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Sent: Monday, November 18, 2019 10:56 AM
To: Rules Coordinator
Cc: Matthew Hite
Subject: GPA Midstream Association Comments, Railroad Commission of Texas, Proposed Amendments to Pipeline Safety Rules
Attachments: 11.18.2019 GPA Midstream Association Comments Railroad Commission of Texas Proposed Pipeline Safety Rules.pdf

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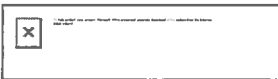
To Whom It May Concern:

Attached please find a comment letter submitted by Matthew Hite, Vice President of Government Affairs, GPA Midstream Association. The comments relate to the proposed amendments to the pipeline safety rules that were published in the Texas Register on October 18, 2019. Please let me know if you have any difficulties accessing the attached file.

Respectfully,
Keith J. Coyle

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Via email to: rulescoordinator@rrc.texas.gov

November 18, 2019

Rules Coordinator
Office of General Counsel
Railroad Commission of Texas
P.O. Box 12967
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Re: Comments on Proposed Amendments to the Pipeline Safety Regulations for Rural Gathering Lines

To Whom It May Concern:

On October 18, 2019, the Railroad Commission of Texas (Commission) published proposed amendments to the pipeline safety regulations in 16 Tex. Admin. Code §§ 8.1 - 8.315 (2019) in the *Texas Register*, including a new regulation for gathering lines in § 8.110. The new gathering line regulation seeks to establish a general safety provision and additional reporting requirements for certain rural pipelines. The Commission proposed those requirements pursuant to the authority provided in a 2013 law that amended a long-standing jurisdictional limitation in the Natural Resources Code and Texas Utilities Code.

GPA Midstream Association (GPA Midstream) appreciates the opportunity to submit comments responding to the Commission's proposed changes to the gathering line regulations.¹ GPA generally supports those changes, but our members are concerned with the subjective nature of the general safety provision for rural gathering lines, particularly the "reasonably prudent manner" standard. GPA Midstream believes that the general safety provision should require operators to correct hazardous conditions that create a risk to public safety, and that the provision

¹ GPA Midstream is composed of nearly 80 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing. Additional information about GPA Midstream is available at <https://gpaglobal.org/>.

for submitting corrective action plans should be limited to hazardous conditions that meet that standard. Additional background information and further details on the nature of GPA Midstream’s concerns with the Commission’s rulemaking proposal are provided below.

I. Background

In 2013, the Texas Legislature enacted a law, H.B. 2982, that gave the Commission additional authority to regulate the safety of rural gathering lines.² Prior to the enactment of H.B. 2982, the Commission’s jurisdiction to regulate the safety of intrastate hazardous liquid and carbon dioxide pipelines under the Natural Resources Code did not extend to “gathering lines in rural locations”.³ H.B. 2982 repealed that prohibition and authorized the Commission to establish safety standards for “intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations”, effective as of September 1, 2015.⁴ However, H.B. 2982 made clear that such safety standards must be “based only on the risks . . . to public safety” or “necessary . . . to maintain the maximum degree of federal delegation permissible” from the Pipeline and Hazardous Materials Safety Administration (PHMSA) under the Pipeline Safety Act.⁵

H.B. 2982 also amended the Commission’s jurisdiction to regulate the safety of rural gas gathering lines under the Utilities Code.⁶ Prior to the enactment of H.B. 2982, the Utilities Code only authorized the Commission to establish safety standards for the “transportation of gas” and “gas pipeline facilities” as defined in the Pipeline Safety Act, neither of which includes rural gas gathering lines in sparsely populated, Class 1 locations.⁷ H.B. 2982 authorized the Commission to “establish safety standards and practices for gathering facilities and transportation activities in Class 1 locations,” effective as of September 1, 2015, so long as those safety standards are “based only on the risks . . . to the public safety” or are “necessary . . . to maintain the maximum degree of federal delegation permissible” from PHMSA under the Pipeline Safety Act.⁸

On July 26, 2019, the Commission released informal draft amendments to its pipeline safety regulations for rural gathering lines. Relying on the authority provided in H.B. 2982, the proposed amendments sought to establish a set of general requirements for all gathering lines not currently regulated by PHMSA, *i.e.*, gas gathering lines in Class 1 locations and certain hazardous liquid gathering lines in rural locations.⁹ The proposed amendments also sought to establish a set of additional requirements for high-stress Class 1 gas gathering lines greater than 12.75 inches in diameter.¹⁰ Finally, the proposed amendments sought to extend the Commission’s incident and

² H.B. 2982, §§ 3, 4, 83rd Leg. (Tex. 2013); S.B. 901, § 11, 83rd Leg. (Tex. 2013).

