

## **The PUC complaint process is fundamentally flawed**

I am responding to the PUC's ANOPR concerning pipeline safety (Docket L-2019-3010267). First, let me say that there are several really important pipeline safety issues that the PUC needs to deal with. Among the ones at the top of my list are:

- Failure to regulate pipeline siting
- Awarding of "public utility" status and abuse of eminent domain
- Failure to require proper emergency response and evacuation plans
- Lack of leak detection and public warning systems

However, I will not comment on any of those because I know others share my concerns and will address them in their comments. Instead, I will focus on a very important area that has not gotten enough attention: the flawed nature of the PUC complaint process (including "formal complaints" and "petitions for emergency relief"), which means that ordinary citizens are not being heard.

**The PUC makes it impossible for ordinary citizens to raise safety concerns.** I want to persuade you that PUC's procedures effectively exclude most people from raising safety concerns. Formal complaints and emergency petitions are impractical for individuals, unless those individuals are very wealthy and well versed in legal processes.

**The first barrier is cost.** It starts with the cost of legal assistance. Hiring a lawyer to present a case before the PUC will cost a minimum of \$20,000, and probably much more. (The alternative, "pro se" representation, is touched on below.) To that must be added the cost of expert witnesses, each involving a fee that is likely to be \$20,000, and often far more. Even simply getting a transcript of your own proceeding, or of another related one, costs \$1,000-\$2,000. By the time the case is concluded, more than \$100,000 will typically be spent (and that's at the low end—some cases would be several times that amount).

No individual, unless they are quite wealthy, can afford that process. Even those involved in the current "Safety 7" case (Flynn et al., Docket C-2018-3006116), which involves citizens from two of the most affluent counties in the Commonwealth, are struggling to find the funding they need to continue the case—and they already have a lawyer who is working pro bono.

For most people, this cost factor rules out any possibility of bringing a problem to the PUC.

**Barriers to the "pro se" option.** For those who can't afford a lawyer, there is the option of filing "pro se". But that is a non-starter for most people. It means taking part in an arcane legal proceeding where one side has a team of trained lawyers and the other has no lawyer at all, following a set of rules that are never explained. Does that sound fair?

Here are some of the things you would have to know:

- Rules of discovery: What can I ask for? What can I insist on? How do I even find out what to ask for?

- Rules of evidence: What is hearsay? What has to come from the mouth of an “expert”, and what is an “expert”, exactly?
- Rules of questioning: What is a leading question? What is the right line of questioning to bring out an important fact?
- Rules of intervention: If you bring friends and neighbors to help with your case, they can’t assist you unless they meet the requirements to be “intervenors”. You may be struggling alone to make your case, while those eager to help you watch helplessly in the room.

And the process can be drawn out to months or years by the opposing legal team (who are being paid to do exactly that in some cases).

**We sorely need an alternative process.** The current process only works in cases where two well-funded legal teams are up against each other. At present, there is no process that is fair to ordinary citizens.

What would a fair process look like? The details of a good process would need to be explored. But, as a starting point, the formal legal rules listed above would need to be replaced by a search for the facts. The judge (or other PUC representative), who is currently given the task of applying legal rules, should instead be given the task of pinning down the substance of the complaint and determining what the relevant facts are. The judge could converse with the complainant to figure out what the key issues are, and then query the utility representatives about those issues. It might look more like arbitration than a trial. Some process like that would put the two sides on a more equal footing.

**The PUC is failing in its mission.** As things stand, you can get a hearing from the PUC only if you have deep pockets and access to legal help. The current system guarantees ordinary people won’t be heard.

The PUC’s mission statement begins: “The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; ....” Right now, I would have to say the PUC is failing at “balancing the needs of consumers and utilities” because its processes are unfairly biased toward the utilities. It is failing to “ensure safe and reliable utility service” because it does not provide an accessible way for the public to raise safety issues. It is failing to “protect the public interest” because the public’s highest-priority interest, safety, is not being addressed.

The PUC has become a tool of the utilities, and the flawed complaint processes are one symptom of this. Ordinary Pennsylvanians no longer have any say in pipeline safety. Major changes are urgently needed, and fixing the complaint process is among the top-priority tasks. I urge you to begin the process of implementing new, more equitable procedures now.

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