

# PENNSYLVANIA BULLETIN

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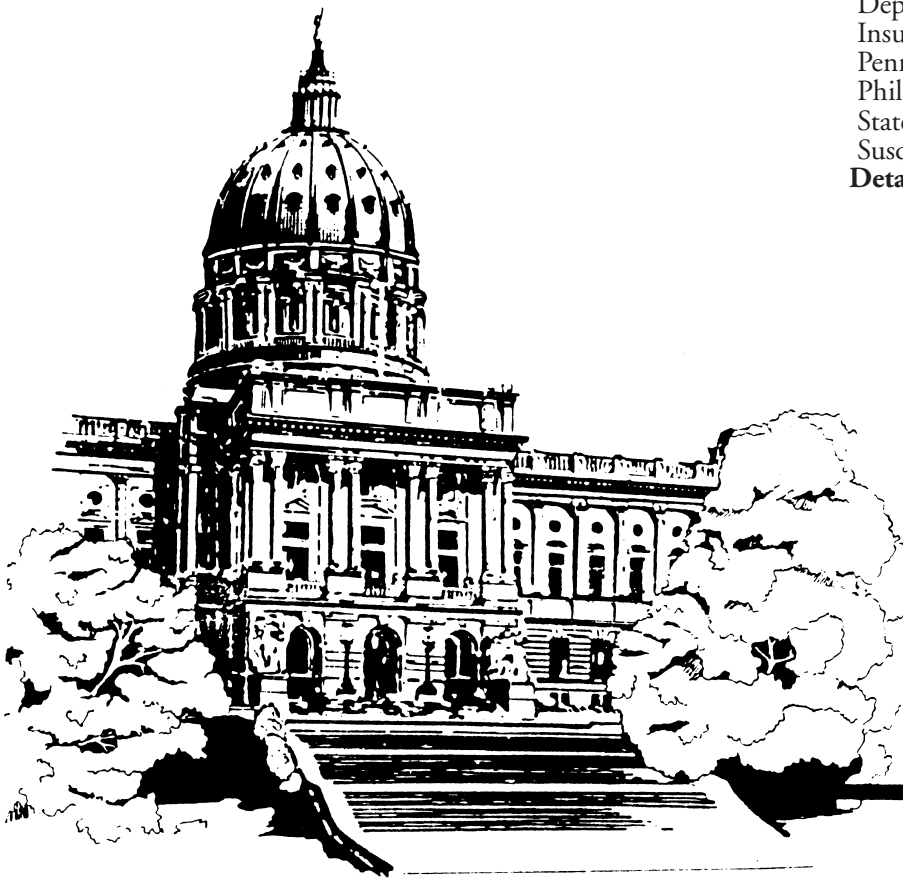
**Part I**

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January—March 2023

**Agencies in this issue**

The Courts  
Department of Agriculture  
Department of Banking and Securities  
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Department of Health  
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this action has requested a hearing, in connection with the appellant's managed health care plan. The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508, 561—588 and 701—704 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant provisions of law.

A prehearing telephone conference initiated by this office is scheduled for April 20, 2023, at 10 a.m. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before April 18, 2023. A date for a hearing shall be determined, if necessary, at the prehearing/settlement conference.

Protests, petitions to intervene or notices of intervention, if any, must be electronically filed on or before April 6, 2023, with the Administrative Hearings Office. The e-mail address to be used for the Administrative Hearings Office is ra-hearings@pa.gov. Answers to protests, petitions to intervene or notices of intervention, if any, shall be electronically filed on or before April 18, 2023.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 23-444. Filed for public inspection March 31, 2023, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Capital Advantage Assurance Company; Small Group Quarterly Update Filing (CABC-133583495); Rate Filing

Capital Advantage Assurance Company is requesting approval to adjust the premium on 37,587 lives in groups renewing in the third quarter (3Q) and fourth quarter (4Q) of 2023. The filing lowers the 3Q and 4Q rates by 1.8% over those approved in the prior annual filing.

