



July 30, 2019

The Honorable Roger Wicker
Chairman, Committee on Commerce, Science and Transportation
United States Senate
555 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member, Committee on Commerce, Science and Transportation
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Re: Rural Gas Gathering Amendment

Dear Chairman Wicker and Ranking Member Cantwell,

On July 31, 2019, the United States Senate Committee on Commerce, Science and Transportation will be marking up legislation to reauthorize the Pipeline Safety Act. Our understanding is that Senator Tom Udall is planning to offer an amendment during the markup that would change the definition of “transporting gas” in Pipeline Safety Act by eliminating certain limitations on the Pipeline and Hazardous Materials Safety Administration’s (PHMSA or the Agency) authority to regulate rural gathering lines.¹ Specifically, the amendment would define all onshore gas gathering lines that are six inches or greater in diameter as regulated gathering lines for purposes of PHMSA’s pipeline safety standards.²

As the nation’s leading trade organization for the gathering industry, GPA Midstream Association (GPA Midstream)³ is strongly opposed to Senator Udall’s amendment. The amendment would alter longstanding procedural protections that limit PHMSA’s jurisdiction over rural gas gathering lines, override a multi-year effort by PHMSA and other interested stakeholders to establish new, risk-based regulations for rural gas gathering lines, and impose billions of dollars

¹ 49 U.S.C. § 60101(a)(21).

² *Id.*

³ 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/>. Prior to April 2016, GPA Midstream was known as the Gas Processors Association.

in unnecessary compliance costs on the gas gathering industry—costs that would be disproportionately born by small companies that operate some of the lowest risk pipelines in the United States. Accordingly, GPA Midstream is respectfully requesting that Senator Udall’s amendment not be considered at the markup.

I. Background

In the Natural Gas Pipeline Safety Act of 1968 (1968 Act), Congress provided PHMSA with the authority to prescribe minimum federal safety standards for the transportation of gas by pipeline.⁴ 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[.]”⁵ According to the legislative history, 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.⁶

In the Pipeline Safety Act of 1992 (1992 Act), Congress amended the jurisdictional limitations in the 1968 Act to provide PHMSA with the authority to regulate rural gas gathering lines, provided the Agency satisfied certain procedural requirements.⁷ Specifically, the 1992 Act directed PHMSA to issue regulations defining the term “gathering line” and, in the case of gas gathering lines, to consider the “functional and operational characteristics” of these lines in establishing that definition.⁸ The 1992 Act also directed PHMSA to issue regulations establishing minimum federal safety standards for a subset of so-called “regulated gathering line[s].”⁹ 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 PHMSA to “consider such factors as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas” or hazardous liquid, as appropriate.¹⁰

In 2006, PHMSA satisfied the 1992 Act’s rulemaking mandate by establishing new safety standards for gas gathering lines.¹¹ Those safety standards, which remain in effect, require operators to use the definition in American Petroleum Institute (API) Recommended Practice 80,

⁴ Pub. L. No. 90-481, 82 Stat. 720. PHMSA is the agency within the U.S. Department of Transportation (DOT) currently responsible for administering the Pipeline Safety Laws and Regulations. For ease of reference, PHMSA is used throughout this letter to refer to the various DOT agencies that have acted in that capacity since the passage of the 1968 Act.

⁵ *Id.* § 2(3), 82 Stat. at 720.

⁶ H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35.

⁷ Pub. L. No. 102-508, 106 Stat. 3289.

⁸ *Id.* § 109(a), 106 Stat. at 3295.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 49 C.F.R. §§ 192.8 to 192.9 (2018). A gathering line is generally defined in Part 192 as a “pipeline that transports gas from a current production facility to a transmission line or main.” *Id.* § 192.3.

