

Prepared Testimony of
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before the

Pennsylvania Senate
Consumer Protection and Professional Licensure Committee
&
Environmental Resources and Energy Committee

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Good morning, Chairman Tomlinson, Chairman Boscola, Chairman Yaw, Chairman Yudichak, members of the Senate Consumer Protection and Professional Licensure Committee, and members of the Environmental Resources and Energy Committee.

I am Gladys Brown, Chairman of the Pennsylvania Public Utility Commission. Also present with me are Bob Young, Deputy Chief Counsel of the Commission's Law Bureau, and Paul Metro, Manager of the Commission's Pipeline and Electric Safety Divisions. On behalf of the Commission, I thank you for the invitation to testify regarding the important topic of pipeline safety.

The responsibility to ensure the provision of safe and reliable public utility service for citizens of the Commonwealth is central to the Commission's mission. The Commission's pipeline safety jurisdiction includes both public and non-public utilities. Public utilities include natural gas distribution companies as well as common carrier pipelines that transport natural gas and hazardous liquids. Non-public utilities include pipeline operators, such as intrastate natural gas transmission and jurisdictional gathering lines, regulated under the Gas and Hazardous Liquids Pipelines Act, enacted in 2011, known as "Act 127."

The jurisdictional landscape for the economic, safety, and siting of natural gas and hazardous liquids pipelines is a complicated one. The three main factors affecting the regulation of pipelines are the commodity being transported, the entity transporting the commodity, and the pipeline route (i.e. interstate or intrastate).

The transportation of natural gas in interstate commerce is regulated at the federal level, by the Natural Gas Act (NGA) and the transportation of hazardous liquids/petroleum products in interstate commerce is regulated by the Interstate Commerce Act (ICA). The Federal Energy Regulatory Commission (FERC) is the lead federal regulatory agency for both the NGA and ICA, with FERC's jurisdiction varying under each act.

FERC's authority under the NGA is exclusive and preempts all state regulation of natural gas in interstate commerce.¹ FERC issues certificates of public convenience, has siting authority, and approves rates. It does not matter whether the pipeline crosses state borders or if the applicable pipeline segment is located within a single state. If the pipeline is part of the interstate pipeline system, the PUC has no regulatory role. Examples of these types of pipelines in Pennsylvania include the Texas Eastern Pipeline, Columbia Gas Transmission, and the Tennessee Gas Pipeline. The NGA covers natural gas pipelines transporting gas in interstate commerce. The distribution of natural gas to end-use customers is primarily regulated by the states. However, some pipelines which deliver natural gas directly to large end-users (such as power plants) from the interstate pipeline system are subject to FERC's exclusive jurisdiction.

The ICA is the federal law which governs the transportation of petroleum products. The ICA defines petroleum products as both refined petroleum products (for example, gasoline, diesel fuel, and heating oil) and petroleum hydrocarbons (for example, propane, butane and ethane).

Under the ICA, FERC does not issue certificates of public convenience or conduct siting. FERC's jurisdiction under the ICA is for rate review and approval. FERC's role is non-exclusive meaning, a pipeline jurisdictional to FERC under the ICA can also provide intrastate service jurisdictional to the PUC. In fact, the Commission and FERC share jurisdiction over six intrastate hazardous liquids pipelines in Pennsylvania, including Sunoco Pipeline L.P.'s Mariner East projects. Pipelines under the purview of the ICA providing only interstate service are not PUC jurisdictional public utilities.

While safety matters for NGA and ICA pipelines are officially under the purview of the U.S. Department of Transportation's Pipeline and Hazardous

¹ Production and gathering are not considered "interstate commerce" and therefore not regulated under the NGA.

Materials Safety Administration (PHMSA), the Commission has a formal agreement with PHMSA to enforce the federal pipeline safety laws. The PHMSA agreement requires that the PUC have a federally-trained workforce of engineers and an active enforcement program that monitors compliance with the federal pipeline safety laws. The federal training is rigorous, consisting of 25 classes at PHMSA's Oklahoma City, Oklahoma training facility – the only such training facility in the U.S. These classes are one week in length and require a two-hour test that the engineers must pass to become federally certified.

