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February 3, 2025

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Mifflin Energy Corp*., Docket No. M-2023-3019782

Dear Secretary Chiavetta:

As counsel for Mifflin Energy Corp. ("Mifflin"), we are attaching a copy of an Order issued on January 13, 2025, by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") in connection with Mifflin's previously filed request for a Declaratory Order. We are providing this Order since it relates to the above matter, which is presently pending before the Pennsylvania Public Utility Commission ("Commission").

Mifflin and the Commission's Bureau of Investigation and Enforcement ("I&E") have settled this matter, which was reflected in a Joint Petition for Settlement and related Statements in Support that were filed in June 2023. Consideration of the settlement is currently before the Commission. The issuance of the attached PHMSA order concludes all matters external to the Commission that could relate to this proceeding and Mifflin respectfully requests that the Commission act on the pending Joint Petition for Settlement as promptly as possible. Such timely action would obviate the need for any response by Mifflin to the PHMSA order.

Mifflin has discussed the contents of this letter with I&E, including the request that the Commission promptly act on the pending Joint Petition for Settlement, and I&E concurs with this request.

Sincerely,

BUCHANAN INGERSOLL & ROONEY PC

By: John F. Povilaitis
John F. Povilaitis, Esquire

JFP/psm
cc: Certificate of Service

**Billing Code: 4910-60-W**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 191 and 192**

**[Docket No. PHMSA-2024-0201]**

**Pipeline Safety: Mifflin Energy Corporation Petition for Declaratory Order Concerning Application of the Gas Pipeline Safety Regulations to a Service Line in Greene County, Pennsylvania.**

**AGENCY**: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT)

**ACTION**: Declaratory Order.

**SUMMARY**: On March 20, 2023, Mifflin Energy Corporation (Mifflin or Petitioner) filed a petition for a declaratory order (Petition) requesting PHMSA issue an order declaring that: (1) customer piping is not subject to the gas pipeline safety standards in 49 CFR part 192; and (2) the owner or operator of an unregulated production or gathering line that delivers gas to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for complying with the safety standards in part 192. Mifflin also requested rescission of an interpretation issued by PHMSA on September 1, 2021. After considering the Petition and public comments received, PHMSA issues this declaratory order *affirming* the September 1, 2021, letter of interpretation and *denying* the Petition.

**FOR FURTHER INFORMATION CONTACT**: Joseph Berry, Office of Pipeline Safety, by email at joseph.berry@dot.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On April 9, 2020, a pipeline delivering natural gas to a residence exploded in Washington Township, Greene County, Pennsylvania, causing significant property damage. In connection with an investigation of the incident, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (PAPUC) asked PHMSA for an interpretation concerning the regulatory status of the pipeline under the pipeline safety regulations at 49 CFR part 192. PHMSA issued an interpretation on September 1, 2021, (2021 Interpretation) concluding the pipeline met the definition of a "service line" subject to the gas pipeline safety regulations because it transported gas from a common source of supply to an individual customer. The common source of supply was Mifflin's production pipeline. PHMSA concluded that Mifflin, as the operator of the common source of supply and the service line, was responsible for ensuring the service line complied with the applicable pipeline safety regulations.

On March 20, 2023, Mifflin filed this petition for declaratory order requesting PHMSA rescind the 2021 Interpretation and issue an order declaring that the pipeline was not subject to the gas pipeline safety standards and that any owner or operator of a similarly situated common source of supply has no duty to comply with the pipeline safety standards at part 192.

The relevant facts as detailed in the 2021 Interpretation and Petition are as follows: Mifflin owned and operated natural gas wells and an associated system of pipelines in Greene

County, Pennsylvania.[1] Before Mifflin acquired the pipeline system, the prior owner and operator of the pipelines had established an oil and gas lease with the owner of the land where the pipelines were located. The lease was originally executed on May 3, 1982, and acquired by Mifflin in July 2005.[2]

In relevant part, the lease provided Mifflin (as Lessee) exclusive right to operate gas production facilities on the leased property.[3] The lease agreement allowed the landowner (as Lessor) to "make[] his own connection at a well or at such other point as the Lessee may designate," to use not more than 250,000 cubic feet of gas per year for domestic purposes.[4] To use such gas, the landowner had to install and maintain at a location satisfactory to Mifflin a suitable regulator(s).[5] Mifflin, for its part, was required to install and maintain a meter at a location satisfactory to Mifflin to measure any gas so used by the landowner.[6] The lease further stated, "all such gas shall be taken and used at the Lessor's own risk . . . ."[7] This type of arrangement is commonly referred to as a "free gas" or "farm tap" arrangement.[8]

When Mifflin acquired the lease in 2005, the production line already had a tap, meter, and regulator installed and gas flowed from the production line through piping owned by the

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[1] In the Matter of Mifflin Energy Corporation, Petition for Declaratory Order, March 20, 2023 (hereinafter "Petition for Declaratory Order"), at 7.
[2] *Id.* at 7. Effective January 1, 2022, Mifflin sold the wells, pipelines, and its rights under the lease to a third party.
[3] Petition for Declaratory Order, Attachment 9, Shoup Lease (May 3, 1982), at 3.
[4] *Id.* at 4.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *See* PHMSA Letter of Interpretation to Charles R. Yarbrough II, Atmos Energy, PI-11-0016 (September 12, 2012) (hereinafter "PI-11-0016") (discussing farm tap arrangements) and PHMSA Letter of Interpretation to Michael J. Schmitt, Kentucky Public Service Comm'n, PI-18-0019 (November 5, 2018) (hereinafter "PI-18-0019") (explaining application of the pipeline safety regulations to farm taps).

landowner to the residence.[9] Until the end of March 2020, the meter (required to be installed and maintained by Mifflin) and the regulator (required to be installed and maintained by the landowner) were immediately adjacent to each other and the tap at Mifflin's production line that was the source of the gas.[10] There was also a shut-off valve immediately downstream of the tap.[11]

At the end of March 2020, with Mifflin's consent, the landowner moved both the regulator and the meter downstream on the landowner piping, closer to the landowner's residence.[12] As a result of the relocation of the meter and regulator, the pressure in the line upstream of the relocated regulator (downstream from the original regulator location) increased from a pressure of 4-6 ounces to a pressure of 10 pounds per square inch gauge (psig), an increase in pressure of 26 to 40 times. Shortly thereafter, on April 9, 2020, a failure occurred on the piping that experienced the pressure increase, resulting in an explosion that destroyed a nearby residence.[13] The failure occurred on the pipeline located between the tap off the production line and the relocated meter and regulator.[14]

A. 2021 Interpretation

The incident was investigated by the PAPUC. In connection with its investigation, on January 29, 2021, the PAPUC submitted to PHMSA a request for interpretation of 49 CFR part

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[9] Petition for Declaratory Order, at 9.
[10] Request for Written Regulatory Interpretation, Pennsylvania Public Utility Commission, January 29, 2021 (hereinafter "PAPUC Request"), at 2.
[11] *Id.* at 2.
[12] *Id.* at 3.
[13] *Id.* at 2-3.
[14] *Id.* at 3.

