

October 26, 1972

Mr. Benjamin C. McMinn
General Counsel
Arkansas Public Service Commission
Justice Building
Little Rock, Arkansas 72201

Dear Mr. McMinn:

Your letter of October 12, 1972, advises that the Commission is considering whether to request legislation amending the Arkansas Pipeline Safety Act of 1971 to except the Commission from following the Arkansas Administrative Procedures Act (APA). You ask whether, for Federal purposes, we consider it necessary that the Commission be required to follow the notice and hearing requirements of the APA.

There is no requirement in the Federal Natural Gas Pipeline Safety Act of 1968 that a State agency afford opportunity for interested persons to present oral testimony and argument in connection with State adoption of Federal safety standards even though such a requirement is imposed on the Secretary in Section 3(d) of the Federal Act.

However, Section 3(e) of the Federal Act requires the Secretary to give notice and opportunity for hearing prior to his decision on an application for waiver of compliance with any regulation established under the Act. Also under Section 3(e), a State agency may waive compliance with a safety standards, "in the same manner as the Secretary". This is interpreted to mean that a State agency must give notice and opportunity for hearing on an application for a waiver.

Procedurally, in connection with waivers, it may be possible for the notice and hearing requirements to be met by administrative action of the States legislature. If the Commission could meet these requirements administratively, exemption of the Commission from the Arkansas APA would not place its certification in

jeopardy, nor raise a question with regard to the Commission's eligibility for Federal grants-in-aid. Qualification for certification or grants is not dependent on whether the Arkansas APA applies or not, but on whether the agency actually meets the requirements of the Natural Gas Pipeline Safety Act of 1968.

If you have further questions in this regard, please do not hesitate to call on us.

Sincerely,

Joseph C. Caldwell
Director
Office of Pipeline Safety