

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 127 of 2011 – The Gas and Hazardous Liquids :  
Pipeline Act; Assessment of Pipeline :  
Operators – Jurisdiction over Class 1 Gas : M-2012-2282031  
Gathering Lines and Certain LNG Facilities; :  
Assessment of Pipeline Operators :

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**PETITION FOR RECONSIDERATION  
OF THE  
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION**

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Pursuant to 52 Pa. Code § 5.572 5(a)-(c), the Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully requests that the Commission reconsider its determination that new Type R reporting-only gas gathering lines are “regulated onshore gathering lines” under the Federal pipeline safety laws, and therefore “regulated under Federal pipeline safety laws” and subject to Act 127 registration and assessment. In support of its request, PIOGA states the following:

**Background**

1. PIOGA is a trade association representing oil and natural gas interests throughout Pennsylvania. PIOGA has over 360 members, including oil and natural gas producers, Commission-licensed natural gas suppliers and marketers, drilling contractors and service companies, as well as various professional firms, individuals and royalty owners. PIOGA members are involved in producing natural gas from conventional and unconventional formations and operating associated gathering lines. PIOGA has submitted comments in this docket concerning implementation of Act 127.

2. On November 15, 2021, the final Gas Gathering Rule of the U.S. Department of Transportation’s (DOT’s) Pipeline and Hazardous Materials Safety Administration

(PHMSA) was published in the Federal Register (PHMSA’s Final Rule) amending the federal pipeline safety regulations.<sup>1</sup>

3. By order entered December 8, 2022, the Commission issued an order in the above-referenced docket clarifying its jurisdiction over Class 1 gas gathering lines and certain liquified natural gas (LNG) facilities under the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (Act 127).

4. The Commission’s order states that PHMSA’s Final Rule defines two new categories of gas gathering lines – Type C and Type R lines:

- Type C lines are gathering lines in Class 1 locations that *are 8.625 inches or greater in diameter and are* (1) metallic, with a maximum allowable operating pressure (MAOP), producing a hoop stress of 20% or more of specified minimum yield strength; (2) metallic, with an MAOP greater than 125 psig if the hoop stress is unknown; or (3) non-metallic, with an MAOP greater than 125 psig.
- Type R lines are gas gathering pipelines in Class 1 or Class 2 locations with *a diameter of less than 8.625 inches* or operating below the pressure or stress level criteria in the regulations.<sup>2</sup>

5. The Commission’s order also states that:

Type R lines will be subject only to Part 191 incident and annual reporting requirements. Type R lines are a catch-all category for the Part 191 reporting-only **regulated onshore gas gathering lines** in Class 1 or Class 2 locations that do not meet the definitions of Type A, Type B, or Type C lines.<sup>3</sup>

6. In its December 8<sup>th</sup> order, the Commission determine that due to PHMSA’s Final Rule, “the Commission now has jurisdiction and authority under Act 127 to oversee a

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<sup>1</sup> See *Pipeline Safety: Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments*, Docket No. PHMSA-2011-0023, Federal Register 86: 217 (November 15, 2021) p. 63266, available at Govinfo.gov <https://www.govinfo.gov/content/pkg/FR-2021-11-15/pdf/2021-24240.pdf> .

<sup>2</sup> Order at 5-6.

<sup>3</sup> Order at 7 (emphasis added).

pipeline operator that owns or operates a Type C or Type R line and enforce its compliance with applicable Part 191 and Part 192 Federal pipeline safety laws.”<sup>4</sup>

7. With respect to Act 127’s pipeline operator registry and annual assessments, the Commission determined that “all pipeline operators that own or operate a **Class 1 gas gathering line**” must register, pay the initial registration fee and thereafter submit annual registration forms, and that “[f]or the newly jurisdictional **Class 1 gas gathering pipeline** operators, the Commission must determine an appropriate annual assessment based on intrastate regulated onshore gathering pipeline miles to collect the pipeline operator’s portion of the Commission’s gas pipeline safety program.”<sup>5</sup>

### **Standards for Reconsideration**

8. The Commission’s standards for granting reconsideration are well-established, and include errors of law.<sup>6</sup>

9. The Commission, citing *Duick* at 559, frequently states that:

[A] petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise ‘new and novel arguments’ not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

10. PIOGA respectfully asserts that the Commission appears to have overlooked that, under the Federal pipeline safety laws, “regulated onshore gathering lines” means gathering lines that are safety-regulated under Part 192 of the Federal regulations and do not include gathering lines that are subject only to reporting under Part 191 and, in so doing, has committed an error of law. As PHMSA states in the Final Rule, these reporting

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<sup>4</sup> Order at 12.

