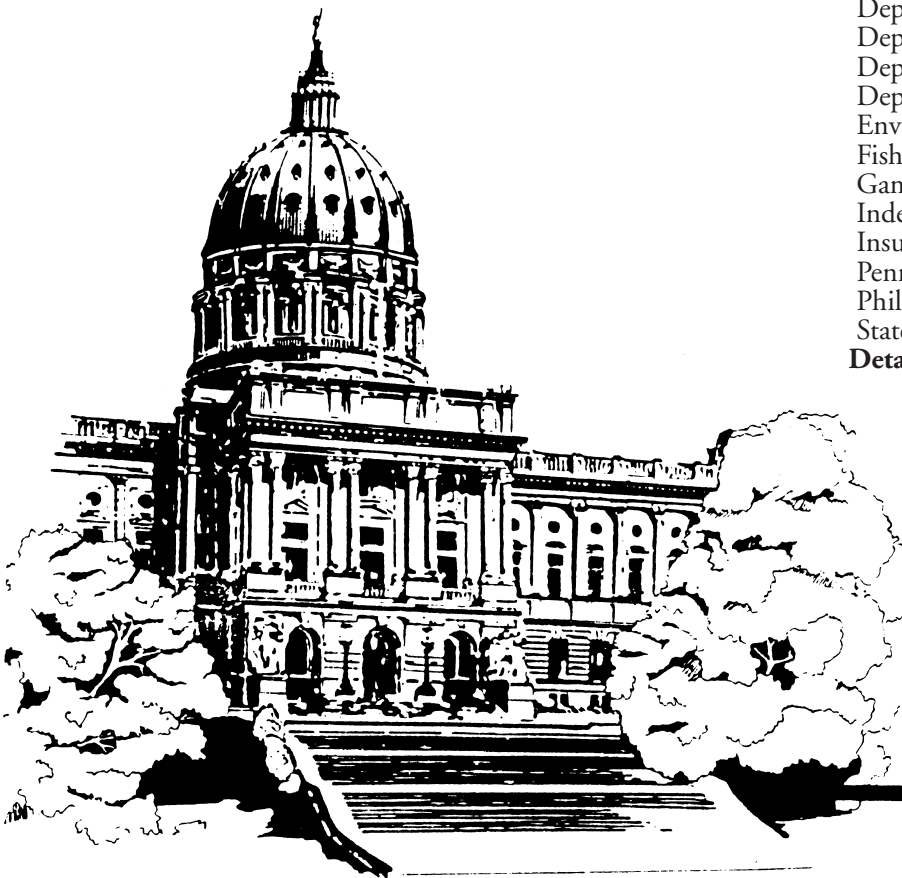


# PENNSYLVANIA BULLETIN

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## PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Public Meeting held  
October 7, 2021

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson, Statement, Dissenting; John F. Coleman, Jr., Vice Chairperson; Ralph V. Yanora

*Rulemaking Regarding Depreciation Reporting and  
Capital Planning for Crude Oil, Gasoline or Petroleum  
Products Transportation Pipelines 52 Pa. Code Chapter  
73; Docket Number: L-2019-3010270*

#### Order

*By the Commission:*

Before the Pennsylvania Public Utility Commission (Commission) for disposition is a rulemaking 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. For the reasons expressed in this Order, we discontinue this rulemaking consistent with this Order.

#### *Background*

At Public Meeting held June 13, 2019, the Commission adopted a Notice of Proposed Rulemaking Order (NOPR) to seek comments 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 52 Pa. Code §§ 73.1—73.9 currently apply to electric service, gas service, and water service public utilities, but are silent about crude oil, gasoline, and petroleum products transportation pipeline public utilities. The Commission 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.

The NOPR and the notice requesting comments from interested parties were published October 5, 2019, in the *Pennsylvania Bulletin*, at 49 Pa.B. 5702—5704. The Commission received comments from the Independent Regulatory Review Commission (IRRC), Sunoco Pipeline, LP (Sunoco), Laurel Pipeline Company, LP (Laurel), The Association of Oil Pipelines (AOPL), the County of Chester (Chester County), West Whiteland Township (West Whiteland), the East Goshen Township Board of Supervisors (East Goshen), and two individuals, Susan Hubickey and Trevor Salla. This order addresses the comments received and sets forth a final rulemaking amending our regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7.

