



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 3, 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
I&E Replies to Comments

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's
("I&E") Replies to Comments in the above-referenced proceeding.

Copies have been served on the parties in accordance with the Certificate of Service.
Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'mswindler'.

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

MLS/ac
Enclosures

cc: Office of Special Assistants (*via email* – ra-OSA@pa.gov)
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 : Docket No. M-2023-3019782
at 134 Water Dam Road, Waynesburg, :
Greene County, PA (Mifflin Energy Corp.) :

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S
REPLIES TO COMMENTS IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

On June 26, 2023, 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") and Mifflin Energy Corp. ("Mifflin Energy") filed a Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") at the above docket to amicably resolve I&E's informal investigation concerning a service line leak on a gas well facility that caused an explosion that occurred on April 9, 2020 at 134 Water Dam Road, Waynesburg, Greene County, Pennsylvania ("Incident"). The facilities involved in the Incident had been owned and operated by Mifflin Energy at the time of the Incident in 2020 but had been subsequently sold to another entity, Mifflin Energy Resources, LLC (referred to herein as "Mifflin Energy Resources"). The terms of the Settlement as set forth therein in addition to the accompanying Statements in Support of I&E and Mifflin Energy provided the support necessary to find that the Settlement Agreement is just and reasonable and in the public interest.

At its Public Meeting held September 21, 2023, the Commission moved to seek public comment on the Settlement Agreement before issuing a final decision. I&E deemed it prudent to

file the instant Replies to Comments to further support this Settlement Agreement and respectfully request that the Commission approve the Joint Petition in its entirety without modification. Comments in support of the Settlement were also filed by the Office of Consumer Advocate on November 1, 2023. I&E now files the instant Comments consistent with the Commission's recent ruling in *I&E v. Great American Power* where it stated, "the Commission has not rejected the filing of reply comments or similar responsive filings if they are filed in a reasonable time and in compliance with our procedural regulations." *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2023-3020643 (Order entered September 21, 2023).

I&E's Replies to Comments intend to not only be responsive to the filing of comments by interested parties or the lack thereof, suggesting no opposition to the Settlement Agreement as filed, but also to comments made at the Public Meeting of September 21, 2023, within the Statement of Chairman Stephen M. DeFrank as well as the Statement of Vice Chair Kimberly Barrow at the above docket. In his Statement, Chair DeFrank states, in pertinent part:

Regardless, however, of who is the current owner of the facilities involved in this incident, the Commission is still obligated to ensure that all necessary remedial measures are taken to ensure that an incident like this never happens again.

A better understanding of this issue of who is responsible for any remedial measures is necessary before determining the proposed settlement is in the public interest and should be approved.

In her Statement, Vice Chair Barrow states, in pertinent part:

Whoever owns the facilities in this case, the Commission is still obligated to ensure the facilities are safely managed.

Not only must the facilities at issue be reviewed to ensure safe service, but the new owners should also conduct a comprehensive review of their facilities to prevent further dangerous conditions. All operators with farm taps must ensure that the facilities which are their responsibility are well maintained.

First, as the OCA Comments correctly note:

...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.

OCA Comments at 3.

I&E's investigation concluded that with the facilities relocation as described in the Settlement, as small or incidental as it may seem at first blush, this relocation of the meter closer to the customer's residence triggered the application of the pipeline operator's compliance with the applicable federal regulations, specifically Part 192. 49 CFR Section 192. Prior to the Incident, I&E-Safety had not been aware of Mifflin Energy's pipeline facilities since the Company was not registered with the PUC or the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) as a pipeline operator. In the interest of amicably resolving the investigation against it, Mifflin Energy, as the owner of the facilities at the time of the Incident, agreed to pay a civil penalty of \$100,000, thus closing the matter as it related to Mifflin Energy. It is this voluntary Settlement with the prior owner of these facilities, separate and apart from any determination to be made at the state or federal level regarding the jurisdictional nature of farm taps, that is in the public interest and should be approved in its entirety.

While the Statements of the Chair and Vice Chair make clear that the Commission's safety concerns do not end with this Settlement, it is important to emphasize that these ongoing concerns are separate and apart from the instant Settlement and should not be judged as a means to justify a modification or rejection of the Settlement with the prior facilities owner. In the Joint Petition itself, I&E recognized the separate, ongoing responsibility of the new facilities owner

when it stated:

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.*

Joint Petition at 2, fn 1. (Emphasis added.)