<sup>5</sup> Order at 13 (emphasis added).

<sup>6</sup> *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

requirements enable PHMSA to gather information to inform its decision “as to whether and to what extent to regulate” these lines under Part 192.

### **Grounds for Reconsideration**

11. PHMSA promulgated the Final Rule under its substantive rulemaking authority and administrative information gathering authority under the Federal pipeline safety laws.<sup>7</sup>

12. As PHMSA states in its Final Rule:

PHMSA has authority under 49 U.S.C. 60102(a)(2) to issue safety regulations for pipeline transportation and pipeline facilities, including nonrural gathering lines and rural gathering lines designated by the Secretary as “regulated gathering lines” under 49 U.S.C. 60101(a)(21) and (b).<sup>8</sup>

13. PHMSA’s substantive rulemaking authority in 49 U.S. Code § 60102(a) (relating to “Purpose and Minimum Safety Standards”) states:

(1) Purpose.—The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) Minimum safety standards.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities.<sup>9</sup>

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<sup>7</sup> Act 127 defines “Federal pipeline safety laws” as “[t]he provisions of 49 U.S.C. Ch. 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under the acts.”

<sup>8</sup> Federal Register 86 (November 15, 2021), p. 63266.

<sup>9</sup> 49 U.S.C. 60101(b) (relating to “Gathering Lines”) provides:

(2)(A) Not later than October 24, 1995, the Secretary, if appropriate, shall prescribe standards defining the term “regulated gathering line”. In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the

14. PHMSA’s administrative information gathering authority, 49 U.S. Code § 60117(b) (relating to “Records, Reports, and Information”) states: “The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.”

15. PHMSA made clear in the Final Rule that there is a distinction between “gathering lines” and “regulated onshore gathering lines”:

Industry commenters were especially concerned about reporting requirements for pipeline attributes that were related to requirements that did not apply to **unregulated gas gathering lines**. . . .

. . . .

- Implement a phase-in period of at least 24 months for **unregulated gathering** annual reports; . . . .

. . . .

. . . . PHMSA explained that it intended to create a new annual report form for **gas gathering lines that are not subject to safety requirements in part 192** (reporting **regulated gathering lines**) separate from the existing DOT Form PHMSA 7100.2–1 required for operators of gas transmission and **regulated gas gathering lines**.<sup>10</sup>

16. PHMSA made clear in its responses to comments concerning the Final Rule that the new Type R reporting-only gas gathering lines are grounded in its administrative information gathering authority and not its substantive rulemaking authority, and therefore are not “regulated onshore gathering lines”:

PHMSA disagrees with comments that it lacks the statutory authority to require reports from operators of **gathering lines other than currently regulated gathering lines as determined under § 192.8. Section 60117(b)** of Federal Pipeline Safety Law specifically authorizes the Secretary to “require owners and operators of **gathering**

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types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

<sup>10</sup> Federal Register 86, p. 63274 (emphasis added).

**lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.’** Congress made no distinction between “gathering lines” and “regulated gathering lines” for reporting purposes. **This information-gathering process is precisely what the NPRM proposed**—to gather information on all gathering lines that would **enable PHMSA to make informed judgments about the need for, and scope, of potential regulation.** Congress intended that the Secretary have the authority to request information from operators of **unregulated gathering lines** in order to help determine “what additional gathering lines should be regulated.” PHMSA seeks to obtain information regarding current risks to people, property, and the environment due to **unregulated rural gathering lines** to determine whether rural gathering lines are presenting unacceptable risk **that would warrant additional regulations.** The information contained in annual and incident reports submitted by operators under part 191 would reasonably help achieve this objective.

. . . .

. . . . For clarity, this final rule designates these reporting-regulated lines as “Type R” gathering lines that are subject to reporting under part 191 **but are not designated as regulated gathering lines in part 192.** These requirements are necessary to evaluate the safety risks on gas gathering systems and determine what, if any, additional measures may be warranted to reduce those risks.<sup>11</sup>

17. Accordingly, PIOGA respectfully asserts that the Commission’s imposition of Act 127 registration and annual reporting requirements and the obligation to pay annual assessments on owners and operators of “Class 1 gathering lines” and “Class 1 gas gathering pipelines” is in error, as this exceeds the Commission’s Act 127 authority, which is limited by Section 103 (relating to “Applicability”) of Act 127: “The provisions of this act shall apply only to pipelines, pipeline operators or pipeline facilities regulated under Federal pipeline safety laws.”