The Public Utility Code gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are just and reasonable and that the service provided by public utilities to their customers and the public is safe, efficient, and adequate. 66 Pa.C.S. §§ 1301 and 1501. To accomplish these objectives, Section 501(b) grants the Commission the administrative authority to supervise and regulate all public utilities doing business within the Commonwealth of Pennsylvania and to make regulations necessary to exercise its powers. 66 Pa.C.S. § 501(b). Additionally, the Commission may require a public utility “to file periodical reports at such times, and in such form, and of such content” as the Commission may prescribe, including information concerning the valuation of its property. 66 Pa.C.S. §§ 504—506. The Public Utility Code, in pertinent part, defines a “public utility” as:

Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for . . . [t]ransporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S. § 102. Consequently, the Commission has the authority under the Public Utility Code to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to comply with the reporting provisions of Chapter 73.

In stating its purpose for promulgating the Chapter 73 regulations, the Commission determined that regular reporting of a public utility’s depreciation practices and capital planning is necessary to determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future. See 38 Pa.B. 4685 (Sept. 17, 1994); Rulemaking Re Public Utility Depreciation Practices and Capital Planning, Docket L-00920062 (Order entered July 22, 1994). The Commission also reasoned that it could not properly evaluate the justness and reasonableness of a public utility’s rates and rate structure without examining a company’s earnings and depreciation practices. However, the original rulemaking did not address the rationale for excluding petroleum transportation pipeline companies from the reporting requirements. At this time, the industry’s growth within the Commonwealth justifies including crude oil, gasoline, and petroleum products transportation pipeline public utilities in the list of entities required to comply with the depreciation and capital planning reporting provisions of Chapter 73. Submission of these reports ensures the Commission receives the information necessary to fulfill the duties imposed upon it by the Public Utility Code.

*Comments:*

#### *IRRC:*

The IRRC’s comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b), and further directs the Commission to respond to all comments received from us or any other source pursuant to Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)). The IRRC notes that two pipelines have submitted comments (Laurel and Sunoco) stating that the new reporting requirements will impose significant costs and points out that this assertion conflicts with the Commission’s cost estimate for the regulated community found in Question # 19 of the Regulatory Analysis Form (RAF), wherein the Commission acknowledged some ad-

ministrative costs, but did not anticipate any significant cost to the regulated community. IRRRC requested the Commission work with the commentators to gain a better understanding of how the new reporting requirements will financially impact pipelines and to include the findings in the RAF submitted with the final-form rulemaking. IRRRC also noted that Sunoco and Laurel question the usefulness of the reports and what the Commission will do with the information gathered. For each of the three reports to be filed by the pipelines, IRRRC asks the Commission to describe the type of information that will be collected and how that information will be used to improve safety, efficiency and adequacy of service. IRRRC Comments at 1.

*Sunoco:*

With regard to annual depreciation reporting, Sunoco commented that the proposed required annual depreciation reporting will come at a substantial cost to pipeline utilities 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. Sunoco Comments at 2. For traditional fixed utilities, the costs of these reports ultimately would be borne by ratepayers. *Id.* Sunoco maintains that because it cannot recover these costs through rates, the money would be better spent on maintaining and investing in infrastructure. Sunoco Comments at 2, 4.

Moreover, Sunoco asserts that reporting on depreciation provides no useful information regarding whether an asset is safe and adequate to provide service, because depreciation is a tax, ratemaking, and accounting concept, and has no bearing on whether such an asset can safely continue to be used and useful in utility service under PHMSA regulations. Sunoco Comments at 2.

Finally, Sunoco comments that 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. 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, however, 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. See 66 Pa.C.S. § 1330. In other words, Sunoco opines, if a hazardous liquid pipeline utility gains approval for alternative rate mechanisms that may not rely upon depreciation concepts, these reports will be wholly useless at great cost and no benefit. Sunoco Comments at 2-3.

Regarding the service life study reporting requirement, Sunoco comments that these reports require hazardous liquid pipelines to analyze their infrastructure in a way that is wholly inconsistent with federal pipeline safety law and regulations. More specifically, requiring hazardous liquid transportation pipelines to create and file service life study reports, as specified in 52 Pa. Code § 73.5, 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. Sunoco opines that the service life study report would require the utility to average and estimate service

life or average remaining life of utility facilities, but that 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 programs. 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. Sunoco Comments at 3.

