Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Docket No. L-2019-3010927 - Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59

Dear Secretary Chiavetta,

The Association of Oil Pipe Lines (AOPL) hereby submits comments to the questions raised by the Pennsylvania Public Utility Commission (Commission) in the Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59 (ANOPR) at Docket No. L-2019-3010927. AOPL is a national trade association that represents owners and operators of oil pipelines across North America, including half a dozen pipeline operators in the Pennsylvania. AOPL members bring crude oil to the nation's refineries and important petroleum products to our communities, including all grades of gasoline, diesel, jet fuel, home heating oil, kerosene, propane, and biofuels. AOPL members are dedicated to continuous improvement in pipeline safety, and therefore, appreciate the opportunity to submit comments on the ANOPR.

As a general matter, the ANOPR details the numerous regulations already applicable to petroleum products pipelines under the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's ("PHMSA") pipeline safety regulations, 49 C.F.R. Part 195. It further explains that the Commission participates in the pipeline safety program administered by PHMSA and has adopted the standards promulgated by PHMSA for purposes of regulating petroleum products pipelines. ANOPR, at pp. 2-4; *see also* 52 Pa. Code § 59.33 (adopting and incorporating 49 C.F.R. Part 195 as the minimum safety standards applicable to Commission-regulated hazardous liquids pipelines). Given that PHMSA's standards already govern the operations of AOPL, it believes that no amendments to the Commission's regulations are necessary at this time.

I. COMMENTS ON ADVANCED NOTICE OF PROPOSED RULEMAKING

In the following sections, AOPL provides its comments on proposals contained in the ANOPR. However, AOPL does not provide comments on every Commission proposal, but reserves the right to supplement and expand upon its comments at a later date. AOPL has organized its comments in accordance with the sections of the ANOPR.

As a general matter, AOPL submits that amendments to the Commission's regulations governing hazardous liquids pipelines are not necessary at this time. The areas and issues identified in the ANOPR for comment are currently governed by existing federal regulations under 49 C.F.R Part 195, which have been adopted and incorporated by the Commission's regulations, 52 Pa. Code

§ 59.33. Pursuant to 49 C.F.R Part 195, pipeline operators already have in place policies, plans and procedures that address these issues in compliance with PHMSAs regulations and, in turn, Section 59.33 of the Commission's regulations. With respect to each area that is currently governed by existing regulations, the Commission does not clearly explain the risk that it is seeking to mitigate by considering amendments to existing regulations. In addition, AOPL submits that the ANOPR does not provide the basis for the intent and need of this additional regulatory burden. Below, AOPL provides its comments specific to each area identified in the ANOPR.

A. CONSTRUCTION.

1. Pipeline Material Specification

In addition to its general comment above, AOPL believes that clarification from the Commission is necessary to develop a fulsome response regarding the phrase the "material and specification requirements of used pipe, including reductions in operating pressures for used pipe." ANOPR, at p. 8. Subject to clarification regarding the Commission's use of this phrase, AOPL reserves the right to file comments replying and responding to issues raised by other commenters.

2. Cover Over Buried Pipelines

While operators have shallow pipe programs for all locations with less than 24-inches total depth of cover, such situations are typically seen in areas that have been aggressively farmed for an extended period of time, since the date of construction. Additionally, such pipelines were likely installed prior to implementation of PHMSA's depth of cover regulation, and given the passage of time, there is no simple way to determine what the original depth of cover was immediately following the construction of the pipeline. As such, AOPL does not believe that amendments to existing regulations governing cover over buried pipelines are not necessary at this time.

3. Underground Clearances

Operators currently comply with 49 C.F.R. § 195.250, by addressing underground clearances as a part of their Damage Prevention Manuals. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing underground clearances are not necessary at this time.

4. Valves

Operators currently comply with 49 C.F.R. § 195.260(c), by valve spacing as a part of their Integrity Management Plans. Part of that consideration is whether a valve location can reduce impacts to high consequence areas. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing valve locations and spacing are not necessary at this time.

In addition, the issue of valve spacing and location is currently being evaluated by PHMSA at Docket Number PHMSA-2010-0229. AOPL believes that the Commission should follow the PHMSA's pending evaluation of this issue prior to considering parallel developments.

