COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 26, 2023

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of the April 9, 2020 Incident at 134 Water Dam Road, Waynesburg, Greene County, PA (Mifflin Energy Corp.)
Docket No. M-2023-3019782
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding including Attachments 1 through 4, as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B - the Statement in Supprt of the Bureau of Investigation and Enforcement; and (2) Appendix C - the Statement in Support of Mifflin Energy Corp.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mswindler@pa.gov

MLS/ac
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email only – Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
Festus E. Odubo, Deputy Director - Technical, OSA (*via email only – Word Version*)
Richard A. Kanaskie, Director, I&E (*via email only*)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of the April 9, 2020 Incident at 134 Water Dam Road, Waynesburg, Greene County, PA (Mifflin Energy Corp.)	:	Docket No. M-2023-3019782

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Bureau of Investigation and Enforcement ("I&E") and Mifflin Energy Corp. ("Mifflin Energy" or "Company") (hereinafter referred to collectively as the "Parties" or "Joint Petitioners" or individually as a "Party") hereby submit this Joint Petition for Approval of Settlement ("Joint Petition" or "Settlement Agreement") to resolve all issues related to an explosion that occurred on April 9, 2020 at 134 Water Dam Road, Waynesburg, Greene County, Pennsylvania ("Incident"). I&E and Mifflin Energy respectfully request that the Commission approve the Joint Petition, without modification, for the compelling public interest reasons set forth, *infra.* Also attached are Proposed Ordering Paragraphs (**Appendix A)** and Statements in Support of the Settlement expressing the individual views of I&E (**Appendix B**) and Mifflin Energy (**Appendix C)**, respectively, of why the Settlement Agreement is in the public interest.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and Mifflin Energy Corp., a purported pipeline operator at the time of this Incident with a primary mailing address of 26 Lewis Run Road, West Mifflin, Pennsylvania.[1]

2. The PUC is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa.C.S. §§ 101, *et seq*.

3. I&E is the bureau within the Commission established to prosecute complaints against public utilities and other PUC jurisdictional entities. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E); *See also* 66 Pa.C.S. § 308.2(a)(11).

4. Pursuant to Section 59.33(b) of the Commission's regulations, 52 Pa. Code § 59.33(b), I&E's Safety Division has the authority to enforce Federal pipeline safety laws and

[1] Since I&E's investigation into the Incident was initiated nearly three years ago, Mifflin Energy's operating assets have been sold to a new owner, Mifflin Energy Resources, LLC, which has no affiliation to Mifflin Energy or relationship to Mifflin Energy's owners despite the similar name. Mifflin Energy continues to exist and owns royalty interests in wells other than the ones it previously owned, but no longer owns or operates what was determined by I&E at the time of the Incident to be facilities subject to the Commission's jurisdiction ("jurisdictional facilities") Consequently, it is Mifflin Energy's position that due to this change in circumstances, even if the Act 127 pipeline operator rules and regulations applied at the time of the Incident, Mifflin Energy is no longer subject to those rules and regulations. For the purpose of reaching an amicable settlement in this matter, I&E does not challenge Mifflin Energy's position that neither Mifflin Energy nor its facilities are currently subject to the Commission's jurisdiction given this change in circumstances. The PUC jurisdictional status of Mifflin Energy Resources, LLC is not addressed in this Joint Petition. However, as Mifflin Energy is addressing through this Settlement Agreement the resolution of I&E's concerns regarding the Incident, the facts of the Incident will not be attributable to new owner Mifflin Energy Resources, LLC by I&E. Nevertheless, the new owner will be responsible to identify, register and operate jurisdictional assets, if any, in accordance with applicable state and federal regulations.

regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, and to apply the federal civil penalty. The federal pipeline safety laws and regulations proscribe the minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth.

5. Mifflin Energy, a gas production company with three employees that owned 36 gas wells and operated 6 additional wells with associated production and gathering lines, was deemed by I&E at the time of the Incident to be a "pipeline operator" as that term is defined under Act 127, 58 P.S. § 801.102, based on I&E's view that Mifflin Energy owned or operated "equipment or facilities in [the Commonwealth of Pennsylvania] for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws." As of the date of the Incident, Mifflin Energy was not registered with the Commission as a pipeline operator.

6. Act 127, 58 P.S. § 801.102, defines "pipeline facility" as "a new or existing pipeline . . . facility or building used in the transportation of gas or hazardous liquids . . . ."

7. Act 127, 58 P.S. § 801.102, defines "gas" as "natural gas, liquefied natural gas . . . and other gas as defined under the Federal pipeline safety laws."

8. Act 127, 58 P.S. § 801.102, defines "transportation of gas" as "the gathering, transmission or distribution of gas by pipeline or the storage of gas."

9. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

10. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators who violate the Act. Under Section 502(a), pipeline operators can be subject to a civil penalty provided under Federal pipeline safety laws or Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), whichever is greater.

11. Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), authorizes the Commission to impose civil penalties on any person or corporation, defined as a public utility, who violates any provisions of the Code or any regulation or order issued thereunder governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive. Section 3301(c) further provides that a civil penalty of up to Two Hundred Thousand Dollars ($200,000.00) per violation for each day that the violation persists may be imposed, except that for any related series of violations, the maximum civil penalty shall not exceed Two Million Dollars ($2,000,000.00) or the penalty amount provided under Federal pipeline safety laws, whichever is greater.

12. Civil penalties for violations of Federal pipeline safety laws and regulations are adjusted annually to account for changes in inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 599, 28 U.S.C. § 2461 note (Nov. 2, 2015) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990). The most recent adjustment made by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") relevant to the Incident occurred on July 31, 2019, which revised the maximum civil penalty to Two Hundred and Eighteen Thousand, Six Hundred and Forty-Seven Dollars ($218,647.00) for each violation for each day the violation continues, with a maximum penalty not to exceed Two Million, One Hundred Eighty-Six Thousand, Four-Hundred and Sixty-Five Dollars ($2,186,465.00) for a related series of violations. 84 Fed. Reg. 37071 (July 31, 2019).

13. Mifflin Energy, an alleged pipeline operator, would, in I&E's view, be subject to the jurisdiction of this Commission pursuant to Section 501(b) of Act 127, 58 P.S. § 801.501(b), which requires pipeline operators to comply with the Act and the terms and conditions of the orders issued under the Act.

14. It is I&E's position that pursuant to the provisions of the applicable Commonwealth and Federal statutes and regulations, the Commission has jurisdiction over the subject matter of this investigation and the actions of the Company related thereto.

II. BACKGROUND

15. Mifflin Energy owned and operated a gas well, Shoup #4,[2] which is located on a 210 acre parcel leased to Mifflin Energy that includes the properties at 134 Water Dam Road and 169 Water Dam Road. Prior to and at the time of the Incident, gas from this well was made available to 134 Water Dam Road, the site of the explosion, and 169 Water Dam Road, a neighboring property. According to Mifflin Energy, the home at 134 Water Dam Road was constructed by its owner prior to 2005 when Mifflin Energy acquired its production and gathering facilities in the vicinity. It is not known if the owners of the home built at 134 Water Dam Road were aware they were constructing their home close to the service line that conveyed gas from Mifflin Energy's production facilities to the property at 169 Water Dam Road.

16. Shoup #4 operates at 400 pounds per square inch gauge ("psig") at the well head. A pressure regulator reduces the pressure to 9 psig prior to entering a 2-inch production line, which was also owned and operated by Mifflin Energy. The I&E Safety Division's investigation following the Incident described the relevant facilities as follows: The 2-inch production line runs in a northerly direction for approximately 300 feet from Shoup #4, where there is a tap located on the property of 134 Water Dam Road. At the tap, there is a "T" and two shut-off valves, one on each side of the tap. On one side of the tap, there is a service line serving 134 Water Dam Road. On the other side of the tap, there is a consumer-owned pipe running to 169

[2] Shoup #4 is one of four wells formerly owned and operated by Mifflin Energy on the Shoup Lease. The Shoup Lease is a 210-acre natural gas and oil lease in Washington Township, Pennsylvania, which was entered into on May 3, 1982 by Margaret E. Shoup and her family, and Kepco, Inc. Mifflin Energy purchased the wells on the Shoup Lease in July of 2005.

Water Dam Road. The consumer-owned piping to 169 Water Dam Road originates on the property of 134 Water Dam Road, crosses a public township road, and terminates on the property of 169 Water Dam Road.

17. The meter and regulator for the service line to 134 Water Dam Road are immediately adjacent to the tap, and approximately 1,000 feet away from the former residential structure at 134 Water Dam Road. The consumer-owned service line to the former residential structure at 134 Water Dam Road is plastic.

18. The meter and regulator for the consumer-owned service line to 169 Water Dam Road were also immediately adjacent to the tap prior to March 2020. However, less than one month prior to the Incident, the owners of 169 Water Dam Road relocated the meter and regulator further downstream.

19. On or about March 28, 2020, the owner of 169 Water Dam Road contacted a Mifflin Energy representative seeking permission to relocate Mifflin Energy's meter, as well as their own pressure regulator, closer to the residence at 169 Water Dam Road. The Mifflin Energy representative granted the homeowner's request to move the Mifflin Energy meter. Prior to the consumer-owner relocating its pressure regulator and the Mifflin Energy meter, Mifflin Energy did not require a pressure test of the service line serving 169 Water Dam Road. Moreover, there is no written record of the work performed related to the relocation of the meter and regulator. The gas leak occurred on the 1-inch bare steel service line to 169 Water Dam Road between the Mifflin Energy tap and the relocated meter serving 169 Water Dam Road.

20. The I&E Safety Division became aware of Mifflin Energy's pipeline facilities in Greene County, Pennsylvania during its investigation of the Incident. Prior to the Incident, the I&E Safety Division was not aware of Mifflin Energy's pipeline facilities since the Company was not registered with the PUC or PHMSA as a pipeline operator.

21. In addition to local emergency personnel, Pipeline Safety Inspectors from I&E's Safety Division responded to the scene on the day of the Incident and initiated an investigation. The following background consists of a summary of I&E's Safety Division's findings from that investigation. The suspected cause of the Incident was a leak on the service line connected to piping that Mifflin Energy considers to be a production line where gas was supplied from a Company well. The service line delivered natural gas to the home at 169 Water Dam Road. An explosion destroyed a neighboring residence at 134 Water Dam Road where the female homeowner suffered second degree burns.

22. The I&E Safety Division's investigation of the Incident discovered that Mifflin Energy made available to lease holders in Greene County natural gas supplied by its wells pursuant to the requirements of the lease.

23. Mifflin Energy did not odorize its gas, did not hold an Operator Identification Number ("OPID") from PHMSA and was not registered as a pipeline operator with the Commission.

24. The I&E Safety Division's investigation found that the relocation of the meter to 169 Water Dam Road affected the treatment of the service line to 169 Water Dam Road, rendering it to be a jurisdictional "service line" that is subject to pipeline safety regulation. Federal pipeline safety regulations define a "service line" as:

> a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

49 CFR § 192.3.

25. On January 29, 2021, as part of its ongoing investigation, I&E sought an interpretation from the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") on whether any of the facilities involved in the Incident constituted a PUC "jurisdictional" service line. See Attachment 1. Mifflin Energy was not made aware of I&E's submission.

26. In its response dated September 1, 2021, PHMSA determined, based on the facts and circumstances as presented by I&E, the jurisdictional service line began at the shut-off valve and ended at the outlet of the meter serving 169 Water Dam Road. Thus, in I&E's view, the segment of pipeline that experienced the failure during the Incident was a jurisdictional service line and Mifflin Energy was responsible for the operation and maintenance of the service line up to the outlet of the customer's meter at the meter's new location.[3] *See* Attachment 2.

27. Moreover, PHMSA further concluded, based on the facts and circumstances as presented by I&E, that Mifflin Energy was a PUC jurisdictional pipeline operator since it was engaged in the transportation of gas. PHMSA determined that the terms of a private lease agreement between Mifflin Energy and the residents of 169 Water Dam Road did not impact the responsibility of a pipeline operator for pipeline safety.

28. On March 20, 2023, shortly after first learning of the September 1, 2021 interpretation, Mifflin Energy submitted a Petition for Declaratory Order to PHMSA ("Petition"). *See* Attachment 3 (sans attachments).

29. In the Petition, Mifflin Energy asked PHMSA to issue an order declaring that customer piping is not subject to the safety standards in 49 C.F.R. Part 192, and that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer

[3] Act 127 adopts the Federal pipeline safety regulations for pipeline operators in Pennsylvania. 58 P.S. § 801.302.

piping pursuant to the terms of a free gas or farm tap agreement is not responsible for ensuring that the customer's piping complies with the safety standards in Part 192.

30. In the Petition, Mifflin Energy also asked PHMSA to rescind its September 1, 2021, letter of interpretation, which in Mifflin Energy's view contravened longstanding and well-established precedent by suggesting that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to a free gas or farm tap agreement is responsible for ensuring that the customer's piping complies with Part 192.

31. In correspondence addressed to Mifflin Energy counsel Keith J. Coyle, PHMSA advised that the Petition will be docketed, notice of the Petition will be published in the Federal Register, and public comments will be requested. At the conclusion of the comment period, PHMSA will consider the petition and public comments, and issue a decision. *See* Attachment 4.

III. ALLEGED VIOLATIONS

32. It is I&E's position that moving the meter to a location away from the tap and adjacent to the residence at 169 Water Dam Road transformed the service line into a jurisdictional service line, with jurisdiction ending at the outlet of the relocated consumer meter pursuant to 49 CFR § 192.3. Upon that meter relocation, it is I&E's position that Mifflin Energy became responsible for complying with Act 127 and applicable Federal pipeline safety regulations.

33. Mifflin Energy does not agree with I&E's position.

34. Had this matter been litigated, I&E would have proffered evidence and presented legal arguments to demonstrate that Mifflin Energy, *inter alia,* committed multiple violations related to Act 127 and the adoption of Federal pipeline safety laws including, but not limited to, failure to file an annual report, failure to pay assessment, and various technical duties and responsibilities of jurisdictional pipeline operators. However, based on the unique facts of this

case and the means by which the facilities became jurisdictional, the short timeframe for which Mifflin Energy was deemed jurisdictional prior to the Incident and given the change in circumstances as set forth in footnote 1*, supra*, that prospectively remove Mifflin Energy from the jurisdiction of the Commission under the Act, and in an effort to amicably resolve this matter, the Parties agree, as part of this Settlement Agreement, that alleged violations and related remedial measures that would have otherwise been sought by I&E for compliance with the Act and related Federal pipeline safety laws, will not be the basis for formal enforcement action against Mifflin Energy.

