

Prepared Testimony of
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Good morning Chairman Browne, Chairman Hughes, and members of the Senate Appropriations Committee. Thank you for the opportunity to testify about the Pennsylvania Public Utility Commission's (PUC or Commission) budget request for fiscal year (FY) 2015-16. I am Robert Powelson, Chairman of the PUC. Joining me today are my fellow commissioners: Vice Chairman John Coleman, Commissioner James Cawley, Commissioner Pamela Witmer, and Commissioner Gladys Brown.

The Commission is requesting **\$72.191 million** for FY 2015-16, which includes **\$69.130 million** in state funds and **\$3.061 million** in potential federal funds. As discussed in more detail later in my testimony, the state share will be obtained from assessments and fees paid by jurisdictional public utilities, electric and natural gas suppliers, as well as assessments received for administration of Act 127 of 2011 and Act 13 of 2012. However, the PUC never loses sight of the fact that the assessments that fund our agency ultimately come from tax-paying utility customers.

This budget request for \$69.130 million in state funding in FY 2015-16 represents a \$4.559 million, or 6.07 percent, increase in state funding over the current fiscal year. This increase is driven by the following factors: instructions from the Governor's Office of the Budget to include prescribed salary increases for all employees, a large increase in employee benefit costs, and increases in the cost of non-discretionary vendor goods and services. The budget increase also funds all current programs, including the recent additions of Act 127 pipeline safety oversight, Act 13 Unconventional Gas Well Impact fee oversight, and the creation of an Electric Safety Division.

Despite these increases, the PUC remains committed to continuing its ongoing efforts to reduce costs and address ways to increase individual productivity and operational efficiency within existing programs. For example, the PUC's existing complement of 503 employees includes staff reductions in some bureaus and shifts in vacant positions in others to accommodate the additional duties of Act 155 of 2014, the natural gas retail

markets investigation, the emergence of transportation network companies, and the creation of the Electric Safety Division. Additionally, upgrades to the PUC docketing and document management system, InfoMAP, will result in the realization of additional economies as utilities, practitioners, and consumers more fully avail themselves of the ability to electronically file and access information.

In short, I am confident that the PUC's budget request for this year fully and accurately reflects the resources the agency needs to carry out its statutory responsibilities. The PUC strives to do its part by minimizing assessments on utilities and, by extension, customers. In the upcoming fiscal year, the PUC will continue to reduce spending wherever possible.

To give you an idea of how the PUC allocates its budget, the next part of my testimony will provide an overview the primary issues facing the PUC. These include: (1) continued pipeline safety oversight pursuant to Act 127 of 2011; (2) proper implementation of the assessment provisions of Act 155 of 2014; (3) monitoring the status of various federal proceedings that could impact the Commonwealth's utilities and utility customers; (4) partnering with the federal government to ensure the ongoing safety of crude oil rail shipments through the Commonwealth; (5) the introduction of new customer protection enhancements in the retail electric market; and (6) continuing efforts to improve cybersecurity efforts within our regulated environment.

There are also several legislative items that are garnering the PUC's attention, which include: (1) updating the Commission's budget cap; (2) the need for a legislative solution that streamlines the application process for transportation network companies such as Uber and Lyft; (3) transferring PA One Call authority to the PUC; and (4) expanding the PUC's authority to order the takeover of troubled utilities under Section 529 of the Public Utility Code (the Code).

Primary Issues Facing the PUC

Act 127 of 2011 and the PUC's Pipeline Safety Oversight

The Gas and Hazardous Liquids Pipelines Act (Act 127 of 2011) expanded the Commission's authority to enforce the federal pipeline safety laws as they relate to gas pipeline operators and hazardous liquids pipeline equipment and facilities within the Commonwealth. These non-public utility gas and hazardous liquids pipeline operators include several different categories of pipelines, such as cooperatively owned natural gas distribution systems, non-utility natural gas transportation and gathering lines, and propane distribution pipeline systems. Acting as an agent for the federal Department of Transportation's Office of Pipeline and Hazardous Materials Safety Administration (PHMSA), the PUC now enforces the federal pipeline safety regulations.

