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November 4, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Notice of Proposed Rulemaking 52 Pa. Code Chapter 73; Docket No. L-2019-3010270; **SUNOCO PIPELINE L.P. COMMENTS**

Dear Secretary Chiavetta:

Enclosed please find Sunoco Pipeline L.P.'s Comments to the Notice of Proposed Rulemaking at Docket No. L-2019-3010270.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Colin Scott, Law Bureau (via email only, colin.scott@pa.gov)
Darin Gill, BTUS (via email only, dgill@pa.gov)



SUNOCO PIPELINE
An ENERGY TRANSFER Partnership

212 North Third Street, Ste. 201
Harrisburg, PA 17101

November 4, 2019

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

Re: Sunoco Pipeline L.P. Comment to Notice of Proposed Rulemaking 52 Pa. Code Chapter 73; Docket No. L-2019-3010270

Dear Secretary Chiavetta,

Sunoco Pipeline L.P. (SPLP) is a Pennsylvania certificated public utility holding several Certificates of Public Convenience for the intrastate transportation of petroleum and refined petroleum products through pipelines. Consistent with those Certificates of Public Convenience, SPLP has also posted and received approval of tariffs from the Commission for intrastate movement of various petroleum and refined petroleum products between defined points within the Commonwealth. In addition to operations within the Commonwealth, SPLP operates interstate pipelines in multiple states, and many of its pipelines provide both interstate and intrastate service, including in Pennsylvania. SPLP appreciates this opportunity to provide comments to the Pennsylvania Public Utility Commission (PUC or the Commission) on the Notice of Proposed Rulemaking regarding 52 Pa. Code Chapter 73 (NOPR).

In the NOPR, the Commission proposed to remove the exemption for crude oil, gasoline or petroleum products transportation pipeline public utilities for creation and filing of depreciation reports, service life study reports, and capital investment plan reports of the type that fixed monopoly natural gas and electric distribution utilities have for 25 plus years.

At the outset, SPLP notes that applying regulations heretofore applied to fixed distribution utilities, who are monopolies that serve residential, small business, customers and other customers may not pass the cost-benefit test given the type of sophisticated producer or wholesale customers pipelines serve. SPLP is not a monopoly for providing pipeline service or service to move the commodity from points A to B with Pennsylvania. Moreover, the regulations would conflict and be inconsistent with federal pipeline safety laws and regulations principles under the Pipeline Safety Act and regulations at 49 C.F.R. Part 195 as promulgated and overseen by the Pipeline and Hazardous Materials Safety Administration (PHMSA). In short, there are no "use by dates" for pipelines. Rather, use depends upon integrity management

programs and the level of maintenance, replacement, testing, monitoring and repair. Moreover, the regulations may conflict and be inconsistent with Federal regulatory principles applicable to pipelines that are subject to Federal regulations that require pipeline operators to design, construct, operate, and maintain their pipelines to ensure safety to the public and the environment.

Below SPLP provides comments regarding each report:

§ 73.3. Annual depreciation report

SPLP submits that the proposed required annual depreciation reporting will come at a substantial cost to the pipeline utilities in question while providing the Commission with little to no benefit given the nature of pipelines versus fixed distribution utilities and the type of sophisticated producer customers served by pipelines who are not residential or small business customers. Under traditional regulation, costs of these reports are ultimately borne by customers. The money would be better spent in maintaining and investing in the infrastructure as opposed to doing reports. If traditional regulation remains, then depreciation expense will be addressed in the appropriate test year and the appropriate depreciation rate profile for the pipeline utility in effect at that time.

Reporting on depreciation provides no useful information regarding whether an asset is safe and adequate to provide service if that was the intent of the requirement. Depreciation is a tax, ratemaking, and accounting concept. That an asset may be fully depreciated has no bearing on whether such asset can safely continue to be used and useful in utility service under PHMSA regulations.

Regarding provision of depreciation reports for ratemaking informational purposes, requiring hazardous liquid pipelines to provide depreciation reports now, 25 years after these provisions were in place for other utilities seems to make no benefit, particularly when considering the unique ratemaking aspects attendant to hazardous liquid pipeline utilities as well as the General Assembly's 2018 choice to allow utilities to engage in alternative ratemaking¹ and the Commission's Orders embracing and promoting such methods which are not traditional cost of service (which includes depreciation as a factor). Hazardous liquid transportation pipelines provide service to a group of sophisticated customers that in most instances have competitive alternatives to the utility service provided, unlike other fixed utilities that serve other customers classes that do not have these same resources or level of sophistication regarding ratemaking. Commission rate cases for hazardous liquid intrastate rates are infrequent and a somewhat streamlined process. The ratemaking concerns applicable to other fixed utilities are simply different from hazardous liquid transportation pipelines. Moreover, depreciation for ratemaking purposes is a concept applicable to rate base rate of return ratemaking. As the Commission is aware, alternative ratemaking is now an option the Legislature saw as a potential need for utilities and their customers in Pennsylvania to move away from traditional rate base rate of return 66 Pa. C.S. § 1330. If a hazardous liquid pipeline utility gains approval for

¹ 66 Pa. C.S. § 1330.

alternative rate mechanisms that may not rely upon depreciation concepts, these reports will be wholly useless at great cost and no benefit.

