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October 7, 2024

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**Re: Replacement of Older Plastic Pipe in Natural Gas Distribution Systems
Docket No. M-2024-3050313**

Dear Secretary Chiavetta:

Enclosed for filing are the comments of the Energy Association of Pennsylvania regarding the Tentative Order entered on August 26, 2024 in the above-referenced proceeding.

Sincerely,

A handwritten signature in blue ink that reads 'Donna M.J. Clark'. The signature is fluid and cursive, with the first name 'Donna' being the most prominent.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: Adam Young, Law Bureau (via email—adyoung@pa.gov)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Replacement of Older Plastic Pipe in
Natural Gas Distribution Systems : Docket No. M-2024-3050313

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE
AUGUST 26, 2024 TENTATIVE ORDER**

I. INTRODUCTION AND BACKGROUND

On August 26, 2024, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered a tentative order to consider the accelerated replacement of older plastic pipe by natural gas public utilities. *Tentative Order Re: Replacement of Older Plastic Pipe in Natural Gas Distribution Systems*, Docket No. M-2024-3050313 (August 26, 2024) (“Tentative Order”) at p. 1. The Tentative Order seeks comments from interested parties thirty (30) days after publication in the *Pennsylvania Bulletin*, i.e., October 7, 2024, and reply comments fifteen (15) days thereafter, i.e., October 22, 2024.

The Energy Association of Pennsylvania (“EAP” or “Association”) submits these comments on behalf of its natural gas distribution company (“NGDC”) members¹. EAP supports and echoes the comments filed by its individual NGDC members in this proceeding. In addition to highlighting the impact of their unique financial and operating system circumstances as related

¹ NGDC members include: Columbia Gas of Pennsylvania, Inc.; Leatherstocking Gas Company, LLC; Pike County Light & Power Company; National Fuel Gas Distribution Corporation; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples Gas Company LLC; Philadelphia Gas Works; UGI Utilities, Inc.; and Valley Energy, Inc.

to the replacement of aging infrastructure, NGDC comments underscore the ongoing and important work performed by natural gas utilities to ensure the integrity of their distribution systems by identifying, prioritizing, and developing strategies to mitigate risk on a continual basis AND how that work informs decisions reflected in company Distribution Integrity Management Plans (“DSIC”)² and Long Term Infrastructure Improvement Plans (“LTIIIP”).

The Tentative Order, based on a Motion of Chairman Stephen M. DeFrank issued at the August 1 PUC Public Meeting, recounts the findings of a 1998 National Transportation Safety Board (“NTSB”) report investigating the vulnerabilities of certain plastic pipe installed in natural gas distribution systems prior to 1982³, references two March 1999 advisory bulletins issued by the Research and Special Programs Administration (“RSPA”) of the U.S. Department of Transportation (“USDOT”) outlining recommendations for owners and operators of natural gas distribution systems⁴, references a third RSPA advisory bulletin issued in November 2002 announcing, *inter alia*, the formation of a Plastic Pipeline Data Committee to develop a process for gathering data to support an analysis of the frequency and causes of plastic pipe failures⁵, and references a fourth advisory bulletin issued in September 2007 by the Pipeline and Hazardous

² Under federal regulations, gas distribution pipeline operators are required to have a DIMP which is a comprehensive approach to ensure the safe and reliable operation of natural gas distribution systems thereby protecting the public, property and the environment from risks associated with transporting natural gas via pipeline. The federal regulations require an iterative and continuous review program based on lessons learned, new technologies, and changing circumstances. *See*, 49 CFR § 192.1007 and discussion *infra* at pp. 5-7. The Commission Bureau of Investigation & Enforcement – Safety Division (“Safety Division”) regularly audits each NGDC DIMP.

³ *Brittle-Like Cracking in Plastic Pipe for Gas Service*, NTSB/STR-98-01 (April 23, 1998). [Brittle-Like Cracking in Plastic Pipe for Gas Service \(nts.gov\)](https://www.nts.gov/NTSB/STR-98-01/Brittle-Like%20Cracking%20in%20Plastic%20Pipe%20for%20Gas%20Service.pdf)

⁴ *See*, *Potential Failures Due to Brittle-Like Cracking of Older Plastic Pipe in Natural Gas Distribution Systems*, 64 Fed. Reg. 12212 (March 11, 1999). [99-6051.pdf \(govinfo.gov\)](https://www.govinfo.gov/epubs/FR/1999-03-11/99-6051.pdf) and *Potential Failure Due to Brittle-Like Cracking of Certain Polyethylene Plastic Pipe Manufactured by Century Utility Products Inc.*, 64 Fed. Reg. 12211 (March 11, 1999). [99-6013.pdf \(govinfo.gov\)](https://www.govinfo.gov/epubs/FR/1999-03-11/99-6013.pdf)

⁵ *Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe*, 67 Fed. Reg. 70806 (November 26, 2002). [Federal Register: Notification of the Susceptibility To Premature Brittle-Like Cracking of Older Plastic Pipe](https://www.federalregister.gov/documents/2002/11/26/00806a-notification-of-the-susceptibility-to-premature-brittle-like-cracking-of-older-plastic-pipe) .

