

White Paper
“Direct Sales Laterals”

White Paper on Direct Sales Laterals

**INGAA Pipeline Safety Committee
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Prepared by:
Process Performance Improvement Consultants, LLC
(P-PIC)

I. BACKGROUND

The Pipeline Safety Act, not the Pipeline Safety Regulations, speak to who has jurisdiction over direct sales laterals. OPS has jurisdiction over all pipelines, however the states may be “granted” jurisdiction over intrastate and even interstate facilities by OPS. For interstate facilities, the states can not enact more stringent requirements that exceed the Federal pipeline safety regulations, for intrastate facilities, they can.

For interstate pipeline operators, the fact that the pipeline system is jurisdictional to OPS has allowed consistent operation and maintenance from one state to another and has allowed operators to have one set of procedures and operating methodology for all operations. Putting direct sales laterals under state jurisdiction has the potential of being burdensome for several reasons. Operating in accordance to state requirements and not Federal regulations could in some instances require the development of separate operating procedures, require extra reporting, and cause confusion in inspection and incident response.

The promulgation of the Integrity Management Regulations will complicate this issue a great deal. Operators with direct sales laterals have not been provided even the most basic information on the expectations for managing these assets as provided by the new regulations. Many questions must now be answered including:

- Does the operator treat these laterals the same as all other pipeline segments in the determination and ranking of HCA's, or do they require risk ranking on a state-by-state basis?
- Do the plans have to meet 49CFR Part 192, Subpart O or is there a state regulation that has different requirements and expectations?
- Who is the contact within the state, who will review the operator's plan, are the timeframes different?

The list of questions is as large as the list of regulations.

Based on these concerns, it seemed prudent to revisit the issue of direct sales laterals and in particular the definition of “intrastate pipeline”.

II. DISUCSSION OF ISSUES

The concept for pre-emption for interstate operators dealt with the very basic idea that interstate assets should not be burdened with individual states requirements. A line moving through a state with state requirements would affect the cost structure for the end user without the end user having the ability to object affect the development and implementation of those requirements.

Direct sales laterals, operated by interstate operators that are under FERC Certification, face this same issue. A state may impose requirements that reflect in the costs to operate the lateral. Due to the rate structure of the operator, these costs are then passed on to all customers without those customers having a say about those costs. Therefore the same preemption issue exists. In this case however, pre-emption is not specified.

The Pipeline Safety Act (PSA) (49USC 60101 et. seq.) covers pipeline safety jurisdiction. Sec. 60101 defines an “interstate gas pipeline facility”, “means a gas pipeline facility used to transport gas and subject to the jurisdiction of the Commission under the Natural Gas Act; but does not include a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption”.

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The PSA defines an “interstate hazardous liquid pipeline facility”, “means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce”. Because the PSA did not specify a point of delineation between interstate and intrastate jurisdiction, as it did for gas pipelines, the regulations in Part 195, Appendix A, provides additional guidance.

There is no definition for “lateral” in either the Pipeline Safety Regulations or in the Pipeline Safety Act.

There presently is not any guidance for gas in Part 192 for the delineation between interstate and intrastate facilities. However there is an internal memo at OPS from Barbara Betsock to William Gate. That memo draws a line between interstate and intrastate. This line is “the point where gas intended solely for the end user leaves the transmission line”. Unfortunately this memo is widely misinterpreted by the States.

As far as the Natural Gas Act, FERC requires that pipelines be operated in accordance with OPS requirements. It is silent on the issue of states acting as agent for the Office of Pipeline Safety (OPS).

OPS has the authority to use states for enforcement of the pipeline safety regulations for intrastate and interstate operators. The states have the ability to enact additional regulations and enforce them for intrastate facilities. The requirements and limitations for OPS and state interactions are set forth in Sec. 60104 of the PSA. State Pipeline Safety Programs Certifications are set forth in Sec. 60105 of the PSA.

Looking at the information available, there does not appear to be a conflict in the regulations, or enabling legislation nor in the Betsock letter per say. The issue lies in the states interpretation which needs to be managed on a state-by-state basis or with NAPS. If a pipeline is an interstate facility and under FERC jurisdiction, then the direct sales lateral begins at the end of the interstate pipeline. If this pipeline is a lateral has no barring on the delineation between intra and interstate classification. The part of the pipeline system which is intrastate would begin at the end of the interstate pipeline which may be a lateral and would be that portion of pipeline operated by the direct sale customer or customer piping. The legislation gives jurisdiction of the customer piping to the state for direct sale customers.

III. CONCLUSION

In conclusion, there is no conflict between and within the legislation or the regulations as it pertains to the direct sales lateral issue. The key lies in the fact that if the lateral is defined as an interstate facility as evidenced by FERC jurisdiction, it is only that portion of the customers line that is truly intrastate. Nothing in the definitions precludes a FERC jurisdictional direct sale lateral from being interstate. Where the gas “leaves the transmission line” is the appropriate designator. Therefore the line is an interstate line until the gas leaves the line and enters the customer’s line or an intrastate asset.

APPENDIX

The applicable sections of the NGPSA are included below:

Sec. 60101. - Definitions

(a) General. -

(6)

"interstate gas pipeline facility" -

(A)

means a gas pipeline facility -

(i)

used to transport gas; and

(ii)

subject to the jurisdiction of the Commission under the Natural Gas Act ([15 U.S.C. 717](#) et seq.); but

(B)

does not include a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption;

(7)

"interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce;

(8)

"interstate or foreign commerce" -

(A)

related to gas, means commerce -

(i)

between a place in a State and a place outside that State; or

(ii)

that affects any commerce described in subclause (A)(i) of this clause; and

(B)

related to hazardous liquid, means commerce between -

(i)

a place in a State and a place outside that State; or

(ii)

places in the same State through a place outside the State;

(9)

"intrastate gas pipeline facility" means -

(A)

a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act ([15 U.S.C. 717](#) et seq.); and

(B)

a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption;

(10)

"intrastate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility;

Sec. 60104. - Requirements and limitations

(c) Preemption. -

A State authority that has submitted a current certification under section [60105\(a\)](#) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

Sec. 60105. - State pipeline safety program certifications

(a) General Requirements and Submission. -

Except as provided in this section and sections [60114](#) and [60121](#) of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) Contents. -

Each certification submitted under subsection (a) of this section shall state that the State authority -

(1)

has regulatory jurisdiction over the standards and practices to which the certification applies;

(2)

has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3)

is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section [60107\(d\)\(1\)\(C\)](#) of this title;

(4)

is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;

(5)

may require record maintenance, reporting, and inspection substantially the same as provided under section [60117](#) of this title;

(6)

may require that plans for inspection and maintenance under section [60108](#) (a) and (b) of this title be filed for approval; and

(7)

may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections [60120](#) and [60122\(a\)\(1\)](#) and (b)-(f) of this title.

(c) Reports. -

(1)

Each certification submitted under subsection (a) of this section shall include a report that contains -

(A)

the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

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(B)

each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than an amount the Secretary establishes (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C)

the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D)

any other information the Secretary requires.

(2)

The report included in the first certification submitted under subsection (a) of this section is only required to state information available at the time of certification.

(d) Application. -

A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) Monitoring. -

The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) Rejections of Certification. -

If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.