



VIA ELECTRONIC FILING

November 16, 2020



Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Re: Docket No. PHMSA-2018-0046, Pipeline Safety: Gas Pipeline Regulatory Reform

To Whom It May Concern:

The following comments are submitted in response to the October 7, 2020, meeting of the Gas Pipeline Advisory Committee (“GPAC”), during which GPAC members reviewed and voted on a proposal to implement gas pipeline regulatory reform (“NOPR”). The Independent Petroleum Association of America (“IPAA”), Kentucky Oil & Gas Association (“KOGA”), Ohio Oil & Gas Association (“OOGA”), Pennsylvania Oil & Gas Association (“PIOGA”), Texas Alliance of Energy Producers, Virginia Oil and Gas Association, and Independent Oil and Gas Association of West Virginia (“IOGAWV”) (collectively, “Indicated Producers”) focus these comments on the aspects of the proposal pertaining to farm taps. Indicated Producers represent thousands of independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of American oil and natural gas. While production does not fall under PHMSA’s jurisdiction, PHMSA’s actions increasingly affect producers through regulation of small, on-pad gathering systems and efforts to move the point of regulation upstream toward the wellhead. In these comments, Indicated Producers focus on PHMSA’s proposed regulation of “farm taps.” These comments directly address the GPAC deliberations and also urge PHMSA

to take additional steps to recognize the characteristics of farm taps emanating off unregulated gathering and production lines and align appropriate regulation with those characteristics.

Indicated Producers appreciate the significant cost savings that PHMSA has attributed to the somewhat reduced level of regulation of farm taps as proposed in the NOPR—over 50 percent of the estimated \$129 million in annualized cost savings. However, Indicated Producers propose that those cost savings could be greater, based on the potential for PHMSA to put in place changes in regulations for farm taps located off unregulated production or Class 1 gathering lines that would achieve cost savings while maintaining appropriate safeguards and without interfering with private contracts. According to the transcript of the GPAC meeting, PHMSA attributes slightly more than half the savings primarily to farm taps operated by local distribution companies (p. 28). PHMSA places constraints on the extent of the changes that it deems appropriate for this NOPR. As noted on p. 46 of the transcript, “excluding service lines connected to unregulated gathering and production pipelines from the scope of part 191 and 192 would be a consequential change outside the scope of the NPRM.”

While PHMSA traditionally may have viewed farm taps as operated by distribution companies, PHMSA’s view now clearly includes farms taps where “operators often agree to provide gas service to landowners along a pipeline in exchange for a right-of-way agreement or other terms. These are typically but not always in Class 1 locations...” (transcript, p. 40). What is needed is further clarification and guidance based on these very different scenarios. It is important that PHMSA clearly state that farm tap lines directly connected to non-regulated gathering or production source pipelines are exempt. The source of the farm tap, along with the ownership of the tap, argues against reliance on the first isolation point test that was put forth in the Frequently Asked Questions (“FAQs”).

PHMSA contends there are constraints on the regulatory changes that could be executed in the NOPR, and therefore PHMSA looks to the pending FAQs for further clarification. Indicated Producers strongly contend that PHMSA will need to provide greater regulatory certainty as to the appropriate level of regulation for farm taps emanating off unregulated gathering and production pipelines, in view of the ownership of the taps themselves. The critical distinction for farm taps off unregulated gathering and production pipelines is especially important for those affected producers and gathering line operators, as many have no regulated pipeline facilities. If the FAQs cannot provide that regulatory certainty, Indicated Producers strongly urge PHMSA to undertake additional regulatory reforms, as PHMSA anticipates may be necessary (transcript, p. 50).