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<sup>11</sup> Federal Register 86, p. 63275 (footnote omitted; emphasis added).

18. As Type R gas gathering lines are not “regulated onshore gathering lines” under 49 C.F.R. Part 192, they are not pipelines regulated under the Federal pipeline safety laws subject to Act 127.

19. As Class 1 Type R gas gathering lines do not implicate the Commission’s gas pipeline safety program, there is no basis in Act 127 to require owners or operators of these gathering lines to register and contribute to the Commission’s gas pipeline safety program.

**Conclusion**

WHEREFORE, for all the foregoing reasons, PIOGA respectfully requests that the Commission reconsider its determination that “Type R lines are a catch-all category for the Part 191 reporting-only regulated onshore gas gathering lines in Class 1 or Class 2 locations that do not meet the definitions of Type A, Type B, or Type C lines” and instead determine that Type R lines in Class 1 locations are not regulated onshore gathering lines subject to Act 127. Accordingly, PIOGA requests that:

- the term “Class 1 gas gathering line” in Ordering Paragraph Nos. 1 and 3 be changed to “Class 1 Type C gas gathering line”;
- the phrase “Act 127 pipeline operators (Types A, B, C, and R)” in Ordering Paragraph No. 1 be changed to “Act 127 pipeline operators (Types A, B, and C)”;
- and
- the term “Class 1 gas gathering miles” in Ordering Paragraph Nos. 4 and 5 be changed to “Class 1 Type C gas gathering miles”.

Respectfully submitted,



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Kevin J. Moody, Esquire  
General Counsel  
PIOGA  
212 Locust Street, Suite 300  
Harrisburg, PA 17101-1510  
717-234-8525, ext. 113  
Fax: 717-234-8812  
[kevin@pioga.org](mailto:kevin@pioga.org)

Dated: December 23, 2022

## VERIFICATION

I, Kevin J. Moody, General Counsel for the Pennsylvania Independent Oil and Gas Association (PIOGA), hereby verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief and that PIOGA expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Kevin J. Moody

Dated: December 23, 2022



## CERTIFICATE OF SERVICE

I hereby certify that I have this day, December 23, 2022, served true and correct copies of PIOGA's Petition for Reconsideration in the above referenced matter upon the persons listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

### **Via Email only**

Commission Staff  
[ra-Act127@pa.gov](mailto:ra-Act127@pa.gov)

Renardo Hicks, Chief Counsel  
Law Bureau  
[rehicks@pa.gov](mailto:rehicks@pa.gov)

Richard Kanaskie, Director  
Bureau of Investigation and Enforcement  
[rkanaskie@pa.gov](mailto:rkanaskie@pa.gov)

Paul Diskin, Director  
Bureau of Technical Utility Services  
[pdiskin@pa.gov](mailto:pdiskin@pa.gov)

Lynda K. Farrell, Director  
Pipeline Safety Coalition  
[lkfarrell@verizon.net](mailto:lkfarrell@verizon.net)

john F. Povilaitis, Esq.  
Buchanan Ingersoll & Rooney PC  
[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)  
*Counsel for Williams Field Services Company, LLC*

Mark C. Morrow, Esq.  
[MorrowM@ugicorp.com](mailto:MorrowM@ugicorp.com)  
*Counsel for UGI Distribution Companies*

Judith D. Cassel, Esq.  
Hawke McKeon & Sniscak LLP  
[jdcassel@hmslegal.com](mailto:jdcassel@hmslegal.com)

Commissioners of Wyoming County  
Richard Wilbur, Chairman  
[rwilbur@wycopa.org](mailto:rwilbur@wycopa.org)

William Gaylord, Chief Clerk  
[bgaylord@wycopa.org](mailto:bgaylord@wycopa.org)

A handwritten signature in blue ink that reads "Kevin J. Moody". The signature is written in a cursive style with a large, stylized "K" and "M".

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Kevin J. Moody, Esquire  
General Counsel, PIOGA