

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Rulemaking Regarding Depreciation  
Reporting and Capital Planning for  
Crude Oil, Gasoline, or Petroleum Products  
Transportation Pipelines  
52 Pa. Code Chapter 73**

**Public Meeting October 7, 2021  
3010270-LAW  
Docket No. L-2019-3010270**

**MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission for disposition is a Final Rulemaking Order on proposed amendments to our public utility reporting regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7 providing for annual depreciation reporting, service life study reporting, and capital investment reporting. The existing regulations at Chapter 73 currently apply to electric service, gas service, and water service public utilities. In a prior Order, the Commission had proposed to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file annual depreciation reports, service life study reports, and capital investment plan reports in accordance with the provisions established in 52 Pa. Code Chapter 73.

In response to our proposed amendments, the Commission has received multiple comments from interested parties and the Independent Regulatory Review Commission. Based on a review of the comments, the recommendation now before us is to withdraw proposed changes to our regulations on depreciation reports and capital investment plan reports. The remaining issue before us involves amendments that would require a regularly filed service life study.

Several commentors have asserted that mandating a reoccurring service life study requirement for all pipelines would be inconsistent or incompatible with the Federal regulations of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) and would therefore be preempted. The Commission participates as a certified state in the Federal pipeline safety program administered by PHMSA under 49 U.S.C. § 60105(a). The Commission has incorporated 49 CFR Part 195 in its regulations, in part, to comport with the requirements of PHMSA's pipeline safety program. Participating certified states must adopt the minimum Federal pipeline safety standards and are permitted to adopt additional more stringent regulations so long as they are compatible with the minimum Federal pipeline safety standards.

While the Commission has a reasonable basis for believing it has jurisdiction to move forward, the risk of federal preemption should not be casually dismissed. PHMSA recently directed the Commission to modify its regulations on customer-owned gas service lines due to a potential conflict with federal rules.<sup>1</sup> The Commission must also demonstrate that it has the legal authority to promulgate a final rule, and that a proposed rule is not in conflict with some other regulation or statute before the Independent Regulatory Review Commission will give final approval. It would not be in the public interest to move forward now, only to have to withdraw or modify the rule, and significantly delay implementation, because of the preemption issue. If

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<sup>1</sup> *Request for Comments on Implementation of Potential Amendments to 52 Pa. Code § 59.34 Relating to Leakage Surveys of Customer-Owned Service Lines*, Docket No. L-2020-3019417 (Order issued August 5, 2021)

the Commission needs to move quickly and decisively to protect the public, there should be no ambiguity about our jurisdiction or authority that might impede our ability to act.

Fortunately, the Commission has the option to obtain assistance from the nation's leading expert on the question of federal pipeline safety preemption. PHMSA itself provides a process for state regulators to request interpretative guidance on pipeline safety issues.<sup>2</sup> It would be wise for the Commission to ask PHMSA to verify that a service life study requirement is compatible with PHMSA standards, and to review our proposed regulatory language for any needed clarifications or suggestions for improvement. I will therefore move that the Law Bureau prepare appropriate correspondence to PHMSA for our review and approval within thirty days of the entry of this Order.

Should PHMSA find that our proposed amendments are compatible with its regulations, a service life study will be incorporated into our pending pipeline safety rulemaking on changes to Chapter 59 of the Commission's regulations.<sup>3</sup> These two proceedings involve overlapping legal and policy issues, and it would be appropriate to locate a study requirement in Chapter 59.<sup>4</sup> Chapter 59 is the primary location of our gas and pipeline safety regulations, and PHMSA's requirements are already incorporated into Section 59.33(b). PHMSA's interpretative guidance on this issue and the comments received at this docket may be incorporated by reference at that proceeding, and the Commission may utilize an advance notice of final rulemaking if additional comment on this issue is necessary. In the meantime, the Commission will continue to implement all service life study requirements that have been approved as part of resolutions of enforcement actions brought by Commission staff. The safety of public utility infrastructure is of utmost importance to the Commission, and we will continue to diligently monitor and enforce compliance with all the laws of the of this Commonwealth within our jurisdiction.

**THEREFORE, I MOVE THAT:**

1. The Law Bureau seek interpretive guidance on the federal preemption issue from PHMSA pursuant to its regulations at 49 C.F.R. §190.11(b). PHMSA's response and any resulting recommendations are to be incorporated into the Commission's rulemaking proceeding at Docket No. L-2019-3010267.
2. The Final Rulemaking Order is adopted, as modified by this Motion.
3. The Law Bureau prepare an Order consistent with this Motion.
4. This docket be marked closed.

**Date: October 7, 2021**



**JOHN F. COLEMAN, JR.  
COMMISSIONER**

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<sup>2</sup> § 49 C.F.R. §190.11(b) *Availability of informal guidance and interpretive assistance.*

<sup>3</sup> *Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267 (Notice of Proposed Rulemaking Order entered August 19, 2021).

<sup>4</sup> 52 Pa. Code §59.1, *et seq.*