

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	M-2023-3019782
	:	
Mifflin Energy Corp.	:	

**REPLY TO MOTION TO STRIKE  
Filed by the  
PENNSYLVANIA GRADE CRUDE OIL COALITION (PGCC)**

Pursuant to 52 Pa. Code § 3.113(b)(3) PGCC files this Reply so that its comments can be heard.

- 1) On September 21, 2023, the Commission entered an order published in the Pennsylvania Bulletin October 7, 2023, 53 Pa.B. 6346, seeking comments from “interested parties” in the captioned matter.
- 2) PGCC is an interested party; it is a nonprofit trade organization formed in 2013 that represents conventional oil and natural gas producers in Pennsylvania. PGCC’s members consist entirely of small businesses, many of which are single-employee entities or individual operators. PGCC’s mission is to advance local economies and engage in regulatory processes that affect conventional oil and natural gas development. PGCC’s members reside and operate throughout western Pennsylvania. PGCC members produce natural gas and many of PGCC’s members operate oil and gas leases with production line farm tap provisions similar to the farm tap provision contained in the Shoup lease relative to this matter. (That Shoup lease, the tap, pipeline, and gas usage made thereunder, and the explosion, are hereinafter referred to as the “Incident.”)
- 3) PGCC monitored the comments submitted during the above-mentioned comment period. PGCC agreed with the substance of the comments submitted by the Pennsylvania Independent Oil & Gas Association (PIOGA); consequently, it was unnecessary for PGCC to submit additional comments.

- 4) However, on November 3, 2023 (either the last day of the comment period or two days following the close of the comment period)<sup>1</sup>, the PUC’s Bureau of Investigation and Enforcement (hereinafter “I&E”) filed a document entitled REPLIES TO COMMENTS IN SUPPORT OF THE JOINT PETITION FOR APPROVAL OF SETTLEMENT. In the first paragraph of those reply comments, I&E makes the following statement: “The facilities involved in the Incident had been owned and operated by Mifflin Energy at the time of the Incident...” That first paragraph materially changed the public record.
- 5) At 9:15 on the morning of November 7, 2023, the second business day following the November 3, 2023 filing by I&E, PGCC filed its comments; PGCC made clear in its filing that its comments were limited to the “sole purpose” of responding to the November 3, 2023, I&E filing.
- 6) On November 7, 2023, I&E filed a Motion to Strike the PGCC comments.
- 7) Under 52 Pa. Code § 3.113(b)(3) it is provided that “documents relied upon by the Commission in reaching its determination shall be made part of the **public record.**” The following sentence then directs the Commission to provide “other potentially affected persons with the opportunity to submit exceptions **thereon.**” (Emphasis added) “Thereon” refers to the public record and PGCC believes it is clear that the purpose of § 3.113(b)(3) is to permit comment on the public record.
- 8) The I&E filing on November 3, 2023 is part of the public record.
- 9) The I&E filing on November 3, 2023, (in particular the first paragraph) contains a statement of fact that is materially different than any other statement of fact contained in the earlier public record. Indeed, the statement of fact contained in the first paragraph of the I&E filing on November 3, 2023 contradicts prior statements made by I&E in the public record.
- 10) In filing its comments on November 7, 2023, PGCC stated that its “sole purpose” was to respond to “that first paragraph of the I&E Reply.”
- 11) The first paragraph of the I&E filing on November 3, 2023, materially changes the public record by describing the facilities involved in the Incident as having been “owned and operated by Mifflin Energy at the time of the Incident...”
- 12) The record is not in dispute that “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.”<sup>2</sup>
- 13) The November 3, 2023 assertion by I&E, that the aforesaid 1-inch steel line was owned and operated by Mifflin Energy at the time of the incident, is not only a new addition to the public

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<sup>1</sup> At paragraph 11 of the Motion to Strike I&E is unclear as to whether the comment period concluded November 1 or November 3, 2023.

