

Prepared Testimony of

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Thank you, Chairman Barrar, Chairman Sainato, other members of the Committee, and all others gathered here this morning.

I am Seth Mendelsohn, Executive Director of the Pennsylvania Public Utility Commission (PUC). Joining me today are PUC Deputy Chief Counsel Robert Young, along with Paul Metro, Manager of the Safety Division of the PUC's independent Bureau of Investigation and Enforcement. It is our pleasure to join you today to testify on behalf of the Commission and our dedicated staff concerning House Bill 1568.

We appreciate the stated purpose of the legislation – “to address concerns of residents and municipal officials who live in close proximity of the construction of pipelines and are unaware of the impact nearby pipelines will have on their lives.”

As detailed in the co-sponsorship memo, the Pipeline Safety and Communication Board Act (the Act) would establish an independent administrative board empowered to: (1) collect and disseminate to the public information of Commonwealth agencies relative to the planning, siting, construction, operation, maintenance, management, inspection and safety of and emergency response procedures for pipelines; and (2) coordinate communications relating to pipeline activities with Federal, State and local government agencies and regulatory authorities, pipeline companies and the public.

The Pipeline Safety and Communication Board (the Board) would be comprised of 22 members, including the Chairperson of the PUC, and the Act requires Commonwealth agencies to cooperate in providing pipeline information, upon request, to the Board.

The goals noted in proposing this legislation are laudable, including greater transparency regarding pipeline planning, construction, maintenance, inspection and safety, and emergency response procedures; enhanced interagency cooperation and communication in communicating pipeline activities; and extended dialogue between state officials, legislative representatives, and interstate and intrastate pipeline owners and operators to ensure that all public and private stakeholders – including the general public – are well informed of potential issues.

Notwithstanding the very important goals of this proposal, the PUC has several major concerns about the legislation as written – which we detail in this testimony – and the Commission currently opposes the legislation unless amended to address the two most serious concerns we will highlight today, including the importance of maintaining Pennsylvania’s Confidential Security Information (CSI) Disclosure Protection Act, and, clarification of responsibilities and procedures related to Pennsylvania’s Right-to-Know (RTK) Law.

CSI Act Concerns

As it currently stands, HB1568 repeals Pennsylvania’s CSI Act without identifying a plan to replace it. This repeal enables agencies to provide CSI to the Board, but there is no provision suggesting that the CSI Act will be replaced with a new mechanism to provide some degree of protection for CSI.

CSI is information provided by a public utility that, if disclosed, would compromise security against sabotage or criminal or terrorist acts, and the non-disclosure

of which is necessary for the protection of life, safety, public property or public utility facilities. It is important to note that the CSI Act covers not only public utility pipelines, but also electric utilities, natural gas utilities, telecommunications utilities and water/wastewater utilities. Repeal of the CSI Act means that protections would not be available for:

- Electric distribution/transmission maps and lines, substations, transformers and other critical elements of the electric grid,
- Natural gas distribution maps and lines, compression stations and other facilities,
- Water/wastewater distribution maps and lines, reservoirs and clear wells, pumping stations and other facilities, and,
- Telecommunications distribution lines, network plans and central office facilities.

Repeal of the CSI Act, without some other mechanism to protect CSI, leaves only the RTK Law's exemption at Section 708 (b)(3), to avoid public disclosure of CSI information that could be used for criminal or terroristic purposes.

We encourage the Committee to review the CSI Act in its entirety, both to modernize it to address risks to public utilities which have been identified subsequent to its enactment, such as those involving cybersecurity, and to correct its flaws, such as enabling better and more transparent information sharing amongst state agencies and with county and local governments.

Given the increased risks to utility infrastructure, both physical and cyber, it would not be prudent to lower the protections against public disclosure of CSI.

We believe repeal of the CSI Act will result in less protection against public disclosure of CSI and increased risk to the public from persons or entities seeking to harm the Commonwealth's infrastructure. It is also reasonable to expect that repeal of the CSI Act will result in public utilities being less willing to turn over records containing CSI to Commonwealth agencies.