The PUC receives federal reimbursement for our enforcement of PHMSA regulations.² The funding levels are approved by the U.S. Congress with a maximum of 80 percent funding for direct costs associated with the pipeline safety program.³ The PUC's pipeline safety program is also audited annually by PHMSA. The audit reviews PUC performance associated with pipeline inspections and reviews the enforcement actions taken by the Pipeline Safety Division with regards to monitoring compliance with the federal and state pipeline safety codes.⁴

As per the PHMSA agreement, the PUC enforces federal pipeline safety laws with respect to public utility and Act 127 pipeline operators. These pipeline operators include distribution operators (e.g. UGI, Columbia, Peoples, etc.) that transport natural gas from a transmission pipeline to the end-use customer (residential, industrial, commercial); gathering pipelines in Class 2, 3, and 4 areas; and intrastate transmission pipeline operators in Class 1-4 locations. The federal pipeline safety

² The Commission's Pipeline Safety budgets submitted to PHMSA for calendar years 2016 and 2017 were \$3,358,454 and \$3,778,662, respectively. For the 2016 budget, the Commission received \$1,733,943 in reimbursement from PHMSA. The Commission awaits receipt of reimbursement for its 2017 budget submittal.

³ The remainder of funding comes from Commission assessments collected from regulated natural gas utilities and fees collected from non-utility pipelines.

⁴ In calendar years 2015 and 2016 the Commission received PHMSA Progress Report Review scores of 50/50 and 50/50 respectively. In calendar year 2016 the Commission received a PHMSA Annual Program Evaluation Review score of 115/116.

regulations define these class locations. Class 4 is the most densely populated area while Class 1 is the most sparsely populated area.

Before moving on to describe the Commission's Pipeline Safety Program, I would like to address three topics which frequently arise during discussions of pipelines: pipelines as public utilities, the use of eminent domain for new pipeline construction, and how the route of a pipeline is determined, also known as the process of "siting."

Pipeline transportation services are defined as public utility services under Section 102 of the Public Utility Code.⁵ Section 102 recognizes the intrastate transportation by pipeline of petroleum products as public utility service under subsection 1(v) of the definition of "public utility:"

Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: . . .

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S. § 102.⁶

The power of eminent domain is conferred upon public utilities by Section 1511 of Pennsylvania's Business Corporation Law (BCL), not the Public Utility Code. Section 1511 of the BCL confers the power of eminent domain on public utility corporations.⁷

A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and

⁵ 66 Pa.C.S § 102

⁶ In Petition of Granger Energy of Honey Brook, LLC, Docket No. P-00032043 (Order entered August 19, 2004) at 9, the Commission held that term "petroleum products," as used in Section 102 of the Code, had a broad meaning as a "catch all phrase" to include what would otherwise be an exhaustive list of products. Under 49 C.F.R. § 195.2, natural gas liquids are encompassed under the terms "petroleum" and "petroleum product." The U.S. Energy Information Administration's definition of natural gas liquids includes ethane and propane, which, in turn, is included in the definition of "petroleum and other liquids."

⁷ 15 Pa.C.S. § 1511(a)

condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes: . . . The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public.

Only electric and telecommunications utilities seeking to condemn property to construct aerial lines⁸ must first obtain Commission approval before proceeding with a condemnation action.⁹ Neither the Public Utility Code nor Commission regulations require prior Commission approval for a public utility to construct underground lines, whether for the distribution or transmission of water, wastewater, electric, gas or petroleum products. No other public utilities have to obtain the Commission's prior approval to exercise eminent domain. The only prerequisite in the Public Utility Code for a public utility to exercise eminent domain is for it to possess a certificate of public convenience before exercising that power.¹⁰ The courts of common pleas have jurisdiction over eminent domain proceedings. As such, a natural gas pipeline entity with a certificate of public convenience may condemn property through eminent domain. The property owner may challenge this condemnation before the court of common pleas.

The personnel in our Pipeline Safety Division (Pipeline Safety or Division) are the Commission's "boots on the ground" to administer safety regulations pertaining to pipelines. The Division employs 21 employees; composed of one manager, four supervisors, and 18 inspectors.¹¹ I note that the Commission's 2018-2019 fiscal year budget proposal includes two additional inspectors for this Division. Pipeline Safety's responsibilities encompass a vast breadth of infrastructure, including 48,139 miles of

⁸ With regard to electric aerial lines, prior Commission approval is only required for lines with a design voltage greater than 100 kilovolts (100,000 volts). Lower voltage and distribution lines do not require prior approval.

⁹ 15 Pa.C.S. § 1511(c).

¹⁰ 66 Pa.C.S. § 1104.