IV. TERMS OF SETTLEMENT

35. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest as set forth at 52 Pa. Code § 5.231(a), the Parties held a series of discussions that culminated in this Settlement Agreement. I&E and Mifflin Energy desire to: (i) terminate I&E's informal investigation of the Incident; and (ii) settle this matter completely without litigation and to eliminate any prospective liability. The Parties recognize that this is a disputed claim and given the inherent unpredictability of the outcome of a contested PUC proceeding, the Parties further recognize the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

36. This matter is worthy of resolution and the facts specific to this case justify reaching an amicable settlement founded on the terms and conditions set forth herein while still accommodating the need to be in the public interest.

37. Here, jurisdiction of Mifflin Energy's facilities only became an issue upon relocation of the meter at 169 Water Dam Road less than one month before the Incident, as described *supra*. By passively agreeing to the request by the owner of the 169 Water Dam Road

residence to relocate its gas meter, it is I&E's position that Mifflin Energy unwittingly became responsible for compliance with all the requirements of Act 127. Mifflin Energy does not agree with I&E's position that Mifflin Energy became subject to Act 127 compliance as a result of the owner of the 169 Water Dam Road residence relocating its regulator and Mifflin Energy's gas meter from one point on the pipeline they own to another point on that pipeline. But for the Incident, I&E would likely not have been made aware of Mifflin Energy or the issues I&E claims to exist under Act 127.

38. Had this matter been litigated, Mifflin Energy was prepared to proffer evidence and legal argument to dispute I&E's claim that Mifflin Energy was subject to PUC jurisdiction under the Act.

39. Given that Mifflin Energy no longer owns or operates the facilities related to the Incident, the jurisdictional issue and application of Act 127 to these facilities no longer apply to Mifflin Energy prospectively. This fact severely limits the value of pursuing litigation against Mifflin Energy. However, it is I&E's view that this change in circumstances does not completely exonerate Mifflin Energy from the violations it alleges Mifflin Energy committed. Mifflin Energy continues to assert that no violations have occurred and that Act 127 does not apply to the pipeline in question. As a result, the Parties have determined that it is in their respective best interest and in the public interest to settle this matter, and they have reached an amicable agreement as to an appropriate civil penalty amount that adequately balances all the relevant interests under the unique circumstances of this case. The unique circumstances here, including the subsequent change of control of Mifflin Energy's pipeline assets, the fact that Mifflin Energy is no longer a jurisdictional pipeline operator, and Mifflin Energy's agreement to pay a fair civil penalty, all warrant consideration of a prompt resolution so as to not unnecessarily further expend either Mifflin Energy's or I&E's resources, and allow the

Commission to direct its regulatory jurisdiction and attention to other matters. Moreover, the overarching question regarding the jurisdictional status of "farm tap" facilities has not been disregarded by this Settlement Agreement as the matter has been placed squarely before PHMSA for review.

40. The terms and conditions of the Settlement Agreement for which the Parties seek Commission approval are set forth below.

41. I&E and Mifflin Energy, intending to be legally bound and for consideration given and received, desire to fully and finally conclude this investigation and agree that a Commission Order approving the Joint Petition without modification shall create the following rights and obligations:

a. Mifflin Energy shall pay a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) pursuant to 58 P.S. § 801.502 and 52 Pa. Code § 69.1201. Said payment shall be made within thirty (30) days of the Commission's Final Order (not subject to pending appeal or other legal challenge) approving any Settlement Agreement in this matter and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

b. Mifflin Energy agrees that the civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

c. Since Mifflin Energy has sold its operational assets to a new owner that has no affiliation with Mifflin Energy, the Parties agree that the remedial measures that would otherwise be sought and potentially imposed upon Mifflin Energy, are no longer applicable to Mifflin Energy, as the sale of these assets relinquishes Mifflin Energy from falling within the definition of a pipeline operator and, accordingly, Act 127's pipeline operator requirements are no longer applicable to Mifflin Energy.

d. Upon Commission entry of a Final Order (not subject to pending appeal or other legal challenge) approving the Settlement Agreement in its entirety without modification, I&E acknowledges and confirms that Mifflin Energy is and will be released from all past or future claims that were made or could have been made by I&E and/or the Commission for monetary and/or other relief based on allegations that the Company failed to comply with the requirements of the Code, the Act, and any other state or federal regulations addressing gas pipeline safety.

e. I&E acknowledges and confirms that Mifflin Energy, given its prior sale of its physical assets and its participation in this Settlement Agreement with respect to the Incident, has no prospective obligations as a pipeline operator under state or federal law with respect to any pipeline or related facilities involved in the Incident.

f. I&E and Mifflin Energy jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E informal investigation, and avoids the time and expense of litigation, which entails hearings, travel for I&E and Mifflin Energy's witnesses, and the preparation and filing of briefs, exceptions, replies to exceptions, as well as possible appeals. Attached as **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and Mifflin Energy, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

42. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

43. This Joint Petition may be signed in counterparts and all signatures attached hereto will be considered as originals.

44. In order to effectuate this Joint Petition, the undersigned Parties request that the Commission issue a Final Order approving the Joint Petition without modification.

45. The Settlement Agreement is conditioned upon the entry by the Commission of a

Final Order (not subject to pending appeal or other legal challenge) approving the terms and conditions contained in this Joint Petition without modification. If the Commission modifies this Joint Petition in any manner, any Party may elect to withdraw from the Settlement Agreement and may proceed with litigation or take such other action and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other Party within twenty (20) days after entry of a Final Order (not subject to pending appeal or other legal challenge) modifying the Joint Petition.

46. The consequence of any Party withdrawing from this Joint Petition as set forth above is that all issues associated with and defenses to the requested relief presented in the proceeding may be fully litigated by the Parties unless otherwise stipulated between the parties, and all obligations of the Parties to each other set forth herein are terminated and of no further force and effect.

47. The Parties agree that the underlying allegations and responses thereto were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, Mifflin Energy has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. Nor may this Settlement Agreement be used by any other person or entity as a concession or admission of fact or law.

48. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any Party's position with respect to any issues raised in this proceeding.

49. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve I&E's informal investigation of the Incident in a manner that is

fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement Agreement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement Agreement by a Party.

50. I&E agrees to close all investigations and potential enforcement actions related to the Incident, and not initiate any new investigation and/or enforcement actions against Mifflin Energy or Mifflin Energy Resources, LLC based on the facts of the Incident. The Settlement Agreement and approval by the Commission in a Final Order (not subject to pending appeal or other legal challenge) shall be a full and complete bar to any future administrative or civil enforcement proceedings by I&E in connection with the Incident. Further, I&E will not cause any third party to pursue any further investigations or enforcement actions against Mifflin Energy in connection with the Incident.

51. Mifflin Energy does not admit to any violations of state or federal law with respect to the Incident.

52. In the event the Commission does not approve the Joint Petition without modifications or conditions in a Final Order (not subject to pending appeal or other legal challenge), Mifflin Energy may raise affirmative defenses in any formal proceeding brought by I&E in connection with the Incident, including but not limited to, defenses based on state or federal statutes of limitation.

53. I&E and Mifflin Energy shall make good faith efforts to obtain approval of the Joint Petition by the Commission by, among other things, submitting Statements in Support of the Joint Petition. Both Parties' Statements in Support of the Joint Petition shall support all of the terms and conditions of the Settlement Agreement specified herein including, without limitation, the position that the agreed-to civil penalty to be paid by Mifflin Energy is adequate and consistent with the Commission's Policy Statement on settlement of investigations and the *Rosi* Standards for civil penalties.

54. I&E acknowledges and confirms that Mifflin Energy, given its sale of physical assets, including assets that could be deemed jurisdictional to the Commission, and given the Settlement Agreement, has no prospective obligations as a pipeline operator under state or federal law with respect to any pipeline or related facilities involved in the Incident. I&E and Mifflin Energy jointly acknowledge that approval of this Settlement Agreement by the Commission is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Commission will serve the public interest by approving this Joint Petition for Approval of Settlement.

55. Since the Parties agree to the terms of the Joint Petition, adopting it will eliminate the possibility of any appeal by the Parties from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

56. This Settlement consists of the entire agreement between I&E and Mifflin Energy regarding the matters addressed herein. Moreover, this Settlement Agreement represents a complete settlement of I&E's informal investigation against Mifflin Energy's alleged violations of state and federal regulations, as discussed, *supra*.

57. The Parties expressly acknowledge that this Settlement Agreement represents a

compromise of positions and does not in any way constitute a finding or an admission of liability. This Settlement shall be construed and interpreted under Pennsylvania law.

58. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

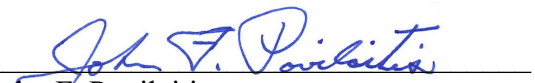
WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Mifflin Energy Corp. respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

Respectfully submitted and filed by:

Date: June 26, 2023

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
mswindler@pa.gov

Date: June 26, 2023



John F. Povilaitis
Alan M. Seltzer
Buchanan Ingersoll Rooney
409 North Second Street
Suite 500
Harrisburg, PA 17101
john.povilaitis@bipc.com
Counsel for Mifflin Energy Corp.

Attachment 1

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 29, 2021

Via Electronic Mail
Mr. John A. Gale
Director, Office of Standards and Rulemaking
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590
John.Gale@dot.gov

Re: Request for Written Regulatory Interpretation;
49 CFR § 192.3 Related to Definition of "Service Line"

Dear Mr. Gale:

This letter represents a request from the Safety Division of the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") for an interpretation of the Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations at 49 CFR § 192.3 (related to the definition of a "service line") and its applicability to a pipeline configuration where an April 9, 2020 natural gas explosion occurred. The suspected cause of the explosion originated from a leak on a consumer-owned line connected to an unregulated well pad production pipeline. The leak was upstream of the outlet of the meter. I&E seeks to determine whether the portion of consumer-owned line that experienced the leak was subject to the definition of "service line" set forth in 49 CFR § 192.3 at the time of the incident and whether the producer was responsible for this portion of the line.

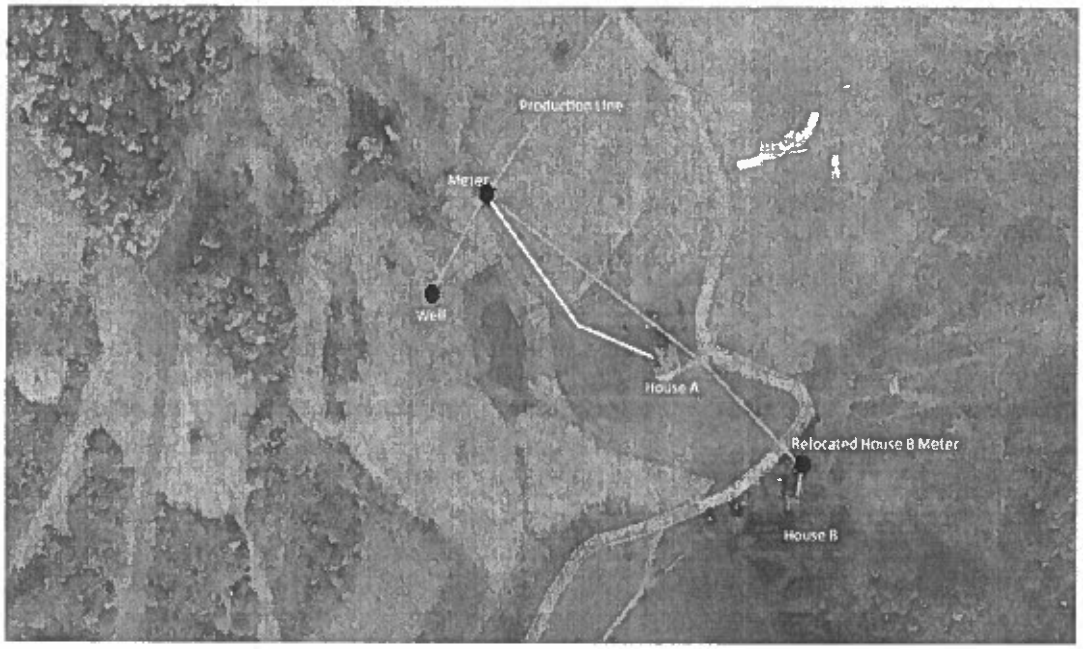
The I&E Safety Division participates in PHMSA's State Pipeline Safety Program. Through its agreement with PHMSA and participation in the Program, the I&E Safety Division has assumed the safety responsibilities of intrastate pipeline facilities in Pennsylvania over which it maintains jurisdiction as authorized by state law.

Pursuant to Pennsylvania's Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* ("Act 127"), the Commission has authority to regulate and supervise pipeline operators within Pennsylvania consistent with Federal pipeline safety laws. 58 P.S. § 801.501(a). Pipeline operators are defined as "a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids *by pipeline or pipeline facility regulated under Federal pipeline safety laws.*" 58 P.S. § 801.102 (emphasis added). Pipeline operators are required to register with the Commission by March 31 of each year and report gathering, transmission and distribution pipeline mileage in class 1, 2, 3 and 4 locations for the preceding calendar year. *See* 58 P.S. § § 801.301(c)(1) and *Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031 (Final Implementation Order entered February 17, 2012).

The I&E Safety Division is investigating a natural gas explosion that occurred on April 9, 2020 in Washington Township, Greene County, Pennsylvania on a line that I&E views to be a farm tap. The explosion demolished a residence, referenced herein as "House A." A gas well is located on the property of House A. This gas well feeds a non-jurisdictional production pipeline that is the source of natural gas provided to House A and a neighboring property, referred to as "House B." A leak on the consumer-owned line to House B is suspected to be the cause of the explosion that demolished House A.

For the consumer-owned lines that take natural gas to House A and House B, there is one tap off of the production line. The tap is located on the property of House A. At the tap, there is a T and a shut-off valve on each side of the tap. The meter and regulator for the line to House A are immediately adjacent to the tap. Prior to the end of March 2020, the meter and regulator for the line to House B had also been immediately adjacent to the tap. However, less than one month prior to the explosion, the owners of House B relocated the meter and regulator to the property of House B and closer to their residential structure.

