

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 127 of 2011 – The Gas and Hazardous  
Liquids Pipeline Act; Assessment of Pipeline  
Operators

M-2012-2282031

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**COMMENTS OF THE  
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION**

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The Pennsylvania Independent Oil and Gas Association (PIOGA)<sup>1</sup> submits these comments to the Commission's January 12, 2012 tentative order implementing Act 127 of 2011, the Gas and Hazardous Liquids Pipelines Act (Pipeline Act). The Pipeline Act expands the Commission's authority to permit the Commission to enforce Federal pipeline safety laws on entities not previously regulated by the Commission – operators of non-public utility intrastate gas and hazardous liquids pipelines and facilities located within the Commonwealth of Pennsylvania. But as the Commission's Implementation Order, Secretarial Letter and FAQs acknowledge, this expanded authority is limited to pipelines and facilities "regulated under the Federal pipeline safety laws." Significantly, the Commission may implement Act 127 with regulations, and thus also administrative actions, that are not inconsistent with, greater or more stringent than the standards and regulations adopted under the Federal pipeline safety laws. The Commission seeks comments to ensure that its implementation approach is reasonable and consistent with the Pipeline Act, and PIOGA provides these comments for that purpose.

**I. Duties of the Commission under the Pipeline Act.**

The Commission's order identifies the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations to be enforced by the Commission as being found in Part

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<sup>1</sup> Effective April 1, 2010, the Independent Oil and Gas Association of Pennsylvania (IOGA of PA) and the Pennsylvania Oil and Gas Association (POGAM) merged and the name of the organization changed to Pennsylvania Independent Oil and Gas Association. PIOGA is now the comprehensive trade association representing oil and natural gas interests throughout Pennsylvania. PIOGA represents approximately 900 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.

49 of the Code of Federal Regulations, Subtitle B, Chapter I, Subchapter D (“Pipeline Safety”). These regulations encompass Parts 190-199 of CFR Title 49:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETYRELATED CONDITION REPORTS

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Subpart A—General

Subpart B—Materials

Subpart C—Pipe Design

Subpart D—Design of Pipeline Components

Subpart E—Welding of Steel in Pipelines

Subpart F—Joining of Materials Other Than by Welding

Subpart G—General Construction Requirements for Transmission Lines and Mains

Subpart H—Customer Meters, Service Regulators, and Service Lines

Subpart I—Requirements for Corrosion Control

Subpart J—Test Requirements

Subpart K—Upgrading

Subpart L—Operations

Subpart M—Maintenance

Subpart N—Qualification of Pipeline Personnel

Subpart O—Gas Transmission Pipeline Integrity Management

Subpart P—Gas Distribution Pipeline Integrity Management (IM)

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

PARTS 196–197 [RESERVED]

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

PART 199—DRUG AND ALCOHOL TESTING

The Commission’s FAQs (“4. What Will PUC Enforcement Include?”) states that “[m]ore than 45 different types of inspections are included in the PUC’s monitoring of natural gas companies and their pipeline safety. The inspections of these newly regulated facilities will be similar.” In view of the many different types of Federal pipeline safety inspections, operators of the facilities newly regulated by Act 127 as well as the general public would be well-served by the Commission’s identification of the particular PHMSA safety inspections (at least by reference to the Federal regulation provisions) that the PUC will conduct under Act 127.

Also, the Commission has informed interested stakeholders that it will be revising its agreement with PHMSA under which the Commission conducts activities on behalf of PHMSA. As this agreement, along with Act 127, is the foundation upon which the PUC's new jurisdiction and authority will be exercised, PIOGA suggests that it is the public interest that the PUC/PHMSA agreement be made publicly available on the PUC's Act 127 webpage.

## II. Scope of Pipeline Operator Registry

The Pipeline Act requires the Commission to develop and maintain an annually renewed registry of all jurisdictional pipeline operators within the Commonwealth of Pennsylvania, to be funded through an annual assessment on these pipeline operators to recover the Commission's costs of its enforcement of the Pipeline Act on the pipeline operators.

"Pipeline operator" is defined in the Act as a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility "**regulated under Federal pipeline safety laws.**" This jurisdictional limitation on the scope of the Pipeline Act is repeated in Section 103 ("Applicability"): "The provisions of this act shall apply only to pipelines, pipeline operators or pipeline facilities **regulated under Federal pipeline safety laws.**" (Emphasis added).<sup>2</sup> The Commission's FAQs ("8. What If An Entity Has Portions That Are Covered Under Act 127 And Portions That Are Not?") reinforces this jurisdictional limitation by stating that "[i]f a person operates multiple facilities, some of which are subject to Act 127 and some of which are not, **the person is a pipeline operator only with respect to the facilities subject to Act 127.**" (Emphasis added).

