MARCELLUS
SHALE COALITION™

August 27, 2019

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

Re: Docket No. L-2019-3010267: Hazardous Liquid Public Utility Safety Standards – Advanced Notice of Proposed Rulemaking – via eFile System

Dear Secretary Chiavetta:

The Marcellus Shale Coalition (MSC) appreciates the opportunity to submit comments regarding the above-referenced advance notice of proposed rulemaking (ANPRM). Formed in 2008, the MSC is comprised of approximately 150 producing, midstream, transmission, and supply chain members committed to working with local, county, state and federal government officials to facilitate the safe and responsible development of the natural gas resources in the Marcellus, Utica, and related geological formations. Our members represent many of the largest and most active companies in the nation involved in natural gas production, gathering, processing, and transmission, as well as the suppliers and contractors who work with the industry.

The MSC commends the Pennsylvania Public Utility Commission's (PUC or Commission) decision to use an ANPRM process to determine whether any changes to the Commission's regulations for public utilities are needed to enhance the safe transportation of hazardous liquids by pipeline. The ANPRM provides an opportunity to evaluate and inform interested stakeholders and community residents about the comprehensive safety standards that are already in place for hazardous liquid pipelines. The MSC believes the ANPRM process will also highlight the need to maintain an appropriate balance of jurisdiction between the Commission and the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency responsible for administering the nation's Pipeline Safety Laws and Regulations.

PHMSA is already addressing many of the items identified in the ANPRM in rulemaking proceedings at the federal level. To avoid duplicating PHMSA's efforts or creating rules that could be challenged under the federal Pipeline Safety Act's[1] preemption provision, the MSC urges the Commission to proceed with caution in developing any new regulations for hazardous liquid pipeline facilities in this proceeding. Pipelines have a demonstrated record of safe transportation in Pennsylvania, and the MSC is committed to ensuring that reasonable, risk-based safety standards remain in effect for hazardous liquid pipelines.

[1] 49 U.S.C. §§ 60101-60503 (2017)

I. Background

a. Industry Commitment to Public Safety

The MSC and its member companies recognize that the safety of their operations is paramount, both for their own employees as well as the residents of the communities in which they operate. Industry operators recognize that safety is not mere adherence to applicable state and federal requirements; rather, it is a culture that must be inherent in the leadership of each company and its employees. Risk by its very nature will never be completely eliminated, but it can be mitigated, minimized and prepared for. Operators continually strive to enhance their own internal safety protocols, while also collaborating with their peers across the industry. The MSC works with and on behalf of its member companies to convene and facilitate opportunities for enhancing public safety and protection of the environment and our natural resources.

Since its inception the MSC has maintained a standing committee dedicated to midstream and transmission pipeline operations. The MSC Midstream and Pipeline Committee meets regularly and brings together experts and professionals from member companies that are focused on relevant midstream and transmission public policy as well as operational issues, while reviewing and providing opportunities for demonstration of advancements in technology and industry management practices. The committee also has created a Pipeline Safety Workgroup focused exclusively on developments and practices affecting safety operations of the industry. Additional workgroups are focused on horizontal directional drilling and pipeline integrity. Leadership of these entities has met numerous times with the PUC's pipeline safety regulators.

The MSC has developed a host of resources[2] as well for both member companies and the general public to inform better on the various roles of state and federal regulatory agencies, as well as the permitting processes involved with siting and operating midstream, transmission and other pipeline facilities. The MSC has also partnered with industry experts, state and federal regulatory agencies to host professional trainings on pipeline safety. In June 2018, the MSC hosted a training entitled "*Successfully Managing Horizontal Directional Drilling, Slope Stabilization and Landslide Mitigation,*" and in September 2019 the MSC will host a seminar entitled "*Pipeline Safety, Operations and Maintenance.*"[3] Evaluation of emerging issues, identification of resources to assist members with enhancing safety, and development of new opportunities for engagement are under development continuously by the MSC.

b. Hazardous Liquid Pipeline Safety Program

PHMSA administers a national pipeline safety program pursuant to the authority provided in the federal Pipeline Safety Act. PHMSA's primary obligation under that Act is to prescribe and enforce minimum federal safety standards for gas and hazardous liquid pipeline facilities and persons engaged in the transportation of gas and hazardous liquids. PHMSA's pipeline safety

[2] For example, see the MSC Fact Sheets entitled "Pipeline and Midstream Facilities" and "Pipeline Oversight", as well as the MSC Recommended Practice "Pipeline Boring" at www.marcelluscoalition.org (click 'Resources')
[3] See https://www.eventbrite.com/e/pipeline-safety-operations-and-maintenance-seminar-registration-62256768671

standards are codified at 49 C.F.R. Parts 190 to 199. PHMSA is responsible for ensuring that operators of regulated interstate pipeline facilities comply with these requirements.