192 as it concerned the facts of this incident.[15] Specifically, the PAPUC asked whether the customer-owned pipe that failed met the definition of a "service line" under 49 CFR 192.3 and whether the company delivering gas was responsible for compliance with part 192.

On September 1, 2021, PHMSA issued an interpretation in response.[16] The interpretation stated that on a farm tap, the "source" piping ends and the service line begins at the first accessible point where the downstream service line can be isolated from source piping (e.g., the inlet to a valve or regulator).[17] In this case, the interpretation stated, it appeared the "source" pipe ended, and the service line began, at the shut-off valve downstream of the tap.[18] The interpretation further stated that, under the definition of service line at 49 CFR 192.3, a service line 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.[19] In this case, the interpretation stated, the service line transporting gas from Mifflin's production line to the landowner ended at the outlet of the relocated meter, since the outlet of the relocated meter was further downstream from the connection to the landowner/customer piping.[20]

Regarding the oil and gas lease between Mifflin and the landowner, the interpretation stated the lease agreement did not have any impact on the pipeline's status as a service line. The

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[15] *Id.* at 4. PHMSA notes that although Petitioner asserted that "certain statements" by the PAPUC in its January 29, 2021, request for interpretation "are not accurate," Petitioner did not identify which statements were inaccurate or explain the inaccuracy. *See* Petition for Declaratory Order, at 10.
[16] PHMSA Letter of Interpretation to Stephanie M. Wimer, PI-21-0003 (September 1, 2021) (hereinafter PI-21-0003").
[17] *Id.* at 2.
[18] *Id.*
[19] *Id.* at 3.
[20] *Id.*

interpretation concluded that Mifflin was an "operator" within the meaning of § 192.3 because it was engaged in the transportation of natural gas via a regulated service line.[21]

B. Petition for Declaratory Order and Standard for Issuance

On March 20, 2023, Mifflin submitted a petition for a declaratory order. In the Petition, Mifflin requested that PHMSA rescind the 2021 Interpretation and issue an order taking the opposite position by declaring that: (1) customer piping is not subject to the safety standards in 49 CFR part 192 and (2) the owner or operator of an unregulated production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for complying with the safety standards in part 192. On November 9, 2023, PHMSA published notice of the Petition and invited public comment.[22]

The Petition was submitted pursuant to section 108 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, which directs PHMSA to "allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5."[23] PHMSA notes Mifflin is the first operator to petition for issuance of a declaratory order under this provision.

In determining the appropriate process by which PHMSA should consider the Petition, PHMSA consulted 5 U.S.C. 554(e) of the Administrative Procedure Act (APA), declaratory orders issued by other federal agencies, and where appropriate, guidance from courts. Pursuant

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[21] *Id.* at 3.
[22] Pipeline Safety: Mifflin Energy Corporation's Petition for Declaratory Order Concerning part 192 Jurisdiction and Operator Responsibility Over Customer-Owned Piping, 88 Fed. Reg. 77,244 (Nov. 9, 2203).
[23] *See* Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Consolidated Appropriations Act, 2021, Division R, Public Law 116–260, section 108(a), 134 Stat. 1181, 2221, 2223; 49 U.S.C. 60117(b)(1)(J).

to § 554(e), a declaratory order is an adjudication in which an agency resolves an issue of controversy or uncertainty. Specifically, § 554(e) provides, "The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."[24] Other federal agencies recognize declaratory orders may be issued for similar purposes.[25] Accordingly, PHMSA in its discretion may issue a declaratory order to terminate a controversy or remove uncertainty.

Based on a review of judicial decisions concerning declaratory orders under the APA, PHMSA understands that to "terminate a controversy," a declaratory order must resolve some aspect of an actual, ongoing dispute between parties (i.e., not serve as an advisory opinion).[26] In addition, to "remove uncertainty," PHMSA understands a declaratory order must address a question of law applied to particular facts.[27] PHMSA is guided by these principles in

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[24] 5 U.S.C. 554(e). The APA defines an "order" as "the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 U.S.C. 551(6).

[25] For example, the Maritime Administration may issue a declaratory order to remove uncertainty, 46 CFR 201.74, as can the Federal Maritime Commission, 46 CFR 502.93.

[26] *See, e.g., W. Coast Truck Lines v. Am. Indus., Inc.*, 893 F.2d 229, 233 (9th Cir. 1990) (determining that there was an actual controversy between two parties - American Industries, Inc., and West Coast Truck Lines - regarding alleged undercharges, and the declaratory order in this case resolved that controversy); *Merchants Fast Motor Lines, Inc. v. I.C.C.*, 5 F.3d 911, 916 (Fifth Cir. 1993) (finding a dispute between the Railroad Commission of Texas (RCT) and the Interstate Commerce Commission over the RCT's stated intent to regulate all interstate shipments from Texas warehouses where the out-of-state shipper had not designated the final consignee); *Illinois Terminal R.R. Co. v. Interstate Commerce Commission*, 671 F.2d 1214, 1215 (8th Cir. 1982) (finding a dispute between the Illinois Terminal Railroad Company and the Interstate Commerce over the meaning of the phrase "bridge toll" and whether it applied to a charge for handling traffic originating, terminating, or stopping to partially load or unload at industries served by the terminal railroad association of St. Louis); *Ashland Oil & Refining Co. v. Federal Power Commission*, 421 F.2d 17, 18 (6th Cir. 1970) (finding a controversy between the Federal Power Commission and Ashland Oil and Refining Company over an interpretation from the Commission of its regulations that had the effect of rendering Ashland not entitled to recover money from a third party).

[27] *See City of Arlington, Tex. V. F.C.C.*, 668 F.3d 229, 243 (Fifth Cir. 2012) (noting that the FCC used declaratory rulings to address concrete and narrow questions of law that would have an immediate and determinable impact on a specific factual scenario). *See also Merchants Fast Motor Lines, Inc.*, 5 F.3d at 916 (finding that a position of the Railroad Commission of Texas was contrary to established Interstate Commerce Commission decisions, which created uncertainty about whether interstate or intrastate rates would apply to shipments).

considering whether the present petition seeks the type of redress that falls within the parameters established by statute for issuance of a declaratory order.

PHMSA may decline to issue a declaratory order concerning a matter where it would not terminate a controversy or remove uncertainty. In addition, in its sound discretion, PHMSA may decline to issue a declaratory order where it would be inappropriate for other reasons, such as where the issue raised is one more appropriately addressed through another agency action, such as administrative or judicial enforcement or rulemaking.[28] When PHMSA issues a declaratory order, it is binding on the petitioner as to the facts presented and discussed in the order.

C. Termination of a Controversy or Removal of Uncertainty

Before analyzing the merits of the Petition, PHMSA must first determine if issuance of a declaratory order in this matter would terminate a controversy or remove uncertainty. As noted, PHMSA understands that to "terminate a controversy," the declaratory order must resolve some aspect of an actual, ongoing dispute.[29] In addition, PHMSA understands that to "terminate a controversy" the declaratory order need not be outcome determinative, but it must resolve some aspect of an ongoing dispute between parties.[30] Courts have provided guidance in this regard.