Unless formal administrative action is taken prior to May 22, 2023, the subject filing may be deemed approved by operation of law.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 23-445. Filed for public inspection March 31, 2023, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Keystone Health Plan Central; Small Group Quarterly Update Filing (CABC-133583560); Rate Filing

Keystone Health Plan Central is requesting approval to adjust the premium on 177 lives in groups renewing in

the third quarter (3Q) and fourth quarter (4Q) of 2023. The filing lowers the 3Q and 4Q rates by 1.9% over those approved in the prior annual filing.

Unless formal administrative action is taken prior to May 22, 2023, the subject filing may be deemed approved by operation of law.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 23-446. Filed for public inspection March 31, 2023, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Act 127 of 2011—The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators—Jurisdiction over Class 1 Gas Gathering Lines and Certain LNG Facilities; Assessment of Pipeline Operators

Public Meeting held  
March 16, 2023

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

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

#### Order

*By the Commission:*

On December 8, 2022, the Commission entered an Implementation Order in the above-captioned docket (Implementation Order) asserting jurisdiction over Class 1 gas gathering lines and certain liquified natural gas (LNG) facilities pursuant to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 et seq. (Act 127) and in response to recent amendments to Federal pipeline safety regulations made in the final Gas Gathering Rule (Final Rule) of the U.S. Department of Transportation's (U.S. DOT's) Pipeline and Hazardous Materials Safety Administration (PHMSA).<sup>1</sup> On December 23, 2022, the Pennsylvania Independent Oil & Gas Association (PIOGA)<sup>2</sup> filed a Petition for Reconsideration (Petition) requesting the Commission to reconsider its determination that certain Class 1 gathering lines, specifically Type

<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> 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.

R lines, are subject to Act 127 registration and assessment given that such lines are subject only to annual and incident reporting requirements under Part 191 regulations and are not subject to the broader safety requirements under Part 192 regulations.

In this Order, we shall deny PIOGA's request for reconsideration regarding Act 127 registration but will grant clarification as to Act 127 assessments. Specifically, we find that Act 127 gives the Commission jurisdiction over Type R intrastate pipeline operators and requires these operators to register with the Commission on an annual basis. However, consistent with Act 127, as discussed further below, we will not assess these operators and will not require them to file Part 191 reports with the Commission at this time.

*Legal Standards for Review*

A party has the right to seek relief following the issuance of a final order relating to reconsideration or amendment of a final determination. 66 Pa.C.S. § 703(g); 52 Pa. Code § 5.572(a)—(c). A petition for reconsideration may properly raise new or novel arguments or considerations which appear to have been overlooked or not addressed in a final order. *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982) (*Duick*). In review, the Commission will first determine whether a party has properly raised a new or novel argument or identified an overlooked consideration in a final order and next will determinate whether it is appropriate to modify a prior determination given the new argument or overlooked consideration. See *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019).

*The Petition*

PIOGA asserts that the Commission committed an error of law by concluding that PHMSA's Final Rule and Act 127 give the Commission jurisdiction over Type R gas gathering lines. PIOGA argues that the Commission overlooked PHMSA's decision to exclude Type R lines from Part 192 safety regulation and to require compliance only with Part 191 reporting requirements to enable PHMSA to gather information to inform its decision "as to whether and to what extent to regulate" these lines under Part 192. PIOGA argues that since Type R lines are not subject to the broader safety requirements of the Part 192 regulations, Type R lines will not impact the Commission's pipeline safety program and, therefore, the Commission lacks jurisdiction under Act 127 to require Type R lines to register with the Commission and pay annual assessments.

PIOGA cites the Commission's Implementation Order, which stated:

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 *unregulated 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.

Petition at 2 (citing Implementation Order at 7) (emphasis added by PIOGA). PIOGA submits that the term "regulated onshore gathering lines" means gathering lines that are subject to the broader safety requirements of the Part 192 regulations and do not include gathering lines that are subject only to the reporting requirements under Part 191. Petition at 3-4. PIOGA asserts that PHMSA

made clear in the Final Rule that there is a distinction between "gathering lines" and "regulated onshore gathering lines" and quotes PHMSA's Final Rule as follows:

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.

Petition at 5 (citing *Federal Register* 86, p. 63274 (emphasis added by PIOGA)).