³ Tex. Natural Resources Code Ann. §§ 117.001(3), 117.011(a), 117.012(b) (2019).

⁴ H.B. 2982, § 2.

⁵ *Id.*

⁶ H.B. 2982, § 4.

⁷ Tex. Utils. Code Ann. §§ 121.201(a)(1), (b)(1), (c) (2019).

⁸ H.B. 2982, § 4.

⁹ 16 Tex. Admin. Code § 8.110(a)-(b) (proposed).

¹⁰ 16 Tex. Admin. Code § 8.110(c) (proposed).

accident reporting requirements to all newly-regulated gas and hazardous liquid rural gathering lines,¹¹ as well as the reporting requirements for the commencement of certain construction activities.¹²

On August 12, 2019, GPA Midstream and the American Petroleum Institute (API) submitted a joint comment letter expressing significant concern with the provisions for rural gathering lines in the informal draft amendments. GPA Midstream and API explained that the proposed safety standards did not satisfy the risk-based rulemaking criteria in H.B. 2982 and went well beyond the changes that PHMSA was considering in a long-running and related rulemaking proceeding at the federal level.¹³ Rather than establishing the proposed set of general and additional requirements for rural gathering lines, GPA Midstream and API urged the Commission to limit the proposed amendments to extending the new reporting requirements to previously unregulated gathering lines. GPA Midstream and API noted that extending the reporting requirements would allow the Commission to obtain additional safety data while PHMSA finalizes its new federal rules for gathering lines.

On October 18, 2019, the Commission published the proposed amendments under consideration in this proceeding in the *Texas Register*. Consistent with GPA Midstream's comments, the Commission decided not to propose the set of general requirements for all gathering lines not regulated by PHMSA or the additional requirements for high-stress Class 1 gas gathering lines greater than 12.75 inches in diameter. Instead, the Commission proposed a general provision requiring all rural gathering lines not regulated by PHMSA to be "operate[d] . . . in a reasonably prudent manner to promote safe operation of the pipeline."¹⁴ The Commission also proposed that rural gathering line operators be required to file incident and accident reports, but provided an exemption from the reporting requirements for construction activities.¹⁵ Finally, the Commission proposed requirements for conducting operator investigations and submitting corrective action plans in response to accidents, incidents, threats, and complaints.¹⁶

II. Comments

GPA Midstream appreciates the Commission's response to the comments submitted in response to the informal draft amendments. As GPA Midstream and API explained in their joint comments, the industry fully supports the Commission's efforts to acquire additional data on the safety of rural gathering lines. GPA Midstream believes that having such data will allow the Commission to make informed decisions about the need to establish additional, risk-based safety standards for rural gathering lines. GPA Midstream also believes that the Commission's actions will avoid creating unnecessary conflicts with PHMSA's long-running initiatives to adopt new

¹¹ 16 Tex. Admin Code § 8.110(d) (proposed).

¹² 16 Tex. Admin Code § 8.115 (proposed).

¹³ See Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610, 61,611-612 (Oct. 13, 2015); Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

¹⁴ 16 Tex. Admin. Code § 8.110(b) (proposed).

¹⁵ 16 Tex. Admin. Code § 8.115(a)(4) (proposed).

¹⁶ 16 Tex. Admin. Code § 8.110(d) (proposed).

federal safety standards and reporting requirements for gathering lines. For these reasons, GPA Midstream welcomes the Commission’s decision to pursue a far more measured approach in the current rulemaking proceeding.

With that said, GPA Midstream is concerned by certain aspects of the proposed amendments. Specifically, section 8.110(b) of the proposed rules includes a general provision that would require all gathering lines not regulated by PHMSA to be “operate[d] . . . in a reasonably prudent manner to promote safe operation of the pipeline.” The phrase “reasonably prudent manner” does not appear in any other provision in the Commission’s pipeline safety regulations, including the PHMSA federal safety standards that are incorporated by reference. Nor is the phrase “reasonably prudent manner” used in the 2013 law that gave the Commission the authority to issue new safety standards for rural gathering lines. The language of that statute states that any safety standards for rural gathering lines must be “based only on the risks . . . to public safety” or “necessary . . . to maintain the maximum degree of federal delegation permissible” under the Pipeline Safety Act.¹⁷

While the Commission did not offer any commentary on the origin of the proposed language, GPA Midstream is concerned that the phrase “reasonably prudent manner” could be viewed as an outgrowth of the reasonably prudent operator standard traditionally used in oil and gas law, or the reasonable person standard traditionally used in tort law. Both of these standards lack the objective criteria and industry familiarity necessary to provide an effective basis for judging compliance with a general safety provision. The prudent operator standard from oil and gas law applies in determining the obligations imposed on the parties to an oil and gas lease.¹⁸ The concepts used in addressing that question do not provide an appropriate foundation for a general safety standard that applies to gathering pipelines. The reasonable person standard provides the basis for determining whether a party is negligent in tort law.¹⁹ The inherently subjective judgments used in evaluating negligence should not be incorporated into a regulation that establishes a general safety standard for gathering pipelines.