PHMSA also oversees a federal certification and grant program that allows state authorities to regulate the safety of intrastate gas and hazardous liquid pipeline facilities.[4] To participate in that program, a state authority must submit an annual certification to PHMSA, agree to adopt the minimum federal safety standards, and meet other program requirements.[5] A certified state authority can apply additional or more stringent safety standards to intrastate pipeline facilities, so long as the state standards are compatible with the minimum federal requirements.[6]

The Commission has submitted an annual certification to PHMSA to regulate the safety of intrastate hazardous liquid pipeline facilities in Pennsylvania. As with its state gas pipeline safety program, the Commission's hazardous liquid pipeline safety program is authorized under two different laws: (1) the Public Utility Code[7] and (2) the Gas and Hazardous Liquids Pipeline Act (Act 127).[8] The Public Utility Code provides the Commission with the authority to regulate the safety of intrastate pipeline facilities that are operated by public utilities.[9] Act 127 allows the Commission to regulate the safety of non-public utility, intrastate pipeline facilities.[10] Consistent with the terms of its certification, the Commission applies PHMSA's safety standards for hazardous liquid pipeline facilities in 49 C.F.R. Part 195 to pipeline operators regulated under the Public Utility Code and Act 127.

Originally established four decades ago, Part 195 contains comprehensive safety standards for the design, construction, testing, operation, and maintenance of hazardous liquid pipeline facilities. Part 195 also prescribes requirements for the qualification of pipeline personnel and corrosion control. Risk-based integrity management (IM) program requirements apply as well to hazardous liquid pipelines that could affect high consequence areas (HCAs), including commercially navigable waterways, high population areas, other populated areas, and areas that are unusually sensitive to environmental damage.

In 2010, PHMSA issued an ANPRM asking the public to comment on potential changes to the Part 195 regulations.[11] Based on the comments received in response to the ANPRM, PHMSA released a notice of proposed rulemaking (NPRM) in 2015 containing extensive changes to Part 195.[12] The proposed changes included (1) extending PHMSA's reporting requirements to all

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[4] *See Olympic Pipeline Co. v. City of Seattle*, 437 F.3d 872, 879 (9th Cir. 2006) (discussing state authority to regulate intrastate pipelines under the federal pipeline safety laws).
[5] 49 U.S.C. § 60105.
[6] *Id.* § 60104(c). A state authority can also enter into a separate agreement with PHMSA to participate in the oversight of interstate pipeline facilities, primarily by performing inspections of intrastate or interstate pipeline facilities for compliance with the federal safety standards. *Id.* § 60106(b).
[7] 66 Pa. Cons. Stat. §§ 101 *et seq.* (2018).
[8] Act of Dec. 22, 2011, Pub. Law 586, No. 127. Act 127 provides that the PAPUC may only apply the federal rules to non-public utility, intrastate pipelines, and may not apply more stringent requirements. *Id.* at Sec. 501(a).
[9] 66 Pa. Cons. Stat. §§ 101 *et seq.* (2018).
[10] Act of Dec. 22, 2011, Pub. Law 586, No. 127. Act 127 provides that the PAPUC may only apply the federal rules to non-public utility, intrastate pipelines, and may not apply more stringent requirements. *Id.* at Sec. 501(a).
[11] Pipeline Safety: Safety of Hazardous Liquid Pipelines, 75 Fed. Reg. 63,774-63,780 (Oct. 18, 2010).
[12] Pipeline Safety: Safety of Hazardous Liquid Pipelines, 80 Fed. Reg. 61,610 – 61,643 (Oct. 13, 2015).

hazardous liquid gravity and gathering lines; (2) requiring inspections of pipelines in areas affected by extreme weather, natural disasters, and other similar events; (3) requiring periodic inline integrity assessments for lines located outside of HCAs; (4) requiring the use of leak detection in all locations; (5) modifying the pipeline repair requirements; (6) and requiring all pipelines subject to IM program requirements be made capable of accommodating inline inspection tools within 20 years, with certain exceptions. PHMSA expects to issue a final rule in this proceeding in the coming months.