At the tapping point, the line is split to serve House A and House B. The line to House B originates on House A's property, crosses a public township road and then ends on House B's property. A map depicting the configuration of the pipeline facilities at the incident site follows.



Prior to the end of March 2020, the pressure in the production line upstream of both regulators for House A and House B was 10 pounds per square inch, gauge ("PSIG") and the pressure in the lines downstream of both regulators was approximately 4-6 ounces. Subsequent to the relocation of the meter and regulator for House B, the pressure in the line upstream of the relocated House B regulator (downstream from the original regulator location) increased from 4-

6 ounces to 10 PSIG. The leak occurred on the line to House B between the split and relocated meter and regulator.

The producer maintains a lease agreement with House A, which provides that the producer's responsibilities end at the production line tap valve, and that House A is responsible for making its own connections at a point designated by the producer in addition to installing and maintaining a regulator. The lease agreement further provides that the producer is responsible for installing and maintaining a meter. These provisions of the lease agreement were extended to the owners of House B upon a conveyance of a portion of the original House A property. When House B relocated the meter and regulator at the end of March 2020, House B notified the producer of its intentions to move the meter and regulator, and received permission from the producer to move the producer's meter.

But for the lease agreement, House A and House B likely would not be served with natural gas. I&E estimates that between 5,000 and 7,000 farm taps exist in Pennsylvania, where individual consumer lines are directly connected to unregulated production pipelines and such consumers are served with natural gas via lease agreements, similar to the instant arrangement.

The producer is not registered with the Commission as an Act 127 pipeline operator and, therefore, the aforementioned pipelines were not reported as jurisdictional assets in Pennsylvania. Additionally, the producer does not have a PHMSA Operator ID as it does not define itself as an "operator" pursuant to 49 CFR § 192.3.

I&E notes that the definition of "service line" provides, in pertinent part, that it "ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter." 49 CFR § 192.3. PHMSA recently elaborated on the definition of service line as it relates to farm tap applications. *See Pipeline Safety: Gas Pipeline Regulatory Reform*, 86 Fed. Reg. 2210 at 2212-14 (January 11, 2021). Providing gas to farm tap customers is not defined as a gathering or production function and may include a regulated service line. *Id.* at 2214. Furthermore, a farm tap facility may meet the definition of a "service line" even if the source of the pipeline is not regulated by PHMSA. *Id.* at 2212. Moreover, it is not necessary, under certain configurations, for the operator to be responsible for maintaining the piping in order for a facility to be deemed a service line. *Id.* at 2214.

I&E also notes that PHMSA provided guidance on the applicability of certain farm taps required by Kentucky state law to PHMSA's regulation at 49 CFR § 192.740. *See* PHMSA letter dated November 5, 2018 and addressed to the Chairman of the Kentucky Public Service Commission.[1] In the letter, PHMSA stated that farm taps meet the definition of service lines, and the piping and appurtenances that comprise a farm tap that are owned or maintained by an entity engaged in the transportation of gas are subject to the requirements of Parts 191 and 192 as a distribution service line. Letter at 1. PHMSA reiterated that a service line ends at the

[1] A link to the letter follows: kentucky-psc-pi-18-0019-11-05-2018-part-192740.pdf (dot.gov)

connection to customer-owned piping or at the outlet of the meter, whichever is further downstream. *Id.*

Regarding the incident that is the subject of I&E's investigation, the leak that precipitated the explosion occurred on a portion of the pipe that was owned and maintained by the customer, but upstream of the meter. The meter, as mentioned above, was relocated by the owners of House B with the permission of the producer less than one month prior to the incident.

I&E's questions to PHMSA are as follows:

(1) Is the House B line from the split at the tap to the outlet of the relocated House B meter a service line pursuant to 192 CFR § 192.3?

(2) Does the lease agreement, which provides that the operator is responsible for the meter and House B is responsible for the regulator and all other piping from the production line tap valve, impact the determination of whether the line is a service line?

(3) Given the above-described configuration, is the producer an "operator" as defined in 192 CFR § 192.3?

Thank you for your consideration in this matter. Should you have any questions or seek further clarification or details with respect to this request, please do not hesitate to contact the undersigned.

Sincerely,

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
PA Public Utility Commission
Bureau of Investigation and Enforcement
(717) 772-8839
stwimer@pa.gov

cc: Richard A. Kanaskie, Director, I&E (*via e-mail only*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via e-mail only*)
Robert D. Horensky, Manager, I&E Safety Division (*via e-mail only*)

Attachment 2

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 1, 2021

Ms. Stephanie M. Wimer
Senior Prosecutor
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Dear Ms. Wimer:

In a January 29, 2021, letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you requested an interpretation of 49 CFR Part 192. Specifically, you requested an interpretation of the definitions of "service line" and "operator" under § 192.3.

You provided the following background. The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") is investigating an April 9, 2020, natural gas explosion. The suspected cause of the explosion is a leak on a consumer-owned line connected to an unregulated well pad production pipeline. The leak was upstream of the outlet of the meter. I&E seeks to determine whether the portion of consumer-owned line that experienced the leak met the definition of "service line" set forth in § 192.3 at the time of the incident and whether the producer was the operator of this portion of the line. You provided the following additional information.

> A gas well is located on the property of House A and the well supplies gas to House A and to a neighboring property House B. There is one tap off of the production line for the consumer-owned lines that take natural gas to House A and House B. The tap is located on the property of House A and there is a T (tee) and a shut-off valve on each side of the tap. The meter and regulator for the line to House A are immediately adjacent to the tap. Prior to the end of March 2020, the meter and regulator for the line to House B have also been immediately adjacent to the tap; however, less than one month prior to the explosion, the owners of House B relocated the meter and the regulator to the property of House B and closer to their residential structure. At the tapping point, the line is split to serve House A and House B. The line to House B originates on House A's property, crosses a public township road and then ends on House B's property. Prior to the end of March 2020, the pressure in the production line upstream of both regulators for House A and House B was 10 pounds per square inch gauge (psig) and the pressure in the lines downstream of both regulators was approximately 4-6 ounces (1/4 to 3/8 psig). Subsequent to the relocation of the meter and regulator for House B, the pressure in the line upstream of the relocated House B regulator (downstream from the original regulator location) increased from 4-6 ounces to 10 psig and the suspect leak on the consumer-

owned line to House B is to be the cause of the explosion that demolished House A. The leak occurred on the line to House B between the split and relocated meter and regulator.

The producer maintains a lease agreement with House A, which provides that the producer's responsibilities end for installing and maintaining a meter and at the production line tap valve, and that House A is responsible for making its own connections at a point designated by the producer in addition to installing and maintaining a regulator. The lease agreement was extended to the owners of House B and when House B relocated the meter and regulator at the end of March 2020, House B notified the producer of its intentions to move the meter and regulator, and received permission from the producer to move the producer's meter.

The producer is not registered with the Commission as an Act 127 pipeline operator and, therefore, the aforementioned pipelines were not reported as jurisdictional assets in Pennsylvania. Additionally, the producer does not have a PHMSA Operator ID as it does not define itself as an "operator" pursuant to 49 CFR § 192.3.

On March 8, 2021, PHMSA asked Pennsylvania PUC to respond to several questions and Pennsylvania PUC responded on March 11, 2021.

With your original request, you provided a map depicting the configuration of the pipeline facilities at the incident site. In addition, you mentioned PHMSA provided guidance on the applicability of certain farm taps required by Kentucky state law to PHMSA's regulation at § 192.740 and provided a link to the guidance.

Your questions and PHMSA's responses are as follows:

Question 1: Is the House B line from the split at the tap to the outlet of the relocated House B meter a service line pursuant to 49 CFR § 192.3?

Response to question 1:

Under 49 CFR § 192.3, a service line is any distribution line that transports gas from a common source of supply to an individual customer through a meter header or manifold. Under certain circumstances, a service line may also be referred to as a "farm tap," which is the common name for a pipeline directly connected to a gas transmission, production, or gathering pipeline that provides gas to a customer.

On a farm tap, the "source" piping ends and the service line begins at the first accessible point where the downstream service line can be isolated from source piping (e.g., the inlet to a valve or regulator). In this case, this point appears to be the shut-off valve downstream of the tap. PHMSA notes that additional safety regulations govern service-line valves, including the location of valves pursuant to § 192.365, and operators must comply with applicable recordkeeping requirements in Part 192.

Under the definition of service line, § 192.3, the service line ends at the outlet of the customer meter or at the connection to a customer's pipeline, whichever is further downstream, or at the connection to customer piping if there is no meter. Here, the House B line transports gas from the production line to the customer. The service line would end at the outlet of the meter, or the connection to customer owned piping, whichever is further downstream. Since the outlet of the meter is further downstream than the connection to customer owned piping, the service line would end at the outlet of the relocated meter.

Question 2: Does the lease agreement, which provides that the operator is responsible for the meter and House B is responsible for the regulator and all other piping from the production line tap valve, impact the determination of whether the line is a service line?

Response to question 2: No. The private lease agreement does not impact the determination of whether the line is a service line under 49 CFR § 192.3.

Question 3: Given the above-described configuration, is the producer an "operator" as defined in 49 CFR § 192.3?

Response to question 3: Yes. An "operator" is a person who engages in the transportation of gas, which includes the distribution of gas by pipeline in or affecting interstate commerce (49 CFR §§ 191.3 and 192.3). From the information provided, the producer provided natural gas from its production line to the consumers which was measured by the producer-owned customer meter. While production lines are not regulated, 49 CFR Parts 191 and 192 apply to distribution lines regardless of whether the "common source of supply" is a regulated line. Therefore, because the producer is engaged in the transportation of natural gas via a regulated service pipeline, it is an operator under 49 CFR Parts 191 and 192 and must comply with all applicable requirements contained therein on the "service line" defined in the **Response to question 1**.

Keep in mind that this response letter reflects the agency's application of the regulations based on our understanding of the specific facts as presented by the person requesting the clarification. Interpretations do not create legally enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

JOHN A GALE

Digitally signed by JOHN A GALE
Date: 2021.09.01 11:55:59 -04'00'

John A. Gale
Director, Office of Standards
and Rulemaking

Attachment 3

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

In the Matter of	)	
Mifflin Energy Corporation,	)	**Docket No. _____**
Petitioner.	)	

PETITION FOR DECLARATORY ORDER

Pursuant to 49 U.S.C. § 60117(b)(1)(J), Mifflin Energy Corporation (Mifflin) respectfully petitions the Pipeline and Hazardous Materials Safety Administration (PHMSA) for issuance of a declaratory order to resolve a matter of ongoing uncertainty and controversy. Specifically, Mifflin is respectfully requesting that PHMSA issue an order declaring that (1) customer piping is not subject to the safety standards in 49 C.F.R. Part 192, and (2) that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping—pursuant to the terms of what is more commonly known as a "free gas" or "farm tap" agreement—is not responsible for ensuring that the customer's piping complies with the safety standards in Part 192.

Mifflin is also respectfully requesting that PHMSA rescind a September 1, 2021, letter of interpretation that the Office of Pipeline Safety (OPS) issued to the Bureau of Investigation and Enforcement (BI&E) of the Pennsylvania Public Utility Commission (PAPUC).[1] In that letter of interpretation, OPS contravened well-established precedent by suggesting that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer

[1] PHMSA Letter of Interpretation to Ms. Stephanie Wimer, Pennsylvania Public Utility Comm'n, PI-21-0003 (Sept. 1, 2021), Attachment 1. BI&E is an independent staff arm of the PAPUC that has authority to investigate matters potentially involving violations of the Public Utility Code and the Gas and Hazardous Liquids Pipeline Act, Act of Dec. 22, 2011, P.L. No. 586, No. 127 (Act 127) (codified at 58 Pa. Const. Stat. §§801.101 et seq. (2020)).

piping pursuant to a free gas or farm tap agreement is responsible for ensuring that the customer's piping complies with Part 192. As important, OPS issued that letter of interpretation to assist BI&E's investigation of an April 9, 2020, incident involving the failure of customer piping that received gas directly from a non-jurisdictional production line owned and operated by Mifflin. OPS did not provide Mifflin with prior notice or the opportunity to respond to the request before issuing the interpretation, even though the facts and questions that BI&E presented were based on the incident. OPS erred in that regard given the significance of the interpretation to BI&E's investigation of the incident and resulting impact on Mifflin's Part 192 compliance obligations.

I. Background

a. Mifflin is authorized to petition PHMSA for issuance of a declaratory order.

In Section 108(a) of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Consolidated Appropriations Act, 2021, Division R, Pub. L. 116-260, § 108(a), 134 Stat. 1181, 2221, 2223 (2020 PIPES Act), Congress added Section 60117(b)(1)(J) to the Pipeline Safety Act. Section 60117(b)(1)(J) states, in relevant part, that "[i]n implementing enforcement procedures under this chapter and part 190 of title 49, Code of Federal Regulations (or successor regulations), the Secretary shall . . . allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5." 49 U.S.C. § 60117(b)(1)(J). Section 554(e) of the Administrative Procedure Act (APA) further states that an "agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e).[2] Unlike an advisory opinion, letter of interpretation, or other forms of informal agency

[2] The declaratory order provision in Section 554(e) originated with a recommendation from the Attorney General's Committee on Administrative Procedure (AG Committee), ATTORNEY GEN.'S COMM. ON ADMIN. PROCEDURE, ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. Doc. No. 77-8, at 1 (1941). Citing the declaratory

guidance, the matters addressed in a declaratory order are legally binding on the issuing agency and any named parties as to the facts and circumstances presented in the petition.

The Administrative Conference of the United States[3] (ACUS) has provided guidance for federal agencies to consider in issuing declaratory orders.[4] That guidance states that "[a]n agency may properly use a declaratory order for a wide variety of purposes, including to: (1) Interpret the agency's governing statute or own regulations; (2) define terms of art; (3) clarify whether a matter falls within federal regulatory authority; or (4) address questions of preemption."[5] Federal agencies have issued declaratory orders to address a wide range of questions that are consistent with the ACUS guidance, *e.g.*, defining a term of art in the agency's statute or regulatory scheme,[6] deciding questions regarding an entity's regulatory obligations,[7] determining the regulatory status of proposed energy projects,[8] identifying whether certain conduct may trigger enforcement,[9] and

judgment available in federal and state courts, the AG Committee found that declaratory orders would "impart certainty to the administrative process, and . . . aid individual citizens seeking an authoritative statement of their rights and duties." *Id.* at 6. The AG Committee further explained that the issuance of administrative declaratory orders would be appropriate where an entity seeks to confirm whether a proposed course of action would be subject to the agency's jurisdiction, or to understand the implications of its proposed action. *Id.* at 31-32. A declaratory order would also be appropriate where "the critical facts can be explicitly stated, without possibility that subsequent events will alter them." *Id.* at 32.

