19TH DISTRICT
STATE SENATOR
CAROLYN T. COMITTA
457 MAIN CAPITOL BUILDING
SENATE BOX 203019
THE STATE CAPITOL
HARRISBURG, PA 17120-3019
717-787-5709
FAX: 717-787-4384

17 EAST GAY STREET • SUITE 301
WEST CHESTER, PA 19380
610-692-2112
FAX: 610-436-1721

Senate of Pennsylvania

COMMITTEES
ENVIRONMENTAL RESOURCES & ENERGY, MINORITY CHAIR
AGRICULTURE & RURAL AFFAIRS
EDUCATION
HEALTH & HUMAN SERVICES
VETERANS AFFAIRS & EMERGENCY PREPAREDNESS

EMAIL: SenatorComitta@pasenate.com
WEBSITE: www.pasenatorcomitta.com
TWITTER: @SenatorComitta
FACEBOOK: @SenatorComitta
INSTAGRAM: @SenatorComitta

September 2, 2021

Pa. Public Utility Commission
400 North Street
Keystone Bldg.
Harrisburg, PA 17120

Re: **Docket No. L-2019-3010267**

To the Pennsylvania Public Utility Commission:

On July 15, 2021, the Pennsylvania Public Utility Commission (PUC) adopted a Notice of Proposed Rulemaking (NOPR) Order seeking comments on several proposed amendments to the existing regulations and proposed additional new regulations in Chapter 59 of Title 52, 52 PA. Code, Chapter 59. The NOPR purpose is to enable more comprehensive regulation of public utilities that transport petroleum products and other hazardous liquids in intrastate commerce.

I have thoroughly reviewed the NOPR and appreciate the PUC's interest in enhancing pipeline safety. While the Commission has no greater responsibility to the citizens of the Commonwealth than its duty to enforce compliance to state and federal pipeline safety, ultimately it is up to the pipeline operators that provide service in and through Pennsylvania communities to constantly work to ensure safety and reliability in their operations.

I respectfully submit the following comments regarding the NOPR:

§59.132 General

Part (b) Enforcement and Part (c) Records should include the term "mapping."

§59.133 Accident Reporting

The Failure Analysis report and the Root Cause Analysis report are vital to the Commission's Safety Division's enforcement of the safety regulations. These reports are components of the accident investigation and are not subject to Right-to-Know requests. However, transparency dictates that the public should have access to the summaries, conclusions, and recommendation of these reports. I propose that the Commission's Secretary's Office provide detailed summaries of these reports that redact confidential security operating data.

These redacted summaries, conclusions, and recommendations should be provided to the public within 30 days of the receipt of these reports by the Investigation and Enforcement Bureau.

§59.134 Construction, operation and maintenance, and other reports.

Part (b) Timeframe for notice

This section establishes timeframes for notice to the Pipeline Safety Section.

I propose that the "Notices" filed under Part (b) should be available to the public. Nothing listed under Part (b) is confidential security information and should be published on the Commission's website by the Commission's Secretary's office.

The general public should have knowledge of these notifications. Transparency of the actions listed under Part (b) provide for public edification and reasonable discussions. Public notification of Part (b) will require the hazardous liquid pipeline operator to provide additional information explaining the safety reasons for these actions. The notices required under Part (b) are not "top secret" and the public will visually see these actions when they are performed anyway.

Additionally, the $50,000 threshold for notice in (b)(2) is too high. A single anomaly would not cost much more than $5,000 to excavate. There should be no dollar threshold for anomaly notification and verification digs. The Pipeline Safety section should be notified for any and all anomalies. The cost of in-line pigging can reach several million dollars. When the pipeline operator utilizes expensive in-line pigging equipment to detect dents, coating issues, shallow wall density, corrosion, and leaks to discover possible safety issues, it should be required to report a summary of the pig findings to the Commission's Pipeline Safety section without the Safety section requesting the report.

Furthermore, if the in-line pigging detects an anomaly or anomalies, the Pipeline Safety section should be made aware of this serious safety issue and be provided, as a regulation requirement, plans and procedures to verify the pig findings. Establishing a $50,000 threshold blocks the Pipeline Safety section from being made aware of potentially serious anomalies.

Part (d) Information to be provided upon request generally.

Part (d) states that the information should be provided "*upon request*." The information listed under Part (d) should be provided automatically with notice under subsection (b)(1)-(3). The Pipeline Safety section should not have to take additional steps to request such information. The Pipeline Safety section will request this information 100 percent of the time as part of the Pipeline and Hazardous Materials Safety Administration (PHMSA) requirements.

Additionally, the hazardous liquid operator should also provide Operation and Maintenance procedures associated with all actions that it has filed notice under subsection (b)(1)-(3). Also, Part (d) should include a requirement to follow the Pennsylvania Underground Utility Line Protection Law, AKA PA One Call Law, Act 50. Specifically, Part (d) should require Section 4(2) Design Ticket and Section (2) Excavation Ticket.

