Gas Pipeline Group's Meeting Signals Stricter Safety Rules

By **Keith Coyle**

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The Gas Pipeline Advisory Committee, or GPAC, the federal advisory committee that reviews the U.S. Pipeline and Hazardous Materials Safety Administration's gas pipeline safety rulemaking proposals, met in Washington, D.C., late last month to consider proposed changes to PHMSA's regulations for onshore gas gathering lines. Driven by recent developments in the oil and gas industry, particularly the expansion of pipeline infrastructure in the nation's shale plays, PHMSA published a notice of proposed rulemaking in April 2016 that contained significant amendments to the federal safety standards and reporting requirements for rural gas gathering lines.

While the Trump administration had signaled a willingness to pursue a more measured approach, the GPAC largely endorsed the prior administration's position, a decision that could ultimately produce a final rule with far-reaching impacts for the industry. According to PHMSA's latest estimates, the GPAC's recommended proposal would make about 90,000 miles of additional gas gathering lines subject to the agency's gas pipeline safety standards. The Trump administration's alternative would only extend the agency's gas pipeline safety standards to about 25,000 miles of additional gas gathering lines greater than 12 inches in diameter.

The GPAC's decision to back more ambitious rules for rural gas gathering lines could represent a dramatic turning point for the industry. Most of the nation's gas gathering infrastructure has remained outside the reach of PHMSA's jurisdiction for decades, due to a long-standing statutory exemption and the absence of sufficient safety data to justify federal regulations.

But the emergence in recent years of larger-diameter, higher-pressure gas gathering lines in the nation's shale plays has raised concerns about the need for new safety standards and reporting requirements. Whether those concerns warrant the expansive rules contemplated by the GPAC, which would extend PHMSA's safety standards to approximately 32,000 miles of 8-inch-diameter gas gathering lines in sparsely populated rural locations, will likely remain the primary point of contention throughout the remainder of the rulemaking process.

Early History: Natural Gas Pipeline Safety Act of 1968 and the Rural Gathering Exemption

In the Natural Gas Pipeline Safety Act of 1968, Congress provided PHMSA with the authority to prescribe minimum federal safety standards for the transportation of gas by pipeline.[1] The 1968 act defined "transportation of gas" to include "the gathering, transmission, distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce[,]" but specifically excluded "the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, 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 which the

Secretary may define as a nonrural area[.]"[2]

The legislative history indicates that Congress excluded rural gas gathering lines from PHMSA's jurisdiction in the 1968 act because the "impressive" safety record of these lines did not support the need for federal regulation.[3] Consistent with that statutory exemption, the agency did not regulate rural gas gathering lines during the first two decades of the federal pipeline safety program's existence. [4]

Definitions and Rural Gathering Lines Revisited: Pipeline Safety Act of 1992

In the Pipeline Safety Act of 1992, Congress amended the 1968 act to give PHMSA the authority to regulate rural gas gathering lines.[5] Specifically, the 1992 act directed the agency to create a new regulatory definition for the term "gathering line" based on the "functional and operational characteristics" of these pipelines.[6]

The 1992 act also directed PHMSA to issue regulations establishing minimum federal safety standards for a subset of so-called "regulated gathering line[s]."[7] In deciding on "the types of the lines which are functionally gathering but which, due to specific physical characteristics, warrant regulation[,]" the 1992 act instructed the agency to "consider such factors as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas."[8]

As PHMSA weighed its options for addressing the 1992 act's rulemaking mandates, the American Petroleum Institute, or API, launched a successful, parallel effort to develop a new industry standard for defining onshore gas gathering operations. That standard, API Recommended Practice 80, Guidelines for the Definition of Onshore Gas Gathering Lines, recommended that operators use a functional approach in determining the extent of production and gathering operations for purposes of the agency's regulations.

Shortly after its publication, API asked PHMSA to satisfy the rulemaking mandate in the 1992 act by incorporating RP 80 by reference in the pipeline safety regulations.