Finally, with regard to the capital investment plan reporting requirement, Sunoco 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. See 52 Pa. Code § 73.8. Sunoco states that a five-year report provides no additional relevant and timely information that Sunoco 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, Sunoco continues, when and if projects arise, initial plans and any alteration are within the utility's "managerial discretion," which is a legal principle that provides that 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. Sunoco questions the need for a projection report that may not remain accurate for very long, nor provides information that is more useful than that already being submitted under 52 Pa. Code § 59.38. Sunoco Comments at 4.

In its response to the Commission's data requests, Sunoco estimated that the costs of preparing the reports would be \$65,000 for the Annual Depreciation Study, \$125,000 for the Service Life Study, and \$345,000 for the Capital Investment Plan. These costs will recur each time a report is due (annually for the depreciation study and every five years for the service life study and capital investment plan). Moreover, Sunoco estimates an approximate 3% yearly increases in costs for each report, which is based on the consumer price index. These costs reflect both internal and external costs and were calculated by listing necessary tasks to complete each report, number of hours for each task, and hourly rate for each person performing the task. Sunoco noted that it has extensive pipeline infrastructure throughout the state that drives these costs. Finally, regarding financial impact, the total amount, \$535,000 represents an approximately 2% of year-to-date 2020 weighted average of Commission tariffed rates. This was calculated by taking the estimated total report cost per intra-state barrel movement divided into weighted average tariffed rate from Twin Oaks, Delaware County origin to points in Pennsylvania destinations. Sunoco DR-1 at 1.

*Laurel Pipeline:*

Laurel generally comments that these additional reporting requirements will increase regulatory compliance costs for hazardous liquids pipelines, without apparent benefit to consumers or the industry. In addition, Laurel

proposed that, should the reports ultimately be required, the frequency at which certain of the requested reports are required by the Commission should be consistent with analogous federal reporting requirements. Specifically, regarding annual depreciation reports, Laurel explains that hazardous liquid pipelines are not currently required to prepare and submit depreciation reports to the Commission on an annual basis, and that, therefore, this additional reporting requirement will require hazardous liquid pipelines to incur additional costs. Laurel comments that it is unclear how these additional reports would be used by the Commission, and thus the benefit of the proposed change is not apparent. Laurel Comments at 2.

Regarding service life study reports, Laurel requests the Commission consider current PHMSA regulations and integrity programs put in place to ensure the safety in the operation and maintenance of hazardous liquid pipelines. Laurel submits that age should not be used to determine a pipeline's viability, rather, the integrity management program that has been regulated under PHMSA's integrity management requirements should be used as the basis to determine a pipeline's viability. Laurel Comments at 2-3.

In addition, Laurel questions the need to perform a service life study every five years. Instead, consistent with existing federal requirements under the Federal Energy Regulatory Commission's (FERC) regulations, Laurel would propose that service life studies be completed at the direction of the Commission or "when a carrier believes any rate prescribed by the Commission is no longer applicable." See 18 C.F.R. § 352, Instruction 1-8(b)(2). By allowing hazardous liquids pipelines to complete these studies "as needed," consistent with existing federal requirements, certain of the additional costs associated with complying with this proposed amendment would be avoided. Laurel Comments at 3.

With respect to the proposed amendment to require hazardous liquids pipelines to submit capital investment plan reports every five years under 52 Pa. Code § 73.7, Laurel submits that the proposed amendment should clarify the manner in which capital incurred for projects that cross state lines should be reported. Petroleum products pipeline projects regularly include interstate and intrastate aspects, i.e., origins and destinations that can be used for intrastate service or interstate service. However, the proposed regulation does not clarify how such projects should be included in a report. Laurel suggests further guidance under the Section 73.2 Definitions, which outlines the report criteria for joint projects (providing both inter and intrastate transportation services), may be needed to address how joint projects are addressed by the report. Id.

Moreover, in the proposed rulemaking, the Commission indicated that Chapter 73 was adopted, in part, because the Commission determined "regular reporting of a public utility's depreciation practices and capital planning is necessary to determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future." See NOPR, p. 2 (citing 38 Pa.B. 4685 (Sept. 17, 1994); Rulemaking Re Public Utility Depreciation Practices and Capital Planning, Docket L-00920062 (Order entered July 22, 1994)). In this regard, as the Commission does not have jurisdiction over the rates charged for interstate service, Laurel submits that the Commission should clarify how it will use information related to interstate service, if such information is to be included in the reports. Laurel Comments at 4.