Part (e) Information to be provided upon request for assessments and verification digs involving an expenditure in excess of $50,000 and the unearthing of suspected anomalies.

The information listed under Part (e) should be provided automatically with notice under subsection (b)(2). The Pipeline Safety section should not have to take additional steps to request such information. 100 percent of the time the Pipeline Safety section will request this information as part of the PHMSA requirements. Additionally, the $50,000 expenditure threshold should be removed as stated above. The excavation of a single or several anomalies will not exceed $50,000. The Pipeline Safety section should be notified of the excavation even if only a single anomaly is discovered, or a verification dig is required.

§59.136 Construction

Part (a) Scope

The Scope of the Construction section is unclear and ambiguous. The section appears to include requirements for new pipeline construction. However, the Scope references "changing existing pipelines." The Commission should clarify the Scope of this Section. Are pipelines that are currently operating grandfathered under this Scope? If a currently operating pipeline performs routine maintenance such as applying new coating, will it be required to install valves that it otherwise does not have on the pipeline?

Part (g)(1)(2)(3) Valves for pipelines transporting HVLs

This Part should be retroactive and mandatory in High Consequence areas as defined by PHMSA at §195.450 Definitions. It is recommended that current operating hazardous liquid pipelines should have a two-year period to install Emergency Flow Restriction Devices (EFRDs) in High Consequence areas.

Additionally, the lateral spacing of EFRD valves in a High Consequence area should be based on engineering calculations and consultation with public officials. The location of EFRDs should minimize public exposure to injury and probability of accidental ignition.

The five-mile maximum lateral valve spacing is too broad and does not adequately address safety issues in High Consequence areas. Valves are a critical safety device that should be required to protect the public and property. The NOPR requires *new* pipelines to install EFRDs in proximity to schools, churches, hospitals, daycares, nursing facilities, commercial facilities, industrial facilities, sport complexes, and public parks. As such, the NOPR recognizes the necessity of EFRDs. If the EFRDs are necessary for new pipelines, it should be required for currently operating hazardous liquid pipelines in High Consequence areas.

Subpart (3) should be retroactive and include currently operating pipelines. Why require only new pipelines to develop and maintain a risk-based plan for valve spacing?

Part (h) Vehicle barriers

This Part should be retroactive. The Part is ambiguous as to whether it applies to new or currently operating pipelines. Vehicle barriers offer commonsense protection of critical infrastructure and should be utilized for new and currently operating pipeline facilities.

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

Part (b) Notification

The notification requirements regarding HDD, TT, and direct buried pipelines should include all Pennsylvania Department of Environmental Protection (DEP) permit applications filed by the pipeline operator associated with HDD, TT and direct buried methodologies. The notification of permit applications filed with DEP would allow the Pipeline Safety section to comment to DEP as to whether the Pipeline Safety section agrees with the construction methodology chosen and whether the operating utility has met the criteria required under this section. Additionally, the notice to the "affected public" should be defined. I recommend that the affected public be notified via (1) residential door cards; (2) newspaper notices; (3) local government officials; (4) county Emergency Management; and (5) public meetings held within the municipality where the construction is to be performed.

Part (c)(1-5) Geological and environmental impacts

Subpart (1) requires the pipeline operator to "*consider*" geological and environmental impacts. The term "consider" is nebulous. An operator will follow the rule/regulation as written and "consider" geological and environmental impacts for three seconds and move to the next regulation requirement. If this NOPR subpart was important enough to include as a consideration, then the Commission should modify the language and make it into a requirement. The term "consider" is unenforceable. I recommend that the term "consider" be replaced with "perform" geophysical testing or evaluation.

Subpart (2) requires the pipeline operator to conduct a geotechnical evaluation of subsurface conditions.

This subpart should require the operator to establish a base line with the geotechnical evaluation and then perform another geotechnical evaluation when the construction has been completed based upon the same 250 feet criteria.

The subpart should also require the operator to perform a geotechnical evaluation of the base line compared to the completed construction evaluation.

Additionally, the subpart should require the pipeline operator to submit the geotechnical evaluation base line and completed construction evaluation to DEP for its technical review and subsequent necessary enforcement actions.

Unless the PUC is authorized to share the construction permitting process approval with DEP, the PUC should not be required to perform the geotechnical evaluations review. The PUC

does not have geotechnical engineers on staff to perform such evaluation. The Pipeline Safety section must contract with an outside contractor to perform the geotechnical evaluations. Since DEP is issuing the HDD, TT, or direct buried permit, then DEP should be required to follow up on the construction process with respect to the HDD, TT, or direct buried permitting, not the PUC's Pipeline Safety section.

