



April 8, 2022

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 –Notice of Proposed Rulemaking – via eFile System

Dear Secretary Chiavetta:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments regarding the above-referenced proposed rulemaking regarding Hazardous Liquid Public Utility Safety Standards. The MSC was formed in 2008 and is currently comprised of approximately 115 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the 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 natural gas production, gathering, processing and transmission, in the country, as well as the suppliers, contractors and professional service firms who work with the industry.

Introduction

The MSC appreciates the opportunity to have been able to submit comments during the Advanced Notice of Proposed Rulemaking (ANPRM) process. The MSC incorporates these prior comments by reference to the extent that the Public Utility Commission (PUC or Commission) did not modify these proposed standards in the revised proposed rulemaking.

The MSC also expresses its support for the comprehensive comments submitted to the PUC by the American Petroleum Institute.

In addition, the MSC strongly urges the Commission 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. Pennsylvania regulations should avoid duplicating PHMSA's efforts or creating rules that could be challenged under the federal Pipeline Safety Act's¹ preemption provision. 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)

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 resources² 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 hosted a seminar entitled "*Pipeline Safety, Operations and Maintenance*." 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.

Overview of 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 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.

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')

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.³ 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.⁴ 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.⁵

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 Code⁶ and (2) the Gas and Hazardous Liquids Pipeline Act (Act 127).⁷ The Public Utility Code provides the Commission with the authority to regulate the safety of intrastate pipeline facilities that are operated by public utilities.⁸ Act 127 allows the Commission to regulate the safety of non-public utility, intrastate pipeline facilities.⁹ 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.

The MSC notes that any changes that PHMSA adopts to Part 195 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.¹⁰ 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.

³ 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).

⁴ 49 U.S.C. § 60105.

⁵ *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).

⁶ 66 Pa. Cons. Stat. §§ 101 *et seq.* (2018).

⁷ 58 P.S. §801.101 *et seq.* 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. 801.501(a).

⁸ 66 Pa. Cons. Stat. §§ 101 *et seq.* (2018).

⁹ 58 P.S. §801.101 *et seq.* 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. 801.501(a).

¹⁰ 52 Pa. Code § 59.33.

Public Comments

The MSC offers the following comments in response to the proposed rulemaking. 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.

Compliance Cost Estimates

The Regulatory Review Act requires the Commission to prepare a Regulatory Analysis Form (RAF) which includes, among other criteria, an estimate of the cost of compliance to the regulatory community to comply with the proposed rulemaking. To the MSC's knowledge, the Commission has failed to produce such a RAF or an estimate on compliance costs so that these items may be evaluated for accuracy and subject to public comment. This appears to be a fatal flaw of the proposed rulemaking that the MSC encourages the Independent Regulatory Review Commission to take note of. Further, the MSC is unaware of any outreach that the Commission has conducted to industry operators to solicit input on anticipate compliance costs, which would be necessary to both inform and prepare an RAF.

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."¹¹ 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.

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 re-examine the current requirements and recent changes to the Part 195 regulations that PHMSA has adopted 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.

¹¹ 49 U.S.C. § 60104(c).

§59.137 Construction.

The MSC strongly encourages that any construction standards the Commission promulgates are prospective in nature, and do not require existing pipelines to be excavated to be brought into compliance. It is concerning that a rulemaking would convert an existing pipeline into non-compliance status merely through the promulgation of new standards, particularly if the pipeline was built in adherence to the standards in place at the time of its original construction.

To this end, the requirement that pipelines must be buried to a level of at least 40 inches below the level of cultivation is problematic. Existing lines have been built in accordance with federal standards, which require depths of between 30-36 inches. Excavating existing lines to achieve this new depth is unpractical, extremely costly, unnecessary, and in conflict with the PUC's own mission of ensuring safe and reliable utility service to consumers. Moreover, the PUC's proposed requirement that an operator evaluate and maintain such cover into the future is in conflict with federal standards, costly, unnecessary and impractical. To adhere to both of these standards would cost multiple millions of dollars per mile, notwithstanding the significant time and cost necessary to obtain the relevant environmental permits to conduct the work. It would also lead to significant disruptions in the utility service, further harming consumers and exacerbating an already stressed and unreliable supply chain that has caused massive disruptions to our economy.