Lastly, Laurel submits that it is important to recognize hazardous liquids pipelines are regulated as common carriers rather than public utilities at the federal level. Under this mode of regulation, "[m]any constraints commonly associated with utility-type regulation. . . were not imposed on oil pipelines." Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 65 F.E.R.C. ¶61,109 (Oct. 22, 1993). Courts have interpreted this as reflecting a Congressional intent to allow market forces "freer play" within the industry, than for other common carriers or for public utilities. Laurel submits that, by considering requiring hazardous liquids pipelines to disclose commercially and competitively sensitive information regarding capital investment strategies, the Commission's proposed amendments may conflict with the market forces driving the hazardous liquids pipelines industry. This would be especially true if the Commission were to require hazardous liquids pipelines to include information related to interstate service projects to be included in a Section 73.7 capital investment plan. Id.

In its response to the Commission's data requests, Laurel estimated that if the requirements proposed in the NOPR were adopted, and it were required to prepare and submit these studies on the timeframes proposed by the Commission, it would incur approximately: (1) \$25,000 to \$30,000 in additional annual costs to prepare and submit the contemplated Annual Depreciation Report; (2) \$35,000 to \$45,000 in additional costs every five years to prepare and submit the contemplated Service Life Study; and (3) \$25,000 to \$30,000 in additional costs every five years to prepare and submit the contemplated Capital Investment Plan Report. In sum, Laurel estimates it would incur approximately \$185,000 to \$225,000 in additional costs every five years, in order to comply with all the proposed reporting requirements. Laurel's estimate is based upon the extent of miles of pipeline facilities that it owns and operates in Pennsylvania, which would be subject to these reporting requirements. Laurel DR-1 at 1.

#### *AOPL:*

Generally, the AOPL agrees with the comments filed by Laurel and Sunoco but adds that it is particularly concerned about the imposition of utility reporting obligations on 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. Further, the 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, 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. AOPL Comments at 1-2.

#### *Chester County:*

Chester County supports the proposed regulations which will increase pipeline operation transparency and will help to ensure that crude oil, gasoline and petroleum products transportation pipeline public utilities are financially fit to complete the needed short and long-term maintenance for these public utilities to continue to operate safely throughout the Commonwealth. Chester County opines that there is no valid reason to exclude crude oil, gasoline and petroleum products transportation

pipeline public utilities from the mandatory reporting requirement for other regulated public utilities. Comments of Chester County at 1.

*West Whiteland:*

West Whiteland comments that it has been ground zero for problems associated with Energy Transfer's Mariner East pipelines that are in operation and under construction, and requests that the proposed amendments include a requirement that the reports, particularly the life studies, be publicly available. West Whiteland recognizes that there are security risks to pipelines but argues that the excessive secrecy surrounding many of Energy Transfer's plans has created challenges for local officials and added to public suspicion about the safety of the pipelines. Comments of West Whiteland at 1.

*East Goshen:*

East Goshen notes that the Mariner East pipeline project runs the entire length of East Goshen Township, and the project has had a profound impact on the quality of life of the Township's 18,233 residents. Therefore, East Goshen strongly supports any and all regulatory efforts to make pipeline operators more accountable to both the Commonwealth and its residents. Comments of East Goshen at 1.

*Susan Hubickey and Trevor Salla:*

The comments of Ms. Hubickey relate to pipeline conversion, construction techniques and horizontal directional drilling, protection of public and private water wells and supplies, and land agents and eminent domain. While filed under the current Docket No. L-2019-3010270, we believe that these comments were intended to address a companion Commission proceeding Hazardous Liquid Public Utility Safety Standards, 52 Pa. Code Chapter 59, at PUC Docket No. L-2019-3010267. Nevertheless, the concerns raised in these comments are legitimate safety concerns that will be addressed both in this case, and in our companion case.

*Disposition*

To begin with, we note that we are closing this rulemaking without adopting the proposed changes. However, as explained below, we will continue to review the propriety of requiring crude oil, gasoline, and petroleum products transportation pipeline public utilities to file service life studies in the open rulemaking proceeding at Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267.

*Depreciation and Capital Investment Plan Reports:*

With respect to the financial impact on pipeline utilities, the Commission sent data requests both to Sunoco and Laurel on September 15, 2020, and received responses on October 15, 2020, and October 16, 2020, respectively. The data requests asked Sunoco and Laurel to provide more information regarding the fiscal impact this proposed rulemaking will have on each company.