PIOGA further asserts that "PHMSA made clear in its responses to comments concerning the Final Rule that" its regulation of Type R lines is "grounded in its administrative information gathering authority and not its substantive rulemaking authority, and therefore Type R lines are not 'regulated onshore gathering lines.'" Petition at 5. PIOGA quotes the PHMSA's Final Rule as follows:

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 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.

Petition at 5-6 (citing *Federal Register* 86, p. 63275 (footnote omitted; emphasis added by PIOGA)).

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." Petition at 6. 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. Petition at 7. 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. Petition at 7.

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. Petition at 7. 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."

Petition at 7.

#### *Discussion*

For the reasons discussed in more depth below, we find that Act 127 gives the Commission jurisdiction over Type R intrastate pipeline operators given that these operators are subject to Federal pipeline safety laws. 58 P.S. § 801.103. Since these lines are jurisdictional, these operators must register with the Commission and the Commission must maintain a registry of all Type R intrastate pipeline operators. 58 P.S. §§ 801.301(a), (c)(1).

However, consistent with Act 127, we will not require these operators to file Part 191 reports with the Commission. The Commission has a statutory duty to supervise and regulate pipeline operators consistent with Federal pipeline safety laws. 58 P.S. § 801.501. To be consistent with PHMSA's approach in the Final Rule, we understand that PHMSA intends to enforce the Part 191 reporting requirements for Type R intrastate pipeline operators and PHMSA finds authority to do so under 49 U.S.C. § 60105(a). Therefore, the Commission's gas safety program need not enforce the Part 191 reporting requirements for Type R intrastate pipeline operators at this time.

Additionally, we will not assess these operators at this time. The Commission has a statutory duty to determine, by order, an appropriate annual assessment of pipeline operators based on "regulated onshore gas gathering pipeline" miles adjusted to collect the pipeline operator's portion of the commission's total costs of the gas pipeline safety program. 58 P.S. § 801.503(a), (b). Given that the Type R intrastate pipelines are not "regulated onshore gas gathering pipelines," meaning they are not Part 192-regulated, there is no basis under Act 127 to assess Type R intrastate pipeline operators. Moreover, since the Commission's gas safety program will not be impacted at this time by Type R operators' Part 191 reporting obligations, it lends further support to not assess these operators at this time.

#### *I. Commission Jurisdiction over Type R Gas Gathering Lines Pursuant to Act 127*

The General Assembly has given the Commission authority to regulate intrastate non-utility<sup>3</sup> pipeline operators pursuant to Act 127. Under the applicability provision of Act 127, the statute applies "only to pipelines, pipeline operators or pipeline facilities regulated under Federal pipeline safety laws." 58 P.S. § 801.103 (emphasis added). Act 127 defines a "pipeline operator," in relevant part, as a non-utility "person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas... by pipeline or pipeline facility regulated under Federal pipeline safety laws." The term "pipeline" is also defined, in relevant part, to include only those pipelines "regulated by Federal pipeline safety laws." 58 P.S. § 801.102 (emphasis added).

Act 127 further defines the phrase "Federal pipeline safety laws" as follows:

*The 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.*

58 P.S. § 801.102 (emphasis added). The definition of "Federal pipeline safety laws" broadly includes "the regulations promulgated" by PHMSA under the "provisions of 49 U.S.C. Ch. 601 (relating to safety)." Based on the plain language,<sup>4</sup> all regulations contained in Title 49 of the Code of Federal Regulations, Subtitle B, Subchapter D, Parts 190—199 regulations are included in the definition of "Federal pipeline safety laws." Therefore, Act 127 applies to pipelines, pipeline operators, or pipeline facilities that are subject to the regulations found at 49 CFR §§ 190.1 et seq.

We disagree with the argument that the above provisions should be interpreted to mean that the Commission has jurisdiction over a gas pipeline operator only if the gas pipeline operator is subject to Part 192 regulations. We find that the plain language of Act 127 does not

<sup>3</sup> Likewise, the General Assembly has given the Commission jurisdiction over intrastate public utility pipeline operators in the Commonwealth pursuant to the Public Utility Code. See 66 Pa.C.S. §§ 102 (definition of public utility (1)(v)), 501.

