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November 6, 2019

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

Re: Association of Oil Pipe Lines Comments to Notice of Proposed Rulemaking 52 Pa. Code Chapter 73; Docket No. L-2019-3010270

Dear Secretary Chiavetta:

Pursuant to the Notice of Proposed Rulemaking (“NOPR”) issued by the Pennsylvania Public Utility Commission (“Commission”) on June 13, 2019, in the above-referenced proceeding, the Association of Oil Pipe Lines (“AOPL”) submits these comments.<sup>1</sup> AOPL is a national trade association that represents the interests of owners and operators of oil pipelines across North America and educates the public about the vital role oil pipelines serve in the daily lives of Americans. AOPL members safely, efficiently, and reliably transport approximately 96% of the crude oil and refined petroleum products shipped through pipelines that extend approximately 215,000 miles across the United States.

In the NOPR, the Commission seeks comments on proposed amendments to the regulations at 52 Pa. Code Chapter 73 that would remove the exemption for crude oil, gasoline or petroleum products transportation pipelines for the creation and filing of depreciation reports, service life study reports, and capital investment plan reports that currently apply to distribution utilities. AOPL has reviewed the comments submitted in this proceeding by Sunoco Pipeline L.P. and Laurel Pipe Line Company, L.P., and supports the concerns with the NOPR raised therein.

AOPL would be particularly concerned with the imposition of utility reporting obligations on oil pipelines that are unneeded, would fail to benefit customers or the industry, and are not fitting for an industry that operates in a vastly different marketplace than traditional utilities. In this regard, in contrast to distribution utilities, crude oil and refined petroleum products pipeline markets are characterized by robust competition, oil pipelines do not have certificated, captive markets, and their customers are commercial enterprises that can typically

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<sup>1</sup> The NOPR requested comments within 30 days of publication in the *Pennsylvania Bulletin*. Therefore, to the extent necessary, AOPL requests leave to file these comments out of time.

rely on transportation alternatives. The U.S. Congress and courts have acknowledged the strong influence of competition on the activities of oil pipelines and that traditional utility regulation is a poor fit for the oil pipeline industry.<sup>2</sup>

Further, the NOPR suggests that the proposed reporting is necessary to, among other things, “determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future.” AOPL echoes concerns expressed in the comments with any suggestion that the useful life of an oil pipeline is limited by its number of years in service, as the extent to which an oil pipeline is depreciated does not bear upon whether the pipeline can continue to provide safe, efficient and adequate service. Moreover, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has an extensive regulatory framework that ensures the safety of oil pipelines. Because PHMSA comprehensively occupies the field of pipeline safety regulation, PHMSA’s regulations would legally preempt any state regulatory requirement that is inconsistent, or incompatible, with federal pipeline safety laws, as courts have consistently held.<sup>3</sup>

AOPL appreciates the opportunity to submit these comments, and respectfully requests that the issues discussed above be taken into account as the Commission considers the proposals in the NOPR.

Respectfully submitted,



Steven M. Kramer  
Senior Vice President, General Counsel  
and Corporate Secretary

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<sup>2</sup> See e.g. *Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 412-413 (D.C. Cir. 1978) (“*Farmers Union F*”), cert. denied, 439 U.S. 995 (1978) (where the court observed that oil pipelines have never been subject to the same level of pervasive regulation that Congress applied to other regulated industries, and stating that the court would “be especially loath uncritically to import public utility notions into this area.”) (emphasis added).

<sup>3</sup> See *Olympic Pipe Line Co. v City of Seattle*, 437 F.3d 872, 880 (9<sup>th</sup> Cir. 2006) (concluding that pipeline safety act expressly preempted the City of Seattle’s attempt to impose safety regulation on a hazardous liquid pipeline); *Kinley Corp. v. Iowa Utils Bd.*, 999 F.2d 354, 358 (8<sup>th</sup> Cir. 1993) (“Congress has expressly stated its intent to preempt the states from regulating in the area of safety in connection with interstate hazardous liquid pipelines ... [and] the state cannot regulate in this area...”); *ANR Pipeline Co. v. Iowa State Commerce Comm’n*, 828 F.2d 465, 470 (8<sup>th</sup> Cir. 1987) (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities” and left “nothing to the states in terms of substantive safety regulation of interstate pipelines.”); see also 49 C.F.R. pt. 195, app. A (“The [Hazardous Liquids Pipeline Safety Act] leaves to exclusive Federal regulation and enforcement the ‘interstate pipeline facilities,’ those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce.”).