§ 73.5. Service life study report

The service life study report requirement as applied to the hazardous liquid transportation pipelines goes beyond mere “reporting” and instead would require such pipelines to analyze their infrastructure in a way that is wholly inconsistent with federal pipeline safety law and regulations. The Commission does not have the authority to promulgate regulations for hazardous liquid pipelines that are inconsistent, or incompatible, with federal law or regulations. State or local pipeline safety laws that are inconsistent with the Pipeline Safety Act or regulations are uniformly held to be preempted. *See e.g., Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872 (9th Cir. 2006) (“The PSA expressly preempts Seattle’s attempted safety regulation of the [pipeline]” and “[p]reemption is a power of the federal government, not an individual right of a third party that the party can ‘waive’”); *Kinly Corp. v. Iowa Utils. Bd., Utils. Div. Dep’t of Commerce*, 999 F.2d 354 (8th Cir. 1993) (“[W]e note that the legislative history [of Pipeline Safety Act predecessor statutes]. . . demonstrates Congress’ intent to preempt state safety regulation of interstate hazardous liquid pipelines”). *ANR Pipeline Co. v. Iowa State Commerce Comm’n*, 828 F.2d 465, 470 (8th Cir. 1987) (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate [...] lines).

More specifically, requiring hazardous liquid transportation pipelines to create and file service life study reports as specified in 52 Pa. Code § 76.3, is inconsistent with the federally mandated requirements for the safe operation, maintenance, inspection, replacement, testing, monitoring and repair that hazardous liquid transportation pipelines apply to their facilities. The service life study report would require the utility to average and estimate service life or average remaining life of utility facilities. 52 Pa. Code § 76.3. However, the concept that a pipeline has a finite life is wholly inconsistent with the federal statutory and regulatory scheme. Instead, federal law and regulations require that pipelines operate, inspect, maintain and repair their pipelines, including through integrity management of programs.² This entails ongoing monitoring, inspection, and evaluation of facilities to determine what repairs are necessary on what timeline and which to prioritize to keep facilities safe and fit for service, potentially infinitely. Like Pennsylvania’s turnpike, simply because it is old does not mean it needs a date to terminate; instead, after study and tests it undergoes necessary repairs and continues to serve the public safely. Moreover, pipeline integrity management requires and utilizes data from actual sophisticated inspections and monitoring to determine how to keep facilities safe and fit for service and is thus far superior than reporting estimates or averages service lives independent of the actual characteristics and integrity state of the facilities in question.

² *See, e.g.,* 49 U.S.C. § 60108; 49 C.F.R. Part 195, Subpart F (Operation and Maintenance including integrity management regulations at 195.450, 195.452) and Subpart H (Corrosion Control).

§ 73.7. Capital investment plan report

SPLP submits that requiring a capital investment plan report comes at significant time and cost with little regulatory benefit. The capital investment plan report is a five year outlook report on major planned expansion, modification or other alteration of utility facilities. 52 Pa. Code § 73.8. SPLP fails to see how a five-year report provides relevant and timely information that SPLP is not already required to provide on a timelier basis through the construction notification requirements in 52 Pa. Code § 59.38, which requires notification and information 30 days prior to starting major construction of utility facilities. In the unique pipeline industry, project opportunities often arise quickly and, in any event, predicting projects and the capital required on a five-year horizon would include significant speculation of future demand for pipeline transportation and estimating capital costs. Moreover, when and if projects arise initial plans and any alteration are within the utility's "managerial discretion," which is a legal principle this Commission and the appellate courts have recognized and applied, that provides the Public Utility Code is performance based and it is up to a utility's management to determine how and when to orient its planned facilities to provide adequate and reasonably continuous service.³ SPLP fails to see how a projection that may not remain accurate for very long provides information that is more useful than that the already required construction notifications in 52 Pa. Code § 59.38.

Instead of committing time and money to preparing reports of little value, SPLP submits such resources are better spent managing and maintaining its facilities to ensure safety and pipeline integrity.

Again, SPLP appreciates this opportunity to comment on the NOPR. The desire to maintain pipeline safety and keep the Commission informed with necessary and prudent information is a top priority for SPLP. The Commission should be commended for its diligence in enforcing existing regulations. Any effort to impose additional reporting requirement regulations should be mindful of the issues set forth above.

Sunoco Pipeline L.P.

By 
Curtis N. Stambaugh
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³ *Metropolitan Edison Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981).