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[28] Any interested person may petition PHMSA to establish, amend, or repeal a regulation in 49 CFR parts 190 through 199. *See* 49 CFR 190.331. *See also Intercity Transp. Co. v. U.S.*, 737 F.2d 103, 109 (D.C. Cir. 1984) (upholding the ICC's decision to not issue a declaratory order because it would be an imprudent and inefficient allocation of the agency's resources); *Climax Molybdenum Co., a Div. of Amax, Inc. v. Secretary of Labor, Mine Safety and Health Administration (MSHA)*, 703 F.2d 447 (Tenth Cir. 1983) (holding "[t]he [Federal Mine Safety and Health Review Commission] may reasonably choose to reserve its use of declaratory relief for special cases in order to conserve its administrative resources").

[29] *See, e.g., W. Coast Truck Lines*, 893 F.2d at 233; *Merchants Fast Motor Lines, Inc.*, 5 F.3d at 916; *Illinois Terminal R.R. Co*, 671 F.2d at 1215; *Ashland Oil & Refining Co.*, 421 F.2d at 18.

[30] *Id.*

In *W. Coast Truck Lines v. Am. Indus., Inc.*, West Coast Truck Lines (West Coast), a former interstate motor carrier, initiated a legal proceeding against American Industries, Inc., a private industrial manufacturer, to collect undercharges for the transportation of steel – i.e., the difference between the rate it filed with the Interstate Commerce Commission (ICC) and the lower figure it negotiated and collected from American Industries.[31] American Industries, in its response, denied that it owed West Coast any additional charges, arguing that undercharges were an unreasonable practice under 49 U.S.C. 10701.[32] During the proceeding, the district court stayed the case for American Industries to file a petition for a declaratory order with the ICC for the ICC to determine whether the attempt to collect undercharges constituted an unreasonable practice under § 10701.[33] The ICC issued a ruling, stating that the imposition of undercharges would be an unreasonable practice under § 10701.[34] The district court thereafter dismissed the case, on the ground that it lacked subject matter jurisdiction to review the ICC's order.[35] West Coast filed a motion for the district court to alter, amend, or vacate the dismissal, arguing that the district court had subject matter jurisdiction to review the ICC's order.[36] The district court rejected this argument and denied the motion.[37] West Coast appealed the denial to the Ninth Circuit.[38]

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[31] *See W. Coast Truck Lines*, 893 F.2d at 230.
[32] *Id.*
[33] *Id.* at 231.
[34] *Id.*
[35] *Id.* Pursuant to the Hobbs Act, an appeal of an order from the ICC must be brought in the court of appeals. *See W. Coast Truck Lines*, 893 F.2d at 232 (citing 28 U.S.C. 2321).
[36] *See W. Coast Truck Lines*, 893 F.2d at 231.
[37] *Id.*
[38] *Id.*

On appeal, West Coast argued that the ICC's order was not a declaratory order under § 554(e), but rather an advisory opinion, and therefore reviewable by the district court.[39] The Ninth Circuit found the ICC's order to be a declaratory order under § 554(e).[40] The court stated that the ICC's order resolved an actual controversy between American Industries and West Coast over alleged undercharges.[41] West Coast's ability to prevail in the case was dependent entirely upon a favorable ruling from the ICC.[42] The court held: "[b]ecause the ICC's ruling resolved an actual controversy between the parties, it meets the requirements of section 554(e)."[43]

Similarly, in *Merchants Fast Motor Lines, Inc. v. I.C.C.*, a controversy existed between several trucking associations and the Railroad Commission of Texas (RCT). The controversy pertained to goods shipped into Texas from another state, temporarily stored in Texas warehouses, and then shipped to a Texas customer.[44] The Association of Texas Warehousemen (the Association) had written to RCT, asking (1) whether the RCT considered the Texas leg of the transportation (i.e., from the warehouse to the customer) interstate or intrastate; and (2) if it was intrastate, whether penalties or sanctions would be imposed on parties out of compliance with RCT rates, rules, and orders, which would normally not be applied to interstate shipments.[45] The RCT responded that when an out-of-state shipment is consigned to a point in Texas "without further instructions for delivery to another Texas location" it loses its interstate identity.[46] It also stated that it could assess administrative penalties for non-compliance with RCT rates, rules, and

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[39] *Id.* at 233.
[40] *Id.* at 234.
[41] *Id.* at 233.
[42] *Id.*
[43] *Id.*
[44] *See Merchants Fast Motor Lines*, 5 F.3d at 913.
[45] *Id.* at 914.
[46] *Id.*

orders.[47] This response was contrary to interpretations from the Interstate Commerce Commission (ICC).[48] The Association petitioned the ICC for a declaratory order.[49] The ICC found that the risk of imminent RCT enforcement presented a controversy sufficient to warrant issuance of a section 554(e) declaratory order.[50]

Applying this guidance to the present mater, PHMSA notes that Petitioner suggested it will be adversely affected by an ongoing controversy in the absence of a declaratory order.[51] But Mifflin did not identify a controversy between itself and another party in which there is an actual, ongoing dispute for which a declaratory order is necessary to resolve. For example, Petitioner provided no evidence of current prosecution or the threat of imminent prosecution or any other dispute that could be resolved by a declaratory order.

However, the comment of the Pennsylvania Independent Oil and Gas Association (PIOGA), received in response to PHMSA's notice and request for public comments on the petition for declaratory order, referenced a prosecution by the PAPUC.[52] Along with its comment, PIOGA attached a Joint Petition for Approval of Settlement (Joint Petition) of the case filed by the PAPUC.[53] The PAPUC case relates to its investigation of the April 9, 2020, pipeline explosion in Greene County, Pennsylvania. In the PAPUC case, a dispute exists between the PAPUC and Mifflin concerning the applicability of the federal pipeline safety regulations to the

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[47] *Id.*
[48] *Id.* at 914-15.
[49] *Id.*
[50] *Id.* at 915-916.
[51] *See* Petition for Declaratory Order, at 7.
[52] *See* Comment of Pennsylvania Independent Oil and Gas Association, Docket No. PHMSA-2023-0080 (December 11, 2023).
[53] *Id.*, Exhibit 2.

pipelines that were the subject of the 2021 Interpretation.[54] Based on a review of the public docket for this case, a final Opinion and Order in that case has not been issued; therefore, the case is still ongoing.[55] Thus, despite Petitioner's failure to provide evidence of a dispute,[56] PHMSA understands that an actual, ongoing dispute concerning the service line definition exists, and a declaratory order could resolve some aspect of the dispute noted in the still-open state case.[57]

Since a declaratory order could resolve an aspect of an actual, ongoing dispute, there are grounds for PHMSA to consider the merits of the Petition and to issue a declarator order. Having found a declaratory order would terminate a controversy, it is unnecessary for PHMSA to separately evaluate whether the declaratory order would also "remove uncertainty" under 5 USC 554(e) and 49 USC 60117(b)(1)(J).

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[54] *See Settlement Agreement*, PAPUC, Docket No. M-2023-3019782, filed June 26, 203, https://www.puc.pa.gov/search/document-search/ (last accessed November 20, 2024). The Joint Petition acknowledges the ongoing dispute between the parties and states that it would have been litigated, had the state case proceeded. *See* Joint Petition, at 9-10. Within the Joint Petition, the parties note Mifflin's disagreement with the September 2021 Interpretation and its petition for a declaratory order requesting PHMSA to rescind the interpretation. *See* Joint Petition, at 8-9.