PHMSA also is considering changes to Part 195 in other rulemaking proceedings. As explained in more detail below, PHMSA recently sent an NPRM to the Office of Management Budget (OMB) for review with proposed new requirements for the installation of valves and standards for detecting pipeline ruptures. PHMSA expects to issue the NPRM next year. PHMSA is also developing another NPRM with new repair criteria for hazardous liquid pipelines, as well as an ANPRM that will expand the definition of the Coastal Ecological Resource Unusually Sensitive Area to include the Great Lakes, coastal beaches, and marine coastal waters.

The MSC notes that any changes that PHMSA adopts to Part 195 in these ongoing rulemaking proceedings will become applicable to public utilities operating hazardous liquid pipelines in Pennsylvania within 60 days of their federal effective date, unless the Commission publishes a notice in the *Pennsylvania Bulletin* indicating otherwise.[13] In other words, the Commission's regulations for hazardous liquid pipelines will be undergoing significant changes in the months and years ahead regardless of the outcome in this proceeding. The MSC urges the Commission to be mindful of that fact in determining the appropriate course of action.

II. Comments

The MSC is offering the following comments in response to the ANPRM. These comments only address the Commission's authority to regulate intrastate hazardous liquid pipeline facilities under the Public Utility Code and the Pipeline Safety Laws. The MSC is not offering any comments on the Commission's authority to regulate intrastate hazardous liquid pipeline facilities under Act 127, which is limited by statute to enforcing PHMSA's Part 195 regulations.

a. Compatibility

The federal Pipeline Safety Act contains a preemption provision that limits the Commission's authority to establish additional or more stringent state safety standards for hazardous liquid pipeline facilities. That provision states, in relevant part, that "[a] State authority that has submitted a current certification [to PHMSA] under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed [by PHMSA] under this chapter."[14] The Commission has a certification to regulate the safety of intrastate hazardous liquid pipeline facilities in Pennsylvania and is subject to the requirements in the Pipeline Safety Act's preemption provision.

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[13] 52 Pa. Code § 59.33.
[14] 49 U.S.C. § 60104(c).

Ensuring that any safety standards issued by the Commission for public utility pipelines are compatible with PHMSA's requirements is of paramount importance to the MSC. Pipeline safety is not served if the Commission establishes state regulations that run afoul of the Pipeline Safety Act's preemption provision. To avoid that possibility, the MSC believes it is critical for the Commission to examine the current requirements and pending changes to the Part 195 regulations that PHMSA is considering at the federal level. The use of leak detection systems, installation of valves, establishment of minimum rupture detection standards, and performance of additional integrity inspection are just some of the items that PHMSA is likely to address in final rules that will be issued in the near future. The MSC does not believe that the Commission needs to consider further regulatory actions in these areas at this time.

Operation and Maintenance

Pipeline Conversion

Section 195.5 contains conversion of service requirements for steel pipelines previously not used in Part 195 service. The regulation requires the operator to prepare and implement a written conversion of service plan to qualify the pipeline for Part 195 service. The plan must address certain activities that are necessary to substantiate that the previously unregulated line can be safely operated under the Part 195. Specifically, the operator must review the design, construction, operation, and maintenance history of the line and, if sufficient historical records are lacking, perform appropriate tests to demonstrate fitness for service; conduct inspections for physical defects and operating conditions that could reasonably be expected to impair the integrity of the pipeline; correct all known unsafe defects and conditions; and conduct a pressure test to substantiate the maximum operating pressure of the line. The operator must comply with the corrosion control requirements in Part 195 within 12 months of placing the converted line into service, and maintain a record of any investigations, tests, repairs, replacements, and alterations made during the conversion for the life of the pipeline. An operator must also notify PHMSA 60 days prior to converting a pipeline to Part 195 service.