Commission staff's responses to questions addressed on the January 26, 2012 Act 127 implementation teleconference also reinforce the jurisdictional limitation of the scope of Act 127:

**Q: If a pipeline operator only operates non PHMSA jurisdictional pipelines (i.e. Production lines or class 1 Gathering lines) are there any PUC requirements that they should be aware of? Specifically, is there any registration required of non DOT jurisdictional pipeline operators.**

*A: Entities which are completely exempt from PHMSA jurisdiction are not required to register as pipeline operators. . . .*

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<sup>2</sup> The limitation is also contained in the definition of "pipeline": "The term **only** includes pipeline **regulated by Federal pipeline safety laws.**" (Emphasis added).

**Q: If this is only for operators of intrastate lines, is there a process for operators who only operate interstate lines to notify you that they only have interstate lines and are, thus, exempt? . . .**

*A: No. Registration is an affirmative requirement for entities which are subject to the act, with a penalty process for those who avoid their obligation. If an entity does not have pipeline facilities subject to the act there is no need to register.*

The Commission's January 12, 2012 Secretarial Letter directs readers to the Implementation Order for more details on the entities that are exempt from this registration requirement. Notwithstanding the jurisdictional limitation stated repeatedly in the Pipeline Act and acknowledged by the Commission in its various implementation documents, the Commission's Implementation Order states only that a petroleum gas distributor who is registered under the Propane and Liquefied Petroleum Gas Act is not required to register with the PUC.

PIOGA requests that the Commission also confirm the two exemptions that flow from Act 127's jurisdictional limitation language.

The first exemption is actually a long-standing Congressional exclusion of oil and natural gas production operations from the scope of Federal pipeline safety authority, and the second exemption is based upon the Congressionally mandated shift during 1992-1996 from a Federal "command and control" regulatory model for pipeline safety to a model based upon the use of risk management concepts, with operators bearing primary responsibility for determining the jurisdictional status of their gathering lines in the first instance.

A. Exclusion of production facilities from scope of Federal pipeline safety rules and Act 127

The Natural Gas Pipeline Safety Act enacted in 1968 covered facilities used for the transmission and distribution of natural gas, as well as a *limited* group of gathering lines (those in nonrural areas):

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area such as a subdivision, a

business or shopping center, a community development, or any similar populated area that the Secretary of Transportation may define as a nonrural area;<sup>3</sup>

As is apparent, this definition did not include, and thus excluded, facilities used to transport natural gas during production operations.<sup>4</sup> This exclusion is reflected in PHMSA's regulation at 49 CFR § 192.8 and the American Petroleum Institute (API) Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines," (1st edition, April 2000):

§ 192.8 How are onshore gathering lines and regulated onshore gathering lines determined?

(a) An operator must use **API RP 80** (incorporated by reference, see §192.7), to determine if an onshore pipeline (or part of a connected series of pipelines) is an onshore gathering line. The determination is subject to the limitations listed below. . . .

(1) The **beginning of gathering**, under section 2.2(a)(1) of API RP 80, **may not extend beyond the furthestmost downstream point in a production operation as defined in section 2.3 of API RP 80**. This furthestmost downstream point does not include equipment that can be used in either production or transportation, such as separators or dehydrators, **unless** that equipment is involved in the processes of "production and preparation for transportation or delivery of hydrocarbon gas" within the meaning of "**production operation**." (Emphasis added).

Despite numerous amendments to the Pipeline Safety Act, the exclusion for production operations has not been changed.<sup>5</sup> Accordingly, a gathering line used as part of a production operation is not an "onshore gathering line" per 49 CFR § 192.8(a) – no matter where located – and is therefore excluded from being characterized as a "regulated onshore gathering line" within the scope of Act 127, and PIOGA requests that the PUC expressly confirm this exclusion from Act 127.

<sup>3</sup> 49 U.S.C. App. 1671(3).

<sup>4</sup> This has been the federal agency's understanding for a long time. *See, e.g.*, Office of Pipeline Safety Interpretation Letter from Cesar DeLeon, Director, Regulatory Programs, to Lance Fellhoalter, OXY USA, Inc. (Oct. 8, 1993), <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=f9a111a0f8f6b110VgnVCM1000009ed07898RCRD&vgnnextchannel=9574d7dcb2588110VgnVCM1000009ed07898RCRD&vgnnextfmt=print>; Office of Pipeline Safety Interpretation Letter from Cesar DeLeon, Director, Regulatory Programs, to Edward M. Steele, Gas Pipeline Safety Section, The Public Utilities Commission of Ohio (Mar. 12, 1992), <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=daf63ec78f95b110VgnVCM1000009ed07898RCRD&vgnnextchannel=9574d7dcb2588110VgnVCM1000009ed07898RCRD&vgnnextfmt=print>.

<sup>5</sup> 49 U.S.C. §§ 60101(a)(3), (18), (19) and (21).

