U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUL 1 4 2009

Mr. Greg Schrab
HSE Coordinator
CDX Gas
14800 Landmark Blvd, Suite 400
Dallas, TX 75254

Dear Mr. Schrab:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated September 19, 2008, you requested an interpretation of the applicability of the Federal pipeline safety regulations in 49 CFR Part 192 to your Slaytonville natural gas pipeline. You stated that the Slaytonville line is an eight-mile line connecting Central Station, a gas processing and compression facility, to the CenterPoint gas transmission pipeline. You explained that, contrary to a recent determination by the Arkansas Oil and Gas Commission that the Slaytonville line is a transmission line, you believe that the Slaytonville line is an "incidental gathering" line under section 2.2(a)(1)(E) of API RP 80 as incorporated in Part 192 and, therefore, unregulated since it is located entirely within a Class 1 area. You requested a final determination from PHMSA as to whether the Slaytonville line is a regulated gas transmission line or a non-regulated incidental gathering line.

Pursuant to 49 U.S.C. 60101 *et seq.*, PHMSA prescribes and enforces standards and regulations that apply to the gathering, transmission, and distribution of gas by pipeline. A gathering line is defined in 49 CFR § 192.3 as "a pipeline that transports gas from a current production facility to a transmission line or main." That same section defines a transmission line as "a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field."

On March 15, 2006, PHMSA issued a Final Rule that defined a "regulated gathering line" and set forth the requirements that apply to regulated gathering lines (71 FR 13289). The rule adopted API RP 80 with certain limitations. Section 192.8 now provides as follows:

> §192.8 How are onshore gathering lines and regulated onshore gathering lines determined?
>
> (a) An operator must use API RP 80 (incorporated by reference, see §192.7), to determine if an onshore pipeline (or part of a connected series of pipelines) is an onshore gathering line. The determination is subject to the limitations listed

below. After making this determination, an operator must determine if the onshore gathering line is a regulated onshore gathering line under paragraph (b) of this section.

(1) The beginning of gathering, under section 2.2(a)(1) of API RP 80, may not extend beyond the furthermost downstream point in a production operation as defined in section 2.3 of API RP 80. This furthermost downstream point does not include equipment that can be used in either production or transportation, such as separators or dehydrators, unless that equipment is involved in the processes of "production and preparation for transportation or delivery of hydrocarbon gas" within the meaning of "production operation."

(2) The endpoint of gathering, under section 2.2(a)(1)(A) of API RP 80, may not extend beyond the first downstream natural gas processing plant, unless the operator can demonstrate, using sound engineering principles, that gathering extends to a further downstream plant.

(3) If the endpoint of gathering, under section 2.2(a)(1)(C) of API RP 80, is determined by the commingling of gas from separate production fields, the fields may not be more than 50 miles from each other, unless the Administrator finds a longer separation distance is justified in a particular case (see 49 CFR §190.9).

(4) The endpoint of gathering, under section 2.2(a)(1)(D) of API RP 80, may not extend beyond the furthermost downstream compressor used to increase gathering line pressure for delivery to another pipeline.

While you correctly point out that the rule did not expressly adopt a limitation on the fifth possible endpoint of gathering in section 2.2(a)(1)(E) of API RP 80, PHMSA considers this to be a drafting error that does not reflect PHMSA's intent. In the Supplemental Notice of Proposed Rulemaking issued on October 3, 2005, PHMSA expressed its intent to "assure gathering line determinations do not stray significantly from PHMSA's historic interpretations of gathering or do not abuse the "furthermost downstream" concept." (70 FR 57540)

Historically PHMSA has not accepted the incidental gathering designation. Based on the pressures at which these lines typically operate and the fact that they share maintenance and inspection needs with high pressure transmission lines, PHMSA has historically treated these lines as regulated transmission lines and did not intend to make any change in the rule. Indeed, the intent of Congress in mandating the rulemaking was to bring additional pipeline mileage into the regulations, not to deregulate lines.

In our experience, the majority of operators treat these lines as regulated transmission lines and PHMSA believes they will continue to do so. Although incidental gathering designations are currently permissible due to the drafting error and would apply to the Slaytonville line based on the description you provided, PHMSA is currently considering whether a rule amendment should

be undertaken to correct the rule and propose adding a fifth limitation on API RP 80 which would mean incidental gathering determinations are no longer permissible. Because PHMSA may undertake such a rule amendment in the near future, operators should strongly consider keeping incidental gathering designations to an absolute minimum and treating these lines as regulated transmission lines.

In addition, be advised that because an incidental gathering line is a single connecting line and not a system of lines, by definition it is limited to the first tie-in downstream of the processing or compression facility even if that connection does not extend all the way to the large diameter interstate line.

Finally, with respect to the beginning of gathering, the system maps you submitted as supporting documentation incorrectly depict CDX's production operations as extending to the Central Station. The relevant API RP 80 diagram (Fig. 2-6) clearly shows that gathering begins at the terminus of production and transports gas to the processing, compression location depicted by the schematic. Proper application of the definition for production in API RP 80, section 2.3 and the supplemental definitions in section 2.4 indicate that the production operations in the CDX system cease much further upstream, at least as far upstream as the facilities identified on the map as "PODS". Further review of the equipment and processes would be necessary to make a determination of the exact endpoint of production and beginning of gathering.

I hope that this information is helpful to you. If I can further assist you with this or any other pipeline safety regulatory matter, please contact me at (202) 366-4046.

Sincerely,

John A. Gale
Director, Office of Regulations

14800 Landmark Blvd, Suite 400, Dallas, TX 75254
Phone: 972-392-1880 Fax: 972-392-1881

September 19, 2008

Office of Pipeline Safety (PHP—30)
PHMSA
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

RE: CDX Gas, LLC Request for Written Regulatory Interpretation

CDX Gas, LLC is requesting a written regulatory interpretation on one of its pipelines (the "Slaytonville line") relative to 49 CFR Part 192 Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards, Final Rule, Federal Register, Vol. 71, No. 50, March 15, 2006. CDX Gas' determination, in accordance with the above-referenced regulation, is that the Slaytonville line is a non-regulated Type A gathering line (see attached CDX Gas Arkoma Project determination document, submitted to the Arkansas Oil and Gas Commission [AOGC] and PHMSA Southwest Region during a meeting on August 7, 2008). CDX is making this request as a result of the determination made by the AOGC—that the Slaytonville line is a transmission line (see attached September 4, 2008 letter).