Guidelines for the Definition of Onshore Gas Gathering Lines (1st ed., April 2000) to determine if a pipeline is an “onshore gathering line”, subject to certain additional regulatory limitations.¹² If a pipeline meets the definition of an onshore gas gathering line, operators must determine if the line qualifies as a “regulated gathering line.” PHMSA recognizes two categories of regulated onshore gas gathering lines: (1) Type A gathering lines, which are higher stress pipelines that pass through more populated areas,¹³ and (2) Type B gathering lines, which are lower stress pipelines that pass through more populated areas.¹⁴ Different risk-based safety standards, drawn primarily from the requirements for gas transmission lines, apply to Type A and Type B gathering lines.¹⁵

PHMSA has initiated a rulemaking proceeding to modify the regulations for onshore gas gathering lines. In that proceeding, PHMSA is recommending that operators of certain rural gas gathering lines comply with the safety standards for Type B gathering lines and the emergency response plan requirements.¹⁶ PHMSA is also recommending that operators of unregulated rural gas gathering lines provide additional information to the Agency by complying with certain reporting requirements.¹⁷ PHMSA expects to issue a final rule next year.¹⁸

II. Analysis

The Udall amendment would change the definition of “transporting gas” in the Pipeline Safety Act by repealing provisions that limit PHMSA’s jurisdiction over rural gathering lines.¹⁹ Specifically, the amendment would strike the language that limits PHMSA’s authority only to rural gathering lines that the Agency determines meet the statutory criteria necessary to warrant regulation in a rulemaking proceeding.²⁰ In other words, the Udall amendment removes the procedural protections that Congress has afforded to these low risk pipelines for more than two decades.

The Udall amendment would also override the rulemaking provision from the 1992 Act by making all gathering lines that are six inches in diameter or greater “regulated gathering lines” for purposes of PHMSA’s regulations.²¹ The amendment would make that determination for the Agency without considering a pipeline’s stress level, proximity to populated or environmentally sensitive areas, or any other risk-based criteria. Operators of rural gas gathering lines that are six inches or greater in diameter would have to comply with PHMSA’s safety standards and reporting requirements for Type A or Type B lines.

¹² *Id.* § 192.8(a).

¹³ *Id.* § 192.8(b) (table).

¹⁴ *Id.*

¹⁵ Compare *Id.* § 192.9(c) with *Id.* § 192.9(d).

¹⁶ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722, 20,808 (Apr. 8, 2016).

¹⁷ *Id.* at 20,806.

¹⁸ See Dep’t of Transp., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).

¹⁹ Safer Pipelines Act of 2019, § 3 (discussion draft).

²⁰ *Id.*

²¹ *Id.*

GPA Midstream is strongly opposed to the Udall amendment. The legislative and regulatory history demonstrate that the proposed amendment is not necessary. The proposed amendment would also undo nearly a decade's worth of work by the regulated community in examining whether to establish additional safety standards and reporting requirements for rural gas gathering lines. Finally, the proposed amendment would impose billions of dollars of unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small companies that operate some of the lowest risk pipelines in the nation.

a. The legislative and regulatory history demonstrate that the Udall amendment is not necessary.

Rural gas gathering lines have always presented a very low risk to public safety. Congress found that the risk was so low that PHMSA did not even receive the authority to regulate these lines in the 1968 Act.²² And Congress did not overrule that original judgment in the 1992 Act.²³ Rather, Congress asked PHMSA to determine if rural gathering lines presented enough risk to warrant federal regulation.²⁴

The Agency satisfied the requirements in the 1992 Act in establishing the current regulations for onshore gas gathering lines and is in the process of modifying those regulations to account for recent developments in the oil and gas industry, particularly the expansion of pipeline infrastructure in the nation's shale plays. PHMSA expects to have new rules in place in the very near future.²⁵ Far from demonstrating that the Udall amendment is needed, the facts show that the current statutory provisions are continuing to serve important public policy objectives, and that the Agency is discharging its obligation in a manner consistent with the intent of Congress.

b. The Udall amendment would undo nearly a decade's worth of work by the regulated community to establish new reporting requirements and safety standards for rural gathering lines.