<sup>4</sup> The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. "Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a); *Commonwealth v. McCoy*, 962 A.2d 1160, 1167-68 (Pa. 2009). A statute's plain language generally provides the best indication of legislative intent. *McCoy*, 962 A.2d at 1166; *Ephrata Area Sch. Dist. v. County of Lancaster*, 938 A.2d 264, 271 (Pa. 2007); *Pennsylvania Fin. Responsibility Assigned Claims Plan v. English*, 664 A.2d 84, 87 (Pa. 1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."). Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. *Ephrata Area Sch. Dist.*, supra; see also 1 Pa.C.S. § 1921(c); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1230 (Pa. 2004). Moreover, in this analysis, "[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous." *McCoy*, 962 A.2d at 1168.

support such an interpretation. Instead, based on the plain language, we find that if a non-utility gas pipeline operator is subject to any part of the Federal pipeline safety laws, including if an operator is Part 191-reporting-regulated only, then the Commission has jurisdiction over the pipeline operator in accordance with Act 127. Since Type R intrastate pipeline operators are subject to Part 191 reporting requirements, Act 127 gives the Commission jurisdiction over Type R intrastate pipeline operators. Since we have jurisdiction over these operators, we find that these operators must register with us on an annual basis and that we must maintain a registry of these operators. However, consistent with Act 127, as discussed further below, we will not assess these operators, and we will not require them to file Part 191 reports with the Commission.

## II. Act 127 Registration

On the issue of registration, Act 127 provides:

(a) *Registry.*—The commission shall establish and maintain a registry of all pipeline operators.

(b) *Application.*—The commission may develop an application for registration under subsection (a) and may charge a reasonable registration fee and annual renewal fee.

(c) *Registration with commission.*—

(1) A pipeline operator shall register with the commission.

(2) Failure to register shall subject the pipeline operator to a civil penalty under section 502.

(3) The operator of a pipeline in a Class 1 location that collects or transports gas from an unconventional well shall report the location of the pipeline by class location and approximate aggregate miles for inclusion in the commission's registry.

(d) *Disclosure.*—The commission shall require each pipeline operator, regardless of class location, to disclose in its initial registration and in each annual renewal the country of manufacture for all tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquids. The commission may develop a disclosure form and require its use.

58 P.S. § 801.301.

As established in the discussion above, Type R intrastate pipelines and pipeline operators are jurisdictional. Since they are jurisdictional, Type R intrastate pipeline operators must register with the Commission, and the Commission must maintain a registry of these operators. 58 P.S. § 801.301(a), (c)(1). Accordingly, we will require Type R intrastate pipeline operators to register with the Commission pursuant to Act 127. 58 P.S. § 801.301(c)(1). We also direct Commission staff to maintain a registry of all Type R intrastate pipeline operators in accordance with Act 127. 58 P.S. § 801.301(a).

## III. Commission's Duty under Act 127 to Supervise Pipeline Operators Consistent With Federal Pipeline Safety Laws

While we will require Type R intrastate pipeline operators to register with the Commission on an annual basis,

we clarify that we will not require these operators to file Part 191 reports with the Commission at this time. Act 127 establishes that the “safety standards and regulations for [non-utility] pipeline operators shall be those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B, Ch. 1, Subch. D (relating to pipeline safety) [49 C.F.R. § 190.1 et seq.]” 58 P.S. § 801.302. The Commission has a statutory duty to supervise and regulate pipeline operators consistent with Federal pipeline safety laws. 58 P.S. § 801.501. Specifically, Act 127 states: “The commission shall have general administrative authority to supervise and regulate pipeline operators within this Commonwealth *consistent with* Federal pipeline safety laws.” 58 P.S. § 801.501 (emphasis added).