[55] *See* PAPUC, Docket No. M-2023-3019782, filed June 26, 203, https://www.puc.pa.gov/search/document-search/ (last accessed November 20, 2024).

[56] PHMSA again notes this is the first petition for declaratory order it has received, and in the future, PHMSA expects a petitioner for a declaratory order itself to present evidence of an actual, ongoing dispute.

[57] Pursuant to the Joint Petition, the parties reached a settlement wherein Mifflin agreed to pay a civil penalty and the PAPUC agreed to release Mifflin of all past or future claims that the PAPUC made or could have made based on allegations that Mifflin failed to comply with state or federal gas pipeline safety laws. The terms of the Joint Petition state that Mifflin, after selling the wells, pipelines, and its rights under the Shoup Lease to a third-party is no longer a pipeline operator, effective January 1, 2022. *See* Joint Petition, at 2 9-10, 11, 12, 13. PHMSA notes the right to request a declaratory order, by statute, is granted only to operators of pipelines. 49 U.S.C. 60117(b)(1)(J). Even though Mifflin no longer operates pipelines as a result of divesting its pipeline assets, PHMSA considers Mifflin to be a pipeline operator for the purpose of satisfying § 60117 because Mifflin operated the service line that is at issue in this matter.

## II. Analysis of the Merits of the Petition

Mifflin requested that PHMSA declare (1) customer piping is not subject to the safety standards in 49 CFR part 192 and (2) the owner or operator of an unregulated production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not responsible for complying with the safety standards in part 192. Mifflin also requested rescission of PHMSA's 2021 Interpretation. PHMSA starts its analysis of Petitioner's request by looking at the text of the applicable statute and regulations.

To provide adequate protection against risks to life and property posed by pipelines, pursuant to the Pipeline Safety Act, PHMSA has prescribed minimum safety standards for pipeline transportation and for pipeline facilities.[58] These standards "apply to any or all of the owners or operators of pipeline facilities."[59] "A person owning or operating a pipeline facility shall . . . comply with applicable safety standards . . . ."[60] A "pipeline facility" as that term is used in the statute, means among other things, a pipeline "used in transporting gas," which includes "the gathering, transmission, or distribution of gas by pipeline."[61]

### A. Applicable Regulations and Prior Interpretations

PHMSA has prescribed minimum federal safety standards for the transportation of gas by pipeline at 49 CFR part 192. Under their terms, a "pipeline" covered by the regulations means "all parts of those physical facilities through which gas moves in transportation," including pipe,

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[58] 49 U.S.C. 60102(a).
[59] 49 U.S.C. 60102(a)(2)(A).
[60] 49 U.S.C. 60118(a)(1).
[61] 49 U.S.C. 60101(a)(3), (a)(18), (a)(21).

valves, metering stations, regulator stations, and other appurtenances.[62] The "transportation of gas" means the gathering, transmission, or distribution of gas by pipeline.[63] A "gathering line" is a pipeline that transports gas from a production facility (e.g., a well) to a transmission pipeline or main line.[64] A "transmission line" generally transports gas from a gathering pipeline to a distribution system.[65] Finally, a "distribution line" is "a pipeline other than a gathering or transmission line," which is generally used to deliver gas to customers who consume the gas.[66] One type of distribution pipeline is a service line.[67] A "service line" is a distribution pipeline that transports gas from a common source of supply to individual customers.[68] Just as the pipeline safety regulations in part 192 apply to distribution pipelines, part 192 applies to the subset of distribution lines called service lines.[69] An "operator" is a person "who engages in the transportation of gas."[70]

Of particular importance to the present matter is the identification of the endpoint of a service line. The regulations define the endpoint of a service line as follows: "A service line 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."[71] This means when there is a customer meter, the end of the service line is at the outlet of that meter or at the

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[62] *See* 49 CFR 192.3.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id. See also* definition of "distribution center."
[67] *Id.*
[68] Another type of distribution line is a main, which serves as a common source of supply for more than one service line. *See* § 192.3.
[69] *See, e.g.*, 49 CFR 192.351 ("minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains").
[70] § 192.3.
[71] *See* 49 CFR 192.3.

connection to the customer's piping, *whichever is further downstream*. If there is no meter measuring the gas delivered to a customer, the service line ends at the connection to piping owned by the customer. The end of the service line marks the end of the distribution pipeline regulated under part 192. Customer-owned piping downstream of the end of the service line is not regulated under part 192.

Based on the plain text of the regulation, a pipeline delivering gas to a customer from a common source of supply is a service line engaged in the transportation of gas that is regulated under part 192. In certain configurations, specifically where there is a customer meter located downstream of the connection to customer piping, the service line regulated under part 192 will include customer piping (but only customer piping upstream of the meter). In other configurations, such as where there is no customer meter, or where a customer meter is upstream of the connection to customer piping, the service line ends at the connection to customer piping. The owner or operator of the service line—including the portion of the service line that is customer-owned piping if located upstream of the customer meter—is required to comply with the applicable pipeline safety regulations.[72] In all of these configurations, any customer piping downstream of the customer meter is not part of the service line and is not subject to part 192.

PHMSA has previously issued several interpretations relevant to this regulation. For example, in an interpretation issued April 19, 2011, PHMSA noted that an operator who primarily operates gathering or transmission lines is also operating a distribution line when it

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[72] The owner or operator is engaging in the transportation of gas by way of the service line. See 49 CFR 192.3 ("operator means a person who engages in the transportation of gas"); 49 U.S.C. 60102(a)(2)(A) ("The [pipeline safety] standards . . . apply to any or all owners or operators of pipeline facilities").

delivers gas directly to customers through a service line or "farm tap."[73] Similarly, in an interpretation issued September 12, 2012, PHMSA noted that farm taps are service lines, a subset of distribution pipelines, which may originate from production pipelines that serve as the common source of supply.[74] Specifically, PHMSA stated, "Part 192 applies to individual service lines originating on production, gathering, and transmission pipelines which are commonly referred to as farm taps. These farm taps link individual customers . . . with gas supplies coming from production, gathering, and transmission pipelines."[75]

In addition, PHMSA issued an interpretation dated November 7, 2018, considering whether safety regulations applied to several different farm taps, and if so, whether responsibility for compliance lies with the production or gathering line operator or with the customer.[76] The interpretation concluded that any piping and appurtenances that comprise the farm tap are subject to the requirements of part 192 as a distribution service line and are the responsibility of the entity engaged in the transportation of gas.[77] On the other hand, any piping and appurtenances downstream of the service line that are owned by a customer or person not engaged in the transportation of gas are not subject to the requirements of part 192.[78]

Both PHMSA and industry have long recognized that as a result of the definition of a service line, there may be configurations where a portion of the regulated service line is customer-owned piping, specifically where the customer-owned piping is upstream of the