Fulfilling the requirements of Act 127 will continue to require significant staff time and resources this fiscal year. The additional jurisdiction provided by the law required hiring additional gas safety inspectors and supervisors, whose training is ongoing. The Commission has established and maintains a registry of all gas and hazardous liquids pipeline operators within the state. The Commission assesses pipeline operators for their share of the Commission's costs based on the miles of impacted pipeline operated within the Commonwealth. More than 100 companies registered more than 9,700 miles with the PUC as required under the law. Of those 100 companies, 62 are jurisdictional with a total of about 1,260 miles eligible for safety inspections.

The Commission is also tracking the development of pipelines in less populated areas as required under the law. On a going forward basis, the Commission believes that the continued development in the Marcellus Shale region will require additional safety inspectors based on an increased number of gas pipelines now under the Commission's expanded jurisdiction under Act 127.

Act 155 of 2014 and the Assessment of Licensed Entities

The Commission is currently in the process of implementing Act 155 of 2014, which gave the Commission the authority to charge fees to electric generation suppliers (EGSs) and natural gas suppliers (NGSs) for the cost of regulatory oversight of these entities. The Commission is carefully working to ensure that any fees and assessments on EGSs and NGSs are not discriminatory and do not skew competitive pricing, because while utilities may recover assessments through base rates – not the price-to-compare – competitive suppliers can only recover any fees and assessments through the prices they offer consumers. The Commission is working to guard the competitive market while implementing the law. To be clear, however, while the ability to assess these licensed entities will lower the assessments to other regulated entities, it does not give the Commission additional funding.

Act 155 also allows the Commission to include the intrastate operating revenues of licensed entities in determining its budget cap, and to exclude from the budget cap funds received from the federal government and funds from other sources to perform functions unrelated to the Commission's jurisdictional regulation. So while the use of EGS and NGS intrastate revenues will assist the Commission with its budget cap issues in the short term, a long-term legislative solution is necessary to ensure funding levels that will allow the PUC to continue to perform its mission. Legislative revision of the Commission's budget cap remains a priority, which I will discuss in the legislative priorities section below.

Federal Proceedings

The Commission is also monitoring the status of various federal proceedings. To the extent that these proceedings will impact the Commonwealth, the Commission files

comments and participates in these proceedings. Examples include proposals to conduct a new electric congestion transmission study; plans to enhance electric market surveillance and analysis; actions on transmission planning and cost allocation; issues with cybersecurity; and proposals on frequency regulation compensation in organized wholesale markets.

One federal proceeding that will require significant Commission resources in FY 2015-16 is the federal Environmental Protection Agency's (EPA) proposed Clean Air Act § 111(d) Clean Power Plan. The Commission believes that, if adopted, these rules could heavily impact and change the composition of electric generation into the future, which may both reduce the supply of and increase the price of electricity while threatening the reliability of electricity service to the state and the region. On this basis, the PUC filed comments with EPA as part of its obligation to ensure that electric distribution companies (EDCs) subject to its jurisdiction have procured or otherwise possess sufficient generation supply to meet their service obligations to the Commonwealth's 12.7 million residents. The Commission expects that the EPA will implement a final rule in the summer of 2015.

PUC Rail Safety Inspections of Crude Oil Shipments

Rail shipments of crude oil have been on the rise throughout Pennsylvania as the refining industry takes advantage of a surge in domestic production. Because of the high volatility of the crude oil from the Bakken region of North and South Dakota, the safety of trains carrying this commodity has drawn significant attention from the government and the media. While the Federal Railroad Safety Act of 1970 (FRSA) preempts the Commission from generally regulating railroad safety and security, the PUC, through its Rail Safety Section, inspects and monitors railroad company compliance with regulations promulgated by the Federal Railroad Administration (FRA).

Currently, the PUC has six (6) railroad inspectors throughout the Commonwealth. Each inspector focuses on a specific discipline (track, operating practices, hazardous materials, motive power and equipment, and grade crossing). PUC inspectors work hand-in-hand with FRA inspectors to ensure safe train movements throughout the state. Due to recent events, a higher level of attention has been given to the crude oil train routes. Track inspectors are very experienced and are aware of the rail safety concerns associated with the shipment of crude oil. Thus, they are able to focus on areas where these shipments are being made.