Furthermore, AOPL believes that any consideration of amendments to valve spacing and location must take into account site-specific information. At the request of PHMSA and to comply with the mandate of Section 4 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (U.S. Congress, 2012), the Oak Ridge Laboratory (Department of Energy) published a study in 2012 entitled "Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety." The study found that:

> Installation of ASVs and RCVs in newly constructed and fully replaced natural gas and hazardous liquid pipelines is economically feasible with a positive cost benefit for the release scenarios considered in this study. However, these release scenarios do not model the unique features of a particular pipeline facility or its site-specific design features and operating conditions. These unique features and conditions can invalidate the underlying assumptions in this study and, therefore, reduce or eliminate the positive cost benefits attributed to block valve closure swiftness.
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> Meaningful economic feasibility assessments and cost benefit analyses for specific pipeline segments need to be based on avoided damage costs and valve automation costs that reflect the actual pipeline design features and operating conditions and the site-specific parameters appropriate for the area where the pipeline segment is located. Consideration of site-specific variables is essential in determining whether the cost benefit is positive or negative and whether installation of ASVs or RCVs in newly constructed or fully replaced pipelines is economically feasible.

The Commission should consider the findings of this study and, specifically, the required consideration of site-specific variables that must be evaluated when operators design valve location. Any amendments or proposed regulations that propose a blanket/uniform distance will be neither efficient nor financially feasible.

B. OPERATION AND MAINTENANCE

1. Pipeline Conversion

Operators already follow 49 C.F.R. § 195.5 as a part of their O&M policies for conversion to hazardous liquids service. The existing PHMSA regulation and operators' policies already require that all known unsafe conditions be corrected prior to conversion, which would cover both HCA and non-HCA features (if known). Operators already follow existing criteria under 49 C.F.R.§ 195.452(h) for determining unsafe conditions. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing pipeline conversions are not necessary at this time.

In addition, PHMSA published Advisory Bulletin ADB-2014-04 entitled Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service under Docket

Number PHMSA-2014-0040. This Advisory Bulletin provides expanded guidance on PHMSA's expectations regarding Pipeline Conversion. Any evaluation of existing regulations governing applicable pipeline conversions by this Commission should include consideration of this bulletin. AOPL submits that PHMSA's bulletin is sufficient and prudent guidance and does not impose further unnecessary regulatory burdens on Pipeline Conversion.

2. Construction Compliance

Operators are currently required to comply with 49 C.F.R. § 195.563, which requires cathodic protection of new and vintage (coated and bare) pipelines. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing construction compliance are not necessary at this time.

In addition, AOPL requests clarification regarding the Commission's request for comment regarding "…the operation and maintenance of hazardous liquid public utility pipelines constructed prior to the dates contained in section 195.401(c)." ANOPR, at p. 15. The ANOPR appears to be seeking to revoke the non-applicability of federal regulations to operations and maintenance of pipelines installed prior to a specific date. The vintage dates to determine applicability of PHMSA's regulations were developed at the time the regulation was enacted. Importantly, each of the prior federal regulatory reviews considered the feasibility of retroactively mandating retrofitting the lines. The Commission's blanket request for comments on this issue would ignore the 40+ year history of government analyses without providing a basis for such drastic change. As such, AOPL requests the Commission prepare a feasibility study, inclusive of industry participation on the revocation of these regulatory dates prior to proposing or enacting any amendment to existing regulations.

Moreover, AOPL requests clarification on the language stating "including additional cathodic protection requirements for … other vintage pipelines." ANOPR, at p. 15. AOPL believes regulatory requirements under 49 CFR §§ 195. 551 – 591 are sufficient and provide comprehensive regulatory oversight of cathodic protection.

3. Pressure Testing and MAOP

Operators currently comply with federal requirements applicable to pressure testing. Generally, operators' Integrity Management Plans allow for both in-line inspection ("ILI) and pressure testing to assess deformation, metal loss and cracking threats. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing pressuring testing are not necessary at this time.

In addition, AOPL notes that an ILI is the preferred primary assessment method for detection of metal loss and deformations, because it allows the pipeline to remain in-service for the assessment, is non-destructive, and provides data about the integrity of the line vs. just pass/fail. Importantly, frequent pressure test programs may be detrimental to the overall integrity of a line segment. The American Petroleum Institute's ("API") API Recommended Practices 1160 outlines some of the technical limitations associated with pressure testing. Assessments may be performed at maximum 5-year intervals, NTE 68 months, per 49 C.F.R. § 195.452(j)(3).