In further support of the Settlement and in order to proactively respond to the concerns memorialized in the Statements of Chair DeFrank and Vice Chair Barrow, I&E-Safety Engineers scheduled a meeting with the owner of Mifflin Energy Resources. On October 23, 2023, two I&E-Safety Engineers and their Supervisor met with the owner of Mifflin Energy Resources, the current owner of the facilities. The purpose of the meeting was to review the Mifflin Energy Resources system to determine which, if any, assets are jurisdictional. The inspection found that Mifflin Energy Resources owns a number of wells and also pipelines that range from 2 inches to 4 inches in diameter. Of these wells, approximately 13 farm taps are served, however several split downstream of the tap and serve multiple homes.

The field inspection of Mifflin Energy Resources included visiting various wells, farm taps, meter sets, and sales points within the system. While additional review of the system is required, field observations of the gathering and production system appear to be non-jurisdictional. The area within which the pipelines are located, based on field observations, appears to be "Class 1" locations, according to 49 CFR Part 192.5. Based on the size of the pipe, that designates them as "Type R gathering", which is only jurisdictional to PHMSA for filing an Annual Report under 49 CFR Part 191.17(a)(2) and to file incident reports under 49 CFR Part 191.15

During this initial field inspection, I&E-Safety Engineers confirmed that the service line for 169 Water Dam Road has been disconnected near the tap off the Mifflin Energy Resources pipeline, meaning that the residence is no longer served from this system. It appears it has switched to propane. The configuration of the tap and service line has otherwise not changed since testing was performed during the original investigation with the exception that, as stated above, the service line is no longer in use.

The I&E-Safety Engineers found that the system does have jurisdictional farm taps - based on the PHMSA Interpretation letter PUC-PI-21-003-09-01-2021 that I&E sought and subsequently received from PHMSA. However, as to this interpretation, further clarification has been requested by the previous owner of Mifflin Energy, through a Petition for Declaratory Order with PHMSA which challenges that interpretation. Further, I&E-Safety is awaiting further guidance from PHMSA with the release of Frequently Asked Questions (FAQs) on farm taps. Depending upon the outcome of the PHMSA ruling on the outstanding Petition and release of updated FAQs, Mifflin Energy Resources, and other similarly situated pipeline operators, may or may not be required to follow 49 CFR Part 190, 191, and 192 applicable to farm taps. I&E agrees with the OCA that these “unresolved issues” are “outside the control of the Commission” at present. OCA Comments at 4. What is important here is that these pending determinations at the federal level, while vitally important, are not a barrier to approval of the instant Settlement, where only the application of a voluntary civil penalty to be paid by an entity that no longer owns the facilities is at issue. And with its recent initial inspection of Mifflin Energy Resources, I&E-Safety has demonstrated its responsiveness to the concerns set forth in the Statements of the Chair and Vice Chair regarding the need to ensure safe service going forward.

Lastly, in support of the \$100,000 civil penalty voluntarily agreed to by the prior owner of the facilities, 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. Moreover, I&E has addressed herein its proactive response to the concerns raised by Chairman DeFrank and Vice Chair Barrow regarding the safety of facilities and responsibility of the new facilities owner going forward, by having conducted an initial system inspection with the new system owner in order to ascertain the jurisdictional nature of the system and to alert the current pipeline operator of the duties and responsibilities under the federal regulations related thereto.

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 to Mifflin Energy Resources removes Mifflin Energy from the realm of Act 127 jurisdiction going forward. On this basis, it is abundantly clear that it is not Mifflin Energy that is responsible for any remedial measures. The question of whether the new owner, Mifflin Energy Resources, is responsible for any remedial measures may require waiting for a PHMSA ruling, but such a determination is separate and apart from finding the instant Settlement to be in the public interest. Mifflin Energy has agreed to pay a fair civil penalty as part of this Settlement Agreement to close the I&E investigation against it. It no longer owns the facilities at issue. 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
mwindler@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Replies to Comments** 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
alan.seltzer@bipc.com
Counsel for Mifflin Energy Corp.

Melanie J. El Atieh, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
MElAtieh@paoca.org

NazAarah Sabree
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place Harrisburg,
PA 17101-1923
ra-SBA@pa.gov



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

Date: November 3, 2023