

Pennsylvania PUC Denies Petition to Reconsider Jurisdiction over Certain Class 1 Gathering Pipelines

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On March 16, 2023, the Pennsylvania Public Utility Commission (PUC) entered an order (Order) denying a petition for reconsideration (Petition) of its December 8, 2022, implementation order (Implementation Order), under which the PUC asserted jurisdiction over Class 1 natural gas gathering pipelines, including Type R intrastate pipelines, and certain liquid natural gas facilities. To reach this conclusion, the PUC relied on the Gas and Hazardous Liquids Pipelines Act (Act 127), 58 Pa. Stat. §§ 801.101–.1101, and amendments to regulations made in the final Gas Gathering Rule of the Pipeline and Hazardous Materials Safety Administration (PHMSA), 86 Fed. Reg. 63,266 (Nov. 15, 2021) (to be codified at 49 C.F.R. pts. 191, 192). As de-scribed in the Implementation Order, the PUC determined that Type R lines were subject to Act 127 registration and assessment, meaning that as issued, the Implementation Order would have required operators of Type R lines to register with the PUC on an annual basis and pay annual assessments.

In its Petition, the Pennsylvania Independent Oil & Gas Association (PIOGA), a trade association representing Pennsylvania oil and natural gas interests, challenged the PUC's conclusion. It argued that the PUC had committed an error of law because Type R lines are subject only to annual and incident reporting requirements under 49 C.F.R. Part 191, which governs annual, incident, and other reporting requirements, but not subject to safety requirements under 49 C.F.R. Part 192, which governs minimum federal safety standards. PIOGA contended that because Type R lines are not subject to the Part 192 safety regulations, they do not implicate the PUC's pipeline safety program. As such, the PUC lacked jurisdiction under Act 127, with its accompanying registration and annual assessment requirements, which apply only to "pipelines, pipeline operators or pipeline facilities regulated under Federal pipeline safety laws." 58 Pa. Stat. § 801.103.

The PUC rejected PIOGA's argument, finding that Act 127 defines "Federal pipeline safety laws" as "[t]he provisions of 49 U.S.C. Ch. 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under the acts." 58 Pa. Stat. § 801.102. The PUC reasoned that because 49 C.F.R. Subtitle B, Subchapter D, Parts 190–199, were promulgated pursuant to 49 U.S.C. Ch. 601, those Parts were subject to Act 127 and thus fall under the PUC's jurisdiction. Accordingly, the PUC denied PIOGA's Petition and determined that Type R pipeline operators must register annually with the PUC and it must maintain a registry of these operators.

In addition to the registration requirements, the PUC clarified two points on assessment and reporting obligations for Type R pipelines. The PUC said that Act 127 assessments apply to "regulated onshore [gas] gathering pipeline miles." 58 Pa. Stat. § 801.503(b). Because Type R pipelines are specifically excluded from that definition under 49 C.F.R. Part 192, the PUC determined that there is no basis under Act 127 to assess Type R pipeline operators. Regarding reporting, the PUC explained that although it has a duty and the authority under Act 127 to regulate pipeline operators consistent with federal pipeline safety laws, PHMSA intends to enforce the 40 C.F.R. Part 191 reporting requirements for Type R intrastate pipeline operators, meaning the PUC does not need to enforce those requirements at this time.

The Implementation Order, PIOGA's Petition, and the Order, as well as other related documents, are available at PUC Docket # M-2012-2282031 at <https://www.puc.pa.gov/search/document-search/>.

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