

August 24, 2019
Via the PUC e-File System

Pennsylvania Public Utility Commission
Attn: Secretary Rosemary Chiavetta
400 North Street Harrisburg, PA 17120

Re: Comments on Docket No. L-2019-3010267

Dear Ms. Chiavetta:

I would like to echo the comments submitted by the group Del-Chesco United for Pipeline Safety on the Pennsylvania Public Utility Commission's Advance Notice of Proposed Rulemaking Order (ANOPR) docket no. L-2019-3010267, concerning hazardous liquids public utility safety standards. Portions of these comments are reproduced below.

I am a longtime resident of Westtown Township in Chester County. It is beyond belief that this pipeline was granted public utility status when it offers absolutely zero public service or benefit. I am very dismayed that the PUC has allowed the environment to be damaged by this pipeline, and for healthy and safety to be put into jeopardy.

To be clear, **I prefer that no additional pipelines be constructed, period.** The fossil fuels they are built to transport are severely damaging our climate, leading to death and disease for many now and in the future. We can meet our energy needs with renewables today. That being said, the comments below provide specific recommendations that may be more in scope with the proposed rulemaking.

Primary concerns are:

- The Commission's ability or willingness, or both, to enforce existing rules, including Title 49 of the Code of Federal Regulations (49 CFR) section 195.440, specifically assessing the plausibility and credibility of operator-provided "public awareness programs."
- The abuse of public utility status by private companies to obtain the awesome sovereign power of eminent domain.
- The fact that no agency within the Commonwealth has exercised siting authority.
- Absence of a construction permitting process through the PUC that would adequately govern pipeline siting, spacing, and evaluation and mitigation of risks to public safety.
- Transparency in all PUC processes and procedures, including the timely release of records in response to requests made under Pennsylvania's Right-to-Know statute.

The Commission explains in its ANOPR that “By describing certain subject areas for potential regulations later in this Order, the Commission does not intend to limit the scope of comments to these subject areas. We intend that the identified subject areas be used as starting points for detailed comments.” These subject areas are “areas where [the Commission] believe[s] additional regulations would be in the public interest.”

Del-Chesco United for Pipeline Safety therefore takes up the PUC’s invitation and hereby comments on the identified subject areas, as well as additional important areas. We will comment under four main categories: “Pipeline Construction”, “Pipeline Operations and Maintenance”, “Informing the Public” and “Other Topics.” These topic headings collectively represent the 21 specific topics listed in the ANOPR, but we have changed the sequence of the topics slightly from that of the ANOPR in order to fit the topics into these four main categories. The final category (“Other Topics”) consists of items not covered in the ANOPR but which, in our opinion, deserve careful consideration.

Topic 1: Pipeline Construction

DCU acknowledges that while pipeline operators are required to complete a permitting process through the DEP for such things as water crossings and erosion and sedimentation control, there is no corresponding process to ensure that pipelines adhere to proper and safe construction procedures. For non-FERC regulated pipelines, such as Mariner East, no state agency has assumed responsibility for approving a pipeline route, including setbacks from homes, schools, hospitals and senior living facilities, or permitting specific proposed pipeline construction methods. DCU strongly recommends a Pipeline Construction Permitting Process through PUC for all nonFERC jurisdictional transmission and gathering lines. Such a permitting process would, in advance:

- Refine the process by which operators seek public utility status and the power of eminent domain;
- Explicitly empower the PUC to exercise risk-based siting authority;
- Publicly identify all high consequence areas (HCA) through which an operator proposes a new pipeline to pass;
- Provide oversight of construction methods including, but not limited to, depth of cover, pipeline spacing, cathodic protection and corrosion mitigation techniques, and special considerations for mitigating risk in HCAs;
- Require proposed HVL pipelines to fully comply with both 49 CFR part 192 as well as part 195;
- Require a risk assessment to identify the Immediate and Delayed Ignition Impact Zones, in both cold and warm weather, with all parameters of the risk assessment publicly disclosed; and
- Require an economic assessment of the negative impacts to local economies, including such things as losses to home values, tourism, and agriculture, and impaired municipal, school district, and county tax bases.