B. Exemption of Class 1 location lines gathering conventional gas from scope of Act 127

As shown above, the 1968 Natural Gas Pipeline Safety Act applied only to a limited group of gathering lines – those located in *nonrural* areas. In 1992, Congress began the change from the prescriptive “command and control” regulatory model for Federal pipeline safety to a model based upon the use of risk management concepts by requiring the Department of Transportation to define the term “gathering line” and then to define a subclass of “regulated gathering lines” that would be subject to Federal pipeline safety standards based upon an actual risk of harm from gathering operations, rather than be excluded from Federal pipeline safety standards only because of their rural nature:

H.R. 1489 requires DOT finally to define the term “gathering line,” to develop an inventory of these lines, and to define a class of “regulated gathering lines” that warrant some safety regulation. DOT is given a great deal of discretion to implement this section based on the information it receives as it proceeds. **If DOT finds that none of these lines poses a hazard to people, property, or the environment, none of them will be regulated.**<sup>6</sup> (Emphasis added)

Again in 1996, Congress directed PHMSA to determine which rural gathering lines, if any, needed to be regulated based on the specific physical safety risks that the lines presented, thus completing the shift to the use of risk management concepts for pipeline safety:

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 types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.<sup>7</sup>

PIOGA acknowledges that in August 2011 PHMSA issued a Notice of Proposed Rulemaking (ANPRM) seeking public comment on, among other subjects, several aspects of the existing Federal framework for regulating natural gas gathering lines, suggesting that this framework may no longer be appropriate due to: (i) the recent expansion of natural gas development from shale formations, and (ii) the claim that “enforcement of the current

<sup>6</sup> See, Pub. L. No. 102-508, § 109(b); 1992 U.S. Code Cong. & Admin. News 2642 at 2652-53.

<sup>7</sup> 49 U.S.C. § 60101(b)(2)(A).

requirements has been hampered by the conflicting and ambiguous language of API RP 80”.<sup>8</sup> While PIOGA has supported comments concluding that no change in the existing Federal framework for gathering lines is necessary or appropriate, the recently enacted Pipeline Safety Act Reauthorization (HB 2845) requires the Secretary of Transportation to conduct a two-year study and report to Congress whether there is any need to regulate additional gas gathering lines,<sup>9</sup> so any change at the Federal level – which Act 127 incorporates automatically – is likely years away and also likely to affect pipelines gathering shale (unconventional) gas rather than conventional gas, as that is a primary driver of the inquiry.

Accordingly, PIOGA requests that the PUC expressly confirm the exemption from Act 127 for gathering lines in a Class 1 location that transport only, or primarily,<sup>10</sup> conventional natural gas. PIOGA also requests the PUC to conclude that the specific directive to register and report the Class location and pipeline mileage of gathering lines in a Class 1 location that transport *unconventional* natural gas<sup>11</sup> applies *only* to pipeline operators of jurisdictional facilities – non-public utility intrastate gathering lines in Class 2, 3 or 4 locations, or non-public utility intrastate transmission or distribution facilities. In the alternative, PIOGA requests the PUC to conclude that this directive represents an *exception* to the jurisdictional limitation language, which applies *only* to owners or operators of Class 1 facilities that transport only, or primarily, unconventional natural gas,<sup>12</sup> and which does *not* apply to owners or operators of Class 1 facilities that transport only, or primarily, conventional natural gas.

The inclusion of all gathering lines in a Class 1 location within Act 127’s jurisdictional limitation language (“regulated under the Federal pipeline safety laws”) flows directly from

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<sup>8</sup> 76 Fed. Reg. 53086, 53101 (Aug. 25, 2011).

<sup>9</sup> Subsections 21(a), (b).

<sup>10</sup> PIOGA is suggesting that a threshold of “more than 50%” be established, such as more than 50% of throughput is conventional gas or more than 50% of wells connected to the pipeline are conventional wells.

<sup>11</sup> Section 301(c)(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.”

<sup>12</sup> As some gathering pipelines may transport unconventional natural gas commingled with conventional gas, PIOGA suggests the threshold should be “more than 50%”, such as more than 50% of throughput is unconventional gas or more than 50% of the wells connected to the pipeline are unconventional wells.

PHMSA regulations. Indeed, PHMSA's written comments in the PUC Marcellus Shale *en banc* investigation confirm this: "Currently, gathering lines in a Class 1 [location] are exempt from PHMSA regulations."<sup>13</sup> The term "regulated onshore gathering line" is a defined term under the PHMSA regulations at 49 CFR § 192.8(b), and means an "onshore gathering line" that is regulated by PHMSA per 49 CFR §§ 192.8(b) and 192.9 – *i.e.*, an "onshore gathering line" in Class 2, 3 or 4 locations, as defined in 49 CFR § 192.5.<sup>14</sup> PHMSA's regulations expressly state that the Part 192 safety requirements apply only to "regulated onshore gathering pipelines":

**§ 192.1 What is the scope of this part?**

(a) This part [192] prescribes minimum safety requirements for pipeline facilities and the transportation of gas, including pipeline facilities and the transportation of gas within the limits of the outer continental shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to—

....