The regulations promulgated in PHMSA's Final Rule make clear that operators of Type R lines are subject to mandatory reporting obligations under Part 191. *Federal Register* 86 (November 15, 2021), p. 63274.<sup>5</sup> PHMSA noted that some commenters representing oil and gas producers opposed this proposal on the grounds that PHMSA had no statutory authority to require Class 1 gas gathering lines to comply with Part 191 reporting requirements if such lines are not regulated under Part 192 regulations. *Federal Register* 86, p. 63274. However, PHMSA responded to these comments by acknowledging that under Section 60117(b) of the Federal Pipeline Safety Act (Federal PSA), 49 U.S.C. § 60117(b), the Secretary has the statutory authority to gather information “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.” *Federal Register* 86, p. 63275. PHMSA, therefore, concluded that the “Final Rule fulfills the Congressional mandate” under 49 U.S.C. § 60117(b) “by requiring operators of *all on-shore gas gathering lines* to file incident and annual reports under [P]art 191.” *Federal Register* 86, p. 63275 (emphasis added).

PHMSA continued with its reasons for needing to gather information about Type R lines:

As demonstrated above, it is no longer reasonable to assume rural gas gathering lines pose uniformly low risk. Information on the changing functional and operational characteristics of gas gathering lines and their safety performance is necessary for PHMSA to better understand the consequences of these changes and to set requirements for gathering lines in the future. Extension of incident and annual reporting to these additional gas gathering lines will provide PHMSA information needed for identifying—and promulgating regulatory requirements or pursuing enforcement activity—design, manufacture, installation, and operational/maintenance issues common to particular pipeline characteristics or operators.

*Federal Register* 86, p. 63275.

It is our understanding that PHMSA intends to enforce the Part 191 reporting requirements for Type R intrastate pipeline operators in accordance with Federal regulations at 49 CFR §§ 190.201—190.243. We also learned of PHMSA's position that it has authority to enforce reporting requirements against intrastate pipeline operators under 49 U.S.C. § 60105(a). We agree with PHMSA's

<sup>5</sup> PHMSA explained that Type R gas gathering pipelines must complete a new annual report form and new incident report form developed especially for these types of operators. *Federal Register* 86, p. 63275-76. PHMSA concluded that operators of “previously unregulated” Type R gas gathering lines “must begin submitting annual reports”...and “must submit a 2022 annual report no later than March 15, 2023.” *Federal Register* 86, p. 63276. PHMSA referred to this deadline as a “compliance deadline.” *Federal Register* 86, p. 63276.

position. To expand, PHMSA, through delegation by the Secretary of the U.S. DOT, administers the federal pipeline safety program pursuant to the Federal PSA, 49 U.S.C. §§ 60101 et seq. The Commonwealth, via the Commission, participates as a certified state in the pipeline safety program administered by PHMSA, as known as a state partner. The Federal PSA preempts state regulation of interstate<sup>6</sup> and intrastate pipelines; however, the Federal PSA creates cooperative federalism by allowing a state to assume safety authority over intrastate pipelines through certification.<sup>7</sup> To the extent a certified state regulates the safety standards and practices of intrastate pipeline operators, the Federal PSA expressly prohibits the Secretary of the U.S. DOT from prescribing or enforcing safety standards and practices for intrastate pipelines. 49 U.S.C. § 60105(a). Specifically, Section 60105(a) states:

*General requirements and submission.*—Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation *may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority. . . . that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.*

Id. (emphasis added). However, by its plain language, Section 60105(a) does not prohibit the Secretary from prescribing or enforcing reporting requirements for an intrastate pipeline operator to the extent a certified state regulates the reporting requirements of intrastate operators. Id.

PHMSA's decision in the Final Rule to prescribe and enforce the new reporting requirements against Type R intrastate pipeline operators is based on PHMSA's Federal statutory duty to gather information to enable a decision by PHMSA to promulgate safety standards and practices for Type R operators, if necessary. 49 U.S.C. § 60117(b). The Commission can only supervise and regulate intrastate pipeline operators consistent with Federal pipeline safety laws. 58 P.S. § 801.501(a). To be consistent with PHMSA's approach in the Final Rule, the Commission acknowledges that PHMSA intends to enforce the new Part 191 reporting requirements against Type R intrastate pipeline operators and that PHMSA finds its authority to do so under 49 U.S.C. § 60105(a). Accordingly, as clarification to our Implementation Order, the Commission need not enforce these new Part 191 annual and incident reporting requirements against Type R intrastate pipeline operators at this time.

<sup>6</sup> PHMSA retains jurisdiction over interstate pipelines, and the Commission currently does not serve as PHMSA's agent to assist with PHMSA's oversight of interstate pipelines. 49 U.S.C. § 60106.