[3] ACUS is established by the Administrative Conference Act to "study the efficiency, adequacy, and fairness of the administrative procedure used by [Federal] agencies" and make recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements. 5 U.S.C. § 594(1).

[4] Administrative Conference of the United States, Adoption of Recommendations, 80 Fed. Reg. 78,161, 78,163 (Dec. 16, 2015).

[5] *Id.* at 78,163. ACUS has explained that federal agencies benefit from the use of declaratory orders in at least four important ways:

> First, declaratory orders promote voluntary compliance, which saves agency resources that would otherwise be spent on enforcement. Second, declaratory orders promote uniformity and fairness in treatment among the agency's regulated parties. Third, declaratory orders facilitate communication between the agency and its regulated parties, which can help highlight issues before they become problems. Finally, declaratory orders help the agency stay current by allowing regulated parties to communicate how they are doing business so that agency officials can understand and address emerging issues.

Id.

[6] *Illinois Terminal R.R. Co. v. Interstate Commerce Commission*, 671 F.2d 1214, 1216 (8th Cir. 1982) (ICC issued a declaratory order on the meaning of the term "bridge toll").

[7] *Ashland Oil & Ref. Co. v. Fed. Power Comm'n*, 421 F.2d 17, 20 (6th Cir. 1970).

[8] *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010).

[9] *FCC v. Pacifica Found.*, 438 U.S. 726, 732–35 (1978).

clarifying whether a state or local regulation is preempted.[10] The Federal Energy Regulatory Commission (FERC) regularly issues declaratory orders on questions pertaining to pipeline and liquefied natural gas projects, the same types of facilities that are subject to PHMSA's jurisdiction under the Pipeline Safety Act.[11]

Despite the unambiguous language of Section 60117(b)(1)(J) and well-established use of declaratory orders by other federal agencies, PHMSA's enforcement guidance suggests that an operator cannot petition the agency for the issuance of a declaratory order to resolve an ongoing controversy or remove uncertainty. The relevant guidance states that "[i]f an operator requests a declaratory order under 5 U.S.C. § 554(e)[,] PHMSA will refer the operator to submit a request for a written interpretation. See 49 C.F.R. § 190.11(b)."[12] Mifflin respectfully submits that the foregoing policy is contrary to law, because a written interpretation under 49 C.F.R. § 190.11(b) is simply not a substitute for a declaratory order under Section 60117(b)(1)(J). As OPS observed in its September 1, 2021 letter of interpretation to BI&E, "[i]nterpretations do not create legally-enforceable rights or obligations."[13] Declaratory orders, on the other hand, are legally binding on the agency and any named parties and can be subject to judicial review under 49 U.S.C. § 60119(a).

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[10] The following cases involved FCC's issuance of declaratory orders on questions regarding preemption of state regulations. *State Corp. Comm'n of Kan. v. FCC*, 787 F.2d 1421, 1428 (10th Cir. 1986); *N.Y. State Comm'n on Cable Television v. FCC*, 669 F.2d 58, 61, 66 (2d Cir. 1982); *N.C. Utils. Comm'n v. FCC*, 537 F.2d 787, 794 (4th Cir. 1976).

[11] *See e.g., Andalusian Energy, L.L.C.*, 174 FERC ¶ 61,107 (2021) (granting a declaratory order that its planned construction and operation of facilities to produce compressed natural gas would not be subject to the Commission's jurisdiction); *PennEast Pipeline Co.*, 170 FERC ¶ 61,064 (2020) (issuing declaratory order regarding scope of eminent domain authority for gas pipeline project under Natural Gas Act); *Shell Pipeline Co.*, 167 FERC 61,207 (2019) (issuing a declaratory order finding that certain existing pipelines, if repurposed as production and gathering lines, would not be subject to FERC's jurisdiction); *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006 (2015) (issuing a declaratory order finding that certain liquefaction facilities would not be subject to FERC's jurisdiction); *Enbridge Offshore Facilities, LLC*, 150 FERC ¶ 61,103 (2015) (issuing declaratory order that bidirectional natural gas pipeline used in offshore oil production operations would not be subject to FERC's jurisdiction under Natural Gas Act).

[12] PHMSA, Pipeline Safety Enforcement Procedures, Section 4 at 34 n.8, 71 n.14 (Dec. 9, 2022), https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-12/Section-4-Administrative-Enforcement-Processes-12-9-2022.pdf.

[13] PHMSA Letter of Interpretation to Ms. Stephanie Wimer, Pennsylvania Public Utility Comm'n, PI-21-0003 (Sept. 1, 2021), Attachment 1.

PHMSA cannot compel operators to forgo the exercise of their statutory right to petition for a declaratory order in favor of using a legally inadequate, alternative procedure.[14]

b. PHMSA should issue the declaratory order that Mifflin is requesting.

Mifflin is respectfully requesting that PHMSA issue a declaratory order to resolve two matters of ongoing uncertainty and controversy; namely, (1) whether customer piping is subject to Part 192, and (2) whether the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to a free gas or farm tap agreement is responsible for ensuring that the customer's piping complies with the requirements in Part 192. Mifflin is also asking PHMSA to rescind OPS's September 1, 2021, letter of interpretation to BI&E, which is contrary to law and longstanding precedent. These matters are clearly appropriate for resolution through the issuance of a declaratory order under Section 60117(b)(1)(J).

First, the questions presented are of great significance to owners or operators of non-jurisdictional production and gathering lines that deliver gas directly to customer piping in farm tap configurations. The applicability of Part 192 to farm tap piping has been much debated in recent years. In April 2020, for example, PHMSA asked the public to provide comments on a draft set of frequently asked questions (FAQs) for farm taps,[15] and several industry trade organizations responded by raising concerns with the Part 192 status of customer piping in farm tap configurations.[16] The Pennsylvania Independent Oil and Gas Association (PIOGA) specifically raised that issue in the context of Pennsylvania law, citing PAPUC's decision in

[14] Mifflin notes that the right to petition for a declaratory order under Section 60117(b)(1)(J) of the Pipeline Safety Act is self-executing. 49 U.S.C. § 60117(b)(1)(J) ("the Secretary *shall* . . . allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5") (emphasis added).
[15] Pipeline Safety: Farm Taps Frequently Asked Questions, 85 Fed. Reg. 21,820 (April 20, 2020).
[16] Comments of the Independent Oil & Gas Ass'n of West Virginia, PHMSA-2019-0131 (June 18, 2020), Attachment 2; Comments of Kentucky Oil and Gas Ass'n, PHMSA-2019-0131 (June 18,2020), Attachment 3; Comments of GPA Midstream Ass'n and the American Petroleum Institute (June 19, 2020), Attachment 4; Comments of the Pennsylvania Independent Oil & Gas Ass'n, PHMSA-2019-0131 (June 19, 2020), Attachment 5.

McGaughey v. Peoples Natural Gas Company LLC, C-2018-3005956 (March 26, 2020) for the proposition that customer piping is not subject to regulation under Part 192, and the Pennsylvania Commonwealth Court's decision in *Adams v. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Cmwlth. 2003) for the proposition that farm tap agreements create private contractual obligations that are not subject to regulation for public utility purposes.[17] OPS did not address the comments that PIOGA and other industry trade associations submitted in response to the draft farm tap FAQs in its September 1, 2021, letter of interpretation to BI&E, even though the facts and circumstances of the April 9, 2020, incident clearly raised the same issues.

Nor did the September 1, 2021, letter of interpretation distinguish OPS's prior letters of interpretation to the Kentucky Public Service Commission, which expressly stated that in the context of a farm tap configuration the "piping and appurtenances that are owned by a customer or person not engaged in the transportation of gas (e.g., a farmer or residential customer) are not service lines and are not subject to requirements in Part 191 or Part 192",[18] or the Virginia State Corporation Commission, which reached the same conclusion in analyzing three different piping configurations.[19] Instead, OPS suggested to BI&E that the owner or operator of a non-jurisdictional pipeline that delivers gas directly to customer piping is legally responsible under Part 192 for the *portions of the customer's piping that it does not own or operate*. In other words, OPS implied either (1) that the regulations in Part 192 can override the terms of a contract executed by two non-jurisdictional parties, or (2) that the customer itself is subject to PHMSA's jurisdiction

[17] Comments of the Pennsylvania Independent Oil & Gas Ass'n, PHMSA-2019-0131 (June 19, 2020), Attachment 5.
[18] PHMSA Letter of Interpretation to Mr. Michael J. Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (Nov. 5, 2018), Attachment 6.
[19] PHMSA Letter of Interpretation to Mr. Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (Feb. 13, 1996), Attachment 7.

and must comply with the requirements in Part 192, a position that is contrary to law and decades of well-established precedent.

Finally, clarifying the questions presented in this petition benefits all interested stakeholders. Rescinding the September 1, 2021, letter of interpretation and addressing the Part 192 status of customer piping in farm tap configurations will ensure that BI&E's investigation of the April 9, 2020, incident is not predicated on erroneous legal assumptions. The answer to these questions will also provide certainty to the scores of pipeline operators that deliver gas directly to customer piping pursuant to the terms of free gas or farm tap agreements. In the absence of these clarifications, Mifflin and other affected industry stakeholders will continue to be adversely affected by the ongoing controversy and uncertainty surrounding the Part 192 status of free gas and farm tap customers and the piping owned and operated by these customers in farm tap configurations.

II. Facts and Procedural History

Mifflin previously owned and operated four natural gas wells and an associated system of small-diameter pipelines in Washington Township, Greene County, Pennsylvania, pursuant to the terms of an oil and gas lease. The lease, known as the Shoup Lease, included as Attachment 9, was originally executed on May 3, 1982, and acquired by Mifflin in July 2005. While not relevant to the questions presented in this petition, Mifflin sold the wells, pipelines, and its rights under the Shoup Lease to a third party, effective as of January 1, 2022.

The Shoup Lease includes what is known as a free gas clause. Under that clause, the landowners (or lessors) reserved the right to use a certain amount of the gas produced from the wells for their own purposes. The relevant language in the Shoup Lease specifically states:

> The Lessor shall retain full possession and control of said land for all purposes and uses not inconsistent or interfering with the aforesaid purposes and rights of the

> Lessee, and while gas is being produced from said land in an amount greater than the Lessee may need for drilling or operating thereon, *the Lessor reserves the privilege, to be exercised following written notice to the Lessee and upon making his own connection at a well or at such other point as the Lessee may designate from time to time, of using for domestic purposes on said land not more than 250,000 cubic feet of gas in any one year, computed from the date or anniversary thereof when such connection was first completed. In order to use such gas the Lessor shall also install and maintain at a location satisfactory to the Lessee a suitable regulator or regulators, to reduce and control the pressure of gas to be metered to and used by the Lessor, and all such gas shall be taken and used at the Lessor's own risk and without liability on the part of the Lessee for any failure of the Lessor to obtain such gas on account of adverse weather conditions, the Lessee's use of pumping stations, breakage of lines, abandonment of wells or lines, or for other causes. The Lessee shall install and maintain a meter of standard make at a location satisfactory to the Lessee and provided by the Lessor, to measure any gas so used by the Lessor or other persons on said land.* All gas used by the Lessor or any other persons on said land in excess of the aforesaid quantity in any one year as aforesaid, shall be deemed to be taken subject to the foregoing conditions and under the Lessee's current rules and regulations, and the Lessor covenants to pay or cause to be paid to the Lessee for same the latter's current domestic rate, in default of which payment promptly when due, the Lessee is hereby authorized to deduct the amount thereof from any royalty or other payments from time to time payable by the Lessee to the Lessor hereunder.

In other words, the Shoup Lease made clear that the landowner (or lessor) was responsible for making the connection necessary to receive the free gas and installing and maintaining a regulator or regulators to reduce and control the pressure of the gas. The landowner (or lessor) also assumed the risk of undertaking the activities necessary to use the free gas. Mifflin was only responsible for installing and maintaining the meter at a location suitable to it as the lessee and provided for by the landowner (or lessor).

When Mifflin served as the lessee under the Shoup Lease, gas flowed from the wells into 2-inch diameter production lines. Regulators installed at the wellhead limited the maximum operating pressure of the production lines to 20 psi, but the normal operating pressure generally ranged from 8 to 10 psi. After entering the production lines, the gas then flowed into piping

downstream for delivery to nearby landowners or to a third-party pipeline owned by Peoples Natural Gas for further transportation.

One of these landowners received free gas from a production line that originated at the Shoup #4 Well for use at a residence located at 169 Water Dam Road. When Mifflin acquired the Shoup Lease in July 2005, the production line already had a tap, meter, and regulator installed approximately 1,100 feet northwest of 169 Water Dam, and the gas flowed from that point through piping owned by the landowner to the residence. The meter and regulator remained at that location until March 2020, when the landowner chose to move the regulator closer to the residence at 169 Water Dam. Consistent with industry practice and the terms of the Shoup Lease, Mifflin gave the landowner permission to relocate the meter further downstream next to the regulator at that time.