Before summarizing CDX Gas' determination as a basis for requesting PHMSA's written regulatory interpretation, CDX Gas would like to call out several points in the September 4, 2008 AOGC letter:

- **AOGC General Rule D-17 and 49 CFR Part 192 regulations (paragraph #1)**: the AOGC State regulation D-17 has no bearing on the determination (it simply references 49 CFR 192), other than D-17 does give AOGC jurisdiction over all "pipeline operator" lines from the wellhead to the custody transfer meter (which effectively focuses on exploration and production company production and gathering lines), previously, the Arkansas Public Service Commission was the only Arkansas State agency enforcing PHMSA regulations; the complete 3/15/06 Federal Register Final Rule, 49 CFR 192, and API RP-80 incorporated by reference are codified and do have a bearing on the actual determination
- **Onshore Gas Gathering FAQs (paragraph #2):** FAQs, referenced by AOGC, are examples to be used as guidance in interpreting an actual rule or regulation—they are not part of or referenced in the Federal Register Final Rule, 49 CFR 192, or API RP-80 as incorporated by reference, therefore these FAQs are not codified and do not have the force of regulations; specifically, FAQ no. 5 referenced by the AOGC, was written and is apparently being interpreted in a way that contradicts the Federal Register Final Rule (specifically, definition of the fifth possible endpoint of gathering and "incidental gathering")
- **Incidental Gathering (paragraph #5):** it has not "been determined that while incidental gathering MAY NOT be limited"; PHMSA DID NOT propose a limitation on the fifth possible endpoint of gathering in 49 CFR 192, therefore incidental gathering under section 2.2(a)(1)(E) of API RP-80 IS NOT limited by PHMSA as discussed in the 3/15/06 Federal Register Final Rule (p. 13292, #5) and incidental gathering IS NOT being used to "circumvent a stated limitation"

Please refer to the attached determination document for the detailed basis for CDX Gas' determination that the Slaytonville line is a non-regulated Type A gathering line, not a transmission line. CDX Gas' determination, and this request for a written interpretation, is based primarily on p. 13292, #5 of the 3/15/06 Federal Register Final Rule (p. 7 of the attached determination document) and the referenced section 2.2.1.2.6 in API RP-80 (p. 5 of the attached determination document):

- **p. 13292, #5, Federal Register Final Rule:** "We did not propose a limitation on the fifth possible endpoint under section 2.2(a)(1)(E). This endpoint is the connection to another pipeline downstream of the furthermost downstream endpoint under sections 2.2(a)(1)(A) through (D), or in the absence of such an endpoint, the furthermost downstream production operation." "The endpoint applies to connecting lines described as 'incidental gathering' under section 2.2.1.2.6 of API RP-80. An example of a connecting line is a pipeline that runs from the outlet of a natural gas processing plant to a transmission line. PHMSA considers 'incidental gathering' to include only lines that directly connect a transmission line to one of the endpoints (A) through (D), as limited by this final rule. Lines that connect a transmission line to one of these endpoints by way of another facility are not considered 'incidental' gathering." (emphasis added)
- **Section 2.2.1.2.6, API RP-80:** "The pipeline moving the gas from the plant to another pipeline is termed 'incidental gathering'. The 'incidental gathering' resumes at the plant outlet and continues to the other pipeline connection. Incidental gathering may also occur when a *compressor* is a *potential* endpoint". From a functional standpoint, this section of incidental gathering line is no different from the rest of the gathering system. The definition, therefore, includes recognition that gathering may continue downstream of the last endpoint identified by processing, *treatment*, commingling, or *compression* activities to the connection with another pipeline. (emphasis added)

As illustrated in Figure 2-6 of section 2.2.1.2.6 of API RP-80, as referenced in the 3/15/06 Federal Register Final Rule, CDX Gas' production operation ends at the outlet of the Central Station. The Slaytonville line then directly connects the Centerpoint transmission line to the Central Station, which contains two possible endpoints of gathering (gas treatment and compression). Therefore, the Slaytonville line is a "connecting" "incidental gathering" line, with the endpoint of gathering being its connection with the downstream Centerpoint transmission line.

CDX Gas respectfully requests a written regulatory interpretation of its determination that the Slaytonville line is a non-regulated, Type A gathering line, in response to the AOGC determination that it is a transmission line. Please call me at (214) 242-1147 with any questions regarding this request.

Sincerely,

Greg Schrab
HSE Coordinator

cc:
Thomas B. Deal/Attorney, CDX Gas, LLC, 14800 Landmark Blvd., Suite 400, Dallas, TX 75254

Gary Looney/Assistant Director, Arkansas Oil and Gas Commission, El Dorado Regional Office, 2215 West Hillsboro, El Dorado, AR 71730

Patrick Gaume/Staff Engineer, Office of Pipeline Safety Southwest Region, 8701 South Gessner, Suite 1110, Houston, TX 77074

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September 4, 2008

Mr. Greg Schrab
CDX Gas, LLC
5485 Beltline Road, Ste 190
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Re: Determination of Pipeline Status
Slaytonville Pipeline
Sebastian County, AR

Dear Mr. Schrab,

Commission staff conducted a review of the Hartford Pipeline System operated by CDX GAS, LLC on May 12, 2008 in an effort to affirm regulatory compliance with AOGC General Rule D-17 and the applicable regulations contained within 49CFR Part 192. During that review, I concluded that a portion of the pipeline system named as the Slaytonville pipeline may be a transmission line and verbally communicated same to you. My conclusion was based upon the limitations set forth under Part 192.8 (a) (4).

The Slaytonville pipeline is identified as the portion of your system downstream of the final compressor station, which boost pressure and transports natural gas to another pipeline at the custody transfer meter and is approximately eight (8) miles in length. In further discussion, you indicated that the other pipeline is a transmission line operated by Centerpoint Energy. Upon final review which included confirmation that the other pipeline was indeed a transmission line and the Onshore Gas Gathering FAQs published by PHMSA (specifically FAQ no. 5), it was determined that the Slaytonville line should be regulated as a Transmission Pipeline.

Subsequent emails and phone conversation ensued in which you expressed your opinion that the Slaytonville line was not a transmission line and at your request I agreed to discuss this matter with Mr. Patrick Gaume, PHMSA Liaison to AOGC. Those discussions ended with the same decision that the Slaytonville line should be regulated as a transmission line.

Your further disagreement in this matter resulted in a meeting at AOGC office in Little Rock on August 7, 2008 to discuss this issue. Present were Mr. Bowen and you representing CDX, Mr. Gaume and myself. You presented your opinion of the regulation and submitted both verbal and written arguments that were taken under submission for review by representatives of PHMSA.

It has been determined that while incidental gathering may not be limited. It is clear that in 192.8 (a) (4) a limitation has been placed on the endpoint of gathering and that incidental gathering can not be used to circumvent a stated limitation. Therefore the fact that the pipeline in question is downstream of the last compressor becomes the main determinate and it is therefore a Transmission Line and shall be regulated accordingly.