(4) Onshore gathering of gas—

....

(ii) **Through a pipeline that is not a regulated onshore gathering line (as determined in §192.8);** . . . . (Emphasis added)

Accordingly, PIOGA asks the Commission to confirm that all "onshore gathering lines" (*i.e.*, non-production operation gathering lines) located in Class 1 locations – whether transporting conventional or unconventional natural gas – are not "regulated onshore gathering pipelines" per PHMSA regulations and are not to be included in the PUC's assessment calculations, as the Commission's draft "County Location and Mileage" form properly reflects.

To give effect to both Act 127's jurisdictional limitation language and its specific reporting directive to operators of Class 1 location gathering lines that transport *unconventional* natural gas, the directive must be viewed either as: (1) applying *only* to operators of jurisdictional facilities – non-public utility intrastate gathering lines in Class 2, 3 or 4 locations; and non-public utility intrastate transmission and distribution facilities; or (2) an *exception* to the

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<sup>13</sup> *Jurisdictional and Pipeline Safety Issues Related to the Marcellus Shale*, Docket No. I- 2010-2163461, April 15, 2010 letter, Jeffrey D. Wiese, Associate Administrator for Pipeline Safety, PHMSA, U.S. Department of Transportation, at 3, [http://www.puc.state.pa.us/naturalgas/pdf/MarcellusShale/MS\\_Comments-DOT.pdf](http://www.puc.state.pa.us/naturalgas/pdf/MarcellusShale/MS_Comments-DOT.pdf).

jurisdictional limitation language that (i) applies *only* to owners or operators of Class 1 facilities that transport only, or primarily, unconventional natural gas and (ii) does *not* apply to owners or operators of Class 1 facilities that transport only, or primarily, conventional natural gas.

Otherwise, the jurisdictional limitation language – which appears in Act 127 no less than seven times<sup>15</sup> – is rendered superfluous. It is that language, and not the language requiring the reporting of otherwise nonjurisdictional facilities, that must control, as the overriding scope of Act 127 is the enforcement of Federal pipeline safety requirements.

To carry out Act 127’s purpose of providing information to the PUC concerning the location and mileage of otherwise nonjurisdictional facilities, while giving effect to Act 127’s clear jurisdictional limitation, pipeline operators that have no facilities for safety inspection or assessment purposes (*i.e.*, no facilities “regulated under the Federal pipeline safety laws”) but have Class 1 gathering lines transporting primarily unconventional natural gas should be permitted to register and report the location and mileage of these facilities without being subject to PUC data requests concerning their nonjurisdictional facilities and facilities not required to reported.<sup>16</sup> PIOGA’s position is consistent with the limitation on the jurisdiction and authority of the Commission set forth in Subsection 504(a) of the Act: “**Nothing in this act shall give the commission jurisdiction over any pipeline operator for purposes of rates or ratemaking or any purpose other than those set forth in this act.**” (Emphasis added).

PIOGA’s position is also consistent with PHMSA’s reporting requirements. As with Part 192, PHMSA’s regulations expressly state that the Part 191 reporting requirements apply only to “regulated onshore gathering pipelines”:

**§ 191.1 Scope. [PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS]**

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<sup>14</sup> As shown above, gathering lines used in a production operation are excluded from characterization as “onshore gathering lines” and, thus, excluded from characterization as “regulated onshore gathering lines”.

<sup>15</sup> Section 102 definitions (“pipeline” and “pipeline operator”); Section 103 (Applicability); Section 302 (a)(Federal safety standards); Section 501(regulate consistent with Federal pipeline safety laws); Section 503(b)(1) (assessment mileage); and Section 503(d) (assessment mileage updates).

<sup>16</sup> These facilities are production operation facilities and Class 1 facilities transporting only, or primarily, conventional gas.

(a) This part [191] prescribes requirements for the reporting of incidents, safety-related conditions, and annual pipeline summary data by operators of gas pipeline facilities located in the United States or Puerto Rico, including pipelines within the limits of the Outer Continental Shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to—

....

(4) Onshore gathering of gas—

....

(ii) Through a pipeline that is not a regulated onshore gathering line (as determined in §192.8 of this subchapter); .... (Emphasis added)

Accordingly, PHMSA reporting instructions refer operators to 49 CFR § 192.8:

The terms “operator,” “distribution line,” “gathering line,” “Maximum Allowable Operating Pressure (MAOP),” “offshore,” “Outer Continental Shelf,” “pipe,” “pipeline,” “pipeline facility,” “specified minimum yield strength (SMYS),” and “transmission line” are defined in §192.3. The terms “assessment,” and “high consequence area (HCA)” are defined in §192.903. **§192.8 describes how to identify onshore gathering lines and to determine if a gathering line is subject to regulation (i.e., is a “regulated gathering line”).** If an operator determines that its pipelines fall under the definition for distribution lines, he or she should submit Form PHMSA F 7100.1-1 rather than this Form PHMSA F 7100.2-1.<sup>17</sup> (Emphasis added)

And PHMSA directs operators to report information only for “regulated” gathering mileage:

Brian **Asked:** Does only regulated gathering need to be listed or all miles of gathering.  
Answer: report only regulated gathering mileage.<sup>18</sup>

Accordingly, PIOGA requests that the PUC expressly confirm the exemption from Act 127’s registration and reporting requirements for gathering lines in a Class 1 location that transport only, or primarily, conventional natural gas.