In partnership with the FRA, the PUC's rail safety inspectors take a multi-faceted approach to safety inspections. Motive power and equipment inspectors inspect locomotive and car braking systems, wheels, couplers, and other mechanical parts to verify equipment is in top working order. Operating practices inspectors oversee safe operations of the train, another critical part of ensuring safety. In addition, rail tanker cars are inspected by the hazardous materials inspector who makes sure the tankers are mechanically sound, properly placarded, and not leaking.

The goal of the PUC Rail Safety division is to ensure that equipment and facilities are safe for transporting oil and other commodities, while not unreasonably delaying the trains. The potential risk related to an incident involving this traffic can certainly be catastrophic, yet the positive economic impact this business provides to the Commonwealth's economy is enormous. With two vacancies in the rail safety inspections unit, the Commission would like to fill our complement with an additional track inspector to cover the eastern part of the state and another operating practices inspector in the west.

Nearly a dozen, mile-long unit trains carrying 70,000 barrels of crude oil are traveling from the Dakotas east on rail lines to refineries in Delaware County and South

Philadelphia every day. Diligent inspections by the PUC, the FRA, and railroad inspectors will greatly reduce the risk of any catastrophic accident.

New Customer Protections in the Retail Electricity Market

Since 1996, with passage of the Electricity Generation Customer Choice and Competition Act, the competitive electric generation market replaced the regulated electric generation market. Today, electric competition is thriving in Pennsylvania. Customers have the option to choose their electric supplier, a choice that has the potential to save them money and provide them with a wide array of options. As of February 2015, 2.1 million Pennsylvania residential and business customers have switched to an EGS. This represents 71 percent of the Commonwealth's total customer load. The Duquesne and PPL Electric Utilities territories are leading the way, with over 40 percent of their customers shopping, representing approximately 70 percent of load.

Despite the progress the market has made, the PUC continues to strive for more robust competition. As many of you know, in early 2014, due to the culmination of a unique set of unprecedented conditions, a number of Pennsylvania electric customers enrolled in variable rate contracts received electricity bills in amounts much higher than what would typically be billed during the winter months. The majority of affected customers were receiving a variable rate product from an EGS.

These high bills reflected wholesale energy market volatility resulting from the historic cold weather that much of the country experienced in the beginning of 2014. The cold weather contributed to increased and, on some days, record-breaking use of natural gas and electricity within the region. As consumer usage spiked on these days, so did wholesale market prices for gas and electricity. In some cases, these wholesale price increases, in whole or in part, were passed on by EGSs to retail electric customers

receiving service at a variable rate. This resulted in a doubling, tripling, or even larger increase of the per-kilowatt hour rate that these customers were charged.

When the Commission became aware that certain variable rate customers were receiving extraordinarily high bills, we immediately took action. In addition to increased consumer education initiatives and consumer-friendly enhancements to the PAPowerSwitch.com website, the PUC initiated two accelerated rulemakings in response to this issue, which have already vastly improved the customer experience in the retail electricity market.

The first rulemaking dramatically reduced the time it takes for customers to switch their supplier. During and prior to the winter of 2014, it took anywhere between sixteen (16) to up to forty (40) days for customers to switch suppliers, which left some individuals stuck on undesired variable rate contracts long after the customer had selected a new supplier. Pursuant to the PUC's accelerated switching rulemaking, however, electric distribution companies (EDCs) are required to switch a customer's supplier in only three (3) business days, a drastic reduction in the amount of time that a customer must wait.

The accelerated switching rule required EDCs to facilitate new three-business-day switching procedures by December 15, 2014. Most Pennsylvania EDCs either met the deadline for implementation or received a partial waiver based on a clearly articulated and supported demonstration of the ability to provide at least one off-cycle switch within three business days.