¹¹ The Pipeline Safety Division will also house the Commission's newly assigned PA OneCall Enforcement responsibilities. Pursuant to Act 50 of 2017, OneCall enforcement will begin at the Commission on April 4, 2018, and will initially be composed of a supervisor, a clerk, and four compliance specialists.

gas distribution mains, 28,933 miles of natural gas distribution services, 799 miles of natural gas gathering lines, 1,275 miles of natural gas transmission lines, and 2,067 miles of hazardous liquids pipelines. In 2017, the Pipeline Safety Division conducted 1,745 individual inspections.

Sunoco Pipeline L.P. (Sunoco), a hazardous liquids carrier under the ICA, is not certificated as a public utility by FERC, but rather received a certificate of public convenience from the Commission in 2002, permitting it to operate as a petroleum products carrier pursuant to Section 102 of the Public Utility Code. There has been an increased public focus on the oversight of Sunoco and its Mariner East 2 project (Mariner Project), with the public supporting the concept of having the Commission conduct a “risk-assessment” on the Mariner Project.

The Commission places a keen focus on common carrier pipeline public utilities under our jurisdiction through the exercise of our general administrative authority to ensure that public utilities furnish and maintain adequate, efficient, safe, and reasonable service and facilities. Further, the principles of “risk assessment” underlie the PHMSA safety regulations, which are applicable under the joint-jurisdictional construct for hazardous liquid lines such as the Mariner Project. PHMSA regulations require pipeline operators such as Sunoco to undertake continual integrity assessments of their pipelines. Among the factors pipeline operators must consider are previous integrity assessments, the history of the pipeline, the product transported, and the existing and projected activities around the pipeline.¹² PHMSA regulations refer to this as “Pipeline Integrity Management.” The Commission and PHMSA review Sunoco’s Pipeline Integrity Management program on at least an annual basis.

The Pipeline Safety Division devoted a significant portion of its resources over the past several years to Sunoco and its Mariner Project. Pipeline Safety spent 76

¹² 49 CFR § 195.452(e).

inspection days during 2017 on the Mariner Project. Our inspectors are continuing this rigorous inspection program of Sunoco's Mariner East 2 project throughout construction, conducting inspections at least weekly. The Commission will also continue to monitor and inspect the Mariner Project after construction is completed, consistent with our duties as a state agent for PHMSA charged with enforcing the federal pipeline safety laws.

To the extent the public asks the state to conduct a public risk assessment of a hazardous liquid pipeline, such a request raises some difficult issues. First, Pennsylvania law requires all state employees and agencies to strictly protect any confidential security information of public utilities.¹³ Thus, publication of such a risk assessment is likely prohibited by state law. Second, both federal and state law expressly permit the transportation of hazardous liquids by pipeline. While there are a handful of ongoing court challenges involving the Mariner Project, all of the existing court decisions have found the Commission correctly recognized there was a public need for natural gas liquids transportation by Sunoco. To the extent that the public wishes to challenge any decision of the Commission regarding the Mariner Project, we have and will continue to afford due process to parties and members of the public who raise issues pertaining to the service provided by any jurisdictional public utilities.

The Commission acknowledges the risks present in the transportation of natural gas liquids by pipeline. The Commission will continue its ongoing oversight of the safety and operations of Sunoco and its hazardous liquids pipeline system to mitigate said risk. To the extent the Commission discovers any issues which raise concerns about the safe operation of any pipeline within its jurisdiction, rest assured that the Commission will take prompt action to protect the public.

¹³ Act 156 of 2006 - The Public Utility Confidential Security Information Disclosure Protection Act

Recent events showcase the Commission's continued oversight. The development of numerous sinkholes located in the township of West Whiteland within Chester County manifested a discernable risk to the continued flow of hazardous liquids through Sunoco's Mariner East 1 pipeline. Upon notification of these circumstances, the Commission acted swiftly to suspend the operation of Mariner East 1, investigate any and all repercussions on the integrity of the pipeline from these circumstances, and place the burden on Sunoco to prove that re-authorizing the operation of the pipeline is safe, reasonable, and in the public interest.¹⁴ This situation exemplifies the role this Commission plays to ensure pipelines operate safely in Pennsylvania.

In closing, I hope my testimony today has detailed the PUC's role in addressing pipeline safety. Safe and reliable energy infrastructure is one of the most essential services that we can provide, and the Commission is dedicated to that mission. We are also committed to working with our utilities, emergency responders, contractors, municipalities, other state agencies, and additional stakeholders to enhance the safety of Pennsylvania's infrastructure.

I appreciate the opportunity to testify today and would be happy to address any of your questions.

¹⁴ Emergency Order entered March 7, 2018 at Docket No. P-2018-3000281 and ratified on March 15, 2018 by the Commission.