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Via Electronic Submission  
Pennsylvania Public Utility Commission  
Harrisburg, PA

Re: Marcellus Shale En Banc Hearing on PUC Jurisdictional Issues, Docket No. I-2010-2163461

Dear Commissioners:

The rapid development of natural gas industry in Pennsylvania has already presented the Commonwealth many challenges. Based experience to date and projections for future development, meeting these challenges and effectively regulating the high-impact activity of natural gas extraction and transportation is of utmost importance to protect the property, safety and welfare of Pennsylvania residents as well as the natural environment. Thank you for conducting the en banc hearings on PUC jurisdictional issues and for this opportunity to provide comment.

Natural Gas development does not occur without pipeline. In the case of exploitation of the Marcellus Shale, thousands of miles of pipeline will be required. It is my position that all oil and gas pipeline in the state must be regulated for safety. All pipeline must be regularly inspected, properly maintained, replaced when necessary, mapped and entered into the PA One-Call system. There should be no exceptions – All pipeline, including Class 1 pipeline and the lines that gas companies allow landowners to run from a gas well to serve their residences and other buildings, must be regulated.

Natural gas pipelines present a unique risk to Commonwealth residents, property and the environment. Especially in the case of unprocessed natural gas, which is highly flammable and has no smell, making it undetectable without special equipment. There have been numerous pipeline accidents in the United States causing severe property damage, injury and death. A significant portion of these

accidents have resulted from internal and external corrosion, weld failures and mechanical damage. I believe that through inspection, proper maintenance and mapping/identification, many of the accidents in the US could have been prevented, and these actions will reduce the number of accidents moving forward.

The geology and topography of Pennsylvania will be challenging for gas drilling and gas transport companies. The rocky land will create a great temptation for gathering lines and other pipeline to be laid above ground. I was offered a gas lease for my land that says the gas company will bury the pipeline *when possible*. Above-ground gas pipeline should not be permitted in Pennsylvania. Risk factors include vandalism and damage caused vehicles, construction and excavation activities, hunting and gunning which is widespread in rural Pennsylvania and begins in the pre-teen years.

Keeping all pipeline underground presents challenges. The very rocky soil in some areas is difficult to excavate, and the rocks can scrape the coating of pipes, compromising corrosion resistance. But these challenges can be dealt with. Pipe must be laid carefully and properly to ensure its integrity over time. The extra time, effort and expense is worth it as the infrastructure that will be put in place may be operational for decades. The safety of residents, their property and the environment must be maintained for the full duration of operations.

I noticed from the biographies on the PUC website that some of the commissioners are from southeastern, PA. For a number of years I lived in the western suburbs of Philadelphia. Now I live in a rural area near the border of Lackawanna and Susquehanna counties. I bring this up because I want to emphasize, that having lived in both environments, I can say from experience that the cultures of these areas are very different. A good percentage of the people in the rural area where I live now have their own backhoes and tractors (with buckets) and do their own digging, excavation and home remodeling. This is the land of do-it-yourselfers. Adults and kids spend afternoons with semi-automatic rifles and

pistols plinking away. In winter people race through the snow covered landscape on snowmobiles, crashing through drifts and jumping ridges. This is the area where we are going to have a lot of Class 1 pipeline. And this is the area where people are going to run lines from gas wells on their properties to their homes to tap “free” gas. The risk of damage to these pipelines, above and below ground, in this region is significant. What happens to the corrosion protection on a pipeline after two 12-year-olds ding fifty .22 cal rounds off it? Or what happens when a snowmobile traveling at 60 mph hits a pipeline buried in a drift. Or how about when somebody has a weekend off and decides to use the backhoe to dig a fish pond, or the foundation for that new workshop he’s been planning on building. These are real problems.

Also, it is very important to recognize that Class 1 doesn’t mean that there are no houses around. In mixed rural agricultural and residential area, like the one in which I live, based on the path of the pipeline, you could achieve a Class I designation on a pipeline running through a farmer’s woods and fields , but be within 150 yards of a suburban style development with hundreds of residents. Just looking at what is within 100 yards of each side of a pipeline over a mile length does not give an accurate picture of the risk to people and property. The existing classification system is not helpful to people in mixed-use communities like mine. It may make pipeline regulation administration more orderly, but it doesn’t achieve its purported goal of protecting people and property. With this in mind, I ask the PUC to not permit any gaps in regulation – ALL pipeline must be must be regularly inspected, properly maintained, replaced when necessary, mapped and entered into the PA One-Call system.

In the event of pipeline accident, local emergency responders will not likely have the knowledge and training necessary to most effectively resolve the situation and protect residents, themselves, property and the environment. For example, there was a gas well in West Virginia that recently burned for several days while the gas exploration company brought in experts from Texas to deal with the

situation. Proper regulation and oversight in the construction, maintenance, mapping/identification and eventually decommissioning of gas pipeline is critical in avoiding pipeline accidents. Prevention is the best defense. All pipeline must be regulated by the PUC or PHMSA, there must be no gaps in regulation, no types of pipeline excluded.