Additional recommendations include:

1) Public Utility Status and Eminent Domain: The process by which Sunoco gained the ability to seize (“condemn”) private property must be completely overhauled. Currently, as it has done for many decades, the PUC grants so-called “Certificates of Public Convenience and Necessity” on a countywide basis without specifying a particular project, and that never expire. Sometimes, as in Sunoco’s case, these certificates are obtained by a company simply acquiring another company that happens to hold a certificate desired by the acquirer. While the PUC has disclaimed responsibility for what a company does once it obtains such a certificate, stating that that is a matter for the Courts, the fact is that Sunoco has used these PUC-issued certificates to condemn property across Pennsylvania. The Courts, for their part, have concluded that it’s not for them to question the PUC’s issuance or approval of the transfer of such certificates, and have allowed Sunoco’s condemnations to stand. In some cases, these condemnations have occurred without Sunoco even being required to pay just compensation until years later and extensive litigation. The one restriction on such taking--15 Pa.C.S. section 1511(b), which would prevent a company from condemning private property within 100 meters of a dwelling--has been ignored by both Sunoco and the Courts. (With one exception: in Sunoco v. Katz, Judge Pellegrini wrote that section 1511(b) prohibited such a taking. Inexplicably, he then allowed the taking to stand).

Sunoco has explicitly argued that this arrangement provides it the authority to seize any or all property, any time it wishes, in each of the seventeen counties in which it has obtained a certificate of public convenience. Thus, Sunoco has laid claim to something like 40% of Pennsylvania. Further, it has argued that, to the extent landowners wish to contest the issuance of these certificates, some of which were originally issued in the 1930s, they are out of time, and they should have raised any concerns decades ago. PUC simply cannot continue to disclaim responsibility for the abysmal results of its actions with respect to these certificates of public convenience. These actions have directly caused a frightening abuse of the awesome power of eminent domain that has allowed a private, for-profit foreign corporate entity to declare itself possessed with the apparent authority to take any or all property throughout any of the seventeen counties that the ancient “Mariner East 1” traverses.

Landowners across the Commonwealth have been bullied and harassed by unregulated “land agents.” Many of these residents subsequently signed easements under the threat of eminent domain, without being informed of the full scope of the project, materials being transported, or risks imposed on their families. In Delaware and Chester Counties alone, this failed process has put tens of thousands of residents at involuntary risk.

The PUC must not, in the future, issue non-expiring certificates of public convenience on a county-by-county basis. Instead, each company should be required to apply for public utility status on a project-by-project basis, and must demonstrate that there is a public need within the state for each particular project. In the case of Mariner East, there is no public need within the Commonwealth for an HVL pipeline whose primary purpose is to transport the raw feedstocks

for plastics manufacturing overseas--as demonstrated by the very fact that the materials are being exported. A private, for-profit export pipeline is simply not a public utility. Hardworking Pennsylvanians across the Commonwealth have had their land taken from them, their property values diminished, their safety put at risk, and in some cases their water destroyed, for a pipeline project that is not a public utility. Through new rulemaking, the PUC must fix this process. A new certificate of public convenience should be required for every new pipeline and every new use. For example, a pipeline that at one time is used for home heating fuel such as oil may qualify for public utility status. That same pipeline may not qualify for public utility status should the company propose a change of materials, direction of flow, pressure, or added new pipelines. To date, PUC has allowed projects which are not for public use, but rather for export and private profit to fall under the public utility code based on antiquated certificates of convenience. This failed policy must end.

