Hawke McKeon & Sniscak LLP
ATTORNEYS AT LAW

Thomas J. Sniscak
(717) 236-1300 x224
tjsniscak@hmslegal.com

Whitney E. Snyder
(717) 236-1300 x260
wesnyder@hmslegal.com

Bryce R. Beard
(717) 236-1300 x248
brbeard@hmslegal.com

Phillip D. Demanchick
(717) 236-1300 x225
pddemanchick@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

May 12, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59; Docket No. L-2019-3010267; **REPLY COMMENTS OF SUNOCO PIPELINE L.P.**

Dear Secretary Chiavetta:

Enclosed for filing you will find Sunoco Pipeline L.P.'s Reply Comments to the Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59 at Docket No. L-2019-3010267.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Whitney E. Snyder
Bryce R. Beard
Phillip D. Demanchick Jr.

Counsel for Sunoco Pipeline L.P.

TJS/WES/das
Enclosure

cc: Colin W. Scott (colinscott@pa.gov)
Hayley E. Dunn (haydunn@pa.gov)
Adam D. Young (adyoung@pa.gov)
Erin N. Tate (etate@pa.gov)
Melanie J. El Atieh (melatieh@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notice of Proposed Rulemaking Regarding	:	
Hazardous Liquid Public Utility Safety	:	Docket No. L-2019-3010267
Standards at 52 Pa. Code Chapter 59	:	

REPLY COMMENTS OF
SUNOCO PIPELINE L.P.

Thomas J. Sniscak, Esq. (PA ID No. 33891)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Bryce R