RP 80 and the Risk-Based Regime: PHMSA's Current Rules for Onshore Gas Gathering Lines

In March 2006, PHMSA concluded a multi-year rulemaking effort by adopting new regulations for onshore gas gathering lines.[9] Those regulations, which remain in effect, require operators to use the definition in RP 80 in determining if a pipeline is an "onshore gathering line", subject to certain additional limitations.[10]

If a pipeline meets that definition, an operator must then determine if it qualifies as a regulated onshore gas gathering line. The agency currently recognizes two categories of regulated onshore gas gathering lines: (1) Type A gathering lines, which are higher-stress pipelines that pass through more populated Class 2, Class 3 and Class 4 locations;[11] and (2) Type B gathering lines, which are lower-stress pipelines that pass through more populated Class 2, Class 3 and Class 4 locations.[12]

PHMSA applies more stringent safety standards to Type A gathering lines, which create a higher risk to public safety, than Type B gathering lines, which create a lower risk to public safety.[13] The agency does not currently regulate gas gathering lines that pass through sparsely populated Class 1 locations, although certain state authorities exercise jurisdiction over these pipelines.[14]

Responding to the Shale Gas Revolution: PHMSA Proposes Regulations for Class 1 Gathering Lines

Citing the changing risk profile of gas gathering lines in the nation's shale plays and concerns over the enforcement of RP 80, PHMSA published an advance notice of proposed rulemaking in August 2011, asking for public comment on potential changes to the onshore gas gathering regulations.[15]

The agency asked a series of specific questions on that point in the ANPRM, including whether to apply the federal reporting requirements to all gathering lines, adopt a new gathering line definition and establish risk-based regulations for certain large-diameter, high-pressure gas gathering lines in rural locations.[16]

After reviewing the comments submitted in response to the ANPRM, PHMSA issued a notice of proposed rulemaking in April 2016 proposing to make significant changes to the safety standards and reporting requirements for gas gathering lines.[17] In particular, the agency proposed to:

- Repeal RP 80 and adopt new definitions for onshore gas gathering by regulation;
- Apply certain safety standards to higher stress Class 1 gathering lines 8 inches or greater in nominal diameter;
- Add new exceptions to the safety standards for currently-regulated Type A gathering lines to accommodate other proposed changes to the transmission line regulations; and
- Apply the federal reporting requirements to operators of all gathering lines, whether regulated or not.[18]

Numerous industry commenters responded to the NPRM by expressing opposition to the proposals, stating that the changes would adversely impact producers and gatherers by extending PHMSA's jurisdiction closer to the wellhead, requiring the widespread reclassification of pipeline facilities, and imposing unduly burdensome regulations and reporting requirements.

The industry commenters also noted that the agency significantly underestimated the costs — and significantly overestimated the benefits — of the gas gathering proposals. Although PHMSA estimated that the costs would exceed the benefits by approximately $1 million over the initial 15-year compliance period, an industry-backed analysis showed that the costs would exceed the benefits by more than $28 billion over that same period.

The Trump Effect: PHMSA's Rulemaking Agenda in the New Administration

Donald Trump's victory in the 2016 presidential election raised questions about the fate of the ambitious rulemaking agenda initiated during the previous administration, including the proposed changes to the gathering line regulations. From the regulatory freeze imposed by the new White House Chief of Staff on inauguration day[19] to executive orders promoting regulatory reform, domestic energy independence and economic growth,[20] the early days of the new administration seemed to reinforce the notion that PHSMA's rulemaking initiatives would be heading in a different direction.

As PHMSA sought to adjust to these broader political forces, API launched an effort to develop a new consensus standard for rural gas gathering lines in 2018. The standard, API Recommended Practice 1182, sought to establish recommended safety practices for the design, construction, testing, operation and maintenance of larger-diameter, higher-stress gas gathering lines in Class 1 locations.

API also undertook a separate effort to develop a new edition of RP 80, the industry standard that PHMSA proposed to repeal in the NPRM. The agency appeared to react favorably to these two industry initiatives as the next step in the rulemaking process approached: the GPAC's review of PHMSA's proposed changes to the gathering regulations.