Any appeal of this determination should be filed in accordance with 49 CFR Part 190.11. Should you desire to file an appeal, please submit a copy of any appeal request and all supporting documentation to my attention at the El Dorado Regional Office.

Sincerely,

Gary D. Looney
Assistant Director
El Dorado Regional Office

CDX Gas, LLC Arkoma Project: Determination of Jurisdictional Status of Pipelines

Production (Central Station and Upstream)
Based on a site visit on May 12 and follow-up communications, the AOGC has agreed with CDX Gas' determination that the system of CDX Gas, LLC wells through the screw compressors "PODS" and the Central Station (which includes separation, dehydration, and compression) in the Arkoma Project all meet the definition of production per 192.8 (1) and Sections 2.3 and 3.1.4 of API RP 80. Therefore, production does not end until the outlet of the Central Station. Per AOGC Rule D-17, CDX Gas has submitted a map of these production facilities (as well as the Slaytonville pipeline they deliver into) to AOGC per Rule D-17.

Slaytonville Type A Gathering Line (Downstream of Central Station)
CDX Gas, LLC's Slaytonville line (approximately 8 miles in length) transports gas from the end of production at the Central Station to the connection with, and custody transfer to, the Centerpoint transmission line. Therefore, the Slaytonville line functions as a gathering line, because it transports gas from a current production facility to a transmission line. Based on their May 12 site visit and follow-up communications, AOGC notified CDX Gas that AOGC has determined that the Slaytonville line is a transmission line and will be under the jurisdiction of the AOGC. During a follow-up meeting with Gary Looney/AOGC on July 17, Mr. Looney again stated he has forwarded all communications to his PHMSA liaison, whose stance continues to be that Slaytonville is a transmission line.

CDX Gas' determination remains that the Slaytonville line is a gathering line. The Slaytonville line operates at a hoop stress of >20% SMYS, so per 192.8 it is a Type A gathering line. It is not a regulated gathering pipeline per 192.8 (b), because it does not lie within a Class 2, 3 or 4 Location. The Slaytonville line lies within a Class 1 location, because there are 10 or fewer buildings intended for human occupancy within 220 yards on either side of the centerline of any continuous 1-mile length of the pipeline (see details on class location below). CDX Gas' determination remains the Slaytonville line does not meet the definition of a transmission line in 192.3:

"Transmission line means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field."

As defined and described above, the Slaytonville line functions as a gathering, not a transmission line, because it transports gas from a production facility (Central Station) to a transmission line (Centerpoint), it does not transport gas from a gathering line or storage facility to a distribution center, storage facility, large volume customer, or within a storage field.

The endpoint of gathering, and therefore the determination of the Slaytonville line as a gathering, not transmission, line, can perhaps best be illustrated using Figure B-2 from API RP 80. In accordance with API RP 80 2.2 (a) as incorporated with limitations in 192.8 (a), the gathering function, including the end of gathering, of the Arkoma Project can best be represented by the decision tree Figure B-2 (attached). As described above, the Central Station is the furthermost downstream point in the Production Operation [2.2 (a) (1)], and is also the location of the furthermost downstream Gas Treatment Facility [2.2 (a) (1) (B)] and Gas Compression [2.2 (a) (1) (D)], the outlet of which would be the possible end of gathering, except, the compressor delivers directly into the Slaytonville line. The Slaytonville line transports and connects to the Centerpoint transmission line, not a distribution center, storage facility, large volume customer, or within a storage field as described above. Therefore, the gathering function extends downstream to the point of connection with another pipeline [2.2(a)(1)(E)], and the furthermost downstream point and end of gathering is the custody transfer connection with the Centerpoint transmission line.

The Slaytonville line may best be identified as an "incidental gathering" line, as described in 49 CFR 192 Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards, Final Rule (Federal Register Vol. 71, No. 50, March 15, 2006; see attached pages):

"Under section 2.2(a)(1)(D), the fourth possible endpoint is the outlet of the furthermost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery into another pipeline. For consistency with our past interpretations and current enforcement policy, we proposed to limit this endpoint to the outlet of a compressor used to deliver gas to another pipeline." (II. A. 5., page 13292).

"Based on this clarification, we believe the term 'another pipeline' in section 2.2(a)(1)(D) of API RP 80 does not mean delivering to another gathering line". (IV. 5.b., page 13296)

*"We did not propose a limitation on the fifth possible endpoint under Section 2.2(a)(1)(E). This endpoint is the connection to another pipeline downstream of the furthermost downstream endpoint under sections 2.2(a)(1)(A) through (D), or in the absence of such an endpoint, the furthermost downstream production operation. The endpoint applies to the connecting lines described as 'incidental gathering' under section 2.2.1.2.6 of API RP 80. An example of a connecting line is a pipeline that runs from the outlet of a natural gas processing plant to a transmission line. **PHMSA considers 'incidental gathering' to include** only **lines that directly connect a transmission line to one of the endpoints (A) through (D)**, as limited by this final rule" (II .A. 5., page 13292)*

Please refer to Figure 2-6—Incidental Gathering Downstream of an Identified Endpoint in section 2.2.1.2.6 of API RP 80 as referenced in Final Rule 49 CFR 192. As described also using decision tree Figure B-2, the Central Station represents two possible endpoints of gathering identified in Figure 2-6: the furthermost downstream gas treatment facility [2.2 (a) (1) (B)] and gas compressor [2.2 (a) (1) (D)]. The Slaytonville line directly connects the Centerpoint transmission line to the Central Station, which contains these two possible endpoints of gathering. Therefore, the Slaytonville line can be identified as a "connecting" "incidental gathering" line, with the endpoint of gathering being its connection with the downstream Centerpoint transmission line. However, as stated in API RP 80, from a functional standpoint, there is no difference between incidental gathering and other gathering, so there is no impact on CDX Gas' determination that the Slaytonville line is a non-regulated Type A gathering line.

Frequently Asked Questions (FAQs) are examples to be used as guidance in interpreting an actual rule or regulation--they are not part of the actual rule or regulation and therefore have no legal standing. Nonetheless, because AOGC initially referenced FAQ #5 during their May 12 site visit and used it as the basis for their determination, FAQ #5 (attached) is also used to further illustrate the CDX Gas Slaytonville line case as described above. Additionally, per API RP-80 (2.6.2.1 Physical Parameters) line length and pressure are not factors that can be used to determine the actual function and therefore the designation of a pipeline; the Federal Register Final Rule and 49 CFR 192 clearly describe that both Type A gathering and transmission lines operate at pressures resulting in a hoop stress of >20% SMYS, and line length is not used as a determining factor in the Final Rule or 49 CFR 192. As another point of reference, the CDX Gas Slaytonville line is not a FERC-regulated interstate or intrastate transmission pipeline (see attached narrative).