Materials Safety Administration (“PHMSA”) of the USDOT that expands on information provided in earlier bulletins and names additional pipeline material with poor performance histories⁶.

In addition to citing to the 1998 report issued by the NTSB and advisory bulletins issued by RSPA and PHMSA between 1999 and 2007, the Tentative Order references federal legislation introduced in September 2023⁷ which, if passed, would, *inter alia*, “require gas pipeline operators to conduct an assessment of pipeline facility records to determine the presence of Aldyl A piping....to submit documentation of the total pipeline mileage and number of components identified as Aldyl A [or]...if there are insufficient records, to adhere to the methodology” established by the U.S. Secretary of Transportation (Secretary) to locate and identify Aldyl A piping. Tentative Order at p. 4. The proposed federal legislation would require the Secretary “to issue standards for the removal of Aldyl A piping at all pressurized locations within four years of the enactment of the legislation, and operators would be required to remove Aldyl A piping at all pressurized locations no later than five years of the enactment of the legislation.” *Id.*

In the Tentative Order, the Commission acknowledges that natural gas distribution systems in Pennsylvania contain the older plastic pipe materials identified by federal agencies as susceptible to brittle-like cracking⁸ and further states that natural gas utilities face “competing priorities in terms of repairing and replacing aging infrastructure.” Tentative Order at p. 4. Citing to its general authority under Section 1501 of the Public Utility Code, 66 Pa. C. S. § 1501, to ensure public utilities maintain safe and reliable facilities, the PUC concludes that it is “appropriate

⁶ *Pipeline Safety: Updated Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe*, 72 Fed. Reg. 51301 (September 6, 2007).

⁷ Representative Chrissy Houlahan introduced the Aldyl A Hazard Reduction and Community Safety Act on September 21, 2023. H.R. 5638, 118th Congress (2023). The bill was co-sponsored by Representative Dan Meuser. The legislation has not moved or been voted on since its introduction.

⁸ Cite to results of data request from October 2023. Tentative Order at p. 5.

to explore the acceleration of replacing ... older plastic pipe materials using the tools already available to natural gas public utilities under Pennsylvania law.” *Id.*

In particular, the Commission seeks comment on requiring the amendment of current NGDC LTIIPS “to target the accelerated replacement of older plastic pipes” and on “establishing a [regulatory] requirement for non- DSIC⁹ eligible public utilities distributing natural gas to file Pipeline Replacement Plans” as detailed in this Commission generic tentative order. Tentative Order at p. 10.

II. COMMENTS

Initially, EAP and its NGDC members support the Commission’s emphasis on gas safety issues generally and are dedicated to continually working with the PUC and its staff responsible for overseeing gas safety in the Commonwealth. The questions posed in the Tentative Order regarding the replacement rate of older (pre-1982) plastic pipe, identified in the NTSB 1998 report and various advisory bulletins issued by USDOT RSPA and PHMSA between 1999 and 2007, and whether removal of that plastic pipe should be prioritized and accelerated over the removal of cast iron and bare steel pipe are reasonable. The findings of the NTSB report and subsequent advisory federal bulletins provide that, while plastic piping is generally safe and an economic alternative to steel pipe or pipe made of other materials, identified plastic pipe¹⁰ installed between the “1960s and the early 1980s may be vulnerable to brittle-like cracking because of improper joining or installation.” Tentative Order at p. 2. In particular, the NTSB report states that certain identified older plastic piping may fail at lower stresses, after less time in place than originally projected,

⁹ DSIC is the acronym for “distribution system improvement charge”.

¹⁰ The federal advisory bulletins issued by RSPA identified plastic pipe manufactured by Century Utility Products, Inc., low-ductile “Aldyl A” piping manufactured by Dupont Company before 1973, and polyethylene gas ppe designated PE 3306. The Century Utility Product was referenced in one of the March 1999 advisory bulletins. All three products were identified in the November 2002 RSPA bulletin. *See, supra*, fns. 4 and 5.

and the failure may be difficult to detect until a significant amount of gas leaks out of the pipe and potentially migrates into an enclosed space, such as a basement.