On April 9, 2020, a failure occurred on the landowner's piping that delivered the gas to 169 Water Dam, causing damage to a nearby residential structure located at 134 Water Dam Road. None of the non-jurisdictional piping owned and operated by Mifflin caused or contributed to the failure,[20] nor did the failure originate at the meter that the landowner had relocated closer to the residence at 169 Water Dam a few weeks earlier. Without Mifflin's knowledge, BI&E submitted a request several months later to OPS for an interpretation under 49 C.F.R. § 190.11 regarding the applicability of Part 192 to the piping involved in the April 9, 2020 incident, *i.e.*, "whether the

[20] As BI&E and OPS both acknowledged in requesting and issuing the September 1, 2021 letter of interpretation, the 2-inch diameter Mifflin pipeline that delivered gas from the Shoup #4 Well to the tap for the landowner's piping was a non-jurisdictional production line at all times relevant to the April 9, 2020, incident. PHMSA Letter of Interpretation to Ms. Stephanie Wimer, Pennsylvania Public Utility Comm'n, PI-21-0003 (Sept. 1, 2021), Attachment 1; *see* 49 U.S.C. § 60101(21)(A); 49 C.F.R. §§ 192.8 and 192.9; *see also* PHMSA Letter of Interpretation to Mr. Edward M. Steele, Public Utilities Comm'n of Ohio, PI-92-010 (Mar. 12, 1992) ("Part 192 does not apply to production facilities"); PHMSA Letter of Interpretation to Mr. Lance Fellhoalter, Engineering Technician, OXY USA, Inc. PI-93-060 (Oct. 8, 1993) ("The regulations in Parts 40, 191, 192, and 199 apply to pipeline facilities used in the transportation of gas beginning at the end of the production process."). Mifflin further notes that even if the 2-inch diameter pipeline had been an onshore gas gathering line, the pipeline still would have been a non-jurisdictional Class 1 gas gathering line under the PHMSA regulations in effect at the time. *See* Gas Gathering Line Definition: Alternative Definition for Onshore Lines and New Safety Standards, 71 Fed. Reg. 13,289 (Mar. 15, 2006).

portion of consumer-owned line that experienced the leak was subject to the definition of 'service line' set forth in 49 CFR § 192.3 at the time of the incident and whether the producer was responsible for this portion of the line."[21] In particular, BI&E asked whether the customer-owned portion of the piping between the tap and relocated meter was a service line under 49 C.F.R. § 192.3; whether the customer's responsibility under the free gas agreement for the piping located between the tap and relocated meter affected the determination as to whether that piping qualified as a service line under 49 C.F.R. § 192.3; and whether the producer, *i.e.*, Mifflin, was an operator under Part 192 given the configuration of the piping involved in the April 9, 2020 incident.[22]

Without providing Mifflin with prior notice or the opportunity to respond to BI&E's request, OPS issued an interpretation on September 21, 2021, addressing each of these questions.[23] First, OPS advised BI&E that the portion of the piping extending from the tap to the relocated meter was a service line under the definition provided in 49 C.F.R. § 192.3, even though the customer owned and assumed legal responsibility for that piping under the terms of the Shoup Lease. Second, OPS advised BI&E that the Shoup Lease had no impact on the determination as to whether that piping was part of a service line under 49 C.F.R. § 192.3, even though the customer owned and assumed legal responsibility for that piping under the express terms of the free gas clause. Third, OPS advised BI&E that Mifflin was an operator under 49 C.F.R. Part 192 solely because of its ownership of the meter that the customer relocated closer to the residence at 169 Water Dam, even though the customer had the sole and exclusive obligation under the Shoup Lease

[21] PHMSA Letter of Interpretation to Ms. Stephanie Wimer, Pennsylvania Public Utility Comm'n, PI-21-0003 (Sept. 1, 2021), Attachment 1.
[22] *Id.*
[23] Mifflin notes that certain statements made by BI&E in its January 29, 2021, request for interpretation about the piping involved in the April 9, 2020 incident are not accurate. For example, BI&E's description of the various landowners' ownership interests in the property involved is incorrect. Had OPS or BI&E advised Mifflin of the outstanding request, Mifflin would have been afforded the opportunity to correct these inaccuracies.

to establish the piping connection necessary to receive the free gas and to install and maintain the regulator.

III. Request for Relief

Mifflin is respectfully requesting that PHMSA issue an order declaring (1) that customer piping is not subject to the federal safety standards in Part 192, and (2) that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for ensuring that the customer's piping complies with the requirements in Part 192.

As to the first question, it is well established that a customer who receives gas for their own consumption is not a person engaged in the transportation of gas, and that owning or operating the piping that delivers that gas to the customer does not change the customer's non-jurisdictional status. As to the second question, it is equally well established that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for ensuring that the customer's piping complies with the requirements in Part 192.

OPS clearly erred in suggesting otherwise in its September 1, 2021, letter of interpretation to BI&E. PHMSA should rescind that interpretation and issue a declaratory order that adopts Mifflin's response to both questions.

a. Part 192 has never applied to customers or customer piping.

PHMSA has never treated customers who receive gas for their own consumption as persons engaged in transportation of gas or owners or operators of jurisdictional gas pipeline facilities. OPS clearly articulated that principle in a 1996 letter of interpretation to the Virginia State Corporation Commission addressing the extent of Part 192's applicability in various pipeline

configurations, stating that a farmer who receives gas for use in operating a farm, a school that receives gas for use in operating a cafeteria and cooking equipment, and a community association that receives gas for use in running street and entrance lighting service were not jurisdictional gas pipeline operators under Part 192.[24] OPS reiterated that principle two decades later in a letter of interpretation to the Kentucky Public Service Commission, noting that a customer who receives gas in a farm tap configuration is "not engaged in the transportation of gas".[25] OPS also clearly stated in both of these interpretations that any piping or appurtenances owned by the customer who receives gas for their own consumption are not subject to Part 192.[26]

Nevertheless, OPS suggested in its September 1, 2021, letter of interpretation to BI&E that customer ownership is not a relevant factor in determining if piping is part of a regulated service line under 49 C.F.R. § 192.3. That suggestion contradicts OPS's longstanding position to the contrary, *i.e.*, that customers are not jurisdictional gas pipeline operators, and that customer piping is not part of a regulated service line under Part 192. OPS did not acknowledge or provide any explanation for changing its position in the September 1, 2021, letter of interpretation or consider the significant reliance interests involved in doing so, particularly for owners and operators of pipelines that provide gas directly to free gas or farm tap customers and the customers

[24] PHMSA Letter of Interpretation to Mr. Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (Feb. 13, 1996), Attachment 7.
[25] PHMSA Letter of Interpretation to Mr. Michael J. Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (Nov. 5, 2018), Attachment 6.
[26] PHMSA Letter of Interpretation to Mr. Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (Feb. 13, 1996), Attachment 7; PHMSA Letter of Interpretation to Mr. Michael J. Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (Nov. 5, 2018), Attachment 6.

themselves.[27] PHMSA should rescind OPS's September 1, 2021, letter of interpretation on this basis alone.

Nor did OPS address the significance of the free gas clause in the Shoup Lease in determining the jurisdictional status of the customer or customer piping involved in the April 9, 2020, incident. In fact, OPS stated that the Shoup Lease had no relevance in determining if the customer piping was part of a regulated service line under 49 C.F.R. § 192.3. OPS clearly erred in that respect as its prior interpretations and the rulemaking proceeding for the customer notification requirements in 49 C.F.R. § 192.16 make clear that the terms of the Shoup Lease govern in determining the extent of the non-jurisdictional customer piping in a farm tap configuration.

b. Production and gathering line operators have never been legally responsible for ensuring Part 192 compliance of customer-owned service lines.

PHMSA has long acknowledged that operators are not legally responsible for ensuring that customer piping complies with the requirements in Part 192. In a 1973 letter of interpretation, PHMSA stated that, "consistent with the new definition of 'service line,' if piping downstream of the meter is owned by the customer, such piping is not included within the definition and, therefore, is not covered by the regulations."[28] PHMSA reiterated that position two decades later in addressing a rulemaking mandate that Congress added to the Natural Gas Pipeline Safety Act for customer-owned service lines.[29] In promulgating the customer notification requirements in 49

[27] *Department of Homeland Security et al. v. Regents of the University of California et al.*, 140 S.Ct. 1891, 1913-1915 (2020); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126-2127 (2016).
[28] PHMSA Letter of Interpretation to Mr. William Doll, Corrosion Assoc., PI-73-0109 (June 1, 1973), Attachment 8.
[29] Pipeline Safety Act of 1992, Pub. L. No. 102-508, § 115(a), 106 Stat 3289, 3296 (Oct. 24, 1992) ("Not later than 1 year after the date of the enactment of this subsection, the Secretary shall issue regulations requiring operators of natural gas distribution pipelines which do not maintain customer-owned service lines up to building walls to advise their customers of the requirements for maintenance of those lines, any resources known to the operator that could aid customers in doing such maintenance, any information that the operator has concerning the operation and maintenance of its lines that could aid customers, and the potential hazards of not maintaining service lines.").

C.F.R. § 192.16 in a subsequent final rule, PHMSA stated that "regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192."[30] PHMSA also confirmed throughout that rulemaking process that "the Federal gas pipeline safety standards do not require gas pipeline operators to maintain customer-owned services lines[,]"[31] and that the notification requirement "do[es] not require operators to take over the maintenance of these lines."[32] PHMSA explained that section 192.16 only required an operator who does not maintain the customer's buried piping to notify the customer in writing that "buried gas piping should be periodically inspected for leaks; periodically inspected for corrosion, if the piping is metallic; and repaired if any unsafe condition is found."[33]

PHMSA has never required an operator of a non-jurisdictional production or gathering line to ensure Part 192 compliance for piping that a free gas or farm tap customer owns and operates. In fact, OPS reached the opposite conclusion in its 2018 letter of interpretation to the Kentucky Public Service Commission, stating that "piping and appurtenances that are owned by the customer or person not engaged in the transportation of gas (e.g., a farmer or residential customer) are not service lines and are not subject to the requirements in Part 191 or Part 192."[34] Nor has PHMSA ever suggested that a producer's ownership of a meter that is located on customer piping and used to facilitate the customer's right to receive free gas for its own use is sufficient to trigger

[30] Customer-Owned Service Lines, 60 Fed. Reg. 41,821, 41,821 (Aug. 14, 1995).
[31] Customer-Owned Service Lines, Notice of Proposed Rulemaking, 59 Fed. Reg. 5,168, 5,169 (Feb. 3, 1994).
[32] *Id.*
[33] Customer-Owned Service Lines, 60 Fed. Reg. at 41,825; 49 C.F.R. § 192.16(b).
[34] PHMSA Letter of Interpretation to Mr. Michael Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (Nov. 5, 2018), Attachment 6.

jurisdictional gas pipeline operator status under the Pipeline Safety Act and regulations in 49 C.F.R. Parts 190 to 199.[35]

The definition of a "service line" in 49 C.F.R. § 192.3 does not change any of the foregoing conclusions. While that definition states that "[a] service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter,"[36] PHMSA has acknowledged that if the customer owns the piping upstream from the meter the operator is not responsible for that piping. PHMSA recognized the potential confusion embodied in that very definition in promulgating the customer notification requirements in 49 C.F.R. § 192.16, stating that the term customer-owned service line "could be easily confused with 'service line'" because "some customers own the portion of a service line on private property between a distribution main and customer meter."[37] But, again, PHMSA confirmed that "[r]egardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192."[38] Indeed, if PHMSA had wanted operators to be responsible for all of the piping located between the main and meter, including in cases where the customer owned that piping, the notification requirements in 49 C.F.R. § 192.16 would not be necessary at all.

Notwithstanding the well-established precedent to the contrary, OPS suggested in its September 1, 2021, letter of interpretation to BI&E that the operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping is legally responsible for

[35] The absurdity of that position is demonstrated by the fact that the producer would be treated as the operator of a jurisdictional gas distribution line that consists solely and entirely of a meter, the ownership of which would require the producer to comply with the annual, incident, safety-related condition, and operator registration and reporting requirements in Part 191, as well as the safety standards in Part 192, and the drug and alcohol testing requirements in Part 199.
[36] 49 C.F.R. § 192.3
[37] Customer-Owned Service Lines, 60 Fed. Reg. at 41,822.
[38] *Id.* at 41,821.

ensuring that the customer's piping complies with Part 192. Again, OPS did not acknowledge or provide any explanation for changing its longstanding position in the September 1, 2021, letter of interpretation or consider the significant reliance interests involved in doing so, particularly for owners and operators of pipelines that provide gas directly to free gas or farm tap customers.[39] Nor did OPS explain how a producer becomes a jurisdictional gas pipeline operator simply by owning a meter that facilitates a landowner's right to obtain gas that is reserved solely for its own consumption under a free gas or farm tap agreement. PHMSA should rescind OPS's September 1, 2021, letter of interpretation on this basis as well.

Finally, OPS did not identify any statute or regulation that authorizes a non-jurisdictional producer to override the terms of a private contractual agreement with a landowner and assume responsibility for determining the design, construction, testing, operation, and maintenance of customer piping that it does not own or operate. There is no legal authority to support that position, which is in direct conflict with OPS's prior interpretations and the customer notification requirements in 49 C.F.R. § 192.16. PHMSA should rescind OPS's September 1, 2021, letter of interpretation as unlawful on these grounds, too.

IV. Conclusion

For the foregoing reasons, Mifflin respectfully requests that PHMSA issue a declaratory order concluding that (1) that customer piping is not subject to the federal safety standards in 49 C.F.R. Part 192, and (2) that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for ensuring that the customer's piping complies with the

[39] *Department of Homeland Security et al. v. Regents of the University of California et al.*, 140 S.Ct. 1891, 1913-1915 (2020); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126-2127 (2016).

requirements in Part 192. Mifflin is also respectfully requesting that PHMSA rescind the September 1, 2021, OPS letter of interpretation to BI&E in issuing the declaratory order.

Respectfully submitted this 20th day of March, 2023.

/s/ Keith J. Coyle
Keith J. Coyle, Esquire
Babst, Calland, Clements & Zomnir, P.C.
505 9th Street, NW, Suite 602
Washington, DC 20004
(202) 853-3460
kcoyle@babstcalland.com
Counsel for Petitioner

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY

In the Matter of	)	
Mifflin Energy Corporation,	)	**Docket No. _____**
Petitioner.	)	

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2023, I served, via electronic mail, the foregoing document on each of the following persons:

Tristan Brown, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration

Alan Mayberry, Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration

/s/ Keith J. Coyle
Keith J. Coyle, Esquire
Babst, Call and, Clements & Zomnir, P.C.
505 9th Street, NW, Suite 602
Washington, DC 20004
(202) 853-3460
kcoyle@babstcalland.com
Counsel for Petitioner

Attachment 4

U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

June 9, 2023

VIA ELECTRONIC MAIL TO: kcoyle@babstcalland.com

Keith J. Coyle, Esquire
Babst, Calland, Clements & Zomnir, P.C.
505 9th Street, NW, Suite 602
Washington, DC 20004

Re: Petition for Declaratory Order

Dear Mr. Coyle:

This letter concerns your Petition for Declaratory Order filed March 20, 2023, in the matter concerning Mifflin Energy Corporation. As noted in your petition, it was filed pursuant to 49 U.S.C. § 60117(b)(1)(J), a law enacted by Congress in section 108 of the PIPES Act of 2020. The law provides, "In implementing enforcement procedures under this chapter and part 190 of title 49, Code of Federal Regulations (or successor regulations), the Secretary shall . . . allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5." Your petition is the first such request submitted by an operator since enactment of the new law.