The Turning Point: GPAC Endorses More Expansive Regulations

The GPAC is a 15-person federal advisory committee charged with providing PHMSA with guidance on "the technical feasibility, reasonableness, cost-effectiveness, and practicability" of proposed changes to the gas pipeline safety regulations.[21] To ensure fairness and a balance of interests, the GPAC's membership is equally divided among three groups with five industry, five government and five public representatives.

The GPAC's views are not binding, but PHMSA must provide a written explanation if the agency rejects the GPAC's conclusions. In other words, the GPAC exercises a significant degree of influence in the rulemaking process, especially from a public perspective.

In the days leading up to the GPAC meeting, PHMSA released new recommendations for addressing the notice of proposed rulemaking.[22] Citing concerns with the original rulemaking proposal and API's efforts to revise API RP 80 and develop API RP 1182, PHMSA indicated that it had decided to withdraw the proposed changes to the gas gathering definitions.

The agency also indicated that it had decided to increase the minimum diameter threshold for regulated Class 1 gas gathering lines from 8 inches or greater to greater than 12 inches, and add a requirement that at least one dwelling or other impacted site be located within the potential impact radius for lines at the lower end of that diameter threshold (greater than 12 inches and less than or equal to 16 inches) to be regulated.

PHMSA further indicated that it had decided that operators of unregulated Class 1 gas gathering lines should only be required to submit incident and annual reports. The agency estimated that approximately 25,000 miles of additional Class 1 gas gathering lines would be regulated under the modified proposal, and that approximately 400,000 miles of unregulated gathering lines would be subject to the new federal reporting requirements.

The GPAC endorsed two of PHMSA's recommendations at the meeting, voting to withdraw the proposed changes to the gas gathering definitions and implement the proposal to require unregulated gathering line operators to submit incident and annual reports. However, the GPAC did not endorse the agency's more measured approach for regulating Class 1 gas gathering lines.

Responding to a proposal initially offered by a public representative and supported by several government representatives, the GPAC recommended that PHMSA establish a baseline set of requirements for all high-stress Class 1 gathering lines 8 inches or greater in diameter. Those requirements would include regulations for materials, design, construction and initial testing, as well as certain operations and maintenance provisions.

The GPAC also recommended that the agency use the PIR concept in establishing a set of additional requirements for larger diameter gathering lines, such as those greater than 12 inches in diameter. According to the estimates provided by PHMSA, the GPAC's recommendations would extend the agency's regulations and full panoply of reporting requirements to approximately 90,000 miles of Class 1 gas gathering lines.

PHMSA's Road to a Final Rule

The GPAC's recommendation to restore the original scope of the NPRM injects a new degree of uncertainty into the rulemaking process. PHMSA staff indicated, in response to questions raised during the meeting, that the agency decided to limit the proposed regulations to high-stress Class 1 gathering lines greater than 12 inches in diameter due to a lack of data, and the provisions in the final rule will need to satisfy the rulemaking and cost-benefit requirements in the Pipeline Safety Act.

Whether PHMSA is able to satisfy these requirements in developing the final rule remains to be seen, particularly for the smaller diameter lines covered in the GPAC's recommendation. The data that the agency provided at the meeting indicates that more than 30,000 miles of high-stress pipe, or approximately one-third of potentially impacted Class 1 mileage, is 8 inches in diameter. The cost-benefit calculation for regulating these lines is likely to be far less favorable than their larger diameter counterparts, which create the potential for more significant impacts on people, property and the environment.