Class Location of Slaytonville Type A Gathering Line.

As documented on our system map, and reviewed and discussed with Gary Looney/AOGC during our July 17 meeting, there are a total of fourteen houses within 220 yards on either side of the centerline of the Slaytonville pipeline, along the approximately 8 mile line length from the Central Station to the custody transfer point at the Centerpoint Interconnect:

- There are six houses within any continuous 1 mile of the Slaytonville line near its termination at the Centerville Interconnect;
- There are five houses within any continuous 1 mile of the Slaytonville line in the area where it crosses State Highway 252;
- There are three houses within any continuous 1 mile going farther south of State Highway 252 along the Slaytonville pipeline (and including the southernmost house of the aforementioned group of five houses).
- Finally, there is one house within any continuous 1 mile of the Slaytonville line in the area on the west side of Gap Road, across from the T-intersection of Gap Road with Diamondback Lane.

Therefore, the Slaytonville Type A gathering line lies entirely in a Class 1 location [per 192.5 (a) and (b) (1): ≤10 buildings intended for human occupancy within 220 yards of its centerline along any continuous 1-mile length], so it is a non-regulated Type A gathering line. Per 192.9 (e) (3), if a change in class location causes the Slaytonville line to become a regulated gathering line, CDX will have 2 years to comply with the requirements of a regulated Type A Gathering line.

FERC Status of Slaytonville Type A Gathering Line

API RP 80 (Section 2.2.2.4), as incorporated into 192, states: "It was recognized that FERC or other agency pipeline designations were not developed with pipeline safety as the regulatory purpose and as such may represent and include concepts and assumptions that are not relevant to Pipeline Safety Act objectives". However, the review of 49 U.S.C 60101, 15 U.S.C. 717, and ADB-08-01 below show the inter-relationship between the definition of pipelines from a pipeline safety perspective--based on their functional and operational characteristics--and from a FERC or State PUC regulatory perspective.

The federal pipeline safety laws (49 U.S.C. 60101 et seq.) call for the definition of gathering lines as follows:
60101 (b) Gathering Lines.--(1)(A) Not later than October 24, 1994, the Secretary shall prescribe standards defining the term ``gathering line".

(B) **In defining ``gathering line"** for gas, the Secretary--

(i) shall **consider functional and operational characteristics** of the lines to be included in the definition; and

(ii) is not bound by a classification the Commission establishes under the Natural Gas Act (15 U.S.C. 717 et seq.).

The Natural Gas Act (15 U.S.C. 717 et seq.) defines the transportation and sale of natural gas to be regulated under FERC:
15 U.S.C. 717 (b) Transactions to which provisions of chapter applicable
The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but **shall not apply** to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or **to the production or gathering of natural gas.**

PHMSA has issued an Advisory Bulletin (ADB-08-01 - Direct Sales Pipelines Jurisdiction) stating that the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) eliminated the former exception of direct sales natural gas pipelines from the definition of an interstate gas pipeline facility. The Federal pipeline safety laws (49 U.S.C. 60101 et seq.) define an "interstate gas pipeline facility" as a facility subject to the jurisdiction of the FERC under the Natural Gas Act (15 U.S.C. 717 et seq.). Section 7 of the PIPES Act changed this by eliminating the exception of direct sales pipelines. As a result, direct sales gas transmission pipelines subject to FERC jurisdiction formerly considered to be intrastate pipelines for purposes of the pipeline safety laws are now considered to be interstate pipelines. If the line has a State certification from the State Public Utility Commission (PUC) such that the State PUC has regulatory jurisdiction over the rates and service of the line and is exercising it (i.e. the State PUC is exercising economic regulatory jurisdiction, not FERC), that would be grounds for concluding that the line is not subject to FERC jurisdiction and therefore can be regulated as an intrastate pipeline by a State having a certification for gas under 49 U.S.C. 60105.

In the case of the Slaytonville pipeline, it functions and operates as a gathering line from a safety perspective as called for in 49 U.S.C 60101 and regulated in 192 (including the incorporated API RP 80)--it transports gas from a production facility (Central Station) to a transmission line (Centerpoint transmission line). **Likewise, under 15 U.S.C. 717, the Slaytonville line is not regulated by FERC or the State PUC (APSC), because it is the gathering of natural gas—it's function does not include transportation in interstate commerce; resale for ultimate public consumption for domestic, commercial, industrial, or any other use; transportation or sale for local distribution, or as a direct sales interstate or intrastate pipeline.**