PHMSA has issued comprehensive guidance for pipeline operators to follow in developing and implementing conversion of service plans, and the MSC is not aware of any concerns that warrant review or revision of the existing regulations, which have been in effect for several decades. Accordingly, the MSC does not recommend any changes to the conversion of service rules at this time.

Inspections of Pipeline Rights-of-Way

The Part 195 regulations already require hazardous liquid pipeline operators to conduct periodic inspections of pipeline rights-of-way. Section 195.412(a) states that "[e]ach operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way." Section 195.412(b) further states, in relevant part, that "each operator shall, at intervals not exceeding 5 years, inspect each crossing under a navigable waterway to determine the condition of the crossing." The damage prevention program provisions in §195.442(c)(6) require pipeline operators to conduct inspections of any pipelines that could be damaged by excavation activities.

In addition, PHMSA is close to issuing a final rule that will contain additional requirements for performing inspections of pipeline rights-of-way in areas affected by extreme weather, natural disasters, and other similar events. The final rule will likely require operators to conduct these inspections within 72 hours after the cessation of such an event and take appropriate remedial action to address any conditions discovered that could adversely affect the pipeline's operations. PHMSA expects to issue the final rule in the coming months.

Given the existing regulations and proposed changes that are likely to be adopted in the near future, the MSC does not believe that the Commission's regulations need to be changed to require additional inspections of pipeline rights-of-way.

Emergency Flow Restricting Devices

PHMSA's IM regulations[15] already require hazardous liquid pipeline operators to perform a risk analysis and install emergency flow restricting devices (EFRDs), where necessary, as a preventative and mitigative measure for segments that could affect an HCA. PHMSA is also considering establishing new requirements for leak detection systems and minimum rupture detection standards in ongoing rulemaking proceedings. Until these rulemaking proceedings are complete, the MSC does not recommend that the Commission take any further action to amend the regulations for EFRDs.

Leak Detection

On June 25, 2019, PHMSA sent an NPRM to OMB with proposed amendments to Part 195 for valve installation and minimum rupture detection standards. The NPRM addresses a congressional mandate in the Pipeline Safety, Regulatory Certainty, or Job Creation Act of 2011 to study the use of automatic and remote-controlled shut off valves on pipeline systems and issue new regulations, if necessary. PHMSA released a comprehensive study assessing the use of leak detection systems on hazardous liquid pipelines in December 2012 and anticipates releasing the NPRM with proposed regulatory requirements for public comment later this year.

The MSC recommends that the Commission not take any further action to change the requirements for pipeline leak detection systems until PHMSA completes its rulemaking process at the federal level. PHMSA has already made significant progress in completing the leak detection study and preparing the NPRM with valve installation and minimum rupture detection standards. PHMSA expects to issue the NPRM in the coming months.

Additional Subject Areas for Public Comment

Numbers correspond to PA PUC Suggested Topics

1. *Utility interactions with local government officials, including but not limited to such topics as emergency planning and emergency response coordination, periodic drills with utility/municipal coordination*

[15] 49 C.F.R. §§ 195.450-195.452

Public utility coordination and interaction with local government officials and emergency responders is critical, and the MSC and its member companies recognize its importance. Operators are required by PHMSA to adhere to strict coordination and interaction standards on a regular basis. The MSC encourages the Commission to defer to these requirements so that there is uniformity and symmetry among operators and so that local government officials and emergency responders have a consistent experience and expectations of the companies operating in their community.

2. *Requiring periodic public awareness meetings with municipal officials and the public*

Operators are required by PHMSA to adhere to strict coordination and interaction standards with local officials and the public on a regular basis. The MSC encourages the Commission to defer to these requirements so that there is uniformity and symmetry among operators and so that local government officials and the public have a consistent experience and expectations of the companies operating in their community.

5. *Enhancing transparency while protecting confidential infrastructure security information*

The MSC and its member companies support collaboration, both with federal, state and local government officials and with the communities in which companies operate. As recognized by both federal and state officials, it is also critically important to safeguard that sensitive information which could be utilized by bad actors to imperil our communities.

