

Prepared Testimony of

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*before the*

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Good afternoon, Chairman Benninghoff, Representative Quinn and members of the House Republican Policy Committee.

I am Andrew Place, Vice 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 pipeline safety; a matter of significant import to the Commonwealth.

The responsibility to ensure the provision of safe and reliable public utility service to the Commonwealth's citizens and economy is central to the Commission's mission. The Commission's pipeline safety jurisdiction includes both public and non-public utilities. Public utilities include both natural gas distribution companies and common carrier pipelines for the transport of 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 economic regulation, safety, and siting of natural gas and hazardous liquids pipelines involves several regulatory bodies, both State and Federal, as well as several statutory constructs.

The three main factors affecting the jurisdiction and regulation of pipelines are: the commodity being transported, the entity transporting the commodity, and the pipeline's geographic intakes and offtakes (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.<sup>1</sup> 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.

By and large, the distribution of natural gas to end-use customers is primarily regulated by the states. However, some pipelines delivering 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 limited to rate review and approval. Additionally, 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. Conversely, pipelines under the purview of the ICA solely providing interstate service are not PUC jurisdictional public utilities.

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

While pipeline safety under the NGA and ICA are the purview of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), the Commission has a formal agreement with PHMSA to enforce compliance with the pipeline safety provisions of these federal laws. The PHMSA agreement requires that the PUC have a federally-trained workforce of engineers and an active compliance enforcement program. The prescribed federal training is rigorous, consisting of twenty-five classes at PHMSA's sole training facility in Oklahoma City, Oklahoma. These classes are one week in length and require a two-hour test that engineers must pass to become federally certified.

The PUC receives federal reimbursement for enforcement of PHMSA regulations.<sup>2</sup> Funding levels are approved by the U.S. Congress with a maximum reimbursement of eighty percent of direct costs.<sup>3</sup> The PUC's pipeline safety program is audited annually by PHMSA. The audit reviews pipeline inspection performance and compliance enforcement actions taken by the Pipeline Safety Division. 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.

As stipulated in the PHMSA agreement, the PUC enforces compliance to federal pipeline safety laws of 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. Federal pipeline safety regulations define these class locations –Class 4 being pipe situated

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<sup>2</sup> 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.

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

in the most densely populated areas while Class 1 being pipe situated in the most sparsely populated areas.

Specifically, the Commission's Pipeline Safety Division (Pipeline Safety or Division) employs a staff of 18 employees: 1 manager, 4 supervisors and 13 engineer inspectors. One of two additional inspectors has been hired and interviews are being conducted for the other position.<sup>4</sup> The Commission's 2018-2019 fiscal year budget includes two additional inspectors and will continue to review this complement as need requires. It is of particular importance to note that Pipeline Safety's responsibilities encompass a vast breadth of infrastructure, including 48,139 miles of 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.

I would like to note three topics which frequently arise during discussions of pipelines: pipelines as public utilities, the use of eminent domain for new pipeline construction, and pipeline siting determinations.

Pipeline transportation services are defined as public utility services under Section 102 of the Public Utility Code.<sup>5</sup> 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.*

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<sup>4</sup> The Pipeline Safety Division also houses the Commission's newly assigned PA One Call Enforcement responsibilities. Pursuant to Act 50 of 2017, One Call enforcement began at the Commission on April 4, 2018, and initially is composed of a supervisor, a clerk, and four compliance specialists.

<sup>5</sup> 66 Pa.C.S § 102

66 Pa.C.S. § 102.<sup>6</sup>

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.<sup>7</sup>

*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 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.*

While electric and telecommunications utilities seeking to condemn property to construct aerial lines<sup>8</sup> must first obtain Commission approval before proceeding with a condemnation action,<sup>9</sup> neither the Public Utility Code nor Commission regulations require prior Commission approval for a public utility to construct underground lines, regardless of whether for the distribution or transmission of water, wastewater, electric, gas or petroleum products, etc. 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.<sup>10</sup> Challenges to the exercise of eminent domain are adjudicated by the Courts of Common Pleas, not by the Commission.

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<sup>6</sup> 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.”

<sup>7</sup> 15 Pa.C.S. § 1511(a)

<sup>8</sup> 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.

<sup>9</sup> 15 Pa.C.S. § 1511(c).

<sup>10</sup> 66 Pa.C.S § 1104.

The Commission places a central focus on jurisdictional entities through the exercise of its general administrative authority to ensure that public utilities furnish and maintain adequate, efficient, safe, and reasonable service and facilities. In the specific instance of hazardous liquids lines, PHMSA regulations require all pipeline operators to undertake continual integrity assessments as a constituent part of Pipeline Integrity Management. 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.<sup>11</sup>

**Sunoco Mariner Project:**

The Pipeline Safety Division has devoted a significant portion of its resources over the past several years to oversight of this construction, operation and management having spent 76 inspection days during 2017 solely on this entity. Commission inspectors are continuing this rigorous program, 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.

The Commission determined that the development of numerous sinkholes located in the township of West Whiteland, 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 suspended the operation of Mariner East 1, investigated any and all risks to the integrity of the pipeline from these circumstances, and placed the burden on Sunoco to prove that re-authorizing the operation of the pipeline is safe, reasonable, and in the public interest.<sup>12</sup> The fully ratified Emergency Order remained in place until May 3, 2018 when the Commission approved Sunoco's request and the Commission's Bureau of Investigation and Enforcement concurrence to reinstate transportation on Mariner

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<sup>11</sup> 49 CFR § 195.452(e).

<sup>12</sup> Emergency Order entered March 7, 2018 at Docket No. P-2018-3000281 and ratified on March 15, 2018 by the Commission.

East 1. In doing so, the Commission directed additional reporting requirements on Sunoco. On May 24, 2018, an Interim Emergency Order to again shut down the operation of Mariner East 1 and the construction of Mariner East 2 and 2X in West Whiteland Township was imposed by a PUC Administrative Law Judge after two days of hearings. The full Commission reviewed the Interim Emergency Order, briefs and the record and determined that Mariner East 1 could be restarted but continued the Interim Emergency Order regarding the construction of Mariner East 2 and 2X in West Whiteland Township until certain information is submitted to the Commission as directed by its June 15, 2018 Order. In addition, there remains a complaint proceeding before the Commission regarding the continued construction of Sunoco's Mariner East 2 and 2X pipelines in West Whiteland Township. The complaint proceeding is pending and cannot be discussed here.

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 entity.

In closing, I hope my testimony today has detailed the PUC's role in addressing pipeline safety. The Commission is dedicated to its mission of ensuring safe and reliable energy infrastructure. Integral to that commitment we will continue to work with regulated entities, 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.