Farm taps received recent attention from PHMSA with its issuance in April 2020 of FAQs. IPAA and a number of state oil and gas associations submitted comments, urging PHMSA to reconsider the FAQs as they pertain to farm tap connections originating from production and rural gathering facilities. As drafted, the FAQs create a regulatory scheme that is unduly burdensome at best, and impossible to comply with in many cases. In these comments, the Independent Producers stated “support [for] 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.” While the NOPR attempts to address some of the burdensome aspects of farm tap regulation, the NOPR fails to recognize the attributes of the majority of farm taps off production and rural gathering lines, which are quite different from taps off transmission or distribution lines operated by distribution companies. Indeed, as the June 19, 2020 comments PIOGA (PHMSA–2019–0131) pointed out, “recipients of gas from farm taps off independent producers’ production and rural gathering lines are neither utility service ‘customers’ nor the producers’ ‘customers.’ In other words, these lines are not customer “service lines.”

In comments submitted on the FAQs, IOGAWV noted “...the service line definition was drafted with the gas utility industry in mind, not the oil and gas production industry. The definition of service line simply does not fit farm taps. PHMSA should declare that the definition of service line is not met if the facilities are owned by the farm tap [user].” The important regulatory reform with respect to farm taps is for PHMSA to clearly state, either in revised FAQs or in a final regulatory reform rule, that any connections or related facilities that are (1) not owned or operated by the production operator; and/or (2) emanate from an unregulated production or gathering line are not “service lines.” It is not sufficient to exempt such facilities from annual reporting, farm tap regulator maintenance, and DIMP. By including farm tap configurations in the definition of “service line,” various aspects of Part 192 would still apply, which small production line operators are not otherwise subject to, creating an obligation to comply with an entirely new, expensive, and cumbersome regulatory scheme. This is not appropriate given the small size of these lines and the complicated ownership issues that accompany them. If PHMSA concludes that such clarification is beyond the scope of the NOPR, then Indicated Producers urge PHMSA to make these facts and definitions clear in the FAQs. Furthermore, the cost savings proposed by PHMSA could then be overestimated and inaccurate, as the burden placed upon producers and operators of unregulated gathering lines would drastically cut into any benefits of the regulatory changes.

Farm tap users take gas as a matter of contract right and are not distribution customers. Landowners have demanded, negotiated, and contracted for the right to lay their own pipelines and take natural gas from low-pressure production and gathering lines for their homes, outbuildings and barns. Farm taps are only allowed by a producer or gathering operator because those with the contractual right to take gas do so at their own cost, risk, and expense. Producers resist farm taps because some or all of the gas taken is free, and the connections do not assist production and sale of natural gas. PHMSA’s service line definition fits the “customer” relationship of public utility distribution companies, not the different relationship between producers and landowners. PHMSA should be clear in its regulations that those farm taps on production and non-jurisdictional gathering pipelines are not subject to Parts 191 or 192 and are in fact exempt from all PHMSA regulation. With respect to farm taps, PHMSA’s rules currently impose cost-prohibitive requirements, and attempt to do so with respect to production where PHMSA has no jurisdiction.

As PHMSA acknowledges in p. 40 of the transcript, the term “farm taps” has no regulatory definition and has been used to apply to a number of different circumstances. The existence of the “farm tap” and the installation, ownership, and maintenance of the tap and related equipment and pipelines are established by a contract between the pipeline operator and the gas recipient. Those contracts also typically allocate any liabilities associated with the tap and related facilities. In some cases, the “farm tap” and related facilities may be the result of state statutes and regulations which similarly define the relationship between the parties. As a preliminary but significant matter, any effort by PHMSA to impose regulations on these farm taps interferes with the parties’ established contractual or state statutory relations.

IPAA, along with the KOGA, OOGA, and PIOGA, previously submitted comments to PHMSA on areas appropriate for regulatory reform. Included in the three areas important to Indicated Producer members was treatment of farm taps.

Indicated Producers support PHMSA in its effort to align regulatory responsibilities with the safe operation of pipeline facilities. However, Indicated Producers urge PHMSA to recognize the significant difference between privately-owned farm taps, governed by contract or statute, and true distribution systems. Making that distinction, either in the FAQs, in future regulatory proceedings, or as referenced in the NOPR, will help achieve regulatory reform without interfering with existing contracts and/or state statutes and will better align regulatory responsibility without sacrificing public safety.

Respectfully submitted,

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