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[73] *See* PHMSA Letter of Interpretation to Thomas Correll, Northern Natural Gas Company, PI-11-008 (April 19, 2011) (hereinafter "PI-11-008").
[74] *See* PI-11-0016.
[75] *Id.*
[76] *See* PI-18-0019.
[77] *Id.*
[78] *Id.*

customer meter. In a 1995 Final Rule regarding notifications to customers, commenters suggested clarification to the rule in order to distinguish between regulated service lines upstream of the meter and unregulated customer piping downstream of the meter.[79] Commenters reasoned that "many service lines under part 192 include piping owned by customers."[80] In a 2021 Final Rule regarding gas pipeline regulatory reform, PHMSA again addressed operators' comments about "their responsibility for customer-owned piping," which PHMSA noted was not a new requirement.[81]

In all of these prior instances, PHMSA consistently noted that a pipeline delivering gas to a customer from a common source of supply is a service line engaged in the transportation of gas regulated under part 192. The service line ends at the outlet to the customer meter or the connection to customer piping, whichever is further downstream. Where the customer meter is located downstream of the connection to customer piping, the customer piping upstream of the meter is part of a service line regulated under part 192. The owner or operator of the service line—including the portion of the service line that is customer-owned piping if upstream of the customer meter—is required to comply with the applicable pipeline safety regulations. This is true regardless of whether the service line's common source of supply is an operator's transmission line, distribution line, regulated gathering line, or unregulated production or gathering line. Having considered the applicable law, PHMSA turns to Petitioner's arguments.

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[79] *Customer-Owned Service Lines*, Final Rule, 60 Fed. Reg. 41821, 41822 (August 14, 1995).
[80] *Id.*
[81] *Pipeline Safety: Gas Pipeline Regulatory Reform*, Final Rule, 86 Fed. Reg. 2210, 2214 (January 11, 2021).

B. Petitioner's Arguments

Petitioner presented several arguments for why PHMSA should declare customer piping is never subject to part 192 and that the operator of an unregulated production or gathering line delivering gas to customer piping is not responsible for complying with part 192.

First, Petitioner argued PHMSA has "long acknowledged" operators are not responsible for ensuring customer piping complies with part 192. Petitioner similarly argued it is "well established" the operator of an unregulated production or gathering line delivering gas to a customer by way of a farm tap is not responsible for compliance with respect to the customer piping. As support for these assertions, Petitioner cited to past actions by PHMSA, starting with a 1973 letter of interpretation.

In an interpretation dated June 1, 1973, PHMSA responded to the question, "who is responsible for cathodic protection on a gas line after the line goes into the meter and back into the ground?"[82] The interpretation stated:

> [I]f piping downstream of the meter is owned by the customer, such piping is not included with the definition [of service line] and, therefore, is not covered by the regulations. In such case, the service line extending down to and including the meter is the responsibility of the operator. On the other hand, if any of the piping downstream of the meter is owned by the operator, such piping, down to the point

[82] *See* Office of Pipeline Safety, Letter of Interpretation to Mr. William C. Doll, Corrosion Associates, Inc., PI-73-0109 (June 1, 1973) (hereinafter "PI-73-0109").

where it connects to the customer's piping, is a service line and the operator is responsible for compliance…

The interpretation further stated, "[t]he transportation of gas is regulated down to the downstream end of the distribution system.[83] Since a distribution system normally ends in a service line, the operator is the person responsible that a service line meets all applicable regulations."[84]

Petitioner drew attention to the sentence of the interpretation that customer piping downstream of the meter is not part of the service line covered by the regulations. This is, of course, a true and accurate restatement of the regulation, as examined above. Customer piping downstream of the customer meter is not subject to part 192. The sentence highlighted by Petitioner does not, however, support its view that customer piping *upstream* of the meter is never regulated. That view cannot be sustained by reading the interpretation cited by Petitioner. Moreover, it cannot be sustained by reading the regulation. As noted, the regulation defines the end of the regulated service line, when there is a meter, as the outlet of the meter or at the connection to a customer's piping, whichever is further downstream.

Petitioner also cited to PHMSA's 1995 Customer-Owned Service lines rulemaking.[85] This rulemaking amended part 192 to include customer notification requirements at § 192.16.[86] Petitioner pointed to a statement in the Notice of Proposed Rulemaking (NPRM) that "the

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[83] *Id.*
[84] *Id.*
[85] Petition for Declaratory Order, at 14.
[86] *See* 60 Fed. Reg. 41821 (August 14, 1995).

Federal gas pipeline safety standards do not require gas pipeline operators to maintain customer-owned services lines."[87] Petitioner then cited to a statement in the Final Rule that "regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of part 192."[88] Through these statements, Petitioner argued, "PHMSA has acknowledged that if the customer owns the piping upstream from the meter the operator is not responsible for that piping."[89] Petitioner further argued, "if PHMSA had wanted operators to be responsible for all of the piping located between the main and meter, including in cases where the customer owned that piping, the notification requirements in § 192.16 would not be necessary at all."[90]

Petitioner has misconstrued these rulemakings. To the extent the rulemakings addressed the definition of service line, they accurately stated that "the end of a service line is a customer meter or a connection to a customer's piping, whichever is further downstream."[91] The "customer-owned service lines" referred to in the NPRM are the portion of customer piping downstream of the meter, beginning at the customer meter and terminating at the customer's exterior wall or end-use equipment.[92] Just as noted above, such customer piping is not within the meaning of a regulated service line.[93] In fact, the Final Rule abandoned use of the term

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[87] Petition for Declaratory Order, at 14 (citing *Customer-Owned Service Lines*, Notice of Proposed Rulemaking, 59 Fed. Reg. 5168, 5169 (February 3, 1994)).
[88] *Id.* at 14 (citing *Customer-Owned Service Lines*, Final Rule, 60 Fed. Reg. 41821 (August 14, 1995)).
[89] *Id.*at 15.
[90] *Id.*
[91] *Customer-Owned Service Lines*, Final Rule, 60 Fed. Reg. at 41821. *See also Customer-Owned Service Lines*, Notice of Proposed Rulemaking, 59 Fed. Reg. at 5168.
[92] *Customer-Owned Service Lines*, Notice of Proposed Rulemaking, 59 Fed. Reg. at 5168 ("the service line ends at the meter and the pipe running from the outlet of the meter to the exterior wall or end-use equipment is called a customer-owned service line.").
[93] *Id.*

"customer-owned service lines" after commenters felt the term was confusing since "many service lines under part 192 include piping owned by customers."[94] PHMSA agreed in the Final Rule the term "customer-owned service lines" was a misnomer that could be easily confused with service lines and therefore lead to customers thinking that customer-owned piping upstream of a meter was their own responsibility, when in fact such customer piping was the responsibility of the pipeline operator.[95]

As to Petitioner's concern about the motivation behind the rulemaking, the notification requirements were adopted in response to a statutory mandate. Congress was concerned that customers were unaware of their responsibility over customer piping between the end of the regulated service line and the exterior wall or end-use equipment. The statutory mandate for the notification requirements directed PHMSA to issue "regulations requiring an operator of a natural gas distribution pipeline *that does not maintain customer-owned natural gas service lines up to the building walls*" to provide notifications to the customer.[96] For this reason, the notification regulations apply only to operators of service lines whose piping stops short of the customer's building or gas utilization equipment.[97]

The rulemakings cited by Petitioner do not support its contention that customer piping *upstream* of the meter is not subject to part 192. Rather, to the extent the rulemakings spoke to the issue at all, they noted that customer-owned piping *downstream* of a meter was not subject to

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[94] *Customer-Owned Service Lines*, Final Rule, 60 Fed. Reg. at 41822.
[95] *Id.* at 41822 (We agree that ''customer-owned service line'' would be a misnomer in part 192. The term could easily be confused with ''service line,'' because some customers own the portion of a service line on private property between a distribution main and customer meter).
[96] 49 U.S.C. 60113(a) (emphasis added).
[97] 49 CFR 192.16(a).

part 192, which is consistent with the regulatory definition of service line.