<sup>7</sup> The Commission's gas safety program certifies annually to the Secretary of the U.S. DOT that it meets all requirements under the Federal PSA, including, but not limited to, the adoption and enforcement of the federal standards as the state's own minimum standards. In the certification process, a state must annually certify to the Secretary of the U.S. DOT that it has lawful enabling authority over intrastate pipelines and meets certain requirements, including, but not limited to, the state's adoption and enforcement of the federal safety standards and practices as the state's own minimum safety standards and practices. 49 U.S.C. §§ 60104(c); 60105, 60106; 49 C.F.R. Part 195, Appendix A to Part 195—Delineation Between Federal and State Jurisdiction—Statement of Agency Policy and Interpretation. Under the Federal PSA, a certified state is permitted to regulate the safety of intrastate pipeline facilities in accordance with its enabling statutory authority, regulations, and orders, so long as, such regulation is not incompatible with or less stringent than the minimum federal safety standards. See 49 U.S.C. §§ 60104(c), 60105; 49 C.F.R. Part 195, Appendix A to Part 195.

PHMSA is the agency that can and will decide whether to promulgate safety standards and practices for Type R pipeline operators. 58 P.S. §§ 801.501(a); 801.302. In the event PHMSA prescribes safety standards for Type R operators, then by operation of law, the Commission will have authority under Act 127 to enforce those safety standards as well as the reporting requirements for Type R intrastate pipeline operators consistent with the federal safety standards and regulations. As of now, however, the broader safety requirements of Part 192 do not apply to the Type R intrastate pipeline operators, as we clearly stated in our Implementation Order. Since PHMSA intends to enforce the new Part 191 reporting requirements for Type R intrastate pipeline operators at this time, we clarify that the Commission's gas safety program will not enforce the Part 191 reporting requirements for Type R intrastate operators at this time.

#### IV. Act 127 Assessments

While we will require Type R intrastate pipeline operators to register with the Commission on an annual basis, we will not assess these operators consistent with Act 127. The Commission has a statutory duty to determine, by order, an appropriate annual assessment of pipeline operators based on "regulated onshore gas gathering pipeline miles" adjusted to collect the pipeline operator's portion of the commission's total costs of the gas pipeline safety program. 58 P.S. § 801.503(a), (b). Type R intrastate pipelines are not "regulated onshore gas gathering pipelines" because these pipelines are not Part 192-regulated. See 49 CFR § 192.8(c)(3) ("[a] Type R gathering line is subject to reporting requirements under part 191 of this chapter but is not a *regulated onshore gathering line* under this part.") (emphasis added). For this reason, there is no basis in the language of Act 127 to assess Type R intrastate pipeline operators at this time. Moreover, as discussed above, the Commission's gas safety program will not enforce the Part 191 reporting requirements for Type R intrastate pipeline operators at this time and, accordingly, will not be impacted by these operators' Part 191 reporting obligations, lending further support to not assess these operators at this time.

Along these lines, we acknowledge the need for clarification as PIOGA highlighted in its Petition and, therefore, we will provide clarification for page 7 of the Implementation Order. Currently, it reads as follows:

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.

Implementation Order at 7 (emphasis added). The second sentence above should be clarified from "reporting-only regulated" to "reporting-regulated only" so it will read as follows: "Type R lines are a catch-all category for the Part 191 *reporting-regulated only* 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." Other than this clarification, we find that the Implementation Order makes clear that Type R gas gathering lines are subject only to reporting requirements of Part 191 and are not subject to Part 192 regulations.

For the reasons set forth above, we will deny PIOGA's request for reconsideration regarding Act 127 registration but will grant clarification as to Act 127 assessments. Specifically, we find that Act 127 gives the Commission jurisdiction over Type R intrastate pipeline operators and requires these operators to register with the Commission on an annual basis. However, consistent with Act 127, we will not assess these operators and will not require them to file Part 191 reports with the Commission at this time. *Therefore,*

*It Is Ordered That:*

1. The Petition for Reconsideration of Pennsylvania Independent Oil & Gas Association filed in the above-captioned docket on December 23, 2022, is hereby granted in part and denied in part.