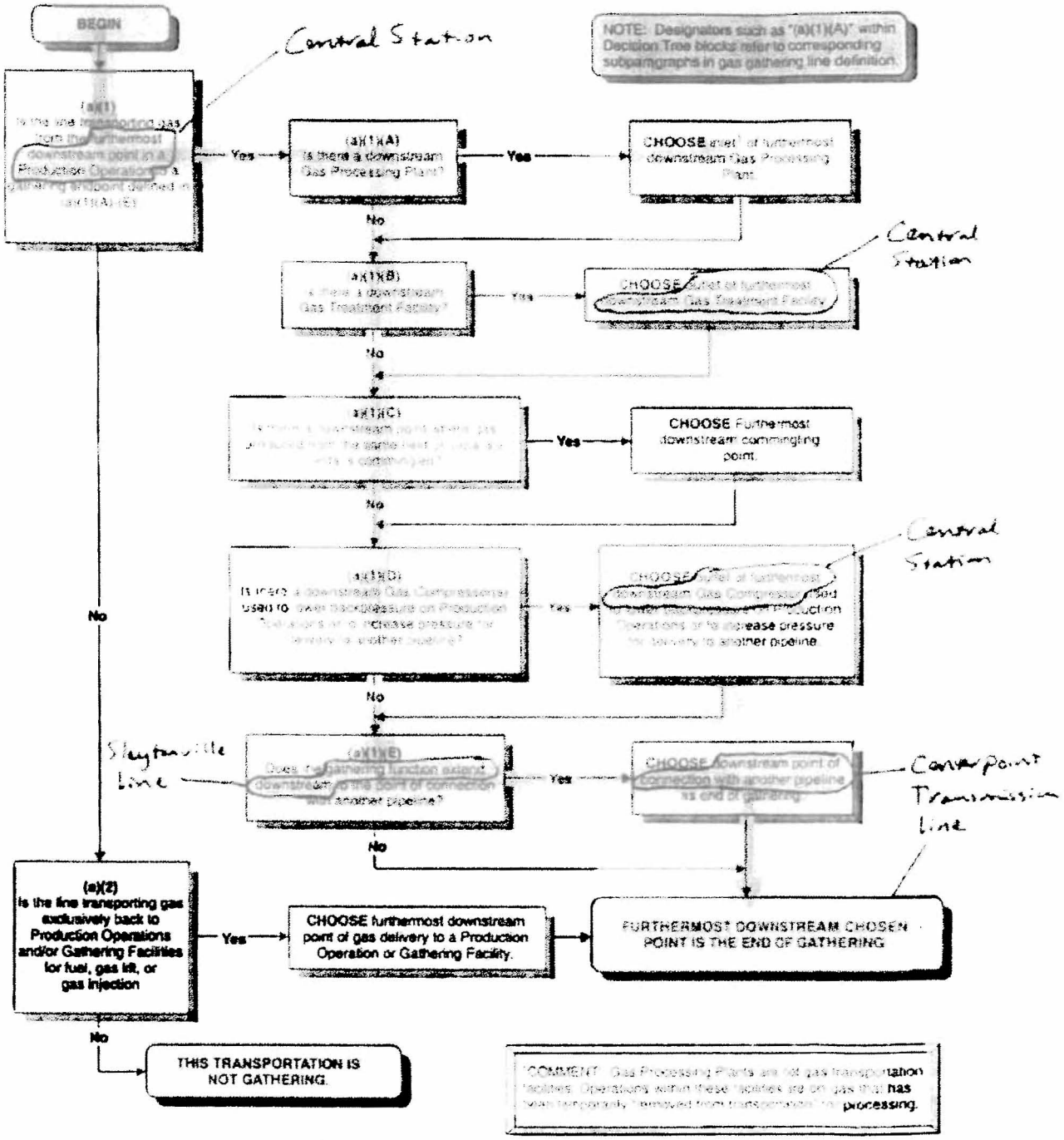

Figure B-2—Alternative1 Decision Tree for Figure B-1 (Scenario A)

2.2.1.2.6 Incidental Gathering

In the case of gas processing or gas treatment, the connection to a transmission line is generally contained within the boundaries of the facility. This is not always the case, however. The gathering line operator may have to move the gas through a pipeline some additional distance from the plant to another pipeline. The pipeline moving the gas from the plant to another pipeline is termed "incidental gathering." The "incidental gathering" resumes at the plant outlet and continues to the other pipeline connection. Incidental gathering may also occur when a compressor is a potential endpoint. Incidental gathering normally is present when the point of last commingling is the last "identified endpoint." From a functional standpoint, this section of incidental gathering line is no different from the rest of the gathering system. The definition, therefore, includes recognition that gathering may continue downstream of the last endpoint identified by processing, treatment, commingling, or compression activities to the connection with another pipeline. Figure 2-6 illustrates this concept.

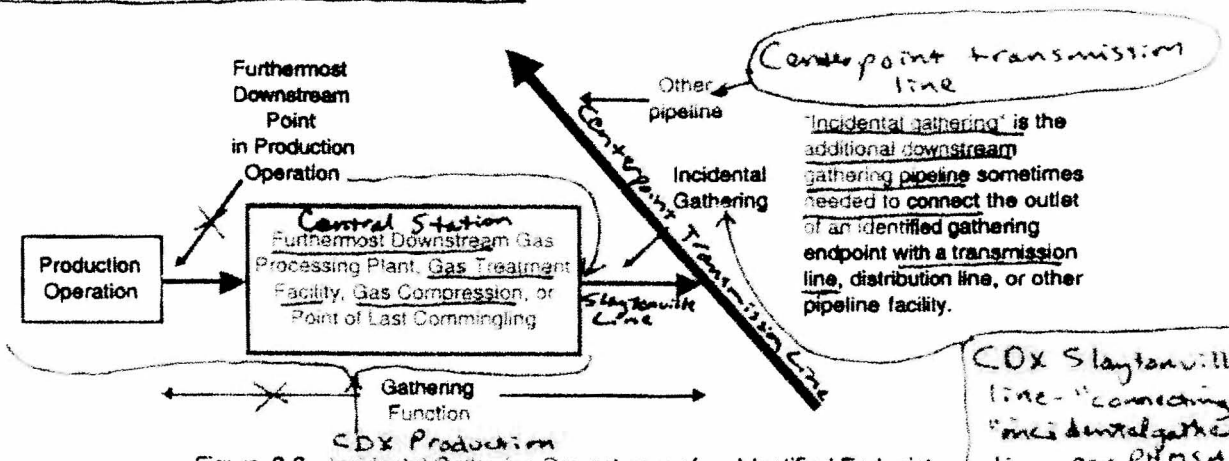

Figure 2-6—Incidental Gathering Downstream of an Identified Endpoint

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–1998–4868; Amdt. 192–102]

RIN 2137–AB15

Gas Gathering Line Definition; Alternative Definition for Onshore Lines and New Safety Standards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT

ACTION: Final rule.

SUMMARY: This action adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations. In addition, it establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in nonrural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intends this action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines.

DATES: This final rule takes effect April 14, 2006. The Director of the Federal Register approves the incorporation by reference of API RP 80 in this rule as of April 14, 2006.

FOR FURTHER INFORMATION CONTACT: DeWitt Burdeaux by phone at 405–954–7220 or by e-mail at *dewitt.burdeaux@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulation of Onshore Gathering Lines; Definition Problem

Gas gathering lines are pipelines used to collect natural gas from production facilities and transport it to transmission or distribution lines, which then transports it to the consumer. PHMSA's pipeline safety rules in 49 CFR part 192 apply to the transportation of natural gas and other gas by pipeline. However, onshore gathering lines in rural areas (areas outside cities, towns, villages, or designated residential or commercial areas) are subject only to § 192.612, which prescribes inspection and burial requirements for lines within Gulf of Mexico inlets (§§ 192.1(b)(4) and (b)(5)). (Note: Lines in these inlets are not covered by this final rule.)

Under § 192.9, gathering lines in nonrural areas must meet the same safety standards for design, construction, testing, operation, and maintenance as gas transmission lines, except the requirements of § 192.150 on passage of an internal inspection device (also known as smart pigs) and subpart O on integrity management. In addition, PHMSA's drug and alcohol testing regulations in 49 CFR part 199 apply to nonrural gas gathering lines.

Section 192.3 currently defines the terms "gathering line," "transmission line," and "distribution line":

> "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main. "Transmission line" means a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a gas distribution center or storage facility; operates at a hoop stress of 20 percent or more of a Specified Minimum Yield Strength (SMYS), or transports gas within a storage field. "Distribution line" means a pipeline other than a gathering or transmission line.

Because these definitions are circular and part 192 does not define "production facility," operators and government inspectors have had difficulty distinguishing regulated gathering lines from unregulated production facilities and unregulated gathering lines from regulated transmission and distribution lines. Also, the complexity of many gathering systems has increased the difficulty of distinguishing gathering lines.