Next, Petitioner cited to the interpretation issued by PHMSA on November 5, 2018, to the Kentucky Public Service Commission, referenced above.[98] Petitioner asserted this interpretation demonstrates PHMSA has never required an operator of a non-jurisdictional production or gathering line to ensure part 192 compliance for customer piping. Specifically, Petitioner pointed to language in which PHMSA stated that "piping and appurtenances that are owned by a customer or person not engaged in the transportation of gas (e.g., a farmer or residential customer) are not service lines and are not subject to requirements in part 191 or part 192."[99] Again, Petitioner's contention is misplaced.

The 2018 interpretation concerned whether part 192 applied to farm taps and whether responsibility for maintaining regulators lies with the production or gathering line operator or with the customer. PHMSA noted that a "farm tap" refers to a pipeline, directly connected to a source pipeline, that transports gas to a customer and which "meets the definition of a service line in the pipeline safety regulations." Further, PHMSA confirmed that a "non-regulated production or gathering pipeline may be the common source of supply for a regulated service line." PHMSA also explained that a "service line ends at the connection to customer owned piping, or the outlet of the meter, whichever is further downstream. Such piping and appurtenances that are owned by a customer or person not engaged in the transportation of gas (e.g., a farmer or residential customer) are not service lines and are not subject to requirements in

[98] Petition for Declaratory Order, at 6, 12, 14.
[99] 49 CFR 192.16(a).

part 191 or part 192."[100]

In this context "*such* piping and appurtenances that are owned by a customer" can only refer to customer piping when there is no meter or when the customer piping is downstream of a meter.[101] It is evident that "such piping" in this context cannot refer to customer piping upstream of a meter, because the immediately preceding sentence reiterates that a regulated service line ends at the connection to customer owned piping, or the outlet of the meter, *whichever is further downstream*. Therefore, any customer piping upstream of the meter is necessarily part of the service line regulated by part 192. Petitioner's reading of a single sentence does not take into consideration the defining context.

Next, Petitioner cited to an interpretation issued by PHMSA in 1996 to the Virginia State Corporation Commission.[102] In this interpretation, PHMSA considered the regulatory treatment of three distribution configurations and determined whether the systems were subject to part 192.[103] Specifically, PHMSA considered a farmer who receives gas for use in operating a farm, a school that receives gas for use in operating a cafeteria and cooking equipment, and a community association that receives gas for use in running street and entrance lighting service. PHMSA determined that in each configuration, the pipeline delivering gas to the customer was regulated under part 192 up to the end of the service line. With respect to the farm, the interpretation noted, "If the transmission line delivers metered gas to farm piping, the jurisdiction

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[100] PI-18-0019.
[101] Id. (emphasis added).
[102] Petition for Declaratory Order, at 6, 11.
[103] *See* PHMSA Letter of Interpretation to Massoud Tahamtani, Virginia State Corp. Comm'n, PI-96-002 (February 13, 1996) (hereinafter "PI-96-002").

of part 192 ends at the outlet of the meter. If there is no meter, jurisdiction ends where the operator's piping connects to farm piping."[104] At the school, "[a]ssuming the operator delivers metered gas to the school, part 192 jurisdiction ends at the outlet of the meter."[105] Finally for the community association, PHMSA noted "in the absence of a meter, Part 192 jurisdiction ends where the gas company's piping connects to the community association's piping."[106]

In all of these configurations, PHMSA consistently applied the regulations to conclude that a pipeline delivering gas to a customer from a common source of supply is a service line regulated under part 192. Further, the interpretation consistently noted that when there is a customer meter the service line regulated under part 192 ends at the outlet of the meter. If there is no meter, the service line regulated under part 192 ends at the connection to customer piping.[107]

Petitioner argued this interpretation demonstrates customers who receive gas are not themselves engaged in transportation of gas and therefore are not considered operators of regulated pipeline facilities.[108] But the question of whether a customer is engaging in transportation is not at issue. It is clear from the regulations that part 192 applies to a pipeline transporting gas from a common source of supply to a customer to the end of the service line. Part 192 does not apply to customer piping downstream of the service line. If there is no meter, the service line ends at the connection to the customer piping. If there is a meter, the service line

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[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] The examples did not explicitly address the configuration where the connection to customer piping is downstream of the meter.
[108] Petition for Declaratory Order, at 11.

ends at the connection to the customer piping or at the meter, whichever is further downstream. Either way, the operator of the service line is responsible for compliance with part 192. Therefore, this interpretation does not support Petitioner's requests.

Petitioner further contended the PAPUC previously decided customer piping is not subject to regulation under part 192.[109] After considering the PAPUC case cited by Petitioner, *McGaughey v. Peoples Natural Gas Company LLC*, PHMSA notes that decision was based primarily on the PAPUC's interpretation of state law regarding utility tariffs. In that case, the PAPUC found that a distinction under state utility laws between a customer-owned service line and company-owned service line was controlling and that applying those laws to the facts of that case, the customer was responsible for repairing a leak.[110] PHMSA finds the state law legal distinctions in that case are not applicable to the federal pipeline safety regulations. Moreover, the PAPUC correctly recognized that part 192 applied to the customer piping upstream of the meter and that any repairs on that piping were required to meet part 192 requirements.[111] To the extent the PAPUC concluded that the customer, and not the pipeline operator, should be responsible to ensure compliance with part 192, such conclusion is not consistent with PHMSA's application and is not binding on PHMSA.

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[109] *Id.* at 5-6 (citing *McGaughey v. Peoples Natural Gas Company LLC*, C-2018-3005956 (March 26, 2020).
[110] *See McGaughey v. Peoples Natural Gas Company LLC*, C-2018-3005956 (March 26, 2020), at 17-18 ("However, under Pennsylvania law, there is a distinction between service lines owned by the Company and customer-owned service lines. The legal distinction between utility-owned and customer-owned facilities is reflected in Section 1510 of the Code, 66 Pa. C.S. § 1510. There are also separate definitions for 'Customer's service line' and 'Service line' in the definitions section of the Code, 66 Pa. C.S. § 102. The last sentence of Section 1510 states that '[m]aintenance of service lines shall be the responsibility of the owner of the service line.' 66 Pa. C.S. § 1510. Thus, the legal distinction between customer-owned and utility-owned service lines is in place to establish who is responsible for maintenance.").
[111] *See McGaughey v. Peoples Natural Gas Company LLC*, C-2018-3005956 (March 26, 2020), at 20.