AOPL maintains that pressure testing and maximum operating pressure follow Recognized And Generally Accepted Good Engineering Practices (RAGAGEP). Until such time when these engineering practices are revised and sufficient research provides a different basis, AOPL requests the Commission to adhere to RAGAGEP.

Furthermore, AOPL requests the Commission considers PHMSA's Amendment 195-17, Testing Highly Volatile Liquid Pipeline of 49 CFR § 195 and specifically PHMSA's discussion on the Final Rule regarding appropriate test records, which explained:

> One industry commenter recommended that any record of past testing offered by the carrier as evidence that proper testing had been performed should be acceptable because there is no requirement in Part 195 to retain records made prior to the effective date of Subpart E, January 8, 1971. Another industry commenter suggested that the actual pressure device charts should be acceptable. Four industry commenters recommended that records which demonstrate the appropriate pressure has been applied and held for an adequate time should suffice as adequate records. These four commenters argued that detailed test records were not commonly kept prior to the effective date of Subpart E and, as a result, such detailed records are not available, although the pipelines were adequately tested. Further, these same commenters argued that in the transfer of ownership of pipelines, only summary statements of these data are transferred rather than detailed records. Four additional industry commenters recommended that certification by an officer of the carrier be acceptable as proof of testing when other proof of testing is not available.
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> The MTB recognizes that prior to January 8, 1971, there was not requirement in Part 195 to keep detailed records nor was there an industry standard concerning test records in common use and, as a result, test records vary in content and in detail. The MTB does not believe, however, that a mere transfer statement or current certification should qualify as proof of prior testing, as there should be no doubt about the efficacy of prior tests in determining whether a pipeline must be tested. Although detailed records of the type prescribed by §195.310 are not required, the MTB believes that test records made at the time of test in sufficient detail to demonstrate that the pipeline has been tested to 1.25 times the maximum operating pressure for four continuous hours are necessary to prove the integrity of the pipeline. Thus, the final rules require carriers who wish to demonstrate that pipelines have been previously tested to 125 percent of MOP to use recording charts or logs made at the time the test was conducted.

4. Line Markers

AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing line markets are not necessary at this time.

5. Inspections of Pipeline ROWs

AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing ROW inspections are not necessary at this time.

6. Emergency Flow Restricting Devices

Operators currently comply with federal requirements applicable to emergency flow restricting devices ("EFRDs"). Generally, operators' Integrity Management Plans establish minimum criteria to determine if sufficient benefits are gained from the installation of EFRDs, to justify their installation. As a part of the integrity impact review process applicable to pipeline operational changes, the requirements for EFRDs are re-evaluated by the operator. As such, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing EFRDs are not necessary at this time.

7. Leak Detection

AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing leak detection are not necessary at this time. In addition, AOPL notes that leak detection is currently being evaluated by PHMSA under Docket Number PHMSA-2010-0229. AOPL believes that the Commission should follow the PHMSA's pending evaluation of this issue prior to considering parallel developments.

8. Corrosion Control and Cathodic Protection

Operators currently comply with federal requirements applicable to corrosion control and cathodic protection, under 49 C.F.R. Part 195, Section H. NACE SP-0169 also outlines requirements for determining adequate levels of cathodic protection. Operators are required to follow 49 C.F.R. § 195.573 for various external corrosion control testing frequencies. Annual cathodic protection surveys are the standard in the industry and, when coupled with rectifier monitoring frequency requirements, are sufficient for proper maintenance. The use and integration of ILI results with annual cathodic protection survey results could support longer intervals of the CIS program on certain line segments.

In addition, close-interval surveys ("CIS") can be performed and are regularly performed by operators, at intervals consistent with their internal policies. PHMSA's existing regulations, *i.e.* 49 C.F.R. § 195.573(a)(2), allow for consideration of other technologies for meeting the objectives of NACE SP-0169 with regard to CIS. Industry standards likely vary and are assessed by operators for possible reconsideration. The use and integration of ILI results with annual cathodic protection survey results could support longer intervals of the CIS program on certain line segments.

