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## **D.C. Circuit Decision Vacates PHMSA's Final Rule Applied to Gathering Lines**

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On May 16, 2023, the D.C. Circuit issued a decision vacating in its entirety a challenged piece of a rule related to safety valve requirements for gas gathering lines. That decision, *GPA Midstream Association and American Petroleum Institute v. United States Department of Transportation and Pipeline and Hazardous Safety Administration*, held that the agency violated the Administrative Procedure Act and acted arbitrarily and capriciously when it failed to explain, let alone consider, why the rulemaking's safety standard would be practicable and make sense for regulated gathering lines until issuing the final rule, when there could be no peer review or public comment.

In 2020, PHMSA published a notice of proposed rulemaking to comply with a Congressional directive to the agency to consider the use of valve, or automatic shutoff technology, on gas transmission lines. But the notice of proposed rulemaking and risk assessment said nothing about the costs and benefits of applying the standard to gathering pipelines. Nevertheless, because of certain pre-existing rules, new or replaced regulated gathering lines would have been

subject to the proposed standard unless expressly carved out by the rule.

As such, in their comments to the proposed rule, the Petitioners sought an exemption for gathering pipelines. Among other things, they argued the risk assessment lacked the cost-benefit data needed to justify applying the rule to gathering pipelines. Knowing these objections, PHMSA proceeded with the rulemaking anyway. In the final rule's preamble, PHMSA addressed some of the objections. It pointed out that the proposed rule never said regulated gathering lines would be exempt—which is correct because the proposed rule said nothing at all—and it included some data about gathering lines in the final rule's risk assessment. Yet it made no attempt to quantify the benefits for gathering lines.

Petitioners sought review in the D.C. Circuit. The crux of Petitioners' arguments was that by simply asserting that the analysis for transmission lines was applicable to gathering lines after the fact, PHMSA deprived the public of the right to participate in the notice and comment process, contrary to law. In fact, there are good reasons that gathering, and transmission lines might be treated distinctly, and by short-circuiting the process, PHMSA ignored those distinctions.

The D.C. Circuit agreed. It vacated the final rule as applied to gathering lines, faulting PHMSA for failing to follow the

process required of it under the APA and the Pipeline Safety Act. As the D.C. Circuit concluded, “the Government should turn square corners in dealing with the people.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020). The PHMSA did not turn square corners here. It cut corners to the prejudice of the petitioners, the administrative process, and thus the public.”

***Keith Coyle and Christina Manfredi McKinley of Babst Calland represented the petitioners in this challenge. The case is No.22-1148.***



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