

COMMONWEALTH OF PENNSYLVANIA



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November 1, 2023

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, Green
County, PA (Mifflin Energy Corp.)
Docket No. M-2023-3019782

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments
in the above-referenced proceeding.

Respectfully submitted,

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Enclosures:

cc: Office of Special Assistants (**email only:** ra-OSA@pa.gov)

4894-5367-0539

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of November 2023.

SERVICE BY E-MAIL ONLY

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Dated: November 1, 2023
4871-034-8763

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

I. Introduction

On September 21, 2023, the Public Utility Commission (Commission) considered a proposed Joint Petition for Approval of Settlement (Settlement) filed on June 26, 2023, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Mifflin Energy Corp. (Mifflin Energy) relating to I&E’s informal investigation of a natural gas explosion that occurred on April 9, 2020, resulting from a leak on the consumer-owned line, which caused destruction to a neighboring residence and the owner of that residence sustaining second degree burns (Incident). The Commission published the Settlement in the *Pennsylvania Bulletin* on October 7, 2023, and requested interested parties to file comments within 25 days of publication.

The Office of Consumer Advocate (OCA) submits these comments. The OCA is a statutory advocate with authority and duty to, *inter alia*, represent the interest of consumers as a party before the Commission in any matter properly before the Commission in connection with any matter involving regulation by the Commission.¹

¹ 71 P.S. § 309-4.

This matter is properly before the Commission pursuant to (1) its authority as a certified state in the pipeline safety program administered by the U.S. Department of Transportation's (DOT's) Pipeline and Hazardous Materials Safety Administration's (PHMSA), pursuant to the Federal pipeline safety laws,² and (2) its authority under Act 127³ to regulate non-utility gas pipeline operators and pipeline facilities within the Commonwealth.⁴ For non-utility gas pipeline operators, Act 127 establishes that the safety standards applicable to non-utility pipeline operators and pipeline facilities are the Federal pipeline safety laws as implemented in PHMSA's regulations at 49 CFR Subtitle B Ch. 1 Subch. D (relating to pipeline safety), as amended.⁵

Finally:

In dealing with any proposed action which may substantially affect the interest of consumers, including but not limited to...the adoptions of...orders..., the [C]ommission shall...[c]onsistent with its other statutory responsibilities, take such action with due consideration to the interest of consumers.⁶

II. The OCA supports the Commission's approval of the Settlement as being in the public interest because it promotes operator compliance with pipeline safety requirements.

Here, there was a modification to a farm tap.⁷ The modification was the relocation of the pipeline operator's meter closer to the customer's residence. In tandem with the meter relocation, the regulator was relocated closer to the residence. The relocation of the meter subjected the line to compliance with applicable Parts 191 and 192 as a "service line"⁸ and, therefore, subjected the pipeline operator to Commission jurisdiction pursuant to Act 127. The issue of whether the

² 49 U.S.C. § 49 U.S.C. § 60105(a).

³ Act of Dec. 22, 2011, Pub. Law 586, No. 127, codified at 58 P.S. §§ 801.101 - 801.1101.

⁴ 58 P.S. §§ 801.302.

⁵ 58 P.S. § 801.501(a).

⁶ 71 P.S. § 309-5.

⁷ A "farm tap" is an individual customer-owned pipe that is directly connected to a production or gathering pipeline of a producer and the consumer is served with natural gas via a lease agreement.

⁸ "Service line" is defined, in relevant part, as 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.

relocation of the meter made the line a jurisdictional “service line” is currently in dispute before PHMSA. However, assuming the jurisdiction question is resolved in a manner that is consistent with PHMSA’s September 21, 2021 Letter of Interpretation, the OCA submits that the Commission’s adoption of the instant Settlement between I&E and Mifflin Energy is in the interest of consumers as it will promote (1) pipeline operator due diligence in configuring their systems and facilities to ensure compliance with pipeline safety requirements; and (2) more accurate communications by operators to farm tap customers.

Pennsylvania consumers benefit when pipeline operators fully comply with safety requirements. Here, the relocation of the meter from the point where the customer piping directly connected to the shutoff valve at the tap’s tee to a point closer to the customer’s residence triggered the operator’s Part 192 compliance. Had the pipeline operator done its due diligence in configuring its system, if the operator wanted to avoid Part 192 responsibility, the operator should have declined the farm tap customer’s request to relocate the meter and regulator.⁹ Vice Chair Barrow highlighted this in her Statement by asking “all natural gas drillers in Pennsylvania who are supplying gas to landowners via farm taps to use this incident as a prompt to review the design and operational safety of their own farm taps.” Indeed, damage to property and persons due to avoidable gas explosions harms the public health and safety of the Commonwealth.

Additionally, consumers benefit where pipeline operators communicate with accurate information relating to pipeline safety notwithstanding any existing contractual arrangements that

⁹ While the Settlement does not specifically allege that the relocation of the regulator was a contributing factor or cause of the Incident, in I&E’s Request for Written Regulatory Interpretation, I&E alleged that, following the relocation of the regulator, the pressure on the customer-owned one-inch bare steel line increased from 4-6 PSIG to 10 PSIG. *See* Joint Petition for Approval of Settlement, Attachment 1 (I&E’s Letter to PHMSA requesting a written interpretation of Part 192 regulations, at pp. 2-3). These allegations, if proven true, would demonstrate that the Settlement is in the public interest as it would deter future non-compliance by pipeline operators.

may not require the same. Here, had the operator declined the customer's relocation request, it would have sent clear and accurate information to the customer of the farm tap.