Petitioner also argued that a state court in Pennsylvania decided farm tap agreements are private contracts not subject to regulation for public utility purposes.[112] After considering the Pennsylvania court case referenced by Petitioner, *Adams v. Pub. Util. Comm'n*,[113] PHMSA notes that the decision interpreted the terms of a contract between two parties for the provision of natural gas. The decision did not discuss the applicability of part 192 in general or the application of part 192 to the pipeline facilities. Indeed, the court did not cite to part 192, or any federal pipeline safety regulation, in the entirety of the decision. Therefore, PHMSA finds the case is not pertinent. Further, the state court decision is not binding on PHMSA.

Finally, Petitioner offered several arguments for why PHMSA's 2021 Interpretation was defective and should be rescinded.[114] Petitioner argued the 2021 Interpretation departed from longstanding agency precedent and failed to acknowledge or provide any explanation for the change in position.[115] But Petitioner failed to demonstrate there has been any change in position. Petitioner's mere assertion—without support—that PHMSA previously "acknowledged" an operator is not responsible for customer piping upstream from the meter is without merit.[116] As already explained above, the opposite is true. The 2021 Interpretation reflected consistently the regulations and prior interpretations when it concluded the regulated service line included customer piping upstream of the meter.

Petitioner also alleged the 2021 Interpretation erroneously evaluated the impact of the oil and gas lease between Mifflin and the landowner when the interpretation stated the lease did not

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[112] Petition for Declaratory Order, at 5-6 (citing *Adams v. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Cmwlth. 2003)).
[113] *See Adams v. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Cmwlth. 2003)
[114] Petition for Declaratory Order, at 14, 15, 16.
[115] Petition for Declaratory Order, at 11.
[116] Petition for Declaratory Order, at 15.

impact the pipeline's status as a service line.[117] Petitioner contended this conclusion did not recognize the legal arrangement negotiated between the pipeline operator and the customer.[118]

PHMSA notes that by operation of federal law, the obligation to comply with the pipeline safety regulations rests with the owners and operators of pipelines. Specifically, the Pipeline Safety Act states the safety standards "apply to any or all of the owners and operators of pipeline facilities."[119] The Act further provides that "a person owning or operating a pipeline facility shall comply with applicable safety standards prescribed under this chapter."[120] If an operator enters into a contractual agreement with another party relating to actions required by the pipeline safety regulations, the operator is not thereby relieved from its responsibility under the law.[121] For the same reasons, an operator cannot use a private contract to modify application of the federal pipeline safety regulations for which it is otherwise responsible. Petitioner's oil and gas lease did not relieve Petitioner of the responsibility as a pipeline operator for compliance with the pipeline safety regulations applicable to the service line. The treatment of the oil and gas lease in the 2021 Interpretation was correct.

Petitioner also alleged fault with the 2021 Interpretation because it did not address comments that were submitted to PHMSA by the public in another regulatory matter.[122] Specifically, Petitioner pointed to an April 2020 notice published by PHMSA asking for public

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[117] Petition for Declaratory Order, at 10.
[118] *Id.*
[119] 49 U.S.C. 60102(a)(2).
[120] 49 U.S.C. 60118(a)(1).
[121] *See, e.g.*, 49 CFR 195.10 ("An operator may make arrangements with another person for the performance of any action required by this part. However, the operator is not thereby relieved from the responsibility for compliance with any requirement of this part.")
[122] Petition for Declaratory Order, at 5-6, *citing* Pipeline Safety: Farm Taps Frequently Asked Questions, 85 Fed. Reg. 21,820 (April 20, 2020).

comment on a set of draft frequently asked questions (FAQs) concerning farm taps.[123] Petitioner contended that among the public comments submitted to the draft FAQs, several trade organizations raised concerns with the status of customer piping in farm tap configurations. Petitioner pointed to comments on the draft FAQs submitted by the Pennsylvania Independent Oil and Gas Association, the Kentucky Oil and Gas Association, the West Virginia Oil and Gas Association, GPA Midstream Association, and the American Petroleum Institute.[124]

In relevant part, the comments highlighted by Petitioner expressed the view that it is not appropriate for the concept of a service line to include farm taps on production lines. In addition, the comments stated operators should be given discretion to classify farm tap piping, and that PHMSA should take the position that piping and equipment owned by the gas recipient is not part of a service line.[125] Petitioner argued the 2021 Interpretation should have addressed these comments. PHMSA disagrees for several reasons.

First, these comments were submitted to PHMSA in connection with an entirely separate regulatory action. The comments concerned a set of generally applicable draft FAQs, not the fact-specific matter giving rise to the 2021 Interpretation. In fact, the comments predated

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[123] PHMSA has not finalized the draft FAQs as of the date of this order.

[124] *See* Petition for Declaratory Order, Attachments 2, 3, 4, and 5.

[125] *See* Comment of West Virginia Independent Oil and Gas Association, PHMSA-2019-0131 (June 18, 2020) ("Now would be an appropriate time to recognize that farm tap users with a private contractual right to take gas from production or unregulated gathering lines are not customers and such farm tap lines are not service lines."); Comment of Kentucky Oil and Gas Association, PHMSA 2019-0131 (June 18, 2020) ("PHMSA should clarify that the piping and equipment owned by the gas recipient is not part of a 'service line'…We respectfully request that this issue be clarified to specifically exempt operators of source pipelines from the implementation of § 192.740 or Part 192 Subpart P (DIMP), to assets that are the private property of the gas recipient."); Comment of GPA Midstream Association and the American Petroleum Institute, PHMSA 2019-0131 (June 19, 2020) ("PHMSA should acknowledge that operators can exercise reasonable discretion in determining the starting point for any distribution service line piping in farm tap configurations, whether at the first readily accessible isolation point, such as a valve or regulator, or at another point, such as a meter or custody transfer point.").

PHMSA's receipt of the request to issue the 2021 Interpretation. Second, PHMSA issued the 2021 Interpretation pursuant to a procedural regulation, 49 CFR 190.11, which provides for the availability of informal guidance and interpretative assistance. Section 190.11 does not prescribe notice and comment for the issuance of interpretative assistance, nor does it specify that PHMSA must consider public comments received in entirely separate regulatory actions. Interpretations issued pursuant to § 190.11 are advisory in nature, reflect the agency's application of the regulations to the specific facts presented, and do not create legally enforceable rights or obligations.[126]

Third, as to the substance of the comments on the draft FAQs highlighted by Petitioner, many of those comments advocated for changes to how part 192 applies to farm taps—changes that could necessitate a rulemaking. For example, were PHMSA to give effect to the FAQ comments that "farm tap lines are not service lines," PHMSA would have to modify the regulatory definition of service line because a farm tap, by definition, is a service line delivering gas from a common source of supply to a customer. Comments of that nature would be more appropriately evaluated in a proceeding to consider changes to the regulations rather than a proceeding to interpret existing law. PHMSA further notes that it has previously rejected similar comments as part of a 2021 Final Rule that implemented gas pipeline regulatory reform.[127]

In conclusion, Petitioner has not demonstrated PHMSA should declare customer piping is never subject to part 192 or that the operator of an unregulated production or gathering line

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[126] For these reasons, it was also not necessary for PHMSA to provide public notice and request comment on the 2021 Interpretation.

