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VIA ELECTRONIC FILING

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Docket Management System
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor
Room W12–140
Washington, DC 20590–0001

Re: Docket No. PHMSA-2021-0039, Pipeline Leak Detection, Leak Repair and Methane Emission Reductions Public Meeting

To Whom It May Concern:

Between May 5 and 6, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) held a public meeting to discuss two provisions in the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act).[1] The first provision, adopted in Section 113 of the 2020 PIPES Act, is a rulemaking mandate that requires the Agency to issue new gas pipeline leak detection and repair requirements by December 27,

[1] Pub. L. No. 116-260, Division R.

2021.[2] The second provision, adopted in Section 114 of the 2020 PIPES Act, is a self-executing mandate that, among other things, requires gas pipeline operators to make certain updates to their inspection and maintenance plans by December 27, 2021.[3]

The GPA Midstream Association[4] (GPA Midstream) and American Petroleum Institute[5] (API) are respectfully submitting these joint comments to address issues of concern to gas gathering line operators under Sections 113 and 114. As explained in more detail below, GPA Midstream and API believe it is important to emphasize that these mandates only apply to certain onshore gas gathering lines. It is also important to recognize that, to the extent that the mandates apply, there are differences between gas gathering and gas transmission and distribution lines that need to be considered in developing any new regulations, guidance documents, or enforcement policies relating to leak detection and repair.

I. Background

On December 27, 2020, President Trump signed the 2020 PIPES Act into law. In addition to reauthorizing the federal pipeline safety program through September 30, 2023, the 2020 PIPES Act amended certain provisions in the Federal Pipeline Safety Act.[6] One of those amendments, adopted in Section 113 of the 2020 PIPES Act, contains a rulemaking mandate directing PHMSA to issue new regulations for gas pipeline leak detection and repair by December 27, 2021.[7] While containing separate provisions for gas gathering, transmission, and distribution lines, Section 113 expressly limits the rulemaking mandate to operators of regulated gathering lines in Class 2, 3, or 4 locations.[8] Gas gathering lines in Class 1 locations, which are currently not subject to PHMSA's jurisdiction, are outside the reach of Section 113's rulemaking provisions.

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[2] *Id.* § 113 (codified at 49 U.S.C. § 60102(q)).

[3] *Id.* § 114(b).

[4] GPA Midstream has served the U.S. energy industry since 1921 and has nearly 70 corporate members that directly employ more than 75,000 employees that are engaged in a wide variety of services that move vital energy products such as natural gas, natural gas liquids (NGLs), refined products and crude oil from production areas to markets across the United States, commonly referred to as "midstream activities". The work of our members indirectly creates or impacts an additional 450,000 jobs across the U.S. economy. GPA Midstream members recover more than 90% of the NGLs such as ethane, propane, butane and natural gasoline produced in the United States from more than 400 natural gas processing facilities. In 2017-2019 period, GPA Midstream members spent over $105 billion in capital improvements to serve the country's needs for reliable and affordable energy.

[5] API is the national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation's energy and are backed by a growing grassroots movement of more than 25 million Americans.

[6] 49 U.S.C. § 60101 et seq.

[7] 2020 PIPES Act § 113 (codified at 49 U.S.C. § 60102(q)(1)).

[8] Section 60102(q)(1) specifically states, in relevant part, that the gas pipeline leak detection and repair rulemaking mandate only applies to "operators of regulated gathering lines (as defined pursuant to subsection (b) of section 60101 for purposes of subsection (a)(21) of that section) in a Class 2 location, Class 3 location, or Class 4 location, as determined under section 192.5 of title 49, Code of Federal Regulations[.]" Section 60101(b), one of the two provisions referenced in the foregoing limitation, is a statutory provision that Congress added to the Federal Pipeline Safety Act in the Pipeline Safety Act of 1992. That provision was part of an earlier rulemaking mandate directing the Agency to define the term gathering line and issue safety standards for regulated gathering lines. PHMSA responded to that rulemaking mandate in the March 2006 final rule that established the current definitions and risk-based regulations for onshore gas gathering lines in 49 C.F.R. Part 192. Those regulations only apply to onshore gas

Another self-executing mandate, adopted in Section 114 of the 2020 PIPES Act, requires operators of gas pipeline facilities to update their inspection and maintenance plans by December 27, 2021.[9] As part of that update, operators must ensure that the requirements in any leak detection and repair regulations issued under Section 113 are addressed in the plan.[10] Although not explicitly stated in the text of the amendment, the self-executing mandate in Section 114 currently only applies to regulated onshore gas lines in Class 2 locations, Class 3 locations, and Class 4 locations. That limitation is derived from the definitions in 49 U.S.C. § 60101(a) and the provisions for regulated gathering lines in 49 U.S.C. § 60101(b).[11] As explained in the subsequent portions of this letter, PHMSA only exercises jurisdiction over regulated onshore gas gathering lines in Class 2 locations, Class 3 locations, and Class 4 locations under 49 U.S.C. § 60101(b).[12] Gas gathering lines in Class 1 locations are not regulated and, therefore, do not qualify as gas pipeline facilities for purposes of the self-executing mandate in Section 114.