GPA Midstream believes that the language of §8.110(b) can be more clearly defined in a manner consistent with the underlying statutory text by adopting a standard that requires operators to correct hazardous conditions that create a risk to public safety. The pipeline industry has a general understanding of what qualifies as a hazardous condition and the corrective actions that should be taken to address those conditions. Pipeline operators also have the knowledge, skills, and experience to determine whether a hazardous condition is creating a risk to public safety. Using language that has a firm grounding in the pipeline safety industry, rather than terms that arise in other areas of law, provides clarity and avoids unnecessary disputes about the meaning of unfamiliar terms. Accordingly, GPA Midstream respectfully requests that the Commission modify § 8.110(b) in the final rule as follows: “Safety. Each operator of a gathering pipeline described in subsection (a) of this section shall ~~operate its pipeline in a reasonably prudent manner to promote~~

¹⁷ H.B. 2982 § 2.

¹⁸ *Amoco Production v. Alexander*, 622 S.W.2d 563, 569 (Tex. Sept. 28, 1981); *Shell Oil Co. v. Stansbury*, 410 S.W.2d 187 (Tex. Dec. 31, 1966).

¹⁹ *Union Pac. RR Co. v. Nami*, 498 S.W.3d 890, 896 (Tex. June 24, 2016).

~~safe operation of the pipeline~~ **take appropriate action to correct a hazardous condition that creates a risk to public safety.”**

GPA Midstream further believes that the corrective action and prevention of occurrence requirements in § 8.110(e) should be tied directly to the above-referenced language in § 8.110(b). As currently proposed, § 8.110(e) authorizes the Commission to require a rural gathering line operator to submit a corrective action plan in response to any “incident, accident, threat, or complaint.” GPA Midstream is concerned that the latter language, particularly the reference to “complaint”, could require operators to submit corrective action plans to the Commission in situations that pose no risk to public safety. Limiting corrective action plans to hazardous conditions that meet the standard proposed by GPA Midstream is more consistent with the text of the statute and the Commission’s obligation to promote public safety. Therefore, GPA Midstream respectfully requests that the Commission modify § 8.110(e) in the final rule as follows: **“Corrective action and prevention of recurrence. As a result of the investigations authorized under subsection (d) of this section, the Commission may require the operator to submit a corrective action plan to the Commission to remediate ~~an accident, incident, threat, or complaint~~ a hazardous condition that creates a risk to public safety.”**

GPA Midstream continues to support the Commission’s proposal to extend the incident and accident reporting requirements to all gathering lines. The information provided in these reports will provide the Commission with data necessary to make informed judgements about the safety of gathering lines. However, GPA Midstream respectfully requests that the Commission consider limiting that obligation to written reports only. Requiring operators to submit telephonic reports, particularly within one-hour of confirmed discovery for events that only involve the monetary or volumetric thresholds provided in the Commission’s regulations, may not be necessary in rural locations.

GPA Midstream also notes that the proposed language in § 8.301 does not distinguish between hazardous liquid or carbon dioxide accidents that require reporting within one hour of confirmed discovery pursuant to 49 C.F.R. § 195.52 and minor releases that only require a 30-day written report pursuant to 49 C.F.R. § 195.50. If adopted as proposed, § 8.301 would be more stringent than the federal requirements and require all accidents involving hazardous liquid or carbon dioxide to be reported within one hour of confirmed discovery. GPA Midstream urges the Commission to address that discrepancy by aligning the proposed reporting requirement in § 8.301 with the comparable provisions in the federal rules.

Finally, GPA Midstream supports the Commission’s decision to provide an exemption from the construction reporting requirements for rural gathering lines subject to regulation under § 8.110. Unlike the incident and accident reporting requirements, the construction commencement reports in § 8.115 are primarily intended to advise the Commission about the need to conduct ongoing compliance and enforcement activities. That information is not necessary to determine whether and to what extent rural gathering lines present a risk to public safety.

III. Conclusion

GPA Midstream appreciates the opportunity to submit comments on the Commission's proposed amendments to the pipeline safety regulations. If you have questions, please contact Matt Hite at GPA Midstream at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,



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