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Submitted Electronically

June 19, 2020

DOT Docket Management System  
U. S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building Ground Floor, Room W12-140  
Washington, DC 20590-0001

Re: Docket PHMSA-2019-0131; Pipeline Safety: Farm Taps Frequently Asked Questions

To Whom it May Concern:

The following comments are submitted by the Independent Petroleum Association of America (“IPAA”), with the input and support of the Independent Oil and Gas Association of West Virginia (“IOGAWV”), the Kansas Independent Oil & Gas Association (“KIOGA”), Kentucky Oil & Gas Association (“KOGA”), Michigan Oil and Gas Association (“MOGA”), The Ohio Oil & Gas Association (“OOGA”), the Pennsylvania Independent Oil & Gas Association (“PIOGA”), and the Texas Alliance of Energy Producers (“Texas Alliance”), in response to the April 20, 2020, *Federal Register* notice, Pipeline Safety: Farm Taps Frequently Asked Questions (“FAQs”).

IPAA represents thousands of independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of American oil and gas wells, produce 54 percent of American oil, and produce 85 percent of American natural gas. IOGAWV is West Virginia’s nonprofit trade association representing more than 500 companies involved in the West Virginia oil and gas production industry. KIOGA represents oil and gas producers in Kansas, as well as allied service and supply companies with a vision to promote the development of Kansas’s oil and natural gas resources for the betterment of society. With nearly 4,000 members representing 1,400 companies, KIOGA is the lead state and national advocate for the Kansas oil and gas industry. KOGA represents the interests of its members who primarily are small independent producers of oil and natural gas that operate, for the most part, low volume/low pressure wells across the Commonwealth of Kentucky. OOGA is one of the largest and most active state-based oil and natural gas association in the United States, representing Ohio’s oil and gas producing industry since 1947. OOGA’s members are involved in all aspects of the exploration, development, production, and marketing of crude oil and natural gas resources in Ohio. PIOGA is Pennsylvania’s unique nonprofit trade association representing Pennsylvania independent oil and natural gas producers involved in producing oil and natural gas from

both conventional and unconventional formations. Its members include nearly 400 marketers, service companies, and other businesses that support the industry, landowners, and royalty owners. Most of these supporting state associations filed separate comments, which IPAA endorses.

While production does not fall under the jurisdiction of the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), many of PHMSA’s actions affect producers through regulation of gathering and efforts to move the point of regulation upstream toward the wellhead. These FAQs, as proposed, would regulate thousands of natural gas wells. In these comments, IPAA urges PHMSA, first, to reconsider these FAQs as they pertain to gas connections originating from non-jurisdictional production and rural gathering facilities. Second, at the very least, PHMSA should hold off on finalizing these FAQs following completion of the Pipeline Safety: Gas Pipeline Regulatory Reform notice of proposed rulemaking (“NOPR”), published in the June 9, 2020, *Federal Register*.

PHMSA’s focus on farm taps as service lines gained momentum with the Operator Qualification (“OQ”) rule in 2017. While some larger independent producers and gathering line operators may have focused on this rule, IPAA and many of its members not subject to PHMSA jurisdiction would not have focused on this rule, as it pertained to regulated entities. Like today, there are no members of the Gas Pipeline Advisory Committee (“GPAC”) who represent the production segment of the natural gas industry. PHMSA did not receive pertinent input from many affected producers, and producers did not have informed opportunity (or maybe adequate notice) to provide this input given that the scope of the OQ rule went beyond segments of the industry under PHMSA jurisdiction. While that understanding can give some context to the path PHMSA has taken with regard to farm taps, the comments on the FAQs create the opportunity to take a fresh look and craft regulation that properly allocates responsibility in line with the risks presented.

PHMSA's interest in farm taps has come indirectly. The OQ rule, adopted in January 2017, required that operators inspect and perform tests on pressure regulating or limiting devices, relief devices (except rupture discs), automatic shut off devices and associated equipment that are located on “any service line directly connected to a production, gathering, or transmission pipeline that is not operated as part of a distribution system.” In early 2017, producers and operators of rural gathering lines rightly viewed themselves as not falling within PHMSA's purview. IPAA lost an opportunity in the OQ rule to comment on the rule’s implications for production operations warranting a different regulatory treatment from that of gas utilities and the homes and businesses with whom those utilities have a business relationship--the traditional provider-customer relationship.