B. Past Attempts To Resolve the Definition Problem and Determine the Need To Regulate Rural Gathering Lines

In 1974, DOT tried to correct the problem of distinguishing gathering lines by proposing to revise the gathering line definition (39 FR 34569; Sept. 26, 1974). However, the proposal was later withdrawn because comments indicated many terms and phrases were unclear (43 FR 42773; Sept. 21, 1978). Afterward, the problem lingered until 1986, when the National Association of Pipeline Safety Representatives (NAPSR), a nonprofit association of State pipeline safety officials, surveyed its members and reported numerous and continuing disagreements with operators over gathering lines. Driven by the NAPSR survey, in 1991 DOT again proposed to revise the gathering line definition (56 FR 48505; Sept. 25, 1991). However, the public response was generally unfavorable, so DOT delayed any further action until it collected and considered more information.

Part 192 does not regulate the safety of most rural gathering lines because, until 1992, the pipeline safety law (49 U.S.C. Chapter 601) restricted DOT's authority over onshore gathering lines to lines in nonrural locations.[1] In 1992, Congress gave DOT specific authority to define gas gathering lines for purposes of safety regulation, and to regulate a class of rural gathering lines called "regulated gathering lines" (49 U.S.C. 60101(a)(21) and 60101(b)). The new authority directed DOT to consider functional and operational characteristics in defining gathering lines. Further direction was to consider such factors as location, length of line, operating pressure, throughput, and gas composition in deciding which rural lines warrant regulation. This authority also expressly allows PHMSA to depart from the concepts of gathering under the Natural Gas Act (15 U.S.C. 717 *et seq.*)

In 1999, in furtherance of the still open 1991 gathering line proceeding and Congress' action on gathering lines, DOT opened a Web site for public discussion of the definition problem and the need to regulate rural gathering lines (Docket No. PHMSA–1998–4868; 64 FR 12147; Mar. 11, 1999). The comments mainly focused on the comprehensive work by the American Petroleum Institute (API), later published as API Recommended Practice 80, "Guidelines for the Definition of Onshore Gas Gathering Lines" (API RP 80). API RP 80 defines onshore gas gathering lines through a series of definitions, descriptions, and diagrams intended to represent the varied and complex nature of production and gathering in the U.S. Although industry commenters spoke favorably about the API RP 80 gathering line definition, NAPSR objected to the use of certain "furthermost downstream" endpoints to mark the beginning and end of gathering. NAPSR's concern was if the definition were included in part 192, operators would have an incentive to establish or move the endpoints further downstream to reduce the amount of regulated pipelines. While considering its next step, DOT published an Advisory Bulletin to remind operators it was still regulating gathering lines according to court precedents and its prior interpretations (67 FR 64447; October 18, 2002).

Then in 2003, DOT held public meetings in Austin, Texas (68 FR 62555; November 5, 2003) and Anchorage, Alaska (68 FR 67129; December 1, 2003)

[1] In 1990 Congress gave DOT limited authority over gathering lines in Gulf of Mexico inlets (see Pub. L. 101–599).

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proposed definitions and safety rules follows.

A. Proposed Definition of "Onshore Gathering Line"

We wanted to define "onshore gathering line" in a way that not only reasonably matched current classifications but also addressed NAPSR's concerns. So we proposed to allow operators to use API RP 80 to determine "onshore gathering lines." But use of API RP 80 would be subject to the following five limitations on the beginning of gathering and the possible endpoints of gathering under section 2.2(a) of API RP 80:

1. Under section 2.2(a)(1), the beginning of an onshore gathering line is the furthermost downstream point in a production operation. We proposed to restrict this point to piping or equipment used solely in the process of extracting natural gas from the earth for the first time and preparing it for transportation or delivery. The purpose of the limitation was to ensure certain dual-use equipment, capable of use in either production or transportation, would be part of gathering when not used solely in the process of extracting and preparing gas for transportation.

2. Under section 2.2(a)(1)(A), the first possible endpoint is the inlet of the furthermost downstream natural gas processing plant, other than a natural gas processing plant located on a transmission line. We proposed this endpoint may not be a natural gas processing plant located further downstream than the first downstream natural gas processing plant unless the operator can demonstrate, based on sound engineering reasons, gathering should extend beyond the first plant. Past DOT interpretations and State agency enforcement actions have recognized the first downstream natural gas processing plant as the customary end of gathering. (See PHMSA's Web site for interpretations and enforcement actions: *http://www.phmsa.dot.gov/.*)

3. Under section 2.2(a)(1)(B), the second possible endpoint is the outlet of the furthermost downstream gathering line gas treatment facility. We proposed this endpoint would apply only if no other endpoint under sections 2.2(a)(1)(A), (C), (D) or (E) existed.

4. Under section 2.2(a)(1)(C), the third possible endpoint is the furthermost downstream point where gas produced in the same production field or separate production fields are commingled. This endpoint recognizes a gathering line may receive gas from several production fields. But because it does not restrict the distance between fields, gathering could potentially continue endlessly, causing reclassifications from transmission to gathering along the way. To set a reasonable limit, we proposed that separate production fields from which gas is commingled must be within 50 miles of each other. We specifically invited comments on whether a maximum distance is needed.

5. Under section 2.2(a)(1)(D), the fourth possible endpoint is the outlet of the furthermost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline. For consistency with our past interpretations and current enforcement policy, we proposed to limit this endpoint to the outlet of a compressor used to deliver gas to another pipeline. → 502 P.13296

We did not propose a limitation on the fifth possible endpoint under section 2.2(a)(1)(E). This endpoint is the connection to another pipeline downstream of the furthermost downstream endpoint under sections 2.2(a)(1)(A) through (D), or in the absence of such an endpoint, the furthermost downstream production operation. The endpoint applies to connecting lines described as "incidental gathering" under section 2.2.1.2.b of API RP 80. An example of a connecting line is a pipeline that runs from the outlet of a natural gas processing plant to a transmission line. PHMSA considers "incidental gathering" to include only lines that directly connect a transmission line to one of the endpoints (A) through (D), as limited by this final rule. Lines that connect a transmission line to one of these endpoints by way of another facility are not considered "incidental gathering."

B. Proposed Definition of "Regulated Onshore Gathering Line"

We proposed to amend § 192.3 to define "regulated onshore gathering lines" by either of two risk categories, Type A and Type B, based on operating stress and location. Type A would include lines whose maximum allowable operating pressure (MAOP) results in a hoop stress of 20 percent or more of SMYS, and non-metallic lines whose MAOP is more than 125 per square inch gauge (psig). The location would be Class 3 and 4 locations, as defined in § 192.5, and other areas the operator determines using potential impact circles with five or more dwellings or a sliding corridor 440 yards by 1000 feet with either 5 or more dwellings per 1000 feet or 25 or more dwellings per mile, whichever results in more regulated lines. Type A lines in a Class 1 or Class 2 location would also include additional lengths of line upstream and downstream to serve as a shield against potential harm to nearby dwellings.