Upon further discussion with the interested bureaus within the Commission, it was determined that the Annual Depreciation Report and the Capital Investment Plan Report are reports generally required of fixed utilities for the purposes of determining base rates, which do not apply to pipeline public utilities. Moreover, the Commission already receives from pipeline public utilities notification of proposed major construction, reconstruction or maintenance of plant at least 30 days prior to the commencement of work. Major construction, reconstruction

or maintenance is defined for this reporting as a single project involving an expenditure in excess of \$300,000 or 10% of the cost of the utility's plant in service, whichever is less, pursuant to 52 Pa. Code § 59.38. Accordingly, the Commission agrees with the commenters that the Annual Depreciation Report is not a report that would assist in determining whether a pipeline public utility will be capable of providing safe, efficient, and adequate service currently and in the future, and that the Capital Investment Plan Report requirements are satisfied by the existing filings being provided to the Commission under 52 Pa. Code § 59.38.

*Service Life Study Report:*

Several commentors asserted that mandating a reoccurring service life study requirement for all pipelines would be inconsistent or incompatible with the Federal regulations of the PHMSA and, therefore, would 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 we have a reasonable basis for believing we have 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> Before the Independent Regulatory Review Commission will give final approval, the Commission must 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. It would not be in the public interest to move forward now, only to have to withdraw or modify the rulemaking, thereby significantly delaying implementation because of a preemption issue. If 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.

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

<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).

<sup>2</sup> See 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.

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 Commonwealth within our jurisdiction; *Therefore,*

*It Is Ordered That:*

1. The Law Bureau prepare appropriate correspondence to PHMSA for the Commission's review and approval within thirty days of the entry of this Order.

2. A copy of this Order be served on all crude oil, gasoline, and petroleum products transportation pipeline public utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement.

3. The instant rulemaking at Rulemaking Regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Products Transportation Pipelines 52 Pa. Code Chapter 73, Docket No. L-2019-3010270 be marked closed.

4. A copy of this Order be entered at Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267.

5. The Law Bureau shall deposit this Order with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. The Commission shall provide notice to the Office of Attorney General, the Governor's Budget Office, the Legislative Standing Committees, and the Independent Regulatory Review Commission that this rulemaking has been closed.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: October 7, 2021

ORDER ENTERED: October 22, 2021

**Statement of Chairperson Gladys Brown Dutrieuille**

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. At the outset of this docket the Commission proposed to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file depreciation reports, service life study reports, and capital investment plan reports.

Numerous parties filed comments in response to this proposed rulemaking. A number of pipeline operators question the value and legality of these three additional reporting requirements. Conversely, various individuals and municipalities filed comments supporting these additional reporting requirements noting their potential to better instill safe and reliable service through accountability and transparency.

Upon review and consideration of their respective costs and benefits I believe that the proposal to add depreciation and capital investment reporting are not necessary. Depreciation reports are beneficial to determine the validity and accuracy of base rates. However, pipeline utilities operate in a manner more akin to a 'common carrier' and are not directly analogous to fixed utilities with base rates. As such, this information is of minimal value. Second, the Commission already receives major construction and maintenance reports from pipeline utilities pursuant to our regulations at 52 Pa. Code § 59.38, thus minimalizing the benefits of the proposed capital investment reporting requirement.

However, I do believe that the proposal to require service life study reporting is in the interest of the public, and I contend this regulatory package should proceed with inclusion of this requirement. I submit that service life study reports can bear upon whether a pipeline can continue to provide safe, efficient, and adequate service. While service life may be extended indefinitely through proper adherence to a Pipeline and Hazardous Materials Safety Administration (PHMSA) integrity management plan, this does not mean that segments of pipelines or other pipeline facilities do not wear out or develop leaks. Public safety and transparency are of paramount importance, and I believe that periodic service life study reporting is step towards achieving these goals.

Several pipelines contend that a service life study reporting requirements is preempted by the PHMSA regulations. I disagree. I contend that such reporting is not inconsistent nor incompatible with Federal regulations but rather a complementary requirement of Pennsylvania necessarily promulgated in response to the burgeoning pipeline industry in the Commonwealth.

The information conveyed pursuant to this proposal will enhance the Commission's ability to appraise that status of pipelines thereby helping to ensure the prudent and safe operations of said pipelines.

For these reasons, I support the issuance of a final rulemaking adopting a service life study reporting requirement and removing the proposed depreciation and capital investment reporting requirements.

Date: October 7, 2021

GLADYS BROWN DUTRIEUILLE,  
*Chairperson*

[Pa.B. Doc. No. 21-1837. Filed for public inspection November 5, 2021, 9:00 a.m.]