2. The Implementation Order entered December 8, 2022, in the above-captioned docket shall be clarified consistent with this Order.

3. By May 15, 2023, all pipeline operators in the Commonwealth of Pennsylvania that own or operate a Type C Class 1 gas gathering line or a liquefied natural gas facility fed by a Type C Class 1 gas gathering line and not connected to the interstate pipeline system shall provide a copy of their Part 191 Annual Report filed with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration to the Commission's Bureau of Investigation & Enforcement Safety Division by email at RA-PC-PipelineSafety@pa.gov. Thereafter, Types A, B, and C pipeline operators (excluding Type R pipeline operators) shall provide a copy of their PHMSA annual report by March 15th of each year to the Commission's Bureau of Investigation & Enforcement Safety Division by email at RA-PC-PipelineSafety@pa.gov.

4. All pipeline operators in the Commonwealth of Pennsylvania that own or operate a Type C or Type R gas gathering line shall file with the Commission an Annual Registration Form by March 31, 2023, and thereafter on March 31st of each year, in accordance with the December 8, 2022 Implementation Order and this Order and the then-current Pipeline Operator Annual Registration Form available on the Commission's website.

5. In addition to computing the annual assessment for Types A and B pipeline operators, that the Commission's Fiscal Office shall compute the annual assessment for Type C Class 1 gas gathering pipeline operators (and not Type R pipeline operators) based on the pipeline operator's current Annual Registration Form and in accordance with Act 127. For the 2023-24 assessment covering fiscal year July 1, 2023, through June 30, 2024, the Fiscal Office shall include Type C Class 1 regulated onshore gas gathering pipeline miles.

6. The Bureau of Technical Utility Services shall modify the Annual Registration Form consistent with this Order, *inter alia*, to include Type C Class 1 regulated onshore gas gathering pipeline miles in the Total Column in Attachment B to the Pipeline Operator Annual Registration Form.

7. Types A, B, and C pipeline operators subject to Act 127 assessments shall pay their assessment within 30 days of the postmark date of the invoice. For the 2023-2024 assessment, invoices shall be mailed in accordance with the Commission's assessment procedures and pipeline operators shall pay their assessments within 30 days of the postmark date of the invoice.

8. A copy of this Order shall be published in the *Pennsylvania Bulletin* and be posted on the Commission's website.

9. A copy of this Order shall be served on the Bureau of Investigation & Enforcement.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: March 16, 2023

ORDER ENTERED: March 16, 2023

[Pa.B. Doc. No. 23-447. Filed for public inspection March 31, 2023, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Electric Generation Supplier License Cancellation of Companies with an Expired Financial Security, Insufficient Financial Security Amount or Language

Public Meeting held  
March 16, 2023

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Electric Generation Supplier License Cancellation of  
Companies with an Expired Financial Security,  
Insufficient Financial Security Amount or Language;  
M-2023-3037455*

#### **Tentative Order**

*By the Commission:*

The Commission's regulations at 52 Pa. Code § 54.40(a) state that an Electric Generation Supplier (EGS) license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. In addition, 52 Pa. Code § 54.40(d) states that the maintenance of an EGS license is contingent on the licensee providing proof to the Commission that a bond or other approved security in the amount directed by the Commission has been obtained.

Each EGS must file an original bond, letter of credit, continuation certificate, amendment, or other approved financial instrument with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120, prior to the EGS's current security expiration date. Each financial instrument must be an original document that displays a "wet" signature or digital signature, preferably in blue ink, and displays a "raised seal" or original notary stamp. The name of the principal on the original financial instrument must match exactly with the name that appears on the EGS's license issued by the Commission.

Failure to file before the financial security's expiration date may cause Commission staff to initiate a formal proceeding that may lead to the following: cancellation of each company's electric supplier license, removal of each company's information from the Commission's website, and notification to all electric distribution companies, in which each company is licensed to do business, of the cancellation of the license.

As of March 7, 2023, each EGS listed in the Supplier Table below has not provided proof to the Commission that it has a bond or other approved security in the amount or language directed by the Commission, to replace a bond which is expired, or which is non-compliant with Commission regulations.