

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION’S  
REPLIES TO I&E COMMENTS**

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The Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully requests that the Commission accept these comments in reply to the Replies and Supplemental Replies to comments submitted by the Commission’s Bureau of Investigation and Enforcement (I&E) in this matter.

PIOGA’s counsel apologizes for not serving its comments on I&E and Mifflin Energy, and for the additional work imposed on Commission staff as a result. PIOGA’s comments were not served on the only two then-known parties because the Commission’s order did not authorize replies or, accordingly, provide a time allowance for doing so.<sup>1</sup> PIOGA’s counsel was also unaware of the *Great American Power* proceeding in which I&E asserted that the Commission’s not providing for replies to comments raised a due process issue, which the Commission appears to have resolved in favor of a right of parties and commentators to file replies to comments.

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<sup>1</sup> The Commission’s order was served on the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA), but at the time of filing PIOGA’s comments, 11/1/2023, 3:55:57 PM, PIOGA’s counsel was unaware of OCA’s filing comments because that was not shown on the Commission’s online docket. Without a time allowance for filing replies, PIOGA’s counsel determined that there was no prejudice to not serving the parties to the proposed Settlement because PIOGA’s comments would be posted expeditiously to the Commission’s online docket.

The rationale for the Commission’s resolution of the commenting process supports acceptance of PIOGA’s replies to I&E’s replies because they misrepresent PIOGA’s comments and provide new, but incomplete, factual information concerning I&E’s investigation:

[T]he Commission has a long history of liberally construing its procedural regulations regarding filings **to afford not only the parties, but also interested persons and entities** who would like to participate in proceedings before the Commission, with the opportunity to do so **in order to provide the Commission with varying positions on the issue(s). By offering such varying positions, the Commission is able to make a more informed decision in a proceeding.**<sup>2</sup>

PIOGA respectfully asserts that its replies will enable the Commission to make an more informed decision in this matter. PIOGA also asserts that this filing complies with the Commission’s *Great American Power* procedural standards: “[T]he 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.”<sup>3</sup>

## REPLIES

### Misstatement of PIOGA’s comments

I&E’s Supplemental Replies misstate PIOGA’s comments,<sup>4</sup> which clearly assert that PHMSA and the Commission do not have jurisdiction and authority over production

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<sup>2</sup> *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2023-3020643, Order entered September 21, 2023, at 10 (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> “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.” Supplemental Replies at 2 (emphasis added); “**PIOGA’s comments indicate that uncertainty regarding the jurisdiction of pipeline operator assets** must be addressed.” *Id.*, at 3 (emphasis added).

operations and consumer-owned piping under the Federal pipeline safety laws and, accordingly, Act 127. PIOGA's comments state the opposite of I&E characterization.

I&E's misstatement forms the basis for its argument that "this settlement docket is *not* the appropriate forum for PIOGA to unleash its arguments" concerning the limits of PHMSA's and the PUC's jurisdiction and authority under the Federal pipeline safety laws and Act 127.<sup>5</sup> PIOGA appreciates I&E's compliment,<sup>6</sup> but I&E's position contradicts the very definition of the word "settlement".<sup>7</sup> The public interest is not served by requiring the payment of \$100,000 for alleged violations of law that are **not** determined, a fact that I&E touts:

*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 . . .*<sup>8</sup>

That amount may seem like a bargain for the producer from I&E's perspective – compared to the more than \$2 million I&E suggests it could seek through litigation – but that's not a bargain to the producer who must pay it without any certainty to the buyer of his assets, or to the significant number of conventional producers with similar farm tap arrangements, of the jurisdictional status of these facilities going forward:

Some PGCC members have been in the business of producing natural gas in Pennsylvania in excess of one hundred years. For all of that time the arrangement of farm taps has been common practice and an integral part of the process of producing natural gas. Among the membership of PGCC

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<sup>5</sup> *Id.* (emphasis in original).