The MSC also encourages the PUC to remove the requirement within subsection (g) that requires the placement of Emergency Flow Restriction Devices (EFRDs) at least every five miles. Each EFRD is extremely expensive. More to the point, however, PHMSA is currently working on a regulation¹² to address EFRD spacing, and the Commission should await final promulgation of a federal rulemaking before proceeding. Failure to do so will impose significant and unnecessary costs onto the regulated community, while establishing a standard that may be negated in the relatively near future by federal rulemaking.

§59.138 Horizontal directional drilling and trenchless technology, or direct buried methodologies.

The Department of Environmental Protection (PA DEP) already has promulgated stringent regulatory standards and requirements related to horizontal directional drilling.¹³ Additionally, PA DEP is currently in the midst of a public comment period for its draft Technical Guidance Document¹⁴ on trenchless technology. The MSC strongly encourages the Commission to recognize the regulatory obligations already imposed upon operators and not seek to duplicate or to deviate from the standards set by a fellow Commonwealth agency. Having two state agencies each assert jurisdiction on a matter, and then devising separate regulatory requirements for

¹² PHMSA Notice of Proposed Rulemaking, Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards – February 6, 2020

¹³ 25 PacCode §78a.68a

<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/025/chapter78a/s78a.68a.html&d=reduce>

¹⁴ PA DEP Document No. 310-2100-003: Trenchless Technology Guidance

<https://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=4240411&DocName=TRENCHLESS%20TECHNOLOGY%20GUIDANCE.PDF>



operators, only exacerbates the uncompetitive, inconsistent and punitive business and regulatory climate that continues to plague the Commonwealth.

Additionally, with respect to protection of water wells and supplies, the MSC notes that the PA DEP also has comprehensive statutory and regulatory requirements already in place to govern this subject. Respectfully, this topic is not a component of pipeline safety, and the Commission is not the environmental regulator of the Commonwealth. These standards are not appropriate to be included within this rulemaking and ought to be removed in their entirety.

§59.139 Pressure Testing.

The MSC encourages the Commission to delete the proposed hydrostatic testing standards for pre-1970 pipelines, as well as the proposed requirement for assessment by in-line inspection tools every two years. The cost to comply with these requirements, while absent from the Commission's proposed rulemaking package, is estimated to be in the billions of dollars. Furthermore, no data or justification is offered in the rulemaking package as to why these standards are necessary. Existing operating pressure studies suggest that they are not.

Furthermore, it would necessitate intruding upon the properties of private landowners and significantly disrupting the continued use of their own property. It may also impose significant costs on these landowners, such as displacing or disrupting valuable farmland. Finally, these significant operating disruptions conflict with the Commission's own obligations to ensure safe and reliable utility service for consumers.

§59.142 Pressure Testing.

The MSC encourages the Commission to remove this section for the following reasons:

- The Commission lacks the statutory authority to impose professional licensure obligations upon land agents employed or contracted by a hazardous liquid public utility;
- The proposed requirement is outside the scope of the proposed rulemaking, which is ostensibly limited to pipeline safety construction and operational standards;
- This standard is arbitrary and confusing, as it would apply only to a fraction of the professionals in Pennsylvania who are engaged in pipeline infrastructure land acquisition – namely those working for or with a regulated public utility;
- The professional license classes referenced in this section bare little, if any, relevance to the professional duties of a land agent employed by a regulated public utility.

Conclusion

On behalf of its member companies, the MSC appreciates the opportunity to submit these comments regarding the 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 E. Callahan
President