Type B lines would include metallic lines whose MAOP produces a hoop stress of less than 20 percent of SMYS, and non-metallic lines whose MAOP is 125 psig or less. The location would be Class 3 and 4 locations and other areas determined by a sliding corridor 300 feet by 1000 feet with 5 or more dwellings per 1000 feet. Lines within a Class 1 or Class 2 location would include additional lengths of line as a shield against potential harm to nearby dwellings.

C. Proposed Safety Requirements

We proposed to revise § 192.9 to include safety requirements for all gathering lines subject to part 192. Paragraph (b) would simply restate the present part 192 requirements applicable to offshore gathering lines.

Under paragraph (c), Type A regulated onshore gathering lines would have to meet part 192 requirements applicable to transmission lines, except requirements concerning the passage of smart pigs (§ 192.150) and integrity management (subpart O). Because of the higher stress at which Type A lines operate and their ability to harm more of the public, we considered Type A lines to warrant safety requirements equivalent to transmission line requirements. Currently regulated gathering lines are subject to these requirements.

Paragraph (d) contains the proposed requirements for Type B regulated onshore gathering lines. These lines, although located near the public and housing, operate at a lower stress than Type A lines and pose a lower-risk. So for Type B lines, we proposed safety requirements focused just on the main threats to these lines—corrosion and excavation damage. First, new lines and existing lines replaced, relocated, or otherwise changed would have to be designed, installed, constructed, initially inspected, and initially tested according to part 192 requirements. Second, operators of Type B lines would have to control corrosion according to applicable subpart I requirements; carry out a damage prevention program under § 192.614; establish MAOP under § 192.619; install and maintain line markers under § 192.707 according to transmission line requirements; and establish a public education program as required by § 192.616.

To allow time for line identification and preparation for compliance, we

thought the government should have the burden of proving further downstream processing is not needed. In addition, West thought we should allow economic reasons as proof.

b. PHMSA Response

We have not experienced a situation in which the closing of a gas processing plant affected a gathering line classification. Although closings of a few weeks for maintenance reasons would not trigger a classification change, longer closings could occur for a variety of reasons and the duration could be uncertain. So we decided not to make a general statement on how temporary plant closures would affect the end of gathering. Instead, when requested, we will determine the impact of closings on an individual basis as the need to do so arises. We expect certified State agencies with safety jurisdiction over gathering lines under 49 U.S.C. 60105 will do likewise.

Regarding West's burden of proof issue, it is not unusual for part 192 safety rules to include exceptions applicable only if operators can demonstrate certain conditions exist. For example, under § 192.479(c), operators do not have to protect aboveground pipelines from atmospheric corrosion if they demonstrate the corrosion will have certain characteristics. We require operators to demonstrate grounds for exceptions when they are the best source of information on which the exception is based. In the case of gathering lines, we think operators are the best source of information to demonstrate why further downstream processing is necessary to complete the gathering process.

As for the proof required in the demonstration, no doubt economics would be a factor in any decision involving further downstream processing. However, many of our prior interpretations have based the end of gathering on the first downstream processing plant. Maintaining consistency with this policy as far as possible is desirable for both government and industry. For this reason, we think any future variation should be based on the fundamental qualities of gas processing, which is best determined by engineering analyses rather than economic conditions, which are transitory. Therefore, the proposed limitation is unchanged in the final rule.

3. Limitation on Furthermost Treatment Facility Endpoint

Under section 2.2(a)(1)(B) of API RP 80, gathering ends at the outlet of the furthermost downstream gathering line gas treatment facility. We proposed the following limitation:

> The endpoint under section 2.2(a)(1)(B) of API RP 80 applies only if no other endpoint identified under section 2.2(a)(1)(A) [processing], (a)(1)(C) [commingling], or (a)(1)(D) [compression] exists.

We intended this limitation to preclude manipulation of the transition from gathering to transmission by installing equipment used in gas treatment.

a. Comments

Coalition, supported by Duke, said the proposed limitation would make the furthermost treatment endpoint unusable, because processing, commingling, or compression is almost always upstream of a treatment facility. These commenters insisted gathering should continue downstream to a gas treatment facility endpoint no matter if compression, commingling, or processing occurs upstream. Coalition offered an alternative approach to preclude treatment manipulation:

> (1) Use the following wording: "The end of a gathering line * * * shall not be defined by the installation of one or more pieces of gas treating equipment at an extreme downstream location that is not justified by sound engineering and economic principles independent of the pipeline's regulatory classification." (2) Explain in the final rule preamble that this endpoint refers to a "gas treating plant" or similar facility and is not intended to be a simple piece of equipment like a separator or dehydrator (other than as can be shown, using sound engineering and economic principles, to be needed at that location to meet transmission pipeline specifications).

b. PHMSA Response

Section 2.2.1.2.2 of API RP 80 explains the meaning of a gas treatment facility under section 2.2(a)(1)(B). This provision describes gathering gas treatment (other than treatment in gas processing or compression) as involving significant stand-alone facilities (*e.g.*, a sulfur recovery or large dehydration facility). We think this explanation is sufficient to preclude possible manipulation of the treatment endpoint by installing a simple piece of treatment-related equipment, such as a separator or dehydrator. Thus, Coalition's alternative is not necessary and the proposed limitation is withdrawn.

4. Limitation on Furthermost Commingling Endpoint

Under section 2.2(a)(1)(C) of API RP 80, gathering ends at the furthermost downstream point where gas produced in the same production field or separate production fields is commingled. We proposed the following limitation:

> If the endpoint is determined by the commingling of gas from separate production fields, the fields may not be more than 50 miles from each other.

With no limit on the distance between separate production fields, a gathering line could continue endlessly, causing reclassification of pipelines from transmission to gathering.

a. Comments

Coalition, Duke, and West said the proposed limitation was not flexible enough to account for future acquisitions and use of maturing fields. Duke said its existing commingled fields were less than 50 miles apart. Although Coalition thought some commingled fields were 125 miles apart, it did not cite an actual example. Coalition and Duke recommended allowing case-by-case regulatory approvals of longer distances based on sound engineering and economic reasons.

b. PHMSA Response

Because, Duke, the largest gas gathering line operator in the U.S., said the proposed 50-mile limit would be adequate for its current systems, the proposed 50-mile limit is unchanged in the final rule. We did not adopt Coalition's request to change the limit to 125 miles because it did not provide any examples of an existing system where the 50-mile limit would be too restrictive. However, to provide flexibility, the final rule allows operators to petition PHMSA, under the procedures in 49 CFR § 190.9, to find a longer limit is justified in a particular case.

