



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 7, 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 Supplemental Replies to Comments

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's ("I&E") Supplemental 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 'M Swindler'.

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
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(717) 783-6369
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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
SUPPLEMENTAL REPLIES TO COMMENTS IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

On November 3, 2023, the Bureau of Investigation and Enforcement (“I&E”) filed Replies to Comments to further support the Settlement Agreement filed at the above docket and respectfully request that the Commission approve the Joint Petition for Approval of Settlement in its entirety without modification. I&E’s Replies to Comments noted that Comments in support of the Settlement had been filed by the Office of Consumer Advocate on November 1, 2023. I&E filed its Replies to 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).

On November 6, 2023, after the deadline for filing Comments and subsequent to the filing of I&E’s Replies to Comments, I&E discovered upon its own investigation that

Comments had also been filed by the Pennsylvania Independent Oil and Gas Association (“PIOGA”) on November 1, 2023. However, I&E was not served by PIOGA and thus had no notice of its Comments seeking rejection of the Settlement Agreement amicably reached between I&E and Mifflin Energy Corp. I&E now files the instant Supplemental Replies to Comments in order to respond to the misplaced comments of PIOGA.

The basis for PIOGA’s recommended rejection of the Settlement Agreement between I&E and Mifflin Energy Corp., the prior owner of the facilities in question, is that said pipelines and facilities are not subject to PHMSA’s jurisdiction and thus not within the Commission’s jurisdiction pursuant to Act 127. PIOGA’s comments explore the reasoning behind its position of non-jurisdiction quoting language from well leases, proposed PHMSA FAQs, federal regulation definitions and various other alleged PHMSA interpretations. Despite its additional claims, I&E has neither failed to understand the intricacies of production operations and their relation to Act 127 nor failed to discover specific facts related to the facilities subject to its investigation. The fact is that I&E does not disagree with PIOGA that there are currently many legal questions that remain unanswered regarding that fine line of what is jurisdictional to the Commission pursuant to PHMSA’s interpretations and what is not when it comes to pipeline operators, farm taps and related facilities. However, simply put, this settlement docket is *not* the appropriate forum for PIOGA to unleash its arguments. PIOGA completely misses the point of the Settlement Agreement reached between I&E and Mifflin Energy Corp. The Parties to this Settlement Agreement are not addressing the legal interpretations that are properly before PHMSA. In the interest of amicably resolving the investigation against it, Mifflin Energy Corp., 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 its involvement in this matter. 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 and related pipeline facilities*, that is before the Commission at this docket, and it 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, and as PIOGA's comments indicate that uncertainty regarding the jurisdiction of pipeline operator assets must be addressed, 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. PIOGA's comments read more like a brief filed in a disputed proceeding or comments to a PHMSA rulemaking. PIOGA's comments provide no justifiable reason to reject the amicable settlement reached between I&E and Mifflin Energy Corp.- a Settlement that does not purport to address the legal interpretations raised by PIOGA.

As I&E stated in its Replies to Comments, 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 current owner, Mifflin Energy Resources. On October 23, 2023, two I&E-Safety Engineers and their Supervisor met with the owner of Mifflin Energy Resources, in order to initiate a review of the Mifflin Energy Resources system to assist in determining which, if any, assets would be deemed jurisdictional under the prevailing federal guidelines. 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, consistent with PIOGA's position. 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.

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 Corp., 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 believes that it is as part of this process that PIOGA's arguments would be properly placed, rather than at the instant docket that acts only to close out an investigation of an entity that is no longer impacted or involved and simply wants the matter put behind them. I&E agrees with the OCA that these "unresolved issues" before

PHMSA 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, to which PIOGA’s comments more appropriately relate, 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.

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 Corp., 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. Approval of this Settlement has no bearing on the pressing legal issues that remain to be addressed by PHMSA. In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The circumstances of this case evidence that there are no prospective remedies to apply to Mifflin Energy Corp. since the Parties agree that Mifflin Energy Corp.’s sale of its operational assets to Mifflin Energy Resources removes Mifflin Energy Corp. from the realm of Act 127 jurisdiction going forward. On this basis, it is abundantly clear that it is not Mifflin Energy Corp. 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. The overarching jurisdictional issue of “farm tap” facilities is to be addressed by PHMSA. Accordingly, the comments of PIOGA, while likely appropriate in another forum, should be dismissed as outside the focus of this Settlement Agreement.

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,



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Deputy Chief Prosecutor
PA Attorney ID No. 43319

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at 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 **Supplemental 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

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Date: November 7, 2023