Subpart (4)(i) requires a mitigation of adverse impacts as soon as practicable but no later than 30 days after the identification of the impact. I recommend that the mitigation begin within two hours of the identification and provide the Pipeline Safety section with an action plan within 24 hours. If the pipeline operator requires additional mitigation time, it should file a waiver request with the Pipeline Safety section immediately after the anomaly identification. The waiver request would include an action plan and timetable for completion.

Additionally, I recommend that language be added to the NOPR that requires all hazardous liquid pipeline operators to notify the Pipeline Safety section within one hour of any discovered sink holes, subsidence, or other geotechnical anomaly within the pipeline right of way. The language should require that a geotechnical evaluation be immediately performed to determine the root cause. The sink hole or subsidence shall not be filled until the Pipeline Safety section has been provided notice and approval to fill the void. Local governing bodies or municipalities shall be notified of all right of way sink holes, subsidence, or other geotechnical anomalies immediately. In addition, any structures that are located within 660 feet of the right of way, where the geotechnical anomalies are located, should be notified immediately of the anomalies by the pipeline operator. If a pipeline is exposed by a sink hole, subsidence, or other geotechnical anomaly, the pipeline operator should provide engineering calculations to the Pipeline Safety section and county Emergency Management, immediately, regarding the unsupported pipeline span. The calculations should provide details as to the safe length of the unsupported pipeline span.

Subpart (5) requires HDD information. The Subpart should be filed with the PUC automatically and not upon request. The Pipeline Safety section will request this information 100% of the time. This Subpart should be a mandatory filing requirement as it pertains to §59.137.

Subpart (5) should also have a requirement that the pipeline operator shall submit all the geotechnical data to the Pipeline Safety section via an electronic format determined by the Pipeline Safety section or its consultant.

Subpart (5)(iii) appears to conflict (500 feet) with Subpart (2) (250 feet) with respect to the minimum evaluation footage. I recommend that the minimum evaluation footage should be 250 feet.

Part (d) Protection of water wells and supplies

As stated above, a base line geotechnical evaluation should be performed and then compared to a geotechnical re-evaluation when the construction is completed in the 250-foot section. In this way, the PUC, DEP, pipeline operator, and the private water supply owner will know whether the construction activity negatively impacted the water source.

§59.139 Operation and maintenance

Part (c) (3) Hazard assessment zone analysis

This subpart is awkwardly written. It is recommended that a comma be placed after "responders" and "agreement". The current language may be interpreted that a nondisclosure agreement is executed within 60 days.

Part (e)(2)(i) Public awareness communication requirements beyond API RP 1162

The NOPR describes the process for holding an annual meeting. This office recommends that this subpart be modified to require the pipeline operator to host at least one meeting annually in each county in which the pipeline is located. Many of the hazardous liquid pipelines are located from one end of the Commonwealth to the other end of the Commonwealth and operate in multiple counties. The current Subpart language requires only one meeting annually. The chosen meeting location may not be convenient or even practical for members of the affected public to attend.

Additionally, it is recommended that this Subpart require knowledgeable pipeline operations personnel attend to answer questions from the public.

Part (i) EFRDs in HCAs

I recommend that Part (i) be modified to require mandatory EFRDs in HCAs for all new and currently operating pipelines. The current language states that the pipeline operator *"shall determine the need in consultation with public officials in all HCAs."*

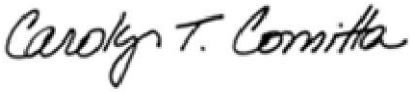
Consistent with the above recommendations with respect to EFRDs, it is recommended that new and currently operating hazardous liquid pipeline should be mandated to install EFRDs and allow for a two-year period to install EFRDs in High Consequence areas. Additionally, the lateral spacing of EFRD valves in a High Consequence area should be based on engineering calculations and in consultation with public officials to minimize public exposure to injury and probability of accidental ignition.

My staff and I have observed that the NOPR does not address pipeline siting. There are no government entities in the Commonwealth that regulate pipeline siting. I recommend that the Commission take immediate steps to request legislative authority to implement Pipeline Siting of natural gas, hazardous liquid, water, and sewer pipelines built or operated in the Commonwealth. The time has come for regulatory authority over pipeline siting and the PUC would be the natural choice for regulating pipeline siting.

Conclusion:

I support the PUC's work through this NOPR to strengthen hazardous liquid utility pipelines. In addition, I encourage the PUC to maintain Pipeline Safety Engineering staff levels commensurate with PHMSA's contractual commitments. This NOPR will increase the staff's workload. In turn, I encourage the PUC to ensure that the Pipeline Safety section is staffed properly to ensure all safety inspections are performed per the PHMSA required time schedule. I also recommend that the Commission update the legislature during budget hearings as to the Pipeline Safety section staffing levels and efforts to hire additional engineering staff.

Thank you for your time and consideration.



Carolyn Comitta
State Senator – 19th District