[127] Pipeline Safety: Gas Pipeline Regulatory Reform, Final Rule, 86 Fed. Reg. at 2214 (January 11, 2021) (rejecting the suggestion to exclude from part 192 farm taps connected to production lines and unregulated gathering lines, finding that would be "a consequential change from longstanding regulatory application.")

delivering gas to customer piping is never responsible for complying with part 192. PHMSA also finds Petitioner has not submitted a valid reason to conclude the 2021 Interpretation should be rescinded. The 2021 Interpretation did not diverge from applicable regulations or prior PHMSA interpretations. To the contrary, the regulations and prior interpretations only support the 2021 Interpretation's conclusion that the farm tap transporting gas from Mifflin's production line to the landowner was a regulated service line that ended at the outlet of the relocated meter.

C. Response to Comments

PHMSA published notice of the Petition and invited public comment.[128] PHMSA received three comments, all from industry associations supporting the Petition. Specifically, PHMSA received a comment from the Gas and Oil Association of West Virginia (GO-WV), a joint comment from the Marcellus Shale Coalition, Ohio Oil and Gas Association, and GPA Midstream Association (collectively, Associations) and a comment from the Pennsylvania Independent Oil and Gas Association (PIOGA).[129] The relevant comments are addressed below.

*Comment:* GO-WV commented that farm tap users are mechanically sophisticated and can reconfigure gas connections at will, unbeknownst to producers. Therefore, it will be "difficult, if not impossible," for producers to comply with part 192.

*Response:* PHMSA appreciates the possibility that a customer could reconfigure a gas connection without the producer's knowledge. PHMSA notes, however, that in the present

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[128] Pipeline Safety: Mifflin Energy Corporation's Petition for Declaratory Order Concerning part 192 Jurisdiction and Operator Responsibility Over Customer-Owned Piping, 88 Fed. Reg. 77,244 (Nov. 9, 2023).
[129] The comment of GO-WV was submitted on April 18, 2023, prior to the notice. The comments of the Associations and PIOGA were submitted on December 10 and 11, 2023, respectively.

matter the reconfiguration was known. Mifflin gave the landowner permission to relocate the meter. Petitioner itself acknowledged this was "industry practice."[130] The mere possibility of an unknown reconfiguration occurring does not change the definition of a regulated service line at § 192.3. Nor does it serve to exempt farm taps from part 192 altogether. That said, companies are encouraged to notify PHMSA or the appropriate state pipeline safety office if they become aware of a gas connection that has been reconfigured without their knowledge.

*Comment:* Commenters stated that the September 2021 Interpretation was inconsistent with the agency's guidance regarding farm taps and should be rescinded. PIOGA commented that the 2021 Interpretation was inconsistent with prior PHMSA interpretations issued in 1973, 1996, and 2018.

*Response:* These comments mirrored those expressed by Petitioner, which are addressed above. The September 2021 Interpretation was consistent with existing regulations and prior PHMSA guidance regarding farm taps.

*Comment:* All three commenters agreed with Petitioner's claims that customer piping is not subject to part 192 and that owners and operators of production and gathering lines are not legally responsible for ensuring that customer piping complies with the regulations in part 192.

*Response:* Petitioner's claims are thoroughly discussed above. For the reasons stated, these claims are rejected as inconsistent with § 192.3 when applied to farm tap configurations where the operator of a transmission, distribution, gathering, or production line serves as a source of gas transported by a regulated service line to a customer meter downstream of the

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[130] Petition for Declaratory Order, at 9.

connection to customer piping. In other configurations, when the customer meter is upstream of the connection to customer piping, or when there is no meter, the service line ends at the connection to customer piping.

*Comment:* PIOGA commented that producers do not engage in the transportation of gas and therefore are not an "operator" under the pipeline safety regulations.

*Response:* This comment is rejected as inconsistent with the pipeline safety statutes and part 192. A company that primarily operates production pipelines, but that also operates a service line transporting gas to a customer, is engaged in the transportation of gas and therefore is responsible for complying with part 192 requirements applicable to the service line. Any person who is engaged in the transportation of gas must comply with the applicable pipeline safety regulations.[131] PHMSA has previously reiterated this point.[132]

*Comment:* PIOGA commented that consumers of gas from farm taps are not engaged in the transportation of gas.

*Response:* PHMSA agrees that consumers of gas from farm taps are generally not engaged in the transportation of gas.[133] As explained above, this question does not impact the responsibility placed on Petitioner as the operator of a service line to ensure compliance with applicable regulations in part 192.

**III. Conclusion**

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[131] 49 U.S.C. 60118(a); 49 CFR 192.13(a).
[132] Pipeline Safety: Gas Pipeline Regulatory Reform, Final Rule, 86 Fed. Reg. at 2212 (noting that while a production pipeline is exempt, any connected facility that meets the definition of a service line is regulated).
[133] *See, e.g.,* PI-96-002.

Based on a review of the regulations and their historical application, and considering the Petition and public comments received, PHMSA confirms the pipeline safety regulations in part 192 apply to service lines, as that term is defined. Because Petitioner's requested declarations would be inconsistent with those regulations, the requests must be denied. PHMSA cannot legally declare, as requested, that customer piping is never subject to the safety standards in 49 CFR part 192, because in certain configurations the definition of a regulated service line at § 192.3 includes customer piping if it is upstream of the customer meter.

Similarly, PHMSA cannot legally declare, as requested by Petitioner, that the operator of an unregulated production or gathering line that delivers gas directly to customer piping pursuant to the terms of a free gas or farm tap agreement is not required to comply with the safety standards in part 192. Such a declaration would be contrary to law because the operator of a farm tap is engaged in the transportation of gas through the regulated service line defined at 49 CFR 192.3 and each operator of a gas pipeline facility is required by 49 U.S.C. 60118 to comply with applicable pipeline safety standards. For these reasons, Petitioner's requested declarations are denied.

Petitioner's request that PHMSA rescind the 2021 Interpretation is also denied. PHMSA finds the 2021 Interpretation correctly concluded that pursuant to § 192.3, the pipeline transporting gas to an individual customer from Mifflin's production line was a service line. Pursuant to the same regulation, that service line ended at the outlet of the relocated meter because the outlet of the meter was further downstream than the connection to the customer piping. The interpretation correctly concluded that Mifflin was the operator of the service line within the meaning of § 192.3 because Mifflin was engaged in the transportation of natural gas

via a regulated service line. Accordingly, PHMSA denies the request to rescind the 2021 Interpretation. PHMSA affirms the interpretation as a correct application of the regulations.

This declaratory order is effective upon date of service to Petitioner and is binding on Petitioner as to the facts presented and discussed in this order.

Issued in Washington, DC on January 13, 2025, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| Pennsylvania Public Utility Commission,<br>Bureau of Investigation and Enforcement | :<br>: | |
| v. | : | Docket No. M-2023-3019782 |
| Mifflin Energy Corp. | : | |

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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