In 2006 the General Assembly enacted and Governor Ed Rendell signed the Public Utility Confidential Security Information Disclosure Protection Act.16. The Commission was instrumental in vetting and passing this legislation. This Act recognizes the importance of safeguarding confidential security information, the disclosure of which would compromise security against sabotage, criminal or terrorist acts and the nondisclosure of which is necessary to the protection of life, safety, public property or public utility facilities. The Act also recognizes and balances the interests of community disclosure requirements related to public utilities as required under applicable federal and state laws.

The MSC strongly urges continued support for this Act and appreciates the Commission's stated opposition to House Bill 1568, which would repeal this Act in its entirety.

6. *Regulation of construction techniques such as horizontal directional drilling*

The MSC respectfully urges the Commission to defer and recognize the expertise of the Pennsylvania Department of Environmental Protection (PA DEP) with respect to

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[16] Act 156 of 2006: https://www.legis.state.pa.us/CFDOCS/LEGIS/LI/uconsCheck.cfm?txtType=HTM&yr=2006&sessInd=0&smthLwInd=0&act=0156.

standards related to construction techniques for horizontal directional drilling or other construction techniques. PA DEP holds operators to strict standards, and oversees a comprehensive permitting program that evaluates non-trench construction techniques and viable alternatives to the use of horizontal directional drilling. In fact, the MSC, along with several environmental organizations, currently are part of a horizontal directional drilling workgroup organized by PA DEP in response to a stipulated agreement PA DEP entered into with said environmental organizations in response to a lawsuit related to the permitting and construction of the Mariner East 2 pipeline.

7. *Accident and incident reporting criteria, notification criteria for reporting incidents or unusual events to local emergency officials*

Operators recognize the importance of clear and early communication with local emergency officials. It is important that criteria be clearly understood by all parties, including local emergency officials, and not deviate merely because of the jurisdiction of a particular pipeline. The Commission is urged to give great deference to the accident and incident response criteria required by federal law and regulations.

8. *Advance notification and / or Commission preapproval of major construction activities*

Pipeline construction activities are governed by a variety of permits issued by various federal, state or local government officials. Those permits, if applicable and appropriate, contain advance notification requirements for certain activities. The Commission is urged to defer to these requirements, which have been independently and thoroughly vetted. A general "preapproval" outside of the specific permit requirements does not seem warranted.

10. *Geophysical testing and baselining*

The MSC encourages the Commission to work closely with PA DEP to understand fully the requirements already in place related to identifying and mitigating geohazards. Such geohazards are not unique simply to pipelines. PA DEP has incorporated many new requirements for geohazard identification, avoidance and minimization in its new Erosion and Sediment Control General Permit 3 (ESCGP3) general permit. The industry, through the MSC's Operations and Pipeline Integrity workgroup, continues to focus awareness, training, development of recommended practices and coordination with PA DEP on this important issue. The Commission is urged to give deference on this issue to PA DEP and the current permitting process.

11. *Protection of public and private water wells and supplies*

Pennsylvania remains one of the few states that does not have construction standards for private water wells. Several studies have indicated that a significant number of private water wells fail to meet basic industry construction standards, which translates to a failure to meet minimum Safe Drinking Water Act water quality standards. Many homeowners are unaware of the quality of their drinking water, and the failure of adhering to minimum

water well construction standards complicates efforts to identify accurately the source or cause of an impaired water supply. For this reason, the MSC joins with PA DEP in supporting enactment of legislation that establishes construction standards for private water wells.

14. *Integration of new regulations on existing facilities*

Facilities designed and built before the implementation of new regulations are built to the standards and requirements that exist at the time of their inception. The federal Pipeline Safety Act prohibits retroactive application of pipeline safety standards for design, construction, initial testing and initial inspection. There may be significant concerns regarding cost and the practical application of applying new requirements related to operation and maintenance and integrity management standards to existing facilities. The MSC encourages the Commission to recognize the distinction and unique challenges posed by applying new standards to existing facilities, and to work closely with industry operators to understand the ramifications of doing so.

Conclusion

On behalf of its member companies, the MSC appreciates the opportunity to submit these comments in response to the Commission's Advance Notice of Proposed Rulemaking. Our member companies stand steadfast in their commitment to ensuring the safe construction and operation of public utility infrastructure that is necessary to serve the needs of our communities. We look forward to serving as resource for the Commission as it examines this important issue.

Thank you for your consideration of these comments.

Sincerely,

David J. Spigelmyer
President