<sup>6</sup> "PIOGA's comments read more like a brief filed in a disputed proceeding or comments to a PHMSA rulemaking." *Id.*, at 3.

<sup>7</sup> "an official agreement intended to resolve a dispute or conflict."

[https://www.google.com/search?q=definition+of+settlement&rlz=1C1EJFA\\_enUS793US866&oq=definition+of+settlement&gs\\_lcrp=EgZjaHJvbWUyCQgAEEUYORiABDIHCAEQABiABDIHCAIQABiABDIHCAMQABiABDIHCAQQABiABDIHCAUQABiABDIHCAYQABiABDIHCACQA BiABDIHCAGQABiABDIHCAkQABiABNIBCjEwODk0ajFqMTWoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=definition+of+settlement&rlz=1C1EJFA_enUS793US866&oq=definition+of+settlement&gs_lcrp=EgZjaHJvbWUyCQgAEEUYORiABDIHCAEQABiABDIHCAIQABiABDIHCAMQABiABDIHCAQQABiABDIHCAUQABiABDIHCAYQABiABDIHCACQA BiABDIHCAGQABiABDIHCAkQABiABNIBCjEwODk0ajFqMTWoAgCwAgA&sourceid=chrome&ie=UTF-8)

<sup>8</sup> Supplemental Replies at 3 (emphasis in original).

there are thousands of farm taps that are configured similarly to the configuration of this Incident (with the Lessor/consumer owning, controlling and maintaining the regulator and piping that supply the dwelling of that Lessor/consumer) and that arise under lease language highly similar to the provisions contained in the Shoup lease.<sup>9</sup>

PIOGA respectfully submits that a settlement of this matter cannot be determined to be in the public interest without a clear Commission determination of the jurisdictional status of the facilities involved. This is even more important in this matter because “[b]y 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.”<sup>10</sup> Clearly, even I&E acknowledges that Mifflin Energy had insufficient knowledge and notice that simply agreeing to something the consumer had the right to request would have such far-reaching and devastating consequences effects to his business, and to the rest of the industry similarly situated.

Significantly, the PHMSA interpretation letter I&E relies upon for its allegations of violations does not contain any new information or authority; it is simply a restatement of prior non-regulatory positions available for many years. Accordingly, it is not clear to PIOGA why I&E – the Commission’s staff responsible for enforcing compliance with Act 127 of **2011** – had to ask PHMSA its opinion on the threshold legal determination in this matter. In other words, I&E should have known the answer.

### **New, but incomplete, factual information concerning I&E’s investigation**

I&E’s Replies disclose an October 2023 meeting between two I&E-Safety Engineers and their Supervisor and the owner of Mifflin Energy Resources “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.”<sup>11</sup>I&E also states that: (i)

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<sup>9</sup> Pennsylvania Grade Crude Oil Coalition Comments submitted November 7, 2023, at 2.

<sup>10</sup> Settlement petition at 37 (emphasis added).

<sup>11</sup> Supplemental Replies at 3.

“field observations of the gathering and production system appear to be non-jurisdictional, consistent with PIOGA’s position” and (ii) “[t]he 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.**”<sup>12</sup>

This description of the meeting is incomplete because neither of these conclusions was communicated to the owner of Mifflin Energy Resources during the inspections by the PUC representatives. On the contrary, the PUC representatives told him: “We have no answers for you. All we can do is take this information back.” So the implication of I&E’s statements is false, and raises questions concerning I&E’s expertise concerning Act 127.

### Conclusion

WHEREFORE, for all the foregoing reasons, PIOGA respectfully requests that the Commission reject the proposed Settlement and vacate the prosecution.

Respectfully submitted,



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Dated: November 7, 2023

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<sup>12</sup> *Id.*, at 3 (emphasis in original).

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of PIOGA's Reply Comments upon the persons listed below, in the manner stated below, in accordance with requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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