Finally, Section 114 also amended the factors that PHMSA and state pipeline safety authorities are required to consider in determining whether an operator's inspection and maintenance plan is adequate.[13] Specifically, the amendment requires PHMSA and state pipeline authorities to consider "the extent to which the plan will contribute to . . . eliminating hazardous leaks and minimizing releases of natural gas from pipeline facilities . . . [and] addresses the replacement or remediation of pipelines that are known to leak based on the material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues), design, or past operating and maintenance history of the pipeline."[14] The amendment further requires PHMSA or certified state pipeline safety authorities to review inspection and maintenance plans at certain intervals, *i.e.*, by no later than December 27, 2022, for the initial review and at least once every 5 years thereafter.[15]

II. Comments

a. The Rulemaking Mandate in Section 113 Only Applies to Certain Regulated Onshore Gas Gathering Lines, and the Differences Between Gas Gathering and Gas Transmission and Distribution Lines Need to be Carefully Considered in Establishing New Leak Detection and Repair Requirements under that Provision.

gathering lines in Class 2, Class 3, and Class 4 locations, a limitation that is also referenced in prescribing the scope of the rulemaking mandate in Section 113.

[9] 2020 PIPES Act § 114(b).

[10] *Id.* § 114(a)(1)(A)(i) (codified at 49 U.S.C. § 60108(a)(2)).

[11] 49 U.S.C. § 60101(a)(3) (defining a "gas pipeline facility" as "a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation"); 49 U.S.C. § 60101(a)(21) (defining "transporting gas" to exclude the gathering of gas in rural areas except in regulated gathering lines).

[12] 49 C.F.R. §§ 192.8-192.9.

[13] 2020 PIPES Act § 114(a)(1)(A)(i) (codified at 49 U.S.C. § 60108(a)(2)).

[14] *Id.* § 114(a)(1)(A)(iii) (codified at 49 U.S.C. § 60108(a)(2)(D)).

[15] *Id.* § 114(a)(1)(B) (codified at 49 U.S.C. § 60108(a)(3)).

Congress made clear that the rulemaking mandate in Section 113 only applies to regulated onshore gas gathering lines in Class 2, Class 3, and Class 4 locations.[16] Gas gathering lines in Class 1 locations are not subject to any of the new leak detection and repair requirements that PHMSA establishes pursuant to Section 113. As for the gathering lines that are subject to the rulemaking mandate, the Agency needs to be mindful of the differences between gas gathering and gas transmission and distribution lines. Unlike the latter pipelines, PHMSA's leak detection and repair requirements only apply to certain onshore gas gathering lines.[17] Gas gathering line operators are also not public utilities that can easily pass the cost of additional regulation onto captive ratepayers. The multi-year, fixed-fee commercial agreements that predominate in the industry generally prohibit midstream companies from shifting such costs onto their customers. The Agency should consider these important factors in establishing any leak detection and repair requirements for regulated gas gathering line operators under Section 113.

PHMSA currently exercises jurisdiction over two categories of regulated onshore gathering lines.[18] The first category, known as "Type A gathering lines", include higher stress or higher operating pressure pipelines in more populated Class 2, Class 3, or Class 4 locations.[19] The second category, known as "Type B gathering lines," include lower stress or lower operating pressure pipelines in Class 2, Class 3, and Class 4 locations.[20] Type A gathering lines, which generally present a higher potential risk to public safety, are subject to the same operations and maintenance (O&M) requirements as gas transmission lines.[21] The relevant regulations for purposes of leak detection and repair include: promptly repairing hazardous leaks under 49 C.F.R. § 192.703(c); conducting pipeline right-of-way patrols at the intervals specified in 49 C.F.R. § 192.705; performing leak surveys at the intervals specified in 49 C.F.R. § 192.706; and complying with the repair requirements in §§ 192.711-192.719.[22] Type B gathering lines, which generally present a lower potential risk to public safety, are only subject to two specific requirements for leak detection and repair purposes: the requirement to promptly repairing hazardous leaks under 49 C.F.R. § 192.703(c) and the requirement to conduct leak surveys at the intervals specified in 49 C.F.R. § 192.706.[23]

The segmented nature of PHMSA's existing regulations for gas gathering lines are an important factor to consider in addressing the rulemaking mandate in Section 113. The practicability, reasonableness, and costs and benefits of applying additional leak detection and repair requirements to Type A and Type B gathering lines could vary given the obligations imposed in the current regulations. Type A gathering line operators are already subject to the same O&M requirements as gas transmission line operators and may be in a better position to accommodate the changes required under the new regulations. Type B gathering line operators, on the other hand, are only subject to a very limited set of O&M requirements and could experience a heavier compliance burden from any new regulations. Furthermore, many, and perhaps most, operators of Type A and Type B gathering lines have Class 1 gas gathering lines throughout their