EAP maintains, however, that a “one size fits all” solution as outlined in the Tentative Order¹¹ does not account for the fact that each NGDC (whether DSIC eligible or not) faces different circumstances regarding: the age of its system; the types of pipe in use; the risks already identified and prioritized in its integrity management plan; the nature of the service area (rural, suburban, or urban); and the financial condition of the utility coupled with the ability of customers to pay higher rates in order to “simultaneously” focus on the replacement of cast iron, bare steel, and older plastic pipe¹². The decision of whether and when the replacement of such older plastic pipeline, if present, should be accelerated over other identified risks will not be uniform among Pennsylvania’s NGDCs and EAP believes that the Commission should not attempt to impose a rigid, inflexible process.

A. RATHER THAN DIRECTING DISC-ELIGIBLE NGDCs TO AMEND CURRENT LTIIPs TO ACCELERATE THE REPLACEMENT OF OLDER PLASTIC PIPE, EAP SEEKS A SOLUTION THAT FOCUSES ON THE DIMP.

The Tentative Order outlines a sweeping and undifferentiated solution requiring all DSIC-eligible NGDCs to include plastic pipe as eligible property in their LTIIPs if such plastic pipe is not already targeted to be replaced. Tentative Order p. 7. The proposed solution outlined in the Tentative Order applicable to DISC-eligible NGDCs does not adequately consider the impact of a major NGDC program required by federal regulations and regularly audited by the Safety

¹¹ See, Tentative Order at p. 7 which directs DSIC eligible NGDCs to petition the PUC “to amend their current LTIIPs to focus on replacement of the older plastic pipe” identified in the federal advisory bulletins “as eligible [DSIC] property if such plastic pipe is not already targeted to be replaced.”

¹² See, Tentative Order at p. 6 (“While the Commission understands that cast iron and bare steel have not been fully eliminated, the Commission would like to emphasize the importance of simultaneously focusing on the replacement of older plastic pipe.”)

Division, i.e., the DIMP. *See, supra.* at fn. 2. Directing NGDCs to amend their current LTIIPs ignores the iterative analysis and continual improvement presently required of NGDCs in the DIMP process where the goal is to ensure the safe and reliable operation of natural gas pipelines.¹³

While the Tentative Order does reference the DIMP at p. 7, the language implies that if the operator identifies, evaluates, and ranks older plastic pipe as a threat, it must be included in the operator's LTIIP under Pennsylvania law. EAP does not agree with this conclusion that purports to substitute Commission discretion for a utility's management decision based on threat identification, risk assessment/prioritization, and mitigation measures developed under the DIMP¹⁴. Plastic pipe might be identified as a potential threat in the DIMP analysis but not a high priority following the risk assessment component of DIMP. The decision of when to then implement a replacement mitigation strategy when the risk assessment for a particular NGDC does not identify replacement of older plastic pipe as a high priority safety concern should appropriately remain with utility management. *See, Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth. 1981).

Additionally, the proposed resolution does not account for the unique characteristics of any given NGDC distribution system nor does it appear to consider where a NGDC is in its current pipeline replacement plan. It also does not address the cost of expanding the LTIIP as envisioned by the Tentative Order or the ability of the utility or its ratepayers to pay for mitigating specific Commission-prioritized risks, which may or may not have a high priority ranking under an NGDC's DIMP.

¹³ The DIMP as established under federal regulations requires a comprehensive approach for natural gas pipeline operators to implement to ensure the integrity of their distribution systems. The key components of a DIMP include identification of threats, risk assessment, mitigation measures, performance metrics and monitoring, documentation and record-keeping, and continuous improvement. 49 CFR §§ 192.1001 – 1015.

¹⁴ Public utilities have a right to self-management provided their actions are consistent with the Public Utility Code. *See, Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth. 1981)

EAP asserts that the DIMP, not the LTIP, is the key to addressing the Commission's legitimate concern regarding the prioritization of risk presented by the existence of older (pre-1982) plastic pipe in a specific natural gas distribution operating system. Rather than mandating the filing of a petition, EAP suggests that the Commission encourage NGDCs to determine whether any of its plastic pipeline installed between 1960 and the early 1980s was manufactured by the companies named in the advisory bulletins issued by RSPA and PHMSA and, if so, look to include that pipeline in its DIMP analysis.

EAP maintains that a NGDC's DIMP is the best vehicle to identify, prioritize, and strategize mitigation measures relating to the replacement of pre-1980 plastic pipe, and that it is the role of utility management to make the fundamental operational and financial decisions regarding how best to maintain the integrity of its distribution system. The analysis required by the DIMP process will help management identify threats and set priorities for risk mitigation. Likewise, the analysis will also provide the PUC and its Safety Division with the data necessary to audit a NGDC's DIMP and confirm that the identified threats, risk assessments, and mitigation measures adhere to the federal regulations. As a tool, the DIMP helps inform the LTIP and its periodic updates which, in turn, supports the utility decision to seek a DSIC as a means of recovering the cost of replacing aging infrastructure between rate cases. Mandating that NGDCs amend their current LTIPs to accelerate the replacement of older plastic pipe in cases where the older plastic pipe is not prioritized as the riskiest infrastructure in need of replacement pursuant to a NGDC's DIMP does not promote public safety and, in some instances, may be considered arbitrary.