5. Limitation on Furthermost Compressor Endpoint

Under section 2.2(a)(1)(D) of API RP 80, gathering ends at the outlet of the furthermost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline. We proposed the following limitation:

> The endpoint may not extend beyond the furthermost downstream compressor used to increase gathering line pressure for delivery to another pipeline.

This limitation is consistent with our past interpretations.

a. Comment

Coalition agreed with the proposed limitation, but asked us to clarify delivery to "another pipeline" does not mean delivery to another gathering line.

b. PHMSA Response

Section 3.2.8 of API RP 80 says, "the definition of gathering line did not directly address the issue of one operator's gathering line beginning or ending with a connection to another operator's gathering line." Based on this clarification, we believe the term "another pipeline" in section 2.2(a)(1)(D) of API RP 80 does not mean delivering to another gathering line.

B. Defining "Regulated Onshore Gathering Line"

We proposed to change how part 192 applies to onshore gathering lines outside inlets of the Gulf of Mexico by making the rules fit the level of risk gathering lines present. The proposal would restrict rules to two categories of lines, Type A and Type B, and define these lines as "regulated onshore gathering lines." A description of the proposed definition is in section II of this preamble.

1. Approach To Defining Regulated Lines

a. Comments

Columbia suggested we adopt a simpler definition of "regulated onshore gathering line" limited to lines in Class 3 and Class 4 locations and lines in Class 1 and Class 2 locations where a potential impact circle includes 20 or more dwellings. It said the alternative would be easier to understand and apply, and consistent with the scientific-based definition of "high consequence area" in § 192.903. PST also suggested a more straightforward approach under which gathering and transmission lines of similar pressures and operating conditions would be regulated alike, and other gathering lines would be regulated the same as distribution lines.

b. PHMSA Response

We did not adopt Columbia's alternative because it would apply the same classification method (potential impact circles with 20 or more dwellings) to high-pressure and low-pressure lines in Class 1 and 2 locations. If impact circles were applied to low-pressure lines in Class 1 and 2 locations, the circles would most likely be too small to include 20 or more dwellings. So the risk of low-pressure lines to fewer than 20 nearby dwellings would not be addressed.

PST's alternative parallels our proposal to regulate higher-risk gathering lines the same as transmission lines, but most transmission line rules are more stringent than appear to be necessary for lower-risk gathering lines. Also, gathering lines are not sufficiently similar to distribution lines to apply the same rules to both types of lines.

2. Identifying Regulated Lines by Potential Impact Circles

a. Comments

AGA and Dominion supported using potential impact circles to identify higher-risk regulated gathering, but said the population criteria (proposed 5 or more dwellings) should not be more stringent than the criteria applied to gas transmission lines (20 or more dwellings under § 192.903). Dominion also suggested allowing use of impact circles as an optional identification method for Type B lines, not just Type A lines as proposed.

NAPSR spotted an irregularity in using potential impact circles to identify Type A lines. Some smaller Type B lines (10 inches nominal diameter or less) uprated to operate above 20 percent of SMYS would lose their regulated status if operators use impact circles to identify Type A lines and the circles do not contain the minimum number of dwellings (5) found in the rectangles (300 ft x 1000 ft) previously used to identify the lines as Type B. Likewise, the use of impact circles could cause some currently regulated nonrural lines operating above 20% of SMYS to lose their regulated status, even though similarly situated Type B lines would remain regulated. Consequently, NAPSR suggested we adopt the proposed Type B rectangles and safety rules as the minimum standard of safety for all regulated lines.

b. PHMSA Response

The decision discussed below (in response to NAPSR's comment) to withdraw the proposal on using potential impact circles to identify Type A lines makes the AGA and Dominion comments moot. Nevertheless, we offer the following: Section 192.903 requires 20 or more dwellings in potential impact circles used to identify transmission line segments subject to integrity management rules. These rules apply to the identified segments in addition to other applicable transmission rules. In contrast, we did not propose to apply integrity management rules to Type A lines identified by circles with just 5 dwellings or more. So we do not consider the proposed 5-per-circle method to be more stringent than the 20-per-circle method used for integrity management.

We did not propose potential impact circles to identify Type B lines because for low-pressure lines the circles would most likely be too small to contain at least 5 dwellings. For this reason, they would not equate to the proposed method of 5 or more dwellings per 1000 feet. As further explained under subheading 4 of this section of the preamble, we did not adopt potential impact circles as a method to identify Type B lines.

We believe NAPSR recognized a serious equivalency problem in allowing use of the proposed impact circles to identify Type A lines. The outcome could easily be an unregulated gathering line operating above 20 percent of SMYS next to a regulated Type B line, with both lines exposing the same dwellings to risk. To avoid this situation, we are withdrawing the proposal to use potential impact circles to identify Type A lines. We did not adopt NAPSR's suggested remedy because the compliance cost of detecting 5 dwellings per 1000 feet would likely be disproportionate to the benefits, as discussed below under subheading 4 of this section of the preamble.

3. Identifying Regulated Lines by Operating Stress

a. Comment

Coalition said 20 percent of SMYS is too low to distinguish high-stress Type A lines from low-stress Type B lines. It recommended using 30 percent of SMYS as in §§ 192.935, 192.937, and 192.941 for integrity management and in §§ 192.505 and 192.507 for pressure testing because lines operating at less than 30 percent of SMYS may leak but not rupture.

b. PHMSA Response

To regulate the safety of rural gas gathering lines, PHMSA must consider various physical characteristics, including operating pressure, to decide which lines warrant safety regulation (49 U.S.C. 60101(a)(21)(B) and (b)(2)(A)). We proposed 20 percent of SMYS as indicative of onshore gathering lines whose operating pressure presents a significant enough risk in certain circumstances to warrant the same amount of regulation as transmission lines, except rules on integrity management and smart pig passage. The basis for this 20-percent threshold is the part 192 definition of "transmission line," which includes pipelines other than gathering lines operating at 20 percent of SMYS or more. These pipelines must meet all applicable part 192 safety rules. Because Type A lines can pose risks similar to transmission lines, we do not think 30 percent of

GAS COMPRESSION

5. **Section 192.8(a)(4) and the RP-80 definition of gas gathering includes as one of the potential endpoints of gathering, "the outlet of the furthermost downstream compressor used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline." What is "another pipeline"?**

PHMSA Response:

"Another pipeline" would be a pipeline designated, according to §192.3, as a transmission or distribution pipeline. If the compressor is boosting gathering line pressure for delivery to another gathering pipeline, that would not be the end of gathering as illustrated below.