2) Pipeline Siting: Our Commonwealth Court has held that the PUC has the authority under existing statutes to regulate pipeline siting, but PUC has failed to do so. PUC should exercise this existing authority to approve, require modifications to, or deny altogether the proposed siting for every new transmission and gathering pipeline in our Commonwealth. Currently, no Commonwealth agency is acting to regulate the placement of high pressure, large diameter transmission and gathering lines, which operators may propose to site in unsafe proximity to homes, schools, senior living facilities, and other dense, vulnerable, immobile populations. Currently, no agency is working to assess and mitigate the potential risk to public safety from the improper siting of HVL pipelines. The PUC should implement a pipeline siting process that requires operators to demonstrate that they have chosen a route that minimizes the risks to public safety in the event of pipeline failure. The PUC must require specific minimum setbacks from facilities such as schools, hospitals, and residential subdivisions based on a publicly available independent analysis of the Immediate and Delayed Ignition Impact Zones. If PUC fails or finds itself unable to rapidly institute rules requiring appropriate setbacks, it should immediately recognize the authority of municipalities to do so.

3) Permitting and Oversight of Construction Methods: The PUC should be responsible for approving or denying the construction plans of pipeline projects with respect to public safety and quality control. DEP has repeatedly claimed that its authority is limited in scope to permitting related to water resources, and that it does not have jurisdiction over public safety. There is a loophole here: the DEP's failure to properly permit and manage erosion and earth movement can jeopardize pipeline integrity. The PUC should exercise its authority to close this loophole and ensure adequate safety protocols are planned as a condition of construction permitting. As part of the construction permitting process, an assessment of risk to public safety should be calculated in advance on every proposed new pipeline. The blast zone of every pipeline should be calculated using its proposed maximum operating pressure. The PUC should establish societal risk criteria for determining what degree of risk is "acceptable" or "tolerable," and the results of the assessment should be measured against those standards. The process should be fully transparent so that the public has a clear understanding of: a) who is in a probable fatality zone; and b) the exact number of fatalities that the Commonwealth is willing to tolerate for each

proposed new pipeline. The PUC should also require an unbiased economic and environmental assessment of any new proposed pipeline project. The supposed economic benefits of any project must be weighed against the threat to property values (including the impairment of municipal, county, and school district property tax bases), the threat to local economies such as tourism and agriculture, and the economic cost of environmental damage. Such an assessment should also take into account whether there is any actual public need for a project. The subsequent draft public safety and economic risk assessments should then be subject to a public review and commenting process before being finalized. Before any municipal or county approvals are issued, these political subdivisions must have full access to all such risk and economic assessments, in order that they are able to make informed decisions for the well-being of their constituents.

4) Regulation of construction techniques such as horizontal directional drilling: Horizontal directional drilling (HDD) is typically reserved for pipeline installation under waterways. PHMSA's guidelines recognize HDD as a non-standard method of installation; 49 CFR Appendix C to Part 195 qualifies it as "18) Non-standard or other than recognized industry practice on pipeline installation (e.g., horizontal directional drilling)." Yet the Mariner East project has utilized this unconventional installation method extensively, more so than any pipeline project in the US. This unprecedented overutilization and non-traditional usage of HDD method has resulted in loss of wells, property damage, sinkholes, contamination of public and private water supplies, and damage to other pipelines. Sunoco has experimented with this technique in high consequence areas, and failed, leading to the reckless aftermath we see in southeast Pennsylvania and across the state. HDD should be utilized only when absolutely necessary, with the proper geologic studies mandated and approved by PUC and DEP officials. Additionally, inspection and enforcement of noise and dust abatement should be required. In areas of residential proximity, preconstruction structural assessments should be paid for by the operator, with a list of approved structural engineers by the state, not the operator. Operators must be required to comply with all municipal ordinances related to noise, vibration, and other nuisances. Disclosure of all chemicals used by during the HDD process must be required, so that area residents may test for contamination in their public or private water supply.

5) Depth of Cover: All new and repurposed pipelines should be buried at a minimum depth of four feet, and deeper in high consequence areas. In multiple locations across the Commonwealth, Sunoco's Mariner East 1 and its 12-inch workaround pipeline are exposed, or buried less than two feet below the surface in close proximity (less than 50 feet) to residential homes. Highly volatile liquids (HVL) pipelines warrant a greater depth of cover than other hazardous liquids pipeline due to their uniquely dangerous physical properties. DCU recommends a rule requiring continual monitoring and testing of depth of cover throughout the length of the pipeline route, and a requirement to maintain a minimum depth of cover, including, but not limited to, adding additional depth of cover to mitigate erosion over time. PUC should be further empowered to inspect every site where depth of cover has not been maintained, and to order an immediate halt to operations for any pipeline over which required cover does not exist.