PHMSA, the pipeline industry, and other interested stakeholders have been examining the need to establish new safety standards and reporting requirements for rural gas gathering lines for nearly a decade. The Agency began the rulemaking process by asking for public comments in 2011 and proposed new safety standards and reporting requirements for rural gas gathering lines in 2016.²⁶ The Gas Pipeline Advisory Committee, the federal advisory committee that reviews

²² H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3234-35.

²³ Pipeline Safety Act of 1992 § 109, 106 Stat. at 3294-95.

²⁴ *Id.*

²⁵ See Dep't of Trans., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule for gas gathering lines is anticipated to be published in June 2020).

²⁶ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,722 (Apr. 8, 2016).

proposed changes to the gas pipeline safety regulations, considered that proposal last month at a public meeting,²⁷ and PHMSA expects to issue a final rule next year.²⁸

Like hundreds of other interested stakeholders, GPA Midstream has been actively engaged in the rulemaking process and hopes that the Agency issues a final rule as soon as possible. The Udall amendment would override this multi-year rulemaking effort and unnecessarily treat rural gathering lines that are six inches or greater in diameter the same as other pipelines that present a much greater risk to public safety.

c. The Udall amendment would impose billions of dollars in unnecessary compliance costs on the gathering industry, and those costs would be disproportionately born by small operators.

In 2016, PHMSA proposed to apply certain safety standards to a subset of the rural gas gathering lines covered under the Udall amendment, *i.e.*, gas gathering lines in Class 1 locations 8 inches or greater in diameter with a maximum allowable operating pressure (MAOP) that produces a hoop stress of 20 percent or more of specified minimum yield strength (SMYS) for metallic lines or more than 125 PSIG for non-metallic lines.²⁹ PHMSA also proposed to extend the reporting to all rural gathering lines, whether regulated or not.³⁰

Given the significance of the changes in the 2016 rulemaking proposal, API asked a third-party to prepare a cost-benefit analysis. That analysis found that the Agency's proposed rule would impose nearly \$30 billion in costs on the gas gathering industry during the initial 15-year compliance period, and that those costs would be disproportionately born by small operators, consuming approximately 90 percent of the annual revenue generated by these companies.³¹

The Udall amendment would go well beyond PHMSA's 2016 rulemaking proposal and treat all gas gathering lines six inches or greater as regulated. The potential cost of complying with that change would be enormous for the gas gathering industry and far exceed API's initial \$30 billion estimate, which did not even consider the economic impact of regulating rural gas gathering lines in Class 1 locations that are less than 8 inches in diameter or that operate at a stress level below 20 percent of SYMS or 125 PSIG.³²

²⁷ PHMSA Public Meetings and Documents, Gas Pipeline Advisory Committee, <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143>.

²⁸ See Dep't of Trans., Report on DOT Significant Rulemakings, <https://www.transportation.gov/regulations/report-on-significant-rulemakings> (last updated May 1, 2019) (providing that the final rule is anticipated to be published in June 2020).

²⁹ Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. at 20,808.

³⁰ *Id.* at 20,806.

³¹ ICF International, Cost and Benefit Impact Analysis of the PHMSA Natural Gas Gathering and Transmission Safety Regulation Proposal at 3, 69 (July 1, 2016), <https://www.regulations.gov/document?D=PHMSA-2011-0023-0381>.

³² According to PHMSA's latest estimate, there are 97,342 miles of high-stress rural gas gathering lines that are 8 inches or greater in diameter, all of which would become regulated under the Udall amendment. *Id.* at 14. Although there is no PHMSA estimate available at this time, thousands of additional miles of rural gathering lines that are less than 6 inches in diameter and that operate at a stress level below 20 percent of SMYS or 125 PSIG would also become regulated.

III. Conclusion

For the reasons provided in this letter, GPA Midstream is strongly opposed to the Udall amendment. If you have questions, please contact me at (202) 279-1664 or by email at mhite@GPAglobal.org.

Sincerely,

A handwritten signature in black ink that reads "Matthew Hite". The signature is written in a cursive style with a large, stylized "M" and "H".

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association