III. The new owner of the facilities in question would be responsible for compliance with Parts 191 and 192 on a going forward basis.

Chairman DeFrank in his Statement invited comments on the question of who the responsible party is for any remedial measures relating to the service line and stated that resolution of this issue is necessary before the Commission can determine whether the proposed settlement is in the public interest and should be approved. The OCA submits, however, that in the narrow context of this case, the Commission can reach a determination that the proposed Settlement is in the public interest and approve the Settlement because the Settlement does not address remedial issues relating to the service line in question. It only addresses the penalty for the operator's non-compliance in 2020, which resulted in the Incident.

The OCA posits that there are several unresolved issues that are outside the control of the Commission before a definitive determination of responsibility for the service line can occur. First, PHMSA would have to resolve the jurisdiction question in a manner that is consistent with PHMSA's September 21, 2021 Letter of Interpretation; and, second, the new owner would have to leave the service line where it was at the time of the Incident.¹⁰ If both of these occur, the Commission could conclude that the new owner of the service line – here, Mifflin Energy Resources, LLC, which has no affiliation to Mifflin Energy despite the similar name – would be responsible for Part 192 compliance on a going forward basis.

¹⁰ If the new owner were to relocate the meter back to its original position (*i.e.*, at the connection point between the pipeline operator's pipeline and the customer-owned piping) or remove the meter altogether, it would remove the line from meeting the definition of "service line" at 49 CFR Section 192.3.

IV. A gap exists in safety regulation that impacts safety for farm tap consumers.

The development and use of shale gas in the Commonwealth has surged in recent history. I&E estimates that there exists between 5,000 and 7,000 farm taps in Pennsylvania.¹¹ Safety of farm taps is paramount. It is important that pipeline safety requirements take into account all types of farm tap configurations so that consumers of farm taps have adequate notice of their obligations to maintain and repair their lines as well as to periodically inspect for leaks.

The Settlement highlights a gap that currently exists in safety regulations relating to farm taps. That is, in farm tap configurations where there is no “service line” as defined under 49 CFR Section 192.3 – which was the case here prior to the relocation of the meter – then there is no obligation for the operator to notify the customer of the customer’s obligation to inspect for leaks on its buried piping. Currently, under 49 CFR Section 192.16, only the operator of a “service line”¹² is required to notify the customer in writing of the customer’s responsibility to maintain and repair the customer’s piping and periodically inspect for leaks on the piping. As PHMSA noted in its proposed farm tap FAQ #4, however, “[i]f customer-owned piping connects directly to the first isolation point, it is possible that no portion of the farm tap operated by the source pipeline operator is a service line.”¹³ This means, customers may receive no notification of their maintenance and leak inspection obligations where the farm tap is on a gathering or transmission line and there is no service line.

¹¹ See Joint Petition for Approval of Settlement, Attachment 1 (I&E’s Letter to PHMSA requesting a written interpretation of Part 192 regulations, at p. 3).

¹² More specifically, it is the operator of the service line who does not maintain the customer’s buried piping from the production source (or main) up to entry of the first building downstream or, if the customer’s buried piping does not enter a building, up to the principal gas utilization equipment or first fence (or wall) that surrounds that equipment. 49 CFR § 192.16(a).

¹³ See *Pipeline Safety: Farm Taps Frequently Asked Questions*, Docket No. PHMSA-2019-0131, Federal Register 85 FR 21820 (April 20, 2020), available at <https://www.federalregister.gov/documents/2020/04/20/2020-07922/pipeline-safety-farm-taps-frequently-asked-questions> or <https://pipelinesafety.dot.gov/regulations/federal-register-documents/2020-07922> or <https://www.regulations.gov/document/PHMSA-2019-0131-0001>.

As a certified state under Federal pipeline safety laws, the Commission is in a unique position to raise awareness to PHMSA and the General Assembly about this existing gap and advocate for changes in law that make sense for Pennsylvania. The OCA encourages the Commission to do the following:

- (1) Encourage PHMSA to amend its regulations to extend the customer notification requirements of 49 CFR Section 192.16 to operators of Class 1 transmission lines and Types C and R gathering lines *where there is a farm tap*. Moreover, the notification requirement of Section 192.16 should be bolstered to require written notice be provided *at least annually* to farm tap customers rather than only once. Residential consumers especially would benefit from more regular notification to account for, *inter alia*, the possibility of a change in home ownership.
- (2) Encourage the General Assembly to amend Act 127 to give the Commission the fullest extent of its authority under Federal pipeline safety laws to promulgate safety regulations. Federal law expressly permits a certified state to adopt additional or more stringent standards than the federal standards for gas and hazardous liquids operators, provided those standards are compatible with the federal standards.¹⁴ However, Act 127 limits the Commission's authority over non-utility gas and hazardous liquids operators by not allowing the Commission to adopt additional or more stringent standards than the federal standards.¹⁵ Given the Commonwealth's unique position within the shale gas production, the Commission should be able to exercise its safety authority over non-utility pipeline operators and pipeline facilities to the fullest extent possible in order to address the safety needs of Pennsylvanians.

¹⁴ 49 U.S.C. § 60104(c); *see also* 49 C.F.R. Part 195, *Appendix A to Part 195*.

¹⁵ 58 P.S. § 801.501(a).

V. Conclusion

The OCA supports the Commission's approval of the Settlement as being in the public interest because it promotes operator compliance with pipeline safety requirements. The OCA also urges the Commission to proactively seek the changes noted above.

Respectfully submitted,

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