<sup>17</sup> PHMSA Transmission & Gathering Annual Report Instructions, <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=f540c02b8be2d110VgnVCM1000009ed07898RCRD&vgnnextchannel=bc79c0124500d110VgnVCM1000009ed07898RCRD&vgnnextfmt=print>, GENERAL INSTRUCTIONS, p. 1 (FORM PHMSA F 7100.2-1 (Rev. 06-2011) ANNUAL REPORT FOR CALENDAR YEAR 20\_\_ NATURAL AND OTHER GAS TRANSMISSION AND GATHERING PIPELINE SYSTEMS Rev. 06-2011).

<sup>18</sup> PHMSA Meeting Questions and Answers, Natural Gas or Other Gas Transmission & Gathering Systems Annual Report and One Rule Webinar, Thursday, March 31, 2011 1:30 PM - 4:00 PM GMT, [http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Pipeline/Webinars/GT\\_webinar\\_questions\\_and\\_answers.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Pipeline/Webinars/GT_webinar_questions_and_answers.pdf).

### C. Farm taps

PIOGA is aware of issues currently being discussed concerning PHMSA Integrity Management requirements and farm taps off of transmission and gathering lines. PHMSA Integrity Management requirements are set forth in 49 CFR Part 192, Subpart O (Gas Transmission Pipeline Integrity Management, §§ 192.901-192.951) and Subpart P (Gas Distribution Pipeline Integrity Management (IM), known as “DIMP”, §§ 192.1001-192.1015). PIOGA’s primary concern with these issues with respect to implementation of Act 127 is with farm taps off of lines not “regulated under the Federal pipeline safety laws”, *i.e.*, production lines, gathering lines used in a production operation, and gathering lines in a Class 1 location that transport only, or primarily, conventional natural gas.

PHMSA’s position is based upon an interpretation letter<sup>19</sup> and an FAQ issued by PHMSA in relation to the DIMP regulations:

#### **C.3.7 Are operators required to include “farm taps” in their distribution integrity management plan?**

In the past, distribution, gathering, and transmission operators connected landowners directly to transmission and gathering pipelines often in exchange for the right to install the pipeline across a landowner’s property. This connection to the gas pipeline is commonly referred to as a “farm tap”. Although new farm taps are not installed nearly as frequently as they were in the past, “farm taps” are very common. The vast majority of “farm taps” meet the definition of a distribution line given that they do not meet the criteria to be classified as a gathering line or a transmission line.

The “farm tap” is pipeline upstream of the outlet of the customer meter or connection to the customer meter, whichever is further downstream, and is responsibility of the operator. The pipeline downstream of this point is the responsibility of the customer. Some States require the operator to maintain certain portions of customer owned pipeline. The pipeline maintained by the operator must be in compliance with 49 Part 192.

Operators of distribution, gathering, and transmission lines with “farm taps” must have a distribution integrity management program meeting the requirements of Subpart P for this distribution pipeline. The DIMP plan is not required to include the customer-owned pipeline (unless required otherwise by State law). The operator having responsibility for operations and maintenance activities for the facility is responsible for developing and

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<sup>19</sup> PHMSA Interpretation ##PI-11-0008, <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnexto id=b9afe8f913c11310VgnVCM1000001ecb7898RCRD>.

implementing the DIMP plan. For additional discussion see PHMSA's interpretation dated April 19, 2011.<sup>20</sup>

PIOGA first notes that FAQs and interpretation letters are not regulations and thus cannot be treated as binding. PIOGA is aware that industry groups are currently discussing the propriety and consequences of this position with PHMSA, such that all the issues arising from this position are not currently resolved. PIOGA disagrees with PHMSA's positions because:

- Applying the DIMP requirement to farm tap operators was never contemplated during the rulemaking process.
- Many, if not most, farm tap operators have not viewed themselves as distribution operators and thus: (i) are not currently regulated by PHMSA; (ii) have never filed PHMSA annual reports or secured Operator IDs; and (iii) didn't even know about the DIMP rule or requirements.
- Many previously nonregulated entities would now become regulated entities that had no ability to comment or respond during the rulemaking process to the DIMP proposal and its impact on their businesses.
- Most farm tap operators do not have the information or records necessary to conduct even the most elementary requirements of the DIMP rule, including the date of installation, materials used, type of couplings, or operational or maintenance records, so as a practical matter there is no way for these historically non-regulated operators to conduct the risk assessment required under the DIMP rule.
- The cost of applying the DIMP requirements to farm taps was not considered in the cost/benefit analysis for the rule, and the cost of implementing this requirement on farm taps will far outweigh any benefits.
- Subjecting farm tap operators to DIMP requirements implies that the operators' systems are now subject to full 49 CFR 192 distribution system regulation, including the filing of annual and incident reports for each system.