For these reasons, AOPL reiterates its general comments on this issue, and submits that amendments to existing regulations governing corrosion control and cathodic protection are not necessary at this time.

C. ADDITIONAL AREAS FOR PUBLIC COMMENT

The Commission also sought comment regarding fourteen (14) additional areas for potential regulation. *See* ANOPR, at p. 27. With respect to each of these areas, AOPL reiterates its general comments, and submits that amendments to existing or additional regulations in the areas identified by the ANOPR are not necessary at this time. However, AOPL offers specific comments on the identified areas as follows.

II.C.1. – Utility interactions with local government – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that hazardous liquid pipeline companies' interactions with local government officials are currently being managed by existing PHMSA regulations under 49 C.F.R. Parts 194 and 195, as adopted by the Commission. The ANOPR does not provide the basis for the intent and need of additional regulatory burdens in this area.

To the extent that the Commission proposes any additional regulations in this area, AOPL submits the Commission should conduct a survey of past Public Awareness Meetings and Emergency Drills attendance from Public Officials. AOPL contends that operators actively invite Public Officials to drills and public awareness meetings, but that invited Public Officials seldom attend.

II.C.2. Periodic public awareness meetings – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Public Awareness Meetings with Municipal Officials and the Public are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195, as adopted by the Commission. The ANOPR does not provide the basis for the intent and need of additional regulatory burdens in this area.

To the extent that the Commission proposes any additional regulations in this area, AOPL submits the Commission should conduct a survey of past Public Awareness Meetings and Emergency Drills attendance from Public Officials. AOPL contends that operators actively invite Public Officials to drills and public awareness meetings, but that invited Public Officials seldom attend.

II.C.3. PA specific enhancements to public awareness – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Public Awareness Programs are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195 as adopted by the Commission. The ANOPR does not provide the basis for the intent and need of this additional regulatory burden.

To the extent that the Commission proposes any additional regulations in this area AOPL requests additional information on specific changes proposed to Public Awareness Programs. This information will allow for informed dialogue on the effectiveness of the proposed changes. AOPL

further requests that the Commission work through the API in proposing changes to API Recommended Practice 1162, utilizing the established process for Standard Review.

II.C.4. PA specific enhancements for operator qualification – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Operator Qualification Programs are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195 as adopted by the Commission. The ANOPR does not provide the basis for the intent and need of this additional regulatory burden.

To the extent that the Commission proposes any additional regulations in this area AOPL requests additional information on specific changes proposed to Operator Qualification Programs. This information will allow for informed dialogue on the effectiveness of the proposed changes.

Moreover, AOPL notes that Operator Qualification is currently being evaluated by PHMSA under Docket Number PHMSA-2013-0163. AOPL believes the Commission should follow the development of that discussion prior to engaging in a parallel discussion.

II.C.5. Enhancing transparency/protecting security information – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Transparency and Protecting Security Information are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195, the Commission's regulation, the existing Pennsylvania Right to Known Law, and the existing Public Utility Confidential Security Information Disclosure Protection Act. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

To the extent that the Commission proposes any additional regulations in this area, AOPL requests additional information on specific changes proposed to Transparency and Protecting Security Information. This information will allow for informed dialogue on the effectiveness of the proposed changes.

Moreover, AOPL requests that the Commission consider federal requirements imposed by the United States Department of Homeland Security ("DHS") for protection of security information prior to promulgating a final rule in order to avoid conflicts or overly burdensome requirements.

II.C.6. Regulation of construction techniques such as horizontal directional drilling – Over a long history, the pipeline industry in conjunction with Local, State and Federal agencies has developed industry best practices, including many American Petroleum Institute (API) Standards and Recommended Practices, that cover issues from material selection through construction practices and commissioning. Additionally, all pipelines under PHMSA jurisdiction, comply with Part 195 of PHMSA's regulations—as do hazardous liquids pipelines subject to this Commission's regulations under 52 Pa. Code § 59.33.

Pipeline installations using Horizontal Directional Drilling ("HDD") are an effective use of technology to minimize surface disturbances, which is essential when dealing with environmentally sensitive areas such are river crossings or wetland occupations. It is also a cost effective means of installing pipelines in developed areas such as rail or road crossings. The design and installation of an HDD requires thorough understanding of the geology, topography,

hydrology as well as surface restraints or impediments. The high variability in these factors make each installed crossing rather unique.