In determining an appropriate process for handling your request, PHMSA consulted 5 U.S.C. § 554(e) as well as processes employed by other federal agencies. In the coming weeks, PHMSA will create a docket and publish in the *Federal Register* notice of your petition and request public comment. At the conclusion of the comment period, PHMSA will consider the petition and public comments and will issue a decision.

A copy of this letter will be placed in the public docket. If you have any questions, you may reach out to Mr. Tewabe Asebe at tewabe.asebe@dot.gov.

Sincerely,

Ben Fred
Date: 2023.06.09 12:53:06 -04'00'

Benjamin Fred
Assistant Chief Counsel
Pipeline Safety Law Division

Appendix A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of the April 9, 2020 Incident at 134 Water Dam Road, Waynesburg, Greene County, PA (Mifflin Energy Corp.)	:	Docket No. M-2023-3019782

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on June 26, 2023 between the Commission's Bureau of Investigation and Enforcement and Mifflin Energy Corp. is granted and the underlying Settlement Agreement is approved in its entirety as submitted without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date this Order becomes final, Mifflin Energy Corp. shall pay a civil penalty in the amount of one hundred thousand dollars ($100,000). Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That upon receipt of the civil penalty payment of the above amount from Mifflin Energy Corp. the above-captioned matter shall be marked closed.

Appendix B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISISON

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of the April 9, 2020 Incident at 134 Water Dam Road, Waynesburg, Greene County, PA (Mifflin Energy Corp.)	:	Docket No. M-2023-3019782

THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Bureau of Investigation and Enforcement ("I&E"), a signatory party to the Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") filed in the above-docketed matter ("Informal Investigation"), submits this Statement in Support of the Settlement Agreement between I&E and Mifflin Energy Corp. ("Mifflin Energy" or "Company").[1] I&E avers that the terms and conditions of the Settlement Agreement are just and reasonable and in the public interest for the reasons set forth herein.

[1] I&E and Mifflin Energy are collectively referred to herein as the "Parties."

I. BACKGROUND

I&E's informal investigation concerns an explosion that occurred on April 9, 2020 at 134 Water Dam Road, Waynesburg, Greene County, Pennsylvania ("Incident"). The Incident destroyed the residence at 134 Water Dam Road where the female homeowner suffered second degree burns.

Mifflin Energy owned and operated a gas well, Shoup #4,[2] which is located on a 210-acre parcel leased to Mifflin Energy that included the properties at 134 Water Dam Road and 169 Water Dam Road. Prior to and at the time of the Incident, gas from this well was made available to the residences at 134 Water Dam Road, the site of the explosion, and 169 Water Dam Road, a neighboring property, from a 2-inch production line running in a northerly direction for approximately 300 feet from Shoup #4 to a tap located on the property of 134 Water Dam Road. At the tap, there is a "T" and two shut-off valves, one on each side of the tap. On one side of the tap, there is a service line serving the residence at 134 Water Dam Road. On the other side of the tap, there is a service line that crosses a public township road and terminates on the property of 169 Water Dam Road. According to Mifflin Energy, the home at 134 Water Dam Road was constructed by its owner prior to 2005 when Mifflin Energy acquired its production and gathering facilities in the vicinity. It is not known if the homeowners at 134 Water Dam Road were aware they were constructing their home close to the service line that conveyed gas from Mifflin Energy's production facilities to the property at 169 Water Dam Road.

The meter and regulator for the service line to 134 Water Dam Road were immediately adjacent to the tap and approximately 1,000 feet away from the former residential structure at

[2] Shoup #4 is one of four wells formerly owned and operated by Mifflin Energy on the Shoup Lease. The Shoup Lease is a 210-acre natural gas and oil lease in Washington Township, Pennsylvania, which was entered into on May 3, 1982 by Margaret E. Shoup and her family, and Kepco, Inc. Mifflin Energy purchased the wells on the Shoup Lease in July of 2005.

134 Water Dam Road. The meter and regulator for the service line to 169 Water Dam Road were also immediately adjacent to the tap prior to March 2020. However, less than one month prior to the Incident, on or about March 28, 2020, the owner of 169 Water Dam Road contacted a Mifflin Energy representative seeking permission to relocate Mifflin Energy's meter, as well as their own pressure regulator, closer to the residence at 169 Water Dam Road. The Mifflin Energy representative granted the homeowner's request to move the Mifflin Energy meter. There is no written record of the work performed related to the relocation of the meter and regulator.

Pipeline Safety Inspectors from I&E's Safety Division responded to the scene on the day of the Incident and initiated an investigation. The suspected cause of the Incident was a leak on the service line. The gas leak that led to the Incident occurred on the 1-inch bare steel service line to 169 Water Dam Road between the Mifflin Energy tap and the relocated meter serving 169 Water Dam Road and in proximity of the residence at 134 Water Dam Road. Prior to the Incident, the I&E Safety Division was not aware of Mifflin Energy's pipeline facilities since the Company was not registered with the PUC or PHMSA as a pipeline operator. The question of Commission jurisdiction over the service line was debated amongst the Parties and was a key factor in the decision of the Parties to settle this matter.

On June 26, 2023, the Parties filed a Joint Petition for Settlement in this matter. This Statement in Support is submitted in conjunction with the Settlement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation involving allegations related to the Incident in question.

The factual circumstances of this case warrant the resolution as memorialized by the Settlement Agreement. At first blush, it would appear that Mifflin Energy should be classified as a "pipeline operator" as that term is defined under Act 127, 58 P.S. § 801.102, based on I&E's view that Mifflin Energy owned or operated "equipment or facilities in [the Commonwealth of Pennsylvania] for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws." I&E posited that moving the meter to a location away from the tap and adjacent to the residence at 169 Water Dam Road transformed the service line into a jurisdictional service line, with jurisdiction ending at the outlet of the relocated consumer meter pursuant to 49 CFR § 192.3. Upon that meter relocation, I&E posited that Mifflin Energy became responsible for complying with Act 127 and applicable Federal pipeline safety regulations. The circumstances here exemplify the fine line between facilities deemed non-jurisdictional and facilities deemed jurisdictional such that all of the responsibilities under Act 127 must be adhered to. In this case, mitigating factors ensue that warrant settlement. Those factors include the means by which the facilities became jurisdictional (a homeowner's request to simply relocate a meter downstream), the short timeframe for which Mifflin Energy was deemed by I&E's Safety Division to be jurisdictional prior to the Incident (less than three weeks) and a subsequent change in circumstances regarding the facilities (the operating assets of the Company have since been sold to a non-affiliated entity). As a matter going forward, even if the Act 127 pipeline operator rules and regulations applied to Mifflin Energy at the time of the Incident as I&E posits, with its operational assets now sold, Mifflin Energy is no longer subject to those rules and regulations and thus prospectively removed from the jurisdiction of the Commission. In amicably resolving this matter, I&E agreed to forego formal enforcement action regarding the alleged violations and related remedial measures that would have otherwise been pursued for compliance with the Act and related Federal pipeline safety laws, finding that the

public interest is best served under the unique circumstances portrayed here with a swift and fair settlement.

III. TERMS OF SETTLEMENT

I&E and Mifflin Energy, intending to be legally bound and for consideration given and received, desire to fully and finally conclude this investigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

Mifflin Energy shall pay a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) pursuant to 58 P.S. § 801.502 and 52 Pa. Code § 69.1201. Said payment shall be made within thirty (30) days of the Commission's Final Order (not subject to pending appeal or other legal challenge) approving any Settlement Agreement in this matter and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Mifflin Energy agrees that the civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

Since Mifflin Energy has sold its operational assets to a new owner that has no affiliation with Mifflin Energy, the Parties agree that the remedial measures that would otherwise be sought and potentially imposed upon Mifflin Energy, are no longer applicable to Mifflin Energy, as the sale of these assets relinquishes Mifflin Energy from falling within the definition of a pipeline

operator and, accordingly, Act 127's pipeline operator requirements are no longer applicable to Mifflin Energy.

Upon Commission entry of a Final Order (not subject to pending appeal or other legal challenge) approving the Settlement Agreement in its entirety without modification, I&E acknowledges and confirms that Mifflin Energy is and will be released from all past or future claims that were made or could have been made by I&E and/or the Commission for monetary and/or other relief based on allegations that the Company failed to comply with the requirements of the Code, the Act, and any other state or federal regulations addressing gas pipeline safety.

I&E acknowledges and confirms that Mifflin Energy, given its prior sale of its physical assets and its participation in this Settlement Agreement with respect to the Incident, has no prospective obligations as a pipeline operator under state or federal law with respect to any pipeline or related facilities involved in the Incident.

I&E and Mifflin Energy jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E informal investigation, and avoids the time and expense of litigation, which entails hearings, travel for I&E and Mifflin Energy's witnesses, and the preparation and filing of any potential briefs, exceptions, replies to exceptions, and appeals. **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and Mifflin Energy, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

IV. CONDITIONS OF SETTLEMENT

The benefits and obligations of the Settlement Agreement filed alongside this Statement in Support shall be binding upon the successors and assigns of the Parties to the Settlement.

The Settlement Agreement may be signed in counterparts and all signatures attached hereto will be considered as originals.

In order to effectuate the Parties' Settlement Agreement, the undersigned Parties request that the Commission issue a Final Order approving the Settlement without modification.

The Parties agree that any Party may petition the Commission for a hearing or take other recourse allowed under the Commission's rules if the Commission Order rejects the Settlement Agreement or otherwise modifies the terms of the Settlement Agreement. In that event, any party may give notice to the other that it is withdrawing from the Settlement. Such notice must be in writing and must be given within twenty (20) business days of the entry of the Final Order which modifies or rejects the Settlement Agreement. The consequence of any Party withdrawing from the Settlement Agreement as set forth above is that all issues associated with the requested relief presented in the proceeding may be fully litigated by the filing of a Formal Complaint unless otherwise stipulated between the Parties and all obligations of the Parties to each other set forth herein are terminated and of no force and effect. In the event that a Party withdraws from Settlement Agreement as set forth in this paragraph, I&E and Company jointly agree that nothing in the Settlement Agreement shall be construed as an admission against or as prejudice to any position which any Party might adopt during litigation of this case.

I&E and Company jointly acknowledge that approval of the Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations.

52 Pa. Code § 69.1201. The Commission will serve the public interest by approving this Joint Petition for Approval of Settlement.

The Settlement Agreement avoids the time and expense of litigation in this matter before the Commission, which likely would entail the filing of a Formal Complaint, the preparation for and attendance at hearings, and the preparation and filing of testimony, briefs, reply briefs, exceptions, and reply exceptions. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement.

Since the Parties agree to the terms of the Settlement Agreement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

The Settlement consists of the entire agreement between I&E and Mifflin Energy regarding the matters addressed herein. Moreover, this Settlement Agreement represents a complete settlement of I&E's informal investigation against Mifflin Energy's alleged violations of the Public Utility Code and the Commission's regulations. The Parties expressly acknowledge that the Settlement Agreement represents a compromise of positions and does not in any way constitute a finding or an admission concerning the alleged violations of the Public Utility Code and the Commission's regulations. The Settlement shall be construed and interpreted under Pennsylvania Law.

None of the provisions in this Settlement shall be considered or shall constitute an admission, a finding of any fact, or a finding of culpability on the part of Mifflin Energy in this or any other proceeding. The Settlement is presented without prejudice to any position that either Party may have advanced, and without prejudice to the position any Party may advance, in

the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

The terms and conditions of the Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

V. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011). Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors ("*Rosi* factors") that the Commission may consider in evaluating whether a civil penalty for violating a Commission

order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

It is important to note that the Commission will not apply the *Rosi* factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the conduct in this matter involves a question of Commission jurisdiction under Act 127 based on the configuration of the Company's facilities. The question of jurisdiction arose from an Incident investigation where one individual suffered injuries. I&E notes that the Incident was an isolated event and did not place members of the general public at grave risk of injury. Nevertheless, because safe and adequate service to the public is a major concern when gas safety incidents occur, I&E considers the consequences of the Incident to be of a serious nature, which warrants a higher civil penalty.

The second factor considers whether the resulting consequences of Mifflin Energy's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). Here, the Incident involved a gas explosion and resulted in the destruction of property and the injury of one individual. It was the investigation of this Incident that led I&E's Safety Division to question the jurisdiction of the Company's facilities. The

failure of a jurisdictional entity to comply with Act 127 is deemed to be serious. Here, a dispute arises as to whether Mifflin Energy was in fact a jurisdictional entity as a result of a meter relocation on a service line. Whether or not the Incident itself was jurisdictional, consequences of a serious nature were involved.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Mifflin Energy's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Mifflin Energy has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As noted in the Joint Petition, since the Incident, Mifflin Energy has divested itself from the operational assets that were at issue here. Given that Mifflin Energy no longer has any assets that could fall under the jurisdiction of the Commission, the Company has removed itself from the possibility of any future violations.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Again, I&E determined that this was an isolated Incident involving facilities that served only two residences. The jurisdictional issue raised related to a single service line. Mifflin Energy has since sold all of its operational assets and does not own any jurisdictional facilities.

The sixth factor to be considered relates to the compliance history of Mifflin Energy. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise complaint company may result in a lower penalty. Here, Mifflin Energy was not known to have any jurisdictional facilities prior to the Incident and, thus, has no compliance history with the Commission.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Mifflin Energy has cooperated with I&E's investigation in order to address the violations alleged as a result of the Incident. Given that Mifflin Energy no longer owns or operates the facilities related to the Incident, the jurisdictional issue and application of Act 127 to these facilities no longer apply to Mifflin Energy prospectively. It was determined that this severely limited the value of pursuing litigation against Mifflin Energy. The Parties further determined that it was in their respective best interest, as well as in the public interest, to settle this matter and to reach an amicable agreement as to an appropriate civil penalty amount that adequately balances all the relevant interests under the unique circumstances of this case. A fair and equitable civil penalty has been reached in this Settlement Agreement without the need to pursue formal enforcement action.