The second PUC rulemaking required EGS disclosure statements to be more transparent and understandable for customers. These user-friendly changes ensure that consumers receive more detailed, adequate, and accurate information, empowering them to make informed decisions when purchasing electric supply. Uniform and consistent

summaries of key contractual terms, and requirements that are designed to make contracts easier to read and understand means consumers will no longer have to wade through long and complicated contractual language to understand the key terms of their agreement.

The disclosure rulemaking also requires that customers who have rolled off of fixed-rate contracts on to a variable rate product receive at least thirty (30) days advance notice of any change in their rate, thereby eliminating the scenario where those customers do not know the rate they will be charged until receipt of their electric bill. The disclosure rule, which has been in effect since July 14, 2014, coupled with the accelerated switching regulation, should effectively prevent these customers from unknowingly experiencing electricity price spikes like they did in the winter of 2014.

Cybersecurity

Cybersecurity represents a serious and ongoing threat to the utility industry. The impact of a cyber-attack on a utility can range from the loss of customers' personal information, to the interruption of the delivery of utility services across a wide area, to large-scale human health and environmental impacts. The Commission has security regulations at 52 Pa. Code § 101 that require utilities to have cybersecurity plans that are tested and updated annually.

The Commission is currently engaged with various parties to continue to improve cybersecurity efforts within our regulated environment. In particular, the PUC is working with representatives from utilities, the Governor's Office of Homeland Security, utility industry trade groups, and federal agencies to develop a tabletop exercise that will test communications across multiple utility sectors during a simulated cyber incident. In addition, the Commission is exploring additional training opportunities to better educate ourselves and the utilities we regulate in the event of a major cyber incident in the

Pennsylvania utility sector. We also continue to monitor cybersecurity efforts at the federal level and consider policy needs from a cybersecurity perspective.

In the coming months, the Commission will also seek to execute a Memorandum of Understanding (MOU) with the Pennsylvania State Police (PSP) to enable two-way data sharing and coordination between the Commission and PSP's Fusion Center. The Fusion Center is broadly charged with evaluating threat intelligence statewide. The MOU will allow the Commission to provide the Fusion Center with data that may be helpful in preemptively identifying threats. It will also allow the Commission greater access to threat information and facilitate the direct participation of Commission staff in Fusion Center programs.

Legislative Priorities

Updating the Commission's Budget Cap

As I briefly discussed in my introduction, with respect to the state portion of the budget, the PUC is unique in the way it funds the day-to-day operations of the Commission. Unlike most other agencies, the PUC's state funding does not come from the General Fund. Rather, it comes from assessments on the utilities the PUC regulates, which they in turn collect from customers through rates.

Currently, Section 510(a) of the Public Utility Code caps the PUC's budget at $\frac{3}{10}$ of 1 percent of public utilities' and PUC-licensed entities' total gross intrastate operating revenues. This cap represents the maximum amount the PUC can assess to utilities and licensed entities for expenses incurred in enforcing the provisions of the Code. Historically this cap has been sufficient to fund the PUC. However, in recent years, total gross operating revenues of public utilities have declined, from \$20.3 billion in 2011, to \$18.4 billion in 2013. In turn, the trend of declining intrastate operating revenues has

resulted in a decrease of the PUC's budget cap from \$61 million for FY 2013-14 to \$55 million for FY 2015-16.

Simultaneously, however, independent PUC operating expenses are increasing, due to contractual salary increases, the rising cost of healthcare benefits and pension costs, and the Commission's taking on of additional duties not related to the regulation of traditional utilities. The combined result of these forces is a squeeze on the Commission's budget that requires legislative amendment and modernization of the budget cap to accommodate our \$70.562 million budget request for this fiscal year and in future years.

Legislative Solution for Transportation Network Companies

Both across the United States and internationally, transportation network companies (TNCs) such as Uber, Lyft and numerous others are challenging the traditional way that customers, regulators, and other transportation service providers think about transportation service. Pennsylvania is no exception. Since early 2014, when Uber and Lyft entered the Pittsburgh market, TNCs have enjoyed widespread public support and have challenged the PUC, as well as the General Assembly, to review the applicability of existing laws that govern transportation service providers.