A recent newspaper article (Times-Tribune June 8, 2010) reports that at the House Republican Policy Committee hearing on pipeline safety the PUC stated its position that it would not seek authority to inspect Class 1 pipeline. Class 1 pipeline is already exempt from PHMSA inspection, thus it falls in that regulatory gap I have mentioned. In that article it is implied that lack of personnel was a driving factor in the PUC taking this position. When discussing the concept of a Class 1 pipeline breach, PUC engineer Paul Metro said that there would be a risk of forest fire and dying trees, "Hopefully that will be the limit of the risk," he added. Yes, *hopefully*. What about my children, my animals, land and house? What about the beautiful homes on the hillside nearby, about 15 of them in a development with 20 mile views. I'm sure some consider these their dream homes. When I read the article I began to get a bad feeling that families like mine, and communities like mine were not given proper consideration regarding these matters. First, it is concerning that the PUC adopted a position prior to concluding these hearings on jurisdictional issues. And, I feel very strongly that protection lives, property and the environment should not be restricted due to limited staff. The PUC should seek authority to inspect Class 1 pipeline, as well as other currently un-regulated gas pipeline and hire the inspectors necessary to do so. Based on testimony from the April 22<sup>nd</sup> en banc hearing, the PUC even has support from the PIOGA for funding inspection by assessing gas transportation companies a fee per mile of pipeline. Please hire additional staff so that Class 1 pipeline, and any other currently unregulated pipeline, including but not limited to the lines gas companies allow landowners to run from wells to their homes, can be properly regulated. The way I see it, these would just be some of the Marcellus jobs our state officials, Penn State University and gas company spokespeople have been telling the public about.

A second point of serious concern is that some gas transportation companies are seeking public utility status so that they may use eminent domain powers to acquire land for pipeline. This desire for public utility status with eminent domain power was expressed by ETC Northeast Pipeline, LLC in their testimony presented at the April 22<sup>nd</sup> en banc hearing and also in Laser Midstream's request for public utility status earlier this year. These companies are not public utilities based on the definition of public utilities set forth in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102. These are gas transportation companies, not utilities. They do not supply gas directly to the public, directly to end users. I believe that their requests for eminent domain power represent attempts to circumvent negotiating pipeline rights with landowners. I've attached a copy of a letter written by TransCanada Pipelines Limited to a South Dakota landowner in 2007 (Exhibit 1). This will provide a flavor for the tone of a pipeline rights "negotiation" backed with the threat of eminent domain, which goes something like "if you don't accept the offer we've decided to give you..." It takes no stretch of the imagination to see how eminent domain power can be abused. Eminent domain power should be available to public utilities, organizations that help people with the services necessary for daily life in the Commonwealth, and it should not be available to private enterprise looking to achieve the best results for their stockholders.

Pipeline rights are a valuable asset of Pennsylvania landowners. The Leasing or purchase of these rights should be negotiated between the owners and the gas transportation companies. If agreement cannot be achieved, then the company must secure another route for the pipeline. It would be both unfair and illegal for the company to be able to acquire a right-of-way through public utility status eminent domain. First, gas transport companies are not utilities as per Section 102 of the Public Utility Code 66 Pa. C.S. § 102. Next it would be, in effect, a taking of a valuable right owned by a landowner. Also, some people may simply object to their private property being used for pipeline (possibly unregulated) that carries odorless highly flammable gas under pressure.

Moreover, eminent domain for gas transportation pipeline rights is not workable from practical view either. In this extremely volatile natural gas land market, where exploration/extraction leasing rights can go from \$100 per acre to \$2600 per acre in less than two years, or from \$50 per acre to \$6700 per acre in 6 years how could one ever begin to assess the value of pipeline rights to determine reasonable compensation? In the time it takes to conduct an eminent domain condemnation proceeding, a fair and just compensation figure could double, triple, or perhaps multiply ten times.

Additionally, by enabling the gas transportation companies to use eminent domain (achieved through public utility status) to acquire pipeline right-of-way in such a volatile market will in effect be a form of price fixing, as price benchmarks will inevitably be established through condemnation procedures, and these benchmarks will likely be relied upon to some degree as precedent in subsequent condemnations. This would certainly create legal entanglements for the landowners, gas transportation companies and the PUC that would be quite difficult to unravel.

Granting public utility status with eminent domain powers to gas transportation companies would not serve the citizens of the Commonwealth. While most of the difficulty and loss would fall upon affected landowners, the legal challenges I described may entangle the industry and possibly the PUC. I urge the PUC to deny public utility status to all companies who are not bona fide public utilities as per Section 102 of the Public Utility Code 66 Pa. C.S. § 102, and to take measures to insure that companies may not maneuver their way into public utility status based on broad company business directions or based on loose or indirect links to providing gas to end use consumers. Regulations must be tight, not allowing gas transport companies to be deemed “utilities” based on the acquisition of business units or infrastructure that would perhaps allow them to say their business serves consumers. Pipeline that is for the transportation of gas should be viewed specifically as that (and not a utility) and pipeline for the purpose of delivering gas to end consumers should be allowed to apply for utility status.

It is important that utility status only be granted based on the use of the specific pipeline in question, and not based on the more broad business models, operations and service provided by a company.

Thank you for your consideration of these matters which substantially affect so many of us who live on the Marcellus shale. You are welcome to contact me with any questions.

Sincerely,

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