<sup>2</sup> See paragraph 19 of the Joint Petition for Approval of Settlement

record; it is an addition that directly contradicts other statements contained in the public record as follows:

- a. The public record contains the letter from I&E Senior Prosecutor, Stephanie M. Wimer, to the Pipeline and Hazardous Materials Safety Administration (PHMSA), dated January 29, 2021, which letter describes the Incident as follows: “A leak on the **consumer-owned** line to House B is suspected to be the cause of the explosion that demolished House A.” (emphasis added)
  - b. The Joint Petition for Approval of Settlement (hereinafter “Joint Petition”) at paragraph 16 describes the pipe running to 169 Water Dam Road as “consumer-owned.”
  - c. At paragraph 19 of the Joint Petition it is stated the gas leak occurred on the line to 169 Water Dam Road.
  - d. The Shoup Lease is part of the public record and in that document the parties made the following a part of their contractual arrangement: “...the Lessor reserves the privilege, to be exercised following written notice to the Lessee **and upon making his own connection...of using domestic gas...**” (Emphasis added)
- 14) Nowhere, prior to the I&E filing of November 3, 2023, does the public record contain an assertion that the pipeline at the center of the Incident was anything other than “consumer-owned.”
- 15) The I&E filing on November 3, 2023, which asserts that Mifflin Energy (not the consumer) owned and operated the pipeline, is both contrary to the express contractual provisions contained in the Shoup lease and contrary to the previous public record.
- 16) PGCC filed its public comment promptly, on the morning of the second business day, following the I&E filing of November 3, 2023.
- 17) PGCC’s comment was purposely narrow and does not comment on any matter other than the fact that the I&E filing of November 3, 2023 is inconsistent with the previous public record, including the prior correspondence of the I&E and the express contractual provision of the Shoup lease.
- 18) If the Motion to Strike is granted I&E will have successfully changed the public record in a highly material way without the opportunity for PGCC to comment upon that modified public record.
- 19) As set forth in its original comments, PGCC’s members would be significantly impacted by the modified public record. If a “consumer-owned” line, which is installed and operated under a farm tap lease provision, can be converted (by unexplained means) to the ownership of the Lessee/producer, in contradiction of the express terms of the underlying Lease agreement, then the contractual relationships of many PGCC members would be directly affected in a manner that is entirely new to the industry and which is entirely contrary to the understanding that has prevailed within the industry for well over a century.

- 20) The determination of ownership of the line located between the tap and the consuming house is a highly material determination that carries with it consequences of enormous magnitude. For example, under the industry understanding that prevailed prior to November 3, 2023, the Lessee/producer operating under a contractual provision such as the Shoup lease would not only have no responsibility to control or interfere with the operation of the consumer-owned line serving the Lessor, but would have no **right** to control or interfere with the operation of the consumer-owned line serving the Lessor. The factual assertion staked out by the I&E in its filing of November 3, 2023, would (somehow) change the ownership of what had been a consumer-owned line, to the ownership of the Lessee/producer. PGCC's members do not understand how such property changes hands, how to insure for that change, how to administer that change, and, in general, how to order their business affairs in the face of such material change.
- 21) If I&E did not intend to assert a change of ownership in its November 3, 2023 filing, then I&E can withdraw that factual assertion and the PGCC comment is unnecessary and moot.
- 22) If I&E stands by its filing of November 3, 2023, then the public record is changed; PGCC promptly commented upon that changed public record (in a narrow comment purposely addressed only to the material change).
- 23) The purpose of § 3.113.(b)(3) will be fulfilled by allowing PGCC to file its narrow comment related to I&E's assertion of changed ownership.
- 24) The determination of ownership of the pipeline involved at the center of the Incident will have material impact on the members of PGCC (who are involved in the several thousand farm tap contractual arrangements that I&E acknowledges exist within the industry).<sup>3</sup>

**WHEREFORE**, PGCC respectfully requests that its comments be heard by the Commission.

Respectfully submitted,



David Clark,  
PGCC President

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<sup>3</sup> In the above-referenced I&E letter to PHMSA, dated January 29, 2021, at page 3 of 4, I&E estimates "...that between 5,000 and 7,000 farm taps exist in Pennsylvania..."

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**CERTIFICATE OF SERVICE  
OF THE  
PENNSYLVANIA GRADE CRUDE OIL COALITION**

I certify that on November 8, 2023, I served a copy of foregoing **REPLY TO MOTION TO STRIKE** upon the parties listed below:

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