

ENERGY ALERT

ASSESSMENTS UNDER PENNSYLVANIA'S NEW PIPELINE SAFETY LAW

Are you ready for the first round of assessments under the recently enacted Pipeline Safety Law (Act 127 of 2011) ?

When Will The Assessment Be Sent By the PUC?

The PUC will issue invoices in July 2012. These invoices will be the first annual assessments under Act 127, and will be for Fiscal Year 2012-2013 (July 1, 2012 to June 30, 2013).

When Will I Need To Pay The Assessment?

Payment is due to the PUC within 30 days after the date of the invoice. At this time, it is unclear if the invoice will allow installment payments.

Why Is The PUC Charging An Assessment?

Act 127 authorizes the Pennsylvania Public Utility Commission ("PUC") to assess Pennsylvania pipeline operators¹ for the PUC's cost of carrying out its responsibilities to enforce Federal pipeline safety laws as they relate to non-public utility gas and hazardous liquid pipeline equipment and facilities within Pennsylvania.

The PUC may assess its total annual costs (based on a July 1 to June 30 fiscal year), plus a reasonable allocation of indirect costs, of its gas and hazardous liquids pipeline safety program, excluding the costs reimbursed by the federal government. With the exception of Fiscal Year 2012-13, the annual costs will be in accordance with the PUC's approved budget.

How Will The Assessment Be Calculated?

To determine the amount of the assessment, the budgeted PUC costs will be divided by the number of miles of pipelines operated by pipeline operators in the state to determine the PUC's cost per mile. An invoice will be created for each pipeline operator by multiplying that cost per mile by the number of miles of pipeline in the state for that operator. At this time, early estimates, which are subject to change, show that the PUC's costs will be around \$1.5 million for Fiscal Year 2012-2013. In future fiscal years, the PUC will true-up any overcollections or undercollections. The initial true-up will occur in the Commission's calculation for the Fiscal Year 2013-14 assessment, but the reconciliation process will continue in each future fiscal year.

¹ The term "pipeline operator" is defined as a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws. But, this term does not include (a) a public utility, (b) an ultimate consumer who owns a service line on their real property (c) pipelines subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC) or (d) petroleum gas distributors who are not subject to the federal pipeline safety laws. This is a broad definition that includes gathering companies; midstream companies; pipeline companies; gas distribution systems that are not public utilities (cooperatives, municipalities, and municipal authorities); master meter systems that provide service to property owned by third parties; and propane distribution systems subject to the federal pipeline safety laws.

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Can I Challenge the Assessment?

Yes. To challenge the amount of the assessment, a pipeline operator must file objections to the assessment within 15 days after receipt of the invoice. See 66 Pa. C.S. § 510(c). The filing of an objection does not excuse or eliminate the obligation to pay the assessment on the due date(s) in the invoice. See 66 Pa. C.S. §§ 510(c), (d). But, it is the only way to preserve your right to a refund of erroneous, unlawful or invalid assessments. See *Pittsburgh Limousine v. PUC*, 762 A.2d 1150 (Pa. Cmwlth. 2000) (PUC has no discretion to consider the merits of a utility's untimely filed objections to assessment).

The objections must explain in detail the specific grounds upon which the assessment is excessive, erroneous, unlawful or invalid. The PUC will hold a hearing upon such objections. After the hearing, the PUC shall issue a ruling on the adjudication. Amounts due must be paid within ten (10) days after receipt of PUC's decision on the objections. A pipeline operator who filed an objection may, at any time within two (2) years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid. See 66 Pa. C.S. §§ 510(d), (e).

Is Anyone Exempt From Paying The Assessment?

Under Act 127, pipeline operators who are boroughs are exempt from paying the assessment.

What Happens If I Fail To Pay The Assessment?

If payment is not timely made, the PUC may suspend or revoke any certificate(s) of public convenience, certify motor vehicle registrations to the Department of Transportation for suspension or revocation, or institute an action at law for the amount lawfully assessed, together with any additional costs incurred. See 66 Pa. C.S. § 510(c).

Conclusion

Eckert Seamans can assist you in understanding this new law and its impact on your operations. Importantly, we can also advise you how to maintain compliance with Act 127 and other applicable laws and regulations. If you would like more information on the new law or assistance in understanding how your interests may be affected by the PUC's actions, please contact Dan Clearfield, Jeff Norton, or any one of our other Energy Group attorneys at Eckert Seamans.

For more background information, see the Energy Alert entitled "Rapidly Approaching Deadlines Under Pennsylvania's New Pipeline Safety Law," dated February 6, 2012, on our website.

This Energy Alert is intended to keep readers current on matters affecting energy, and is not intended to be legal advice. If you have any questions, please contact Dan Clearfield at 717.237.7173 or dclearfield@eckertseamans.com, Jeff Norton at 717.237.7192 or jnorton@eckertseamans.com, or any other attorney with whom you have been working.