Accordingly, EAP respectfully asks that rather than requiring DSIC-eligible NGDCs to amend their LTIPs to accelerate the replacement of older plastic pipe, the Commission focus on

individual company DIMPs, encourage companies to further examine the risks and priority of mitigation assigned to any older plastic pipe that remains in their individual distribution systems, and discuss their efforts with the Safety Division during future DIMP audits. EAP maintains that such a course of action will better address the safety concern posed by the existence of older (pre-1982) distribution plastic pipe in the context of individual company circumstances as continually examined and updated through an NGDC DIMP.

B. THE TENTATIVE ORDER PROCESS IS NOT AN APPROPRIATE VEHICLE TO IMPLEMENT A NEW REGULATORY PROGRAM REQUIRING FILING AND APPROVAL OF PIPELINE REPLACEMENT PLANS FOR NON-DSIC ELIGIBLE NGDCs.

The Tentative Order contemplates a new mandatory program under which non-DSIC eligible NGDCs will be required to file Pipeline Replacement Plans which include, *inter alia*, replacement timeframes and a proposal for how the cost of the pipeline replacement will be addressed in rates. Tentative Order at p. 8. The Tentative Order states that a Pipeline Replacement Plan will be compliant if it meets a performance metric for replacement of pipe based on “the public utility’s average rate of pipeline replacement during the previous ten years or the rate that will result in the replacement of all at-risk pipe within twenty years, whichever results in a more accelerated rate of replacement.” *Id.* The Tentative Order requires that “each non-DSIC eligible gas public utility must replace the older plastic pipe..., unprotected bare or coated steel, and cast iron pipe based upon their DIMP plan for risk assessment with the rate of replacement equal-to or greater-than their metric.” *Id.* The utility may request a waiver of the performance metric if its DIMP plan prohibits the utility from complying with the metric or compliance would result in unreasonable rates. *Id.*

It is axiomatic that a final order requiring filing and approval of the proposed Pipeline Replacement Plan described in the Tentative Order would impose “binding norms” of conduct on non-DSIC eligible NGDCs. The Supreme Court of Pennsylvania has held that an administrative agency may only establish such “binding norms” through rulemaking or adjudication. *See, Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977). This proceeding is not a rulemaking, as the Commission is not following the process set forth in the Commonwealth Documents Law, 45 P.S. §§ 1102 *et seq.*, and the Regulatory Review Act, 71 P.S. §§ 745.1 *et seq.*, for promulgating regulations. This proceeding is also not an adjudication, such as a complaint case or other matter in which the Commission exercises its quasi-judicial powers to resolve a dispute. This proceeding was initiated by the Commission for the purpose of establishing a new policy and program binding on non-DSIC eligible NGDCs in Pennsylvania, requiring the filing and approval of Pipeline Replacement Plans. Efforts such as this to establish new policies for an entire segment of an industry are in the nature of regulations, and agencies may not avoid the established process of promulgating regulations. *See, Dept. of Environmental Resources v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Cmwlth. 1991), *appeal denied*, 600 A.2d 541.

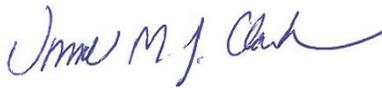
If the Commission decides to move forward and require non-DSIC eligible NGDCs to file and seek approval of Pipeline Replacement Plans, EAP contends that it must do so by promulgating regulations.

III. CONCLUSION

Based on the foregoing, EAP respectfully requests that, with respect to DSIC eligible NGDCs, the Commission forego a mandated amendment to current LTIIPs in order to accelerate

the replacement of older (pre-1982) plastic pipeline and pursue a more collaborative approach that incorporates the importance of utility management discretion. One that focuses on individual company DIMPs, encourages NGDCs to continue to identify threats posed by older (pre-1982) plastic pipeline in their distribution systems, to assess the risks and priority of such threats, and to plan for replacement mitigation in the context of their overall distribution integrity management plans. NGDCs should further be encouraged to discuss these ongoing efforts related to the risks posed by older pipeline with the Safety Division during upcoming DIMP audits. With respect to non-DSIC eligible NGDCs, EAP maintains that the proper procedural pathway to a required Pipeline Replacement Plan for those gas utilities is via a rulemaking proceeding and not, as proposed, a final generic order.

Respectfully submitted,



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Date: October 7, 2024