As PHMSA's FAQs and interpretation letters are not regulations and applying the DIMP requirement to farm tap operators was never contemplated during the DIMP rulemaking process, so these issues were not subjected to public comment and review – and these issues continue to be discussed with PHMSA – Act 127 precludes the PUC from applying this position until PHMSA finalizes it in a rulemaking.<sup>21</sup> Nonetheless, if the PUC intends to apply the current

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<sup>20</sup> <http://primis.phmsa.dot.gov/dimp/faqs.htm>.

<sup>21</sup> Section 302: "(a) General rule.--The safety standards and regulations for pipeline operators shall be those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B Ch. I Subch. D (relating to pipeline safety)."

PHMSA position before final resolution of all issues through a PHMSA rulemaking, PIOGA requests that the PUC treat farm taps off nonregulated gathering lines as not changing the nonregulated status of the line serving the farm tap, such that the nonregulated line would become a jurisdictional distribution line even though the *function* of the line as excluded production or exempt gathering has not changed.<sup>22</sup> PIOGA also requests that the PUC provide additional time for compiling, reviewing and reporting farm tap facilities because – as stated above – many operators do not have the necessary farm tap records readily available.

Requiring operators of farm taps off nonregulated lines to register and report the farm taps as Act 127 distribution facilities raises an assessment issue because the farm tap facilities are, in most cases, not lengthy. It is likely that most newly regulated farm tap operators will not have any aggregate “miles” of farm taps facilities to report. Accordingly, PIOGA requests that the PUC address this issue by either establishing a *de minimis* exception to assessments (a threshold number of farm taps or miles) or a general waiver of assessments on these farm tap facilities.

D. “County Location and Mileage” form

Changes to the “County Location and Mileage” form are required to fully reflect the jurisdictional limitation language of Act 127. The *first* column of the form requires the reporting of Class 1 gathering lines transporting *conventional* natural gas, while the *second* column requires the reporting of Class 1 gathering lines transporting *unconventional* natural gas. As explained above, the first column clearly goes beyond the scope of the PUC’s Act 127 jurisdiction, and also its authority because that requirement is inconsistent with PHMSA reporting requirements, and so should be deleted consistent with Subsection 504(a) of the Act (no PUC jurisdiction or authority over any pipeline operator for any purpose other than those set forth in the Act).

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<sup>22</sup> Function is the overriding determination under PHMSA regulation § 192.8 and API RP 80, consistent with Congress’s directive to define 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 types of lines that **functionally are gathering** but should be regulated under this chapter because of specific physical characteristics.” 49 U.S.C. § 60101(b)(2)(A) (emphasis added).

To the extent that this information is requested only for the information of the Commission,<sup>23</sup> PIOGA does not oppose retention of the first column provided the Commission makes clear that: (1) submission of this information is voluntary and not required; (2) submission of this information does not require the operator to provide further information in response to data requests; and (3) failure to submit this information is not a basis for finding noncompliance with the Act and imposing penalties. PIOGA also suggests that, as an alternative to reporting this information, an operator could voluntarily provide One Call registration information to the PUC.

If farm tap facilities off nonregulated lines are required to be reported, a new column for “Distribution” must be added. To provide more detailed information, PIOGA also suggests that the forms provide for differentiation between “Transmission” and “Gathering” facilities in the Class location columns.

#### E. Tubular Steel Products Reporting Requirements

Section 301 (d) of the Act states:

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.

The Implementation Order (p. 3) states that all *registered* pipeline operators must disclose to the PUC the country of manufacture and length (in feet) of all tubular steel products (actual pipe, excluding valves as well as other facilities or equipment) installed in the prior calendar year in Pennsylvania for the exploration, gathering, or transportation of natural gas or hazardous liquids. Consistent with the discussion above, PIOGA believes that this requirement is limited to pipeline operators of: (i) jurisdictional facilities (non-public utility intrastate gathering lines in Class 2, 3 or 4 locations; non-public utility intrastate transmission and distribution facilities (including, possibly, farm tap facilities off nonregulated lines); and (ii) gathering lines in a Class 1 location that transport only, or primarily, unconventional natural gas, as these otherwise nonjurisdictional

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<sup>23</sup> See Commission staff’s response re January 26, 2012 Act 127 implementation teleconference, p. 2 of 4: “**Q: Class 1 pipelines are not subject to Part 192. Why are you collecting Class 1 locations and miles? A: Simply for informational purposes.**”