For producers, farm taps have granted access to drill or lay low-pressure gathering lines on a homeowner's property by an oil and gas lease or for a right-of-way to lay piping. The homeowner usually would contract with a plumber to install the necessary equipment to take the producer's or gatherer's gas off the tap. The gas is often "free," or the homeowner would reserve a specific volume of "free" gas, then pay for volumes taken above that amount. These were viewed as contractual arrangements that did not fall within federal jurisdiction covering taps off transmission or distribution lines. Importantly, the homeowner—and not the producer—owns and operates the pipeline, the meter, the regulator, and all equipment. The producer allows the homeowner access to the supply point but does not control nor own any of the farm tap owner’s equipment. As such, producers cannot enter onto a homeowner’s property (trespass) and be required to inspect facilities they do not own (trespass and liability). Production pipeline is unregulated by PHMSA. Farm taps should be unregulated as well.

No definition of "farm tap" exists in federal regulations, but PHMSA describes "farm tap" as "individual service lines" that are referenced in regulation. This is the hook for the regulation of farm taps. According to PHMSA regulations, "Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter."

The customer relationship deserves greater scrutiny. For many producers with farm taps, that producer did not install the piping, may not even know the location of the piping, and in most cases does not bill the homeowner or receive any payment, other than the in-kind benefit of having pipe that traverses the farm tap owner's property. PHMSA could make this distinction in its review of the FAQ comments. Importantly, recipients of gas from farm taps off production lines are not customers. These lines are privately owned. They are not the ratepayers of a regulated utility. Producers have no rights to inspect, locate, test, or trespass on lines and property that they do not own, do not operate, and did not install. IPAA points to comments being filed concurrently by PIOGA, noting state regulatory decisions that make the critical distinction that farm tap operators are not utilities, nor are farm tap owners the customers of the operator.

If PHMSA chooses not to accept this line of reasoning, it then must grapple with the enormity of its undertaking. Ohio producers have installed about 30,000 free gas taps. In West Virginia, IOGAWV estimates 20,000 farm taps. For one small Appalachian producer with almost 200 wells, 50 farm taps with an average length of 500 feet could become subject to PHMSA regulation. Such regulation, as detailed in the FAQs, may require the farm tap provider to submit a gas distribution annual report, obtain an Operator Identification Number, use only qualified individuals under PHMSA regulations to perform certain tasks on farm tap lines, as well as prepare and follow an operations and maintenance manual in accordance with PHMSA regulations. Such regulation defies logic and certainly is not warranted from a risk standpoint. It could not withstand a cost-benefit analysis. The Preliminary Regulatory Impact Analysis for the Regulatory Reform NOPR provides cost estimates for farm taps off production and rural gathering, and IPAA intends to comment on these estimates as part of the NOPR comment period. Based on preliminary review, it appears that the costs of adhering to the FAQs is significantly understated.

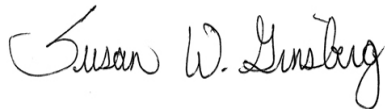
If PHMSA maintains its interpretation of farm taps as regulated service lines, then PHMSA should provide a broad exemption, such that "customer-owned piping following the first isolation point does not constitute a service line if the common source of supply originates from an unregulated production or unregulated gathering line, regardless of the presence of a customer meter."

PHMSA also has the opportunity to "fix" its view of farm taps off production and rural gathering facilities by setting aside the FAQs, pending action on the Gas Regulatory Reform NOPR. IPAA intends to comment on the NOPR and will give careful consideration to the significant changes proposed for farm taps. While the NOPR would scale back some of the regulation entailed in the Farm Tap FAQs, the proposal is just that--a proposal. Producers cannot count on any of the suggested changes.

Absent abeyance on the FAQs or exemption for farm taps off unregulated production and gathering facilities, IPAA urges PHMSA to continue to exercise forbearance in enforcement until completion of the regulatory reform NOPR process.

IPAA, the supporting state associations, and their members support PHMSA's mission to promote safety. But it is not clear that there is any safety benefit by placing producers in the position of taking responsibility for farm taps when they generally do not have legal access to these facilities. Revising the FAQs to interpret the regulation so as not to apply to unregulated production lines and small-diameter rural gathering lines is the judicious way to approach these discussions. Furthermore, the FAQs are premature in light of the Gas Regulatory Reform NOPR. IPAA urges PHMSA to reconsider its approach to farm taps off production and rural gathering facilities, as described in these comments. Producers are not local distribution companies. Privately-owned lines are not regulated distribution service lines.

Respectfully Submitted,



Susan W. Ginsberg  
Vice President  
Crude Oil & Natural Gas Regulatory Affairs  
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA  
1201 15<sup>th</sup> Street, NW, Suite 300  
Washington, DC 20005  
Cell: 202-549-8506