Consistent with the PUC's mission to both protect the public interest and foster new technologies, and upon demonstrating compliance with conditions that evidence satisfactory levels of driver integrity, vehicle safety, and insurance requirements, the Commission has granted Uber and Lyft experimental authority to operate within Pennsylvania for a period of two years. The Commission has reviewed and approved both companies' plans, allowing Uber and Lyft to operate in most parts of the Commonwealth.

The PUC recognizes that TNC service presents numerous benefits for the traveling public, and has encouraged this innovative use of the public space. The benefits of these services include increased market competition, additional jobs, and new transportation options for consumers. However, my colleagues and I reiterate the need for a legislative solution that would accommodate the current state of the transportation industry, which includes TNCs, in order to streamline the application process moving forward. Legislation that provides a permanent set of rules for TNCs, ensures safe and reliable service for consumers, and maintains a level playing field for existing taxi companies is necessary to refine the PUC's temporary regulatory solution.

Additionally, as part of a more comprehensive inquiry into the state of the transportation industry in the Commonwealth, the Commission is presently reviewing the laws, regulations, and policies with regard to transportation matters, which may eventually result in a request for other legislative changes as necessary.

Transfer of PA One Call Authority to the PUC

Another ongoing legislative priority is to transfer PA One Call enforcement authority from the Department of Labor & Industry (L&I) to the PUC. PA One Call requires people to call 8-1-1 before they dig as a safety precaution and to prevent damage to underground infrastructure.

Utilities with underground lines are already regulated by the PUC. The transfer of One Call enforcement authority to the Commission is a logical extension of those responsibilities. The transfer of this function is also consistent with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) recommendation encouraging state utility commissions to enforce One Call laws. In other states where a regulatory agency provides this enforcement, both the number of reportable incidents and damage to underground facilities is lower. Based on the

experience in other states, the Commission confidently believes increased enforcement of PA One Call will reduce underground line hits, increase public safety, and reduce costs associated with line hits for utilities, excavators and ultimately utility customers.

The Commission fully supports the transfer of the enforcement authority for the PA One Call Law from L&I to the PUC as it is consistent with our current regulatory functions; however, the Commission has concerns regarding the exemption for lines owned by Pennsylvania Independent Oil & Gas Association (PIOGA) members. In short, the Commission, consistent with PHMSA's recommendation, believes all exemptions should be eliminated.

In the 2013-2014 legislative session, the House of Representatives passed HB 1607, by a vote of 202-0. However, the Senate did not act on this bill. The bill has been reintroduced as HB 445 in this session, but it maintains the PIOGA exemption. The Commission stands ready to assist you in any way on this issue in order to make the transition of enforcement authority to the PUC a reality.

Expansion of PUC Authority to Order the Takeover of Troubled Utilities

The Commission's final legislative priority is to expand our existing authority regarding the takeover of small troubled water and sewer utilities to include other fixed utilities, particularly troubled natural gas distribution companies (NGDCs).

During the past year, specifically during the colder winter months, the Commission has had to act in emergency fashion to address several significant operational issues with small NGDCs that have experienced low pressure and customer outages during cold weather events. In one circumstance, the PUC discovered that customers of a small NGDC were without gas service. The Commission repeatedly attempted to contact the company, but no representative from the company could be reached. Due to the extreme

cold, the Commission was compelled to act promptly to ensure that customers would have adequate service. The Commission issued an emergency order requiring a nearby large NGDC to take over operational control of the smaller company to avoid the potential loss of heating service for customers.

In an effort to avoid future scenarios where customers are potentially without service during extreme weather events, the Commission proposes revision of Section 529 of the Code, which currently only permits the Commission to order the takeover of water and sewer utilities. Expanding this section to encompass fixed utilities other than water and sewer would allow the Commission to be more proactive in addressing issues with problem companies, rather than requiring the PUC to wait until a dangerous scenario arises. Such a legislative solution would allow the Commission to continue to fulfill its mission.

Conclusion

In each of the five industries we regulate, the PUC has a wide variety of responsibilities to carry out during the next fiscal year. While the issues we face are significant, I am confident that the PUC is well-positioned to take on these challenges. Thank you for your consideration of our budget request. My colleagues and I are happy to answer any questions you have.