[http://www.puc.state.pa.us/naturalgas/PDF/Act127/Tele\\_Conf\\_QA-012412.pdf](http://www.puc.state.pa.us/naturalgas/PDF/Act127/Tele_Conf_QA-012412.pdf)

facilities are specifically directed to be reported. Accordingly, PIOGA requests the PUC to confirm that an operator of nonjurisdictional facilities or Class 1 gathering lines transporting only, or primarily, conventional natural gas are not subject to this reporting requirement. This position is consistent with the limitation of purpose language in Subsection 504(a) of the Act. This position is also consistent with staff's position:

**Q: Under Section 301(D), the country of manufacturer data filing requirement applies to "pipeline operators" which are defined as owners/operators of facilities subject to federal pipeline safety laws. Since exploration and certain gathering facilities are not currently subject to federal pipeline safety laws, is a company that only owns/operated class 1 gathering and exploration facilities exempt from registering and filing country of manufacture information?**

*A: No. Staff believe Section 301(d)'s specific reference to "regardless of class location" requires operators of class 1 pipelines transporting gas from unconventional wells to register as the means for the Commission to collect the data, even if the pipelines are in class 1 locations and not subject to assessments. (Emphasis added).*

For those entities subject to this reporting requirement, PIOGA suggests that clarification of the scope of the term "exploration" is necessary because exploration is not regulated by PHMSA. To minimize reporting and regulatory burdens, PIOGA suggests that the term not include pipe on or below the well pad, and end where gathering begins per 49 CFR § 192.8 and API RP 80. Based on a staff response to a question from the January 26, 2012 teleconference,<sup>24</sup> PIOGA suggests that the term "installed" should be replaced with the term "used", which is the statutory term: "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." Section 301(d). This term shows that the term "installed" as interpreted by staff is inconsistent with the statute.

PIOGA also understands that the Commission staff would like to use this reporting requirement to provide pre-construction information that assists the Commission's installation

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<sup>24</sup> **Q: Under Section i., General Rule Paragraph 3, Act 127 States "In addition registrants must provide the country of manufacture for all tubular steel product installed in the prior calendar year." Can you please define what is meant by the term installed? Does this mean in-service as of Dec 31, XXXX or welded and placed in the ground?**

*A: "Installed" means that the pipe was placed in the ground as of December 31st, even if the pipe is not yet transporting any materials. We seek your input; please address this issue in your filed comments."*

inspection duties.<sup>25</sup> PIOGA notes that PHMSA's regulations contain pre-construction notice requirements:

**§ 191.22 National Registry of Pipeline and LNG operators.**

(c) Changes. Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new pipeline; . . . .

PHMSA recently clarified that the \$10 million threshold applies to each individual project even though, to minimize costs, contractors, material, etc., similar projects are consolidated into one program that exceeds \$10 million, so that each \$1 million project consolidated into one *program* exceeding \$10 million would nonetheless fall under the threshold.<sup>26</sup>

While PIOGA supports assisting the PUC's inspection efforts, PIOGA suggests that the Act 127 reporting requirements are not suited for the type of additional pre-construction reporting apparently envisioned by Commission staff, as the statutory requirement is that the steel products reportable are those "used" in the exploration, gathering or transportation of natural gas or hazardous liquids. This is an after-installation/operation standard rather than a pre-construction standard. PIOGA recommends that the Commission initiate a rulemaking to establish a process for additional notification of jurisdictional pipeline installation plans to assist the PUC's pre-construction inspection duties.

## II. Data Requests and Verifying Compliance

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<sup>25</sup> **Q: If we do not have our pipeline in place yet, do we have to file a report? We are still in the design phase and have not actually begun laying pipe. We anticipate the project for this year. So do we still file or wait until next year?**

*A: Yes, you should register now and report zero miles.*

<sup>26</sup> 77 Federal Register 2126 (January 13, 2012), PHMSA Notice & Issuance of Advisory Bulletin, January 6, 2012, Docket No. PHMSA-2012-0001, <http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/ADB-12-01.pdf>.

At the initial Act 127 implementation meeting the PUC stated that staff data requests would be served on registered pipeline operators to request specific but sensitive (infrastructure security, confidentiality, etc.) information about pipelines and facilities, including interconnection points and compressor station locations on both “regulated” and “unregulated” pipes. The Implementation Order does not address this subject, but PIOGA’s comments above show that data requests directed to any facilities other than those “regulated under the Federal pipeline safety laws” or *specifically required* to be reported (*i.e.*, Class 1 gathering lines transporting unconventional natural gas, and tubular steel products) are beyond the scope of the PUC’s jurisdiction and authority under Act 127. As stated in Subsection 504(a) of the Act, the expansion of the PUC’s jurisdiction and authority over pipeline operators is limited to the purposes set forth in the Act.