5) Underground clearances: Due to the potential risk of an accident on one highly volatile liquids

pipeline causing a cascading failure of an adjacent pipeline (see August 2019 explosion on Texas Eastern pipeline in Kentucky), the spacing of HVL pipelines is critical. In recent PUC hearings, two Sunoco experts testified that the desired spacing between HVL pipelines is ten feet or more. Yet in Chester and Delaware counties, there are multiple locations where Sunoco is installing two high pressure, large diameter hazardous, highly volatile liquids pipelines mere inches apart. Not only does such minimal pipeline spacing impair cathodic protection and increase the risk of corrosion, it further increases the risk to the public should one pipeline fail.

6) Valve Stations and Pumping Stations: The Citizens Risk Assessment identifies aboveground valve stations as particularly high risk areas along the pipeline route. Valve stations, where pipes are exposed above ground, are at greater risk of accidental release or sabotage. Furthermore, in the case of HDD pipe installation, any leak along a deeply buried pipeline will take the path of least resistance to the surface, likely along the pipeline path and emerging at the nearest valve site, pump station, or HDD entry/exit point. It is therefore imperative that the PUC develop regulations on the location of these sites, due to their increased risk of leaks. Sunoco has chosen to place valve sites near schools, businesses, residential subdivisions, and heavily trafficked roads. While these valves are intended as safety features, they also carry their own set of risks, and such locations in the center of dense, vulnerable populations must be carefully assessed before being approved. The siting of these facilities simply cannot be left up to the operator to determine. Additionally, vehicle-proof barriers should be required in these locations to prevent damage from vehicles in the event of an accident or act of terrorism. Enforcement actions for operator negligence should be consequential to the company that fails to protect the public, up to and including that the pipeline operation be shut down until risk is properly mitigated. Further study is warranted to minimize risk; the necessity of minimizing the amount of material in the pipeline between valves that will escape in the event of a worst case leak or rupture along the line must be assessed along with the fact that valve sites themselves increase the probability of a release. Air pollutant emissions from valve and pumping stations should be investigated, monitored and policed for community protection. Finally, risk assessment of HVL pipelines must specifically take into account the fact that closing block valves to isolate a failed HVL pipeline segment is a lengthy process that will not stop the release of material from that segment.

7) Pipeline Conversion: Proposals to “repurpose” pipelines are becoming more prevalent throughout the Commonwealth as operators seek to convert older hazardous liquids pipelines to methane gas and/or HVL. Under the current regulatory scheme, older pipelines are “grandfathered” in as they are, circumventing current regulations such as: depth of cover, steel type and thickness, setbacks, etc. This practice introduces a unique set of concerns whereby natural gas and HVL pipelines are currently planned, under construction, or even operating in Pennsylvania communities, without having had to meet current safety standards. We believe this practice places communities at unacceptable risk of harm. All existing regulations for new construction should also be adhered to for lines already in the ground, without exception. This would require operators to make considerable adjustments to come into compliance. However, public safety should always be placed above the convenience of the operator. Particularly in the

case of hazardous, highly volatile liquids, all repurposed pipelines proposed to transport these materials must fully comply with the most recent standards and permitting processes for new pipelines, including pipeline depth of cover, steel type, and thickness. This is of particular importance in high consequence areas, where repurposed pipelines do NOT currently meet the federal standards put in place to mitigate risks to public safety.