In addition, HDD's crossing under major waterways or wetlands must be submitted to State and Federal agencies for permitting approval. These permitting applications must include such specifics as the design (plan and profile) of the crossing, soil boring information, erosion and sediment controls, and contingency plans to deal with potential loss of drilling media and other information that may be required by the permitting agencies.

It is AOPL's opinion that the utilization of pipeline construction via HDD is a valued available tool for operators. Installations of hazardous liquids pipelines are already regulated by PHMSA (49 C.F.R. Part 195), the US Corps of Engineers or USEPA (Permitting), as well as other State and Local agencies. Additional regulations by this Commission to govern the use of HDD would need to be overly broad to account for the high variability in their design, rendering such regulations vague and of limited value, or to become so prescriptive to cover all conditions that the regulation becomes burdensome and difficult to meet from an operator perspective and difficult to enforce from a regulator perspective. In cases where regulations are highly prescriptive, some operators tend to only follow the regulations, which are minimum expectations, rather than industry best practices, which could result in a lower quality of work. As such, AOPL submits that amendments to existing or additional regulations in this area are not necessary at this time

II.C.7. Accident and incident reporting criteria – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Accident and Incident Reporting Criteria are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195, as adopted by the Commission. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

To the extent that the Commission proposes any additional regulations in this area AOPL requests additional information on specific changes proposed. . This information will allow for informed dialogue on the effectiveness of the proposed changes.

Moreover, AOPL believes the current regulatory requirements in accident reporting criteria are sufficiently stringent, with notifications required within one hour of confirmed discovery and an extensive accident report filed electronically into the PHMSA Portal. The Commission currently has access to both databases (*i.e.* telephonic reports through the National Response Center and the PHMSA Portal).

II.C.11. Protection of public and private water wells and supplies – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

II.C.12. Land agents and eminent domain (see 52 Pa.Code § 57.91) – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

II.C.13. Background investigations of employees and contractors – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes that Background Investigations of Employees and Contractors are currently being

managed by existing PHMSA regulations under 49 C.F.R. Part 195 as adopted by the Commission's existing regulations, DHS requirements, United States Transportation Security Administration ("TSA") requirements, Equal Employment Opportunity Commission requirements, Fair Labor standards, and the internal policies and procedures of operators drafted to be consistent with these existing requirements. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

To the extent that the Commission proposes any additional regulations in this area AOPL requests additional information on specific changes proposed. This information will allow for informed dialogue on the effectiveness of the proposed changes.

Moreover, AOPL requests that the Commission consider federal requirements imposed by the United States Department of Homeland Security and the TSA regarding this issue in order to avoid conflicts or overly burdensome requirements.

II.C.14. Integration of new regulations on existing facilities – The Commission does not clearly explain the risk that would be mitigated by additional regulations in this area. AOPL believes existing facilities are currently being managed by existing PHMSA regulations under 49 C.F.R. Part 195 as adopted by the Commission's existing regulations. The ANOPR provides no basis for the intent and need of regulatory changes in this area.

To the extent that the Commission proposes any additional regulations in this area, AOPL requests additional information on specific changes proposed. This information will allow for informed dialogue on the effectiveness of the proposed changes.

Moreover, AOPL requests that the Commission perform a thorough review of the history of each amendment to 49 C.F.R. Part 195, and to include the discussion on each of the changes to the regulation from the Proposed Rulemaking to the Final Rule. The discussion at the federal level should not be set aside without review prior to enacting a wide array of new requirements. The ANOPR appears to be seeking to revoke federal guidelines on existing facilities. Each of the federal regulatory reviews considered the feasibility of proposed changes and provided for a healthy discussion between public, government and industry. This blanket request for comment from the Commission would ignore the 40+ year history of government analyses without providing a basis for such drastic change. For all of the reasons stated above, AOPL submits, consistent with its comments, that amendments to the Pennsylvania Public Utility Commission's regulations governing hazardous liquids pipelines as detailed in the Advanced Notice of Public Rulemaking are not necessary at this time.

Respectfully Submitted,

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