The eighth factor to be considered is the appropriate civil penalty necessary to address the Incident and to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E determined that the change in circumstances resulting in the elimination of prospective obligations under the Act did not completely exonerate Mifflin Energy from the violations it alleges Mifflin Energy committed, and to which Mifflin Energy continues to assert do not apply. As noted above with regard to the seventh factor, given that seeking deterrence from committing future violations does not apply here under the circumstances noted, I&E submits that the negotiated civil penalty amount of $100,000, which is not tax deductible, is a fair, substantial and sufficient result to find that this Settlement Agreement is in the public interest.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the circumstances of this matter are unique, but that other settlements involving Act 127 have been approved by the Commission. In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Bushkill Group, Inc*.,

Docket No. C-2015-2512950 (Order entered November 30, 2018), the Commission approved the Joint Petition for Approval of Settlement as submitted without modification resolving allegations including but not limited to failing to file Act 127 reports and failing to maintain a procedural manual for operations where respondent agreed to pay a civil penalty of $37,500. Similarly, in *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. XTO ENERGY, Inc. and Mountain Gathering, LLC,* Docket No. C-2014-2444722 (Order entered September 3, 2015), the Commission approved a settlement agreement wherein the respondent agreed to pay a civil penalty of $30,000 to resolve the allegations alleged that the respondents failed to timely identify and classify pipelines for reporting and assessment purposes pursuant to Act 127. By comparison, the instant matter involves a Company that unwittingly, by approving the relocation of a single meter, became a jurisdictional pipeline operator in the eyes of the I&E Safety Division for less than a month prior to I&E's investigation. Here, Mifflin Energy has since sold its operational assets divesting itself from any possible Commission jurisdiction going forward, and agrees to pay a civil penalty of $100,000 to resolve the matter.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). In support of the $100,000 civil penalty, I&E again notes the unique circumstances of this matter. Mifflin Energy, given its prior sale of its operational assets and its participation in this Settlement Agreement with respect to the Incident, has no prospective obligations as a pipeline operator under state or federal law with respect to any pipeline or related facilities involved in the Incident. Given the fair civil penalty to be paid by Mifflin Energy, there is simply no benefit to proceeding to litigation or seeking a more significant monetary penalty.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. Moreover, the circumstances of this case evidence that there

are no prospective remedies to apply to Mifflin Energy since the Parties agree that Mifflin Energy's sale of its operational assets removes the Company from the realm of Act 127 jurisdiction going forward. Mifflin Energy has agreed to pay a fair civil penalty as part of this Settlement Agreement. The overarching jurisdictional issue of "farm tap" facilities is to be addressed by PHMSA. Accordingly, approval of this Settlement Agreement is in the public interest.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the terms of the Joint Petition in their entirety without modification.

Respectfully submitted,

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6369
mswindler@pa.gov

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	Docket No. M-2023-3019782
v.	:	
Mifflin Energy Corp.	:	

MIFFLIN ENERGY CORP. STATEMENT IN SUPPORT OF FULL SETTLEMENT OF INFORMAL INVESTIGATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Mifflin Energy Corp. ("Mifflin Energy")[1] hereby files this Statement In Support Of Full Settlement Of Informal Investigation ("Statement") in connection with a Joint Petition for Approval of Settlement ("Settlement Agreement," "Settlement," or "Joint Petition") entered into by Mifflin Energy and the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") (collectively, "Joint Petitioners") in the above- captioned proceeding. The Settlement Agreement is intended to resolve all issues related to a natural gas explosion that occurred on April 9, 2020, at 134 Water Dam Road, Waynesburg, Greene County, Pennsylvania (the "Incident"), including any alleged liability arising under the Gas and Hazardous Liquid Pipelines Act of Dec. 22, 2011, P.L. 586, No. 127, 58 P.S. § 801.101 et seq ("Act 127"). Mifflin Energy has settled the threatened prosecution to: (i) avoid the greater expense of defending I&E's allegations in a fully litigated formal complaint and (ii) achieve certainty in final resolution of this matter. Rather than engage in months of costly litigation that would delay final resolution of the issues in this matter, Mifflin Energy has provided I&E with all information requested, fully

[1] Mifflin Energy is a natural gas production company with three employees that owned production facilities in the vicinity of the Incident since 2005. Mifflin Energy's operating assets were sold to a new owner, Mifflin Energy Resources, LLC effective on January 1, 2022. Mifflin Resources, LLC has no legal affiliation with Mifflin Energy.

cooperated with I&E, and the Joint Petitioners have developed a reasonable resolution of I&E's informal investigation of the Incident. The Settlement Agreement is in the public interest and meets all legal requirements. Therefore, it should be approved by the Commission without modification.

I. BACKGROUND

1. The background of this proceeding is accurately set forth in Paragraphs 15- 31 of the Joint Petition and is incorporated herein by reference. As noted therein, this matter involves a failure that occurred on consumer-owned piping delivering gas to a residential homeowner pursuant to the terms of what is more commonly known as a "free gas" or "farm tap" agreement, which was also a gas production lease. Mifflin Energy became a party to that agreement upon acquiring certain production wells in July 2005. As originally executed in May 1982, the agreement (the "Lease Agreement") authorized the homeowner to use a certain amount of the gas produced from the well for domestic purposes, so long as the homeowner took all of the steps necessary to establish a connection with the production pipeline that carried the gas from the well. The Lease Agreement expressly stated that the homeowner assumed all liability under the free gas provision, and that Mifflin Energy's only obligation with respect to the consumer-owned piping was to install and maintain a meter for purposes of measuring the amount of gas consumed.

2. In March 2020, the homeowner exercised their right under the Lease Agreement to relocate the regulator on the consumer-owned piping to a point closer to their residence. The homeowner also relocated the meter as part of that project with Mifflin Energy's acquiescence. Approximately three weeks later, the consumer-owned piping failed at a point between the connection to Mifflin Energy's production pipeline and the relocated regulator and meter set, causing an explosion that damaged an adjacent home and injured a resident. Other than agreeing

to the meter relocation, Mifflin Energy had no involvement in any of the events leading up to the Incident.

3. Mifflin Energy understands the nature of the allegations I&E would have asserted under Act 127 in a formal complaint if one had been filed with the Commission in connection with the Incident and will describe in this Statement both the reasons why the Settlement should be approved consistent with the Commission's regulations and the legal and factual defense Mifflin Energy would have presented had this matter gone to litigation. While the Settlement is in the public interest and should be approved without modification, Mifflin Energy does not acknowledge liability with respect to the allegations I&E has raised. However, to resolve I&E's informal investigation of the Incident without the additional cost and uncertainty of litigation, Mifflin Energy has agreed to pay a significant penalty in the amount of $100,000.

II. MIFFLIN ENERGY'S DEFENSE OF I&E'S ALLEGATIONS

4. Had this matter been litigated before the Commission, Mifflin Energy would have proffered the following evidence and legal arguments to demonstrate that Mifflin Energy did not commit any of the violations alleged by I&E.

5. Mifflin Energy was not legally responsible for installing or maintaining the portion of the consumer-owned piping that failed during the Incident. The consumer-owned piping originated at a tap on a Mifflin Energy production facility, ran past the residence at 134 Water Dam Road (the "Beyer Residence"), and terminated at the residence at 169 Water Dam Road (the "Churney Residence"), Waynesburg, Greene County, Pennsylvania. Pursuant to the terms of the Lease Agreement, the homeowner had the sole and exclusive responsibility for installing and maintaining this piping in its entirety, except for the meter used to measure the amount of gas consumed. Mifflin Energy had no other rights or responsibilities with respect to that piping under the Lease Agreement. This is consistent with prevailing Pennsylvania law. *See Adams v. Public*

Utility Commission, 819 A. 2d 631 (2003); *Leslie P. Midla v. Equitable Gas Company*, 2007 WL 7233729 (2007) (holding that free gas or farm tap agreements create private contractual rights between the parties); *see also T.W. Phillips Gas and Oil Co. v. Jedlicka*, 615 Pa. 199, 208 (2012) (holding that an oil and gas "lease is in the nature of a contract and is controlled by principles of contract law"); *Zettlemoyer v. Transcontinental Gas Pipeline Corp.*, 540 Pa. 337, 334 (1995) ("It is well established that the same rules of construction that apply to contracts are applicable in the construction of easement grants.").

6. Mifflin Energy did not initiate or otherwise participate in any of the work that preceded the Incident. Under the express terms of the Lease Agreement, the homeowner was responsible for installing and maintaining the regulator that controls the gas pressure in the consumer-owned pipeline involved in the Incident. The homeowner of the Churney Residence decided to relocate the regulator and meter, using its own contractor and at its expense, away from the tap on Mifflin Energy's production line to a location closer to its home. Attached as Appendix 1 to this Statement is a map showing the consumer-owned piping, the Beyer Residence and the Churney Residence in the area where the Incident occurred. Mifflin Energy was not involved in the work itself and did nothing more than agree to the homeowner's request to relocate the meter. The Incident occurred approximately three weeks later, causing damage to the Beyer Residence and injuries to a resident.

7. Mifflin Energy acted promptly in responding to the Incident. After the Incident occurred, Mifflin Energy was on the site of the Incident daily for weeks and worked with the Pennsylvania Department of Environment Protection ("DEP") to map the source of the gas and conduct soil sampling. Mifflin Energy also submitted a report on the Incident to the DEP.

8. Mifflin Energy cooperated fully with I&E during all phases of its investigation. On August 13, 2020, I&E notified Mifflin Energy that it had opened an investigation of the Incident and served data requests on Mifflin Energy. Mifflin Energy filed complete responses to all data requests on September 2, 2020. Mifflin Energy also attended a meeting with Commission gas safety representatives at the site of the Incident on November 20, 2020, and assisted with the marking of the production line and taps that connected to the customer-owned pipelines leading to the Beyer Residence and the Churney Residence.[2] In response to periodic inquiries on the status of I&E's investigation, Mifflin Energy was advised that the informal investigation was ongoing. On February 23, 2023, I&E reported the results of its investigation to Mifflin Energy. Settlement discussions ensued, which formed the basis of a Joint Petition for Settlement.

9. Mifflin Energy's view is that it was not subject to the Commission's jurisdiction under Act 127 at the time of the Incident. Act 127 only authorizes the Commission to apply the Pipeline and Hazardous Materials Safety Administration's ("PHMSA")[3] federal pipeline safety standards in 49 C.F.R. Part 192 to certain intrastate gas pipeline facilities, 58 P.S. §§ 801.103, 801.501. PHMSA's federal pipeline safety standards in Part 192 do not apply to facilities that are used in the production of natural gas, *see* 49 U.S.C. § 60101(21)(A); 49 C.F.R. §§ 192.8 and 192.9; *see also* PHMSA Letter of Interpretation to Mr. Edward M. Steele, Public Utilities Comm'n of Ohio, PI-92-010 (Mar. 12, 1992) ("Part 192 does not apply to production facilities"); PHMSA Letter of Interpretation to Mr. Lance Fellhoalter, Engineering Technician, OXY USA, Inc. PI-93-

[2] The well, production line and taps associated with the Incident were all in place at the time Mifflin Energy first obtained these facilities in July 2005.

[3] PHMSA is a United States Department of Transportation agency that was created under the Norman Y. Mineta Research and Special Programs Improvement Act (P.L. 108-426) of 2004. PHMSA develops and enforces regulations for the safe, reliable, and environmentally sound operation of the nation's 2.6-million-mile pipeline transportation system and the nearly 1 million daily shipments of hazardous materials by land, sea, and air. PHMSA comprises two safety offices, the Office of Pipeline Safety and the Office of Hazardous Materials Safety. PHMSA is located in five regions across the country and headquartered in Washington, D.C.

060 (Oct. 8, 1993) ("The regulations in Parts 40, 191, 192, and 199 apply to pipeline facilities used in the transportation of gas beginning at the end of the production process."), and Act 127 prohibits the Commission from applying any state safety regulations that are inconsistent with or greater or more stringent than the Part 192 requirements. 58 P.S. § 801.501(a). Mifflin Energy only ever used the wells and pipelines at issue in the case to engage in the production of natural gas. Therefore, the Commission cannot exercise jurisdiction over Mifflin Energy under Act 127.

10. In Mifflin Energy's view, the portion of the consumer-piping that failed during the Incident is not subject to the Commission's jurisdiction under Act 127 either. PHMSA has long recognized that persons who receive gas for their own consumption are not engaged in transportation of gas or owners or operators of jurisdictional gas pipeline facilities under the Pipeline Safety Act or Part 192. PHMSA established that principle more than 25 years ago in a 1996 letter of interpretation, stating that a farmer who receives gas for use in operating a farm, a school that receives gas for use in operating a cafeteria and cooking equipment, and a community association that receives gas for use in running street and entrance lighting service were not jurisdictional gas pipeline operators under Part 192, PHMSA Letter of Interpretation to Mr. Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (Feb. 13, 1996). PHMSA affirmed this principle more recently in a 2018 letter of interpretation, noting that a customer who receives gas in a farm tap configuration is "not engaged in the transportation of gas", PHMSA Letter of Interpretation to Mr. Michael J. Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (Nov. 5, 2018). PHMSA also acknowledged in both interpretations that Part 192 does not apply to any piping or appurtenances owned by the customer who receives gas for their own consumption, PHMSA Letter of Interpretation to Mr. Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (Feb. 13, 1996); PHMSA Letter of Interpretation to Mr. Michael J. Schmitt, Kentucky Public

Service Comm'n, PI-18-0019 (Nov. 5, 2018). As in these prior cases, the consumer was solely responsible for installing and maintaining the portion of the piping that failed during the Incident pursuant to the express terms of the free gas clause in the Lease Agreement. Mifflin Energy believes the Commission could not apply Part 192 to either the consumer or the consumer-owned-and-operated portion of the piping, or exercise jurisdiction over the same under Act 127, at the time of the Incident.

11. Mifflin Energy's position is that I&E's allegations that Mifflin Energy violated Act 127 rest on an erroneous interpretation that PHMSA issued following the Incident. In January 2021, without prior notice to Mifflin Energy, I&E submitted a request to PHMSA for an interpretation on the jurisdictional status of the consumer-owned piping that failed during the Incident, *i.e.*, "whether the portion of consumer-owned line that experienced the leak was subject to the definition of 'service line' set forth in 49 C.F.R. § 192.3 at the time of the incident and whether the producer was responsible for this portion of the line." In September 2021, without prior notice to Mifflin Energy, PHMSA issued a letter interpretation advising I&E that the portion of the piping extending from the tap to the relocated meter was a service line under the definition provided in 49 C.F.R. § 192.3, even though the consumer owned and assumed legal responsibility for that piping under the terms of the Lease Agreement; that the Lease Agreement had no impact on the determination as to whether that piping was part of a service line under 49 C.F.R. § 192.3, even though the customer owned and assumed legal responsibility for that piping under the express terms of the free gas clause in the Lease Agreement; and Mifflin Energy was an operator under Part 192 solely because of its ownership of the meter that the customer relocated closer to the Churney Residence, even though the consumer had the sole and exclusive obligation under the

Lease Agreement to establish the piping connection necessary to receive the free gas and to install and maintain the regulator.