8) Maximum Operating Pressure and Hydrostatic Pressure Testing: Maximum operating pressure (MOP) should always be limited to the least capable piece of infrastructure along the pipeline route. For example, if MOP on valve seals is 1,480 pounds per square inch gauge (psig), a pipeline should not be permitted to operate at 2,100 psig, even if the pipeline itself has been hydrostatically tested at a pressure greater than 2,100 psig. Furthermore, MOP should be congruent with the type and age of steel used in any particular pipeline. Older pipelines built in the 1930s should maintain a lower MOP to minimize risk, as should pipelines segmented together with pipes of varying sizes. A risk assessment should also be an integral tool in determining MOP. A risk assessment taking into account materials, diameter, and MOP should be submitted to and reviewed by the PUC to determine how the pressure of the proposed project would impact the safety of the surrounding public. Higher pressure lines should require increased regulation of pipeline integrity and corrosion protection/coating, particularly in high consequence areas. Residents should be informed in advance of pressure testing in their area, and should be informed how to identify the dyes being used. If a resident identifies and collects a sample of liquid that apparently contains dye, PUC should require the operator to investigate and test for the presence of dye by an independent third-party lab.

9) Emergency flow restricting devices: If such a device would limit the amount of material released in a pipeline accident, this should be a requirement for all highly volatile liquids pipelines.

10) Pipeline materials and specifications: Under the current federal regulatory scheme, hazardous, highly volatile liquids are treated the same as “ordinary” (non-highly volatile) hazardous liquids such as crude oil and gasoline, and regulated under 49 CFR part 195. The available literature shows that HVLs will often revert to gaseous form while being transported; thus, regulation under part 195 is incorrect or, at best, inadequate. In recognition of their greater hazards, HVL pipelines should be subject to even stricter regulation than hazardous liquids and methane gas when it comes to pipeline material and specifications. For example, all HVL pipelines should be constructed of steel manufactured in the United States, and should meet or exceed the federal requirements for gas transmission pipelines. This should include at least steel strength, wall thickness, and depth of cover, and should apply to new, repurposed, and all repaired pipeline segments. In the absence of a specific HVL rule, such pipelines should be required to comply with all applicable sections of both part 192 as well as part 195.

Topic 2: Pipeline Operations and Maintenance

1) Line markers: Lines carrying highly volatile liquids should be identified by markers that specify “hazardous, highly volatile liquids.”

2) Inspections of pipeline rights of way: Third-party inspection should be required routinely to ensure that pipeline operations continue to comply with permit requirements. For example, an exposed active line carrying highly volatile liquids should always warrant an on-site PUC inspector as it is being remediated, particularly in high consequence areas. Inspectors should have no conflict of interest with the operator, to ensure unbiased assessments. Inspection records should be made available to the public on request, so that dates, locations, and measured values can be reviewed.

3) Leak detection: Operators should be required to pay for equipment capable of detecting the smallest possible leak of the material flowing through a pipeline carrying highly volatile liquids. In populated areas, in the event of a leak, the detection equipment should activate strobe lights and a siren to warn local residents. While municipalities and landowners would have the option to configure and operate these systems, these leak detection systems should be paid for by the pipeline operator.

4) Corrosion control and cathodic protection: The PUC should establish and enforce rules that specify the required frequency of in-line inspection runs for each type of in-line fault-detection technology, for each pipeline according to its age, pressure, contents, construction method and material, and other relevant criteria. Operators must be required to submit a mitigation plan for any anomalies found. Records of cathodic protection inspections and surveys, and of in-line inspection runs, and mitigation plans should be made publicly available. For pipelines that cannot be protected by cathodic protection (because they are too deep, too close to sources of electrical interference, etc.), the PUC should require the operator to specify how corrosion will be prevented. Additionally, PUC must enforce standards around pipeline storage and installation to ensure best practices for corrosion prevention. For example, pipes should not be left outdoors and exposed to UV rays multiple years on end, breaking down pipe coating critical to cathodic protection, nor should pipes be placed so close to one another that the integrity of cathodic protection is threatened.

5) Accident reporting criteria: The PUC should require that every release of flammable gas and hazardous, highly volatile liquids must be immediately reported to local authorities and the PUC, regardless of size or location. These reports must also be publicly available in as close to real time as feasible.