[16] *Id.* § 113.
[17] 49 C.F.R. § 192.8-192.9.
[18] 49 C.F.R. § 192.8-192.9.
[19] *Id.* §§ 192.9(c), 192.8 (Table).
[20] *Id.* §§ 192.9(d), 192.8 (Table).
[21] *Id.*§§ 192.9(c), 192.8 (Table).
[22] *Id.* §§ 192.9(c), 192.8 (Table).
[23] *Id.* §§ 192.9(d), 192.8 (Table).

systems. The presence of these Class 1 segments, which are not subject to PHMSA's current regulations or within the scope of Section 113, is another factor that could affect the practicability, reasonableness, and costs and benefits of applying additional leak detection and repair requirements to regulated onshore gathering line operators.

Finally, gas gathering line operators are generally not public utilities that can recover the costs of additional leak detection and repair activities from captive ratepayers. Gas transmission and distribution line operators, which are typically subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) or comparable state public utility commissions, have the ability to recover such costs from their customers through ratemaking or other mechanisms. Gas gathering line operators function in a different market environment, *i.e.*, gathering, treatment, compression, processing, or other services are provided to customers under multi-year, bilateral, fixed fee agreements without any mechanism for recovering additional regulatory expenses. The costs of additional regulatory burdens tend to be absorbed by gas gathering line operators more directly as a result of these commercial relationships, particularly in the near term. The Agency needs to recognize that distinction in evaluating the practicability, reasonableness, and costs and benefits of applying additional leak detection and repair requirements to regulated onshore gathering line operators.

b. The Self-Executing Mandate in Section 114 Only Applies to Operators of Regulated Onshore Gas Gathering Lines, and the Obligations Imposed in that Provision are Limited.

The self-executing mandate in Section 114 only applies to operators of regulated onshore gas gathering lines.[24] As previously discussed, there are two categories of regulated gathering lines, Type A and Type B, in Class 2 locations, Class 3 locations, and Class 4 locations. PHMSA is not exercising jurisdiction over gas gathering lines in Class 1 locations, and those pipelines do not qualify as gas pipeline facilities for purposes of the inspection and maintenance plan requirements in 49 U.S.C. § 60108. Accordingly, operators of Class 1 gas gathering lines are not required to comply with the self-executing mandate in Section 114 or the other provisions in 49 U.S.C. § 60108 (although PHMSA is in the process of issuing regulations that could make certain Class 1 gas gathering lines subject to those provisions in the future).[25]

As important, Section 114 only imposes limited obligations on operators of regulated onshore gas gathering lines. The language of that amendment states, in relevant part, that an inspection and maintenance plan "must meet the requirements of any regulations promulgated under" Section 113.[26] A separate, uncodified mandate further states that "each pipeline operator shall update the inspection and maintenance plan prepared by the operator under section 60108(a) of title 49, United States Code, to address the elements described in the amendments to that section made by subsection (a) [of Section 113]."[27] The other language in the amendment only affects obligations imposed on PHMSA and state pipeline safety authorities, *i.e.*, the factors that need to be considered in reviewing the adequacy of inspection and maintenance plans and the intervals for

[24] 2020 PIPES Act § 114.
[25] Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (April 8, 2016).
[26] 2020 PIPES Act § 114(a) (codified at 49 U.S.C. § 60108(a)(2)).
[27] *Id.* § 114(b).

conducting those reviews.[28] These are matters of enforcement discretion that do not create any direct or enforceable legal obligations for pipeline operators.

PHMSA should consider these distinctions when issuing agency guidance or taking other agency actions related to Section 114. With regard to the provisions in the self-executing mandate that apply to pipeline operators, the Agency should clarify that the only element that needs to be considered in updating their inspection and maintenance plans by December 27, 2021, is the need to comply with any leak detection and repair requirements issued by PHMSA in a final rule pursuant to Section 113. As for the other provisions that apply to the Agency and state pipeline safety authorities, PHMSA should clarify that those changes only have a direct effect on matters of enforcement discretion; namely, the factors that pipeline safety inspection and enforcement personnel will consider in determining if an operator's inspection and maintenance plan is adequate. Operators should certainly consider how the new factors could impact future inspections and enforcement activities, but PHMSA should clarify that the provisions themselves do not require any specific updates or revisions to inspection and maintenance plans.

III. Conclusion

GPA Midstream and API appreciate the opportunity to submit comments in response to the Notice. If you have any questions, please feel free to reach out to Matt Hite or Dave Murk at the contact information provided below.

Sincerely,

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[28] *Id.* § 114(a)(1)(A)(i).