12. In response to being informed by I&E at the end of its investigation that it had obtained an interpretation from PHMSA regarding Mifflin Energy's liability, Mifflin Energy filed a petition pursuant to 49 U.S.C. § 60117(b)(1)(J) asking PHMSA to issue a declaratory order affirming the non-jurisdictional status of the consumer-owned piping that failed during the Incident and rescinding the erroneous September 2021 interpretation. Specifically, Mifflin Energy has asked PHMSA to declare that (1) customer piping is not subject to the safety standards in Part 192, and (2) that the owner or operator of a non-jurisdictional production or gathering line that delivers gas directly to customer piping pursuant to a free gas or farm tap agreement is not responsible for ensuring that the customer's piping complies with Part 192. Mifflin Energy also asked PHMSA to rescind its September 2021 letter of interpretation as contrary to longstanding precedent and well-established law, including the customer notification requirements in 49 C.F.R. § 192.16. Indeed, as Mifflin Energy explained in its petition, PHMSA acknowledged in promulgating the customer notification requirements in 49 C.F.R. § 192.16 that "regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192."[4] PHMSA also acknowledged throughout the rulemaking process that "the Federal gas pipeline safety standards do not require gas pipeline operators to maintain customer-owned services lines[,]"[5] and that the customer notification requirement in 49 C.F.R. § 192.16 "do[es] not require operators to take over the maintenance of these lines."[6]

[4] Customer-Owned Service Lines, 60 Fed. Reg. 41,821, 41,821 (Aug. 14, 1995).
[5] Customer-Owned Service Lines, Notice of Proposed Rulemaking, 59 Fed. Reg. 5,168, 5,169 (Feb. 3, 1994).
[6] *Id.*

PHMSA recently notified Mifflin Energy that its petition for a declaratory order has been accepted by the agency and will be made available for public comment prior to disposition.

13. Pennsylvania jurisdictional utilities have raised concerns similar to Mifflin Energy's concerns about being made responsible for maintaining customer-owned service lines. Under Section 1510 of the Public Utility Code, 66 Pa.C.S. §1510, maintenance of state jurisdictional consumer service lines is the responsibility of the service line owner ("[m]aintenance of service lines shall be the responsibility of the owner of the service line."). In a 2020 Tentative Implementation Order at Docket No. L-2020-301917 ("Tentative Implementation Order"), the Commission requested comments on a proposal to make utilities responsible for repair and maintenance of customer-owned service lines located between the utility's Commission-jurisdictional gas distribution line and the utility meter, citing 49 C.F.R. § 192.3.

14. Among the comments filed to the Tentative Implementation Order were several submitted by the Energy Association of Pennsylvania ("EAP") and Columbia Gas ("Columbia"), a natural gas distribution company.[7] The EAP noted that "federal regulations do address circumstances where the customer owns and maintains a portion of the service line" and that the federal regulations at 49 C.F.R. § 192.16 "require an operator to provide notice to the customer if that operator does not maintain the customer's buried piping and to provide notice that if the customer's buried piping is not maintained, it may be subject to potential hazards of corrosion and leakage."[8] The EAP further stated that the notice requirement of § 192.16 of the federal regulations contradicts making the "operator" responsible for maintenance and repair of the service line between the utility main and the outlet of the meter.[9] In this case, official notice by Mifflin Energy

[7] After receiving comments, the Commission has not taken further action on the Tentative Implementation Order.
[8] Citing 49 C.F.R. § 192.16(b)(1)-(2). Comments of EAP at Docket No. L-2020-3019417, p. 7.
[9] Comments of EAP at Docket No. L-2020-3019417, p. 7.

to Churney that he was responsible to maintain his service line was irrelevant because Churney was fully aware that Mifflin Energy did not maintain the service line.

15. Similarly, Columbia noted in its comments to the Tentative Implementation Order that Part 192 does not require an operator to own service lines and that "[t]here is nothing in section 19.13(c), or any other section of Part 192, that requires an operator to perform or pay for the actual work that is necessary for compliance."[10] Columbia also stated that there are several instances in Part 192 where customers are responsible for maintaining service lines where the operator does not maintain customer-owned piping, and that 49 C.F.R. § 192.16 was inconsistent with the Commission's proposition in the Tentative Implementation Order that the utility/operator be responsible for safety compliance between the main and the meter outlet.[11]

16. Thus, Pennsylvania utilities agree with Mifflin Energy that Part 192 does not make an operator responsible for repair and maintenance of customer-owned piping downstream of the operator's facilities and up to the consumer's meter. In Mifflin Energy's case, this conclusion is particularly apt when the source piping is non-jurisdictional production facilities and the consumer's lease made it clear that maintenance and repair of the consumer-owned pipe was the consumer's responsibility.

17. Even if Part 192 and Act 127 applied to the consumer piping that failed during the Incident, Mifflin Energy's view is that it did not have fair notice of the interpretation of 49 C.F.R. § 192.3 that forms the basis for I&E's alleged violations. That lack of fair notice is demonstrated by the fact that I&E could not determine the jurisdictional status of the piping involved in the Incident without seeking an interpretation from PHMSA. Mifflin Energy cannot be subject to civil penalties without having fair notice of the interpretation of 49 C.F.R. § 192.3 that forms the basis

[10] Comments of Columbia Gas at Docket No. L-2020-3019417, p. 5.
[11] Comments of Columbia Gas at Docket No. L-2020-3019417, p. 6.

for I&E's alleged violations, as well as a due process opportunity to confront the proponent of that interpretation.

18. Finally, Mifflin Energy would show in its defense of I&E's allegations that, notwithstanding the fact that it had been operating wells since 2005, its career as an alleged Pipeline Operator started in 2020 the day its meter was relocated by the homeowner and ended approximately three weeks later when the consumer-owned service line leaked, caused an explosion and was retired from use. Any alleged responsibility of Mifflin Energy under these circumstances was not a well-established and generally accepted gas safety requirement ignored by Mifflin Energy at the time of the Incident.

III. REASONBLENESS OF THE SETTLEMENT

19. It is well-established that Commission policy encourages settlements.[12] The public benefits from settlements because they reduce the time and expense the parties must expend in litigating a case while simultaneously conserving important administrative resources. Also, settlements are more predictable than the results likely to be achieved in full litigation. In order to accept a settlement, the Commission must first determine that the proposed penalty is in the public interest.[13]

20. In *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 Pa. P.U.C. 103 (Order entered March 16, 2000) ("*Rosi*"), the Commission established standards to be applied in determining whether a particular enforcement outcome is in the public interest. *See also*, *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Tentative Order entered December 20, 2000 outlining the "*Rosi* Standards"). These standards have been reviewed by the Joint

[12] *See* 52 Pa. Code§ 5.231.

[13] 7Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2010- 2071433, 2012 PUC LEXIS 1377 at *6 (Order approving settlement agreement entered on August 31, 2012).

Petitioners and compared against the proposed outcome in this case. The Settlement Agreement meets the standards outlined by *Rosi* as being in the public interest, as further discussed below.

21. Further, approval of this Settlement Agreement is consistent with the Policy Statement promulgated by the Commission[14] establishing the ten *Rosi* factors it may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. The Policy Statement, by its own language, is only considered a "guide" to the Commission in evaluating these types of matters. Moreover, the Commission has recognized that "the parties in settled cases should be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." The terms of the Settlement Agreement, as well as the ten factors the Commission evaluates in reviewing a settlement of an alleged violation, are addressed below.

a. *Whether the conduct at issue was of a serious nature?* – There was no egregious, willful fraud or misrepresentation element of Mifflin Energy's conduct, which suggests that a substantially lower penalty, if any, is appropriate in this case. There was no Mifflin Energy conduct whatsoever, except for acquiescing in the Lessor's plan to relocate the Lessor's own regulator and Mifflin Energy's meter along a pipe that Mifflin Energy had never maintained, did not own and did not have a legal right to access under the Lease. For negligence to be present, Mifflin Energy would have had to know of some duty, defined by clear legal precedent, that relocation of the meter under the circumstances applicable here imposed certain maintenance responsibilities on it, a proposition that had not been articulated to Mifflin Energy until I&E completed its informal investigation.

[14] 52 Pa. Code § 69.1201.

b. *Whether the resulting consequences of the conduct at issue were of a serious nature?* – While any gas explosion is a serious matter, no fatalities were involved in the Incident, all damage claims have been resolved, and there are no longer any ongoing investigations related to damages, persons or property. Mifflin Energy has fully cooperated with all investigations of the Incident. Further, it is Mifflin Energy's position that there were no consequences of *its* actions. The only consequences that occurred were as a result of the Lessor moving its own regulator on its own service line.

c. *Whether the conduct at issue was deemed intentional or negligent*? – This factor is only considered in evaluating litigated cases.

d. *Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future?* – At no time in its entire history of operating has Mifflin Energy ever been a regulated entity. In fact, until I&E completed its informal investigation and shared its conclusions, Mifflin Energy had no expectation it could even be considered a regulated entity. Mifflin Energy no longer owns facilities producing or transporting gas and there are no customers extant whose service would be prospectively affected.

e. *The number of customers affected and the duration of the violation* – First, it is Mifflin Energy's position that there were no violations, and that the Incident was caused by the Lessor's actions and the Lessor's failure to maintain its own consumer-owned line. Further, the Incident occurred only days after Mifflin Energy's meter was relocated by the Lessor. A small number of gas users was affected and fortunately no fatalities arose from the Incident.

f. *The compliance history of the regulated entity which committed the violation* – As noted above, it is Mifflin Energy's view that it has committed no violations of any

law or regulation and at worst was arguably a regulated entity for a matter of days as to a single gas meter. Further, Mifflin Energy never sought or accepted status as an operator of any pipeline facilities under federal or state law. There is no negative compliance history for Mifflin Energy.

g. *Whether the regulated entity cooperated with the PaPUC* – Mifflin Energy timely provided I&E answers to its questions in the informal investigation almost three years ago. No further contact, questions or discussions were forthcoming from I&E until I&E provided to Mifflin Energy a letter in early 2023 communicating the results of I&E's investigation of the Incident. Prior to that time, in response to Mifflin Energy's periodic inquiries for a status of the investigation, I&E only advised the investigation was ongoing. Mifflin Energy's cooperation with the investigation was full and complete.

h. *The amount of penalty necessary to deter future violations* – Even assuming a violation occurred (which Mifflin Energy disputes, as noted above), there is no issue of future violations by Mifflin Energy given the sale of its assets. No deterrent is necessary for Mifflin Energy and therefore no amount is necessary "to deter future violations."

i. *Past PaPUC decisions in similar situations* – Mifflin Energy is unaware of similar prior investigations where the analysis supporting violations was a new analysis, not within the knowledge or ability of the alleged violator to address in advance, and not fully consistent with prior interpretations of existing law and regulations. In other cases where I&E has sought a penalty from an alleged violator of pipeline safety regulations in the range sought in this matter, the party was well aware of its status as a utility operator and had reason to be fully conversant with PHMSA and Commission gas safety requirements, unlike Mifflin Energy.

j. *Other relevant factors* – Mifflin Energy has not ignored well-established and clear gas safety requirements and contends that any safety requirements applicable to the

consumer-owned piping was the duty of the homeowner, not Mifflin Energy. Mifflin Energy acted at all times consistent with its private contractual obligations. All damage issues have already been amicably resolved by the affected parties.

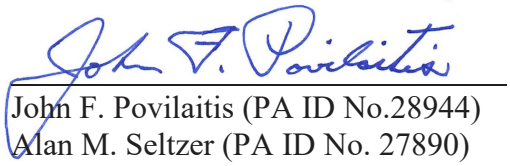
22. Based on the above analysis, the Settlement Agreement is consistent with the Commission's ten-factor Policy Statement, has been designed to provide a thorough and appropriate response to I&E's informal investigation, and is therefore in the public interest. The Company has endeavored to work with I&E to prepare reasonable settlement terms. The Settlement Agreement is intended to address all concerns raised during the informal investigation. In addition, the Settlement Agreement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs.

IV. CONCLUSION

Mifflin Energy and I&E have worked diligently and cooperatively to reach a reasonable and comprehensive settlement of all issues raised by I&E's informal investigation that is in the public interest. The Settlement Agreement penalty should be expressly found to satisfy the ten factors in the Commission's Policy Statement at 52 Pa. Code § 69.120l(c) as being in the public interest. Mifflin Energy supports the Settlement Agreement and respectfully requests that the Commission approve it in its entirety without modification.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: 

John F. Povilaitis (PA ID No.28944)
Alan M. Seltzer (PA ID No. 27890)
409 North Second Street, Suite # 500 Harrisburg, PA 17101-1357
Tel: (717) 237-4800
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Counsel for Mifflin Energy Corp.

Dated: June 26, 2023

Attachment 1

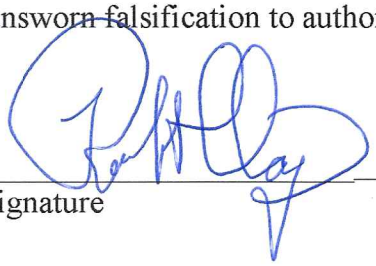
Shoup Wells and Production Lines

Including approximate locations of Churney and Beyer pipelines

Appendix C

VERIFICATION

I, Robert Clay, an owner and employee of Mifflin Energy Corp., hereby verifies that the information in the foregoing Mifflin Energy Corp. Statement in Support of Full Settlement of Informal Investigation, is true and correct to the best of my information, knowledge and belief. I understand that these statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.



Signature

Dated: June 26, 2023

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of the April 9, 2020 Incident at 134 Water Dam Road, Waynesburg, Greene County, PA (Mifflin Energy Corp.)	:	Docket No. M-2023-3019782

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement** upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail

John F. Povilaitis
Alan M. Seltzer
Buchanan Ingersoll Rooney
409 North Second Street
Suite 500
Harrisburg, PA 17101
john.povilaitis@bipc.com
Counsel for Mifflin Energy Corp.

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mswindler@pa.gov

Date: June 26, 2023