Additionally, the Commission's regulations at 52 Pa. Code, Chapter 101 (regarding Confidential Security Information) would likely need to be amended if the CSI Act is repealed.

RTK Law Issues

There is a lack of clarity in the Act regarding the responsibilities of the Board and the Commission (or other agencies also subject to the Act) when the Board receives a RTK Law request.

Section 5 of the proposed Act requires the Commission to cooperate in providing information, upon request, to the Board. If the Board requests information from the Commission, there is no provision that allows the Commission to decline to release information nor is there an exemption to refuse dissemination to the Board per RTK Law exemptions. There is no language in Section 5 to explicitly protect the Commission from turning over privileged, confidential, or critical infrastructure information to the Board.

In the event of a RTK Law request to the Board for information provided by the Commission, the Board must forward the request to the Commission “for review and response.” Section 5 does not explain whether the Board or the Commission is responsible for sending a response directly to the requester (or only to the Board) and what happens if the Board disagrees with the Commission’s determination regarding the RTK request or improperly discloses information provided by the Commission.

Similarly, it is unclear whether the Board or the Commission defends a RTK Law response that is appealed to the Office of Open Records (OOR). Under the existing RTK Law, the obligation to respond to a RTK Law request is on the agency that holds the record created, received or retained in connection with the business or activity of the agency which, in this case, would be the Pipeline Safety and Communications Board.

Per the RTK Law, the agency in possession of the record is the agency that must respond to the RTK Law request. To the extent the record was provided by another agency or third-party, that other agency or third-party must be notified and given the opportunity to assert a RTK Law exemption.

Section 5 of the Act also appears to allow agencies to direct the Board to handle RTK Law requests in a manner that does not necessarily require notifying the agency that provided the requested information. This may be inconsistent with the third-party notification procedures set forth in Sections 707(a) and (b) of the RTK Law.

Additional Concerns

Based on the current draft of the Act, it is unclear whether the Board will attempt to exercise some jurisdiction over interstate pipelines, which generally fall under federal jurisdiction – and if so, under what authority. The definition of “pipeline” included in the Act does not differentiate between interstate and intrastate pipelines and is ambiguous about whether interstate pipelines are encompassed in the Act. Additionally, Section 4 of the Act includes information relative to “siting,” though this is a matter under the purview of the Federal Energy Regulatory Commission. Commonwealth agencies do not have siting authority.

Under the Act, the Chairperson of the PUC, as a member of the Board, would need to attend quarterly meetings, review information collected for dissemination to the public relating to pipeline activities, and aid in coordinating communications with public and private entities. But the review and potential discussion of information relating to pipeline activities in these quarterly meetings may present conflicts for the PUC Chair, particularly regarding *ex parte* communications related to cases actively being litigated before the PUC. Given the number of contested pipeline cases that come before the PUC and the involvement of pipeline operators and owners on the Board, procedures would need to be established to address those possible conflicts.

Details regarding how the Board will be funded and staffed are not included in the Act, so the true fiscal impacts are unknown. There is no explicit funding mechanism and

utilizing current PUC staff and assessment designs may result in administrative costs for the Board being borne by non-pipeline-related public utilities and their customers.

The current structure of the proposed Board focuses all six gubernatorial appointees on representing pipeline owners and operators. We would suggest including representation from local government entities along with the general public.

The Act requires logging of information received by the Board, but it is unclear where information is logged, who has access to those logs, who is responsible for maintaining that documentation, and what procedures will be put in place to protect that information.

The Act is unclear regarding coordination of communications during emergencies, and – if the Board is to have a role in this process – how that would interface with the safety-related duties of the PUC, the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), along with local, county and state emergency management agencies and responders.

Finally, there should be greater clarity concerning whether meetings of the Board are public meetings, and how they will be noticed/advertised in order to increase access and transparency.

As I noted at the beginning of my testimony, the stated purpose of this legislation is admirable. As the agency with jurisdiction for enforcement of pipeline safety regulations in Pennsylvania, the PUC is highly focused on matters related to pipeline

infrastructure, and we continue to stand ready to assist this committee and other concerned members of the General Assembly in addressing these matters.

The PUC appreciates the opportunity to testify today and we are happy to address any of your questions.