Topic 3: Informing the Public

1) Utility interactions with local government officials: Local officials have publicly and privately expressed frustration from attempts to gain information from pipeline operators, particularly regarding the Mariner East project. This issue has led to a lack of public awareness regarding these projects, which should be of utmost importance when planning and executing

construction and operation of such pipelines. The PUC should mandate the operator must communicate with local municipalities on a regular basis, requiring documentation of such communication, and enforcement actions if an operator fails to comply.

2) Requirements for periodic public awareness meetings: Operators should be required to hold at least two meetings per county prior to the initiation of construction of a project. If construction is initiated, the operator should be required to hold public meetings at least quarterly, with documentation provided to the PUC of the planning and execution of these meetings. A PUC representative should also be present. For HVL pipelines: during operation, annual public awareness meetings should be required.

3) Pennsylvania-specific credibility assessments for “public awareness programs”: The public awareness programs (PAP) provided by pipeline operators under the provisions of section 195.440 should require approval by the PUC, but only following an assessment process to ensure that the information provided to the public is plausible, relevant, and effective. It is not sufficient for the PUC to simply note that an operator has provided a PAP; the PUC has an obligation to evaluate that plan for credibility and efficacy. For example, if a pipeline operator provided a PAP that instructed the public “What should I do if I suspect a leak? Flap your arms and fly to the neighboring county...” the PUC has an obligation to find such a plan noncompliant with the existing regulations. By the same token, the PUC must apply the same reasoning to the actual PAP provided by Sunoco: “What should I do if I suspect a leak? Leave the area immediately on foot...” to determine whether this is a credible plan; or, whether it is actually not only an impractical plan, but a dangerous one that may cost people their lives. Similarly, the Mariner East mailers that Sunoco labels as “public awareness” have provided little information regarding the materials transported or evacuation recommendations, and instead focus on marketing to the public. The mailers do not let the public know how they will be informed that a leak has occurred. The PAP does not let the public know how they will determine which direction is upwind, or how they will reconcile if upwind is also the direction towards the pipeline. Most importantly, the PAP makes no allowance for how the young, the old, the infirm, or the disabled, will be able to run half a mile at any time of day or night, in any type of weather. The PAP does not instruct the public how to self-evacuate dense, vulnerable populations. Oversight is needed (and justified under existing rules) to ensure that a credible emergency plan is even feasible, and if so, that residents receive that vital information. If a credible emergency plan is not feasible, a pipeline project should not be permitted to be constructed or operated.

Topic 4: Other Topics

1) Insurance requirements: Pipeline companies should be required to disclose their liability insurance coverage for accidental death, injury, and property damage. They should be required to carry sufficient insurance to cover a worst-case rupture at a worst-case location. Pipeline operators must also be required to permanently replace any impacted insurance coverage

affected by the presence of a pipeline and its associated risk, including for both homeowners and businesses.

2) Background investigations of employees and contractors: Mariner East contractors and laborers walk on school property during school hours, on private residential properties with no notice, on retirement and medical facilities, and in busy apartment building grounds. It is imperative that background checks, particularly child abuse clearances, be mandated for workers to continue this activity. Megan's Law should not be bypassed for contractors, particularly because many schools have been impacted by the Mariner East project. Pipeline contractors on private property must be required to provide identification to the property owner as well as provide evidence of satisfactory background checks.

3) Formal Complaint Process: The PUC must revise its so-called "formal complaint" process to make it accessible to all residents regardless of economic or financial resources. This would include everything from an easier process for filing complaints pro se to making transcripts available in digital form at a nominal cost, etc. Conclusion The Pennsylvania Public Utility Commission must command more authority to oversee the pipeline permitting and construction process including (but not limited to) matters of public utility status; pipeline siting; risk measurement and mitigation to acceptable standards; and emergency preparedness, both for first responders and the general public. Furthermore, the Commission must do more to enforce its existing rules and to conduct agency business with the utmost transparency to the public, whose interests the Commissioners are mandated to serve.

Respectfully submitted,

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