Now that the GPAC process is complete, PHMSA is in a position to develop and submit a final rule to the U.S. Secretary of Transportation and the U.S. Office of Management and Budget. The secretary's office will review the final rule to ensure consistency with the administration's objectives and departmental rules, policies and procedures.[23] OMB will then review the final rule for cost-benefit and other purposes.[24]

Once OMB's review is complete, the final rule can be returned to PHMSA for publication in the Federal Register. PHMSA is currently projecting that publication could occur as early as next year in the months prior to the 2020 election, although that timing appears unlikely, given the backlog of other pending pipeline safety rules and current pace of the rulemaking process.[25]

Regardless of how the rulemaking process plays out, there is a significant likelihood that one or more parties will either seek further administrative review of the final rule or file a petition for judicial review in the federal courts. PHMSA's regulations allow interested parties to seek reconsideration of a final rule by filing a petition with the agency within 30 days of publication in the Federal Register.[26]

The pipeline industry has filed petitions for reconsideration of other final rules in recent years, and it is possible that a petition could be filed in this proceeding, particularly for purposes of seeking a clarification or extended compliance deadline for the new regulations. In the alternative, a party can seek judicial review by filing a petition with the U.S. Court of Appeals within 89 days.[27]

The state of Texas recently filed such a petition in the U.S. Court of Appeals for the Fifth Circuit, challenging PHMSA's interim final rule for underground gas storage facilities, and it is possible that one or more parties could ask for judicial review of the gas gathering final rules.

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[1] Pub. L. No. 90-481, 82 Stat. 720.

[2] Id. § 2(3), 82 Stat. at 720.

[3] H.R. Rep. No. 1390 (1968), reprinted in 1968 U.S.C.C.A.N. 3223, 3234-35.

[4] Establishment of Minimum Standards, 35 Fed. Reg. 13248, 13,258-13,259 (Aug. 19, 1970) (codifying original definition of gathering line in 49 C.F.R. § 192.3 and establishing original requirements for regulated gathering lines in 49 C.F.R. § 192.9).

[5] Pub. L. No. 102-508, 106 Stat. 3289.

[6] Id.

[7] Id.

[8] Id.

[9] Gas Gathering Line Definition: Alternative Definition for Onshore Lines and New Safety Standards, Final Rule, 71 Fed. Reg. 13,289 (March 15, 2006); see also Gas Gathering Line Definition; Alternative Definition for Onshore Lines and Proposed Safety Standards, 70 Fed. Reg. 57,536 (Oct. 3, 2005); Gas and Hazardous Liquid Gathering Lines, 68 Fed. Reg. 67, 129, 67,131 (Dec. 1, 2003).

[10] 49 C.F.R. § 192.8(a). The additional limitations prohibit operators from treating certain dual-use equipment as being part of a production operation and restrict the endpoint of gas gathering at processing plants, points of commingling, and compressor stations. Id. at (a)(1)-(4).

[11] Id. § 192.8(b) (table).

[12] Id.

[13] Compare Id. § 192.9(c), with Id. § 192.9(d).

[14] Detailed information on the various state authorities that regulate gas gathering lines is provided in a Sept. 4, 2013, report that Oak Ridge National Laboratory prepared for PHMSA in response to a statutory mandate in Section 21 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, 125 stat. 1,904. A copy of the report is available on PHMSA's website at https://www.phmsa.dot.gov/news/report-congress-natural-gas-and-hazardous-liquid-gathering-lines-may-2015-0.

[15] Pipeline Safety: Safety of Gas Transmission Pipelines, 76 Fed. Reg. 53,086, 53,100-53,101 (Aug. 25, 2011).

[16] Id. at 53,101.

[17] Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

[18] Id. at 20,827-20,828.

[19] Regulatory Freeze Pending Review, 82 Fed. Reg. 8346 (Jan. 24, 2017).

[20] Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 9,339 (Feb. 3, 2017); Executive Order 13777 on Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 12,285 (March 1, 2017); Executive Order 13783 on Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16,093 (March 31, 2017).

[21] 49 U.S.C. § 60115.

[22] https://www.phmsa.dot.gov/news/phmsa-presentation-slides-january-2019-gpac-meeting.

[23] https://cms.dot.gov/sites/dot.gov/files/docs/regulations/328561/dot-order-21006-rulemaking-process-signed-122018.pdf.

[24] https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp.

[25] https://www.transportation.gov/regulations/report-on-significant-rulemakings.

[26] 49 C.F.R. § 190.335.

[27] 49 U.S.C. § 60119.