A similar issue arises from the PUC’s apparent presumption of pipeline operator subjectivity to Act 127:

As part of the initial implementation of the Pipeline Act, a Secretarial Letter, the Implementation Order, and the Registration Form will be sent to entities *which the Commission believes* may be pipeline operators pursuant to the Pipeline Act. Entities who are not pipeline operators pursuant to the Pipeline Act need not register, but should email Commission staff at [ra-Act127@pa.gov](mailto:ra-Act127@pa.gov) *with a justification in order to be removed from the Commission’s mailing list*. An entity’s determination that they are not required to register under the Pipeline Act is subject to review by the Commission.<sup>27</sup>

As shown above, this presumptive subjectivity approach is inconsistent with the PHMSA approach, as a response to question on the January 26, 2012 teleconference acknowledges: “Registration is an affirmative requirement for entities which are subject to the act, with a penalty process for those who avoid their obligation. . If an entity does not have pipeline facilities subject to the act there is no need to register.”<sup>28</sup>

A purported jurisdictional gathering “pipeline operator” should not be placed in a position of having to justify in writing why it is not subject to Act 127 and, pending concurrence by the PUC, be subject to inclusion in the registry, reporting and assessment process and to data requests, especially when the operator’s position is based upon its historical status under

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<sup>27</sup> Implementation Order at 4 (emphasis added).

<sup>28</sup> [http://www.puc.state.pa.us/naturalgas/PDF/Act127/Tele\\_Conf\\_QA-012412.pdf](http://www.puc.state.pa.us/naturalgas/PDF/Act127/Tele_Conf_QA-012412.pdf), p. 3 of 4.

PHMSA standards as either excluded (production operation) or exempted (Class 1 locations) from PHMSA's pipeline safety standards.

The presumptive subjectivity approach is all the more unreasonable because the PUC has not disclosed the information upon which it bases its belief that the entity is subject to the Act. For example, One Call<sup>29</sup> registration may be a source of the PUC's belief, but registration under One Call is not inconsistent with exclusion or exemption from regulation under the Federal pipeline safety laws because operators may voluntarily register their facilities even if they are not required to do so.

## II. Conclusion.

PIOGA's comments seek to ensure that the PUC's Act 127 implementation approach is reasonable and consistent with the Act, which requires consistency with the Federal pipeline safety laws. Accordingly, PIOGA requests that the PUC do the following:

1. Identify the particular PHMSA safety inspections, at least by reference to the Federal regulation provisions, which the PUC will conduct under Act 127.
2. Make the effective PUC/PHMSA agreement(s) publicly available on the PUC's Act 127 webpage.
3. Confirm the nonapplicability of Act 127 to: (i) a gathering line used as part of a production operation; and (ii) a gathering line in a Class 1 location, unless the line transports only, or primarily, unconventional natural gas.
4. Conclude that farm taps off nonregulated lines are not required to be reported or, alternatively, limit any jurisdictional farm tap facilities to those facilities and not include the nonregulated lines serving the farm tap and establish a *di minimis* exception to assessments (a threshold number of farm taps or miles) or a general waiver of assessments on these farm tap facilities.
5. Conclude that Act 127's specific directives (i) to register and (ii) to report the unconventional Class 1 location and gathering pipeline mileage and tubular steel product

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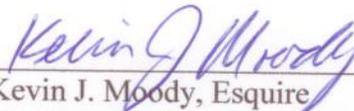
<sup>29</sup> The Underground Utility Line Protection Law, Act of December 10, 1974, P.L.852, No.287, 73 P.S. §§ 176-186. The One Call act definition of "line" or "facility" excludes "crude oil or natural gas production and gathering lines or facilities unless the line or facility is a regulated onshore gathering line as defined in regulations promulgated after January 1, 2006, by the United States Department of Transportation pursuant to the Pipeline Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 *et seq.*), if the regulated gathering line is subject to the damage prevention program requirements of 49 CFR § 192.614." 73 P.S. § 176.

information apply only to pipeline operators of jurisdictional facilities – non-public utility intrastate gathering lines in Class 2, 3 or 4 locations, and non-public utility intrastate transmission and distribution facilities or,

alternatively, conclude that these directives represent an exception to the PUC's otherwise limited jurisdiction which applies only to owners or operators of Class 1 facilities that transport only, or primarily, unconventional natural gas, and which does not apply to owners or operators of Class 1 facilities that transport only, or primarily, conventional natural gas.

6. Conclude that a pipeline operator owning or operating no jurisdictional facilities for safety inspection or assessment purposes but owning or operating Class 1 gathering lines transporting only, or primarily, unconventional natural gas may voluntarily register and report the location and mileage of these facilities without being subject to PUC data requests concerning nonjurisdictional and Class 1 facilities not required to reported.
7. Revise the "County Location and Mileage" form and Class 1 conventional gathering line reporting as suggested herein, depending on the applicable PIOGA requests adopted.
8. With respect to tubular steel reporting, define the term "exploration" not to include the pipe on or below the well pad, and to end where gathering begins per 49 CFR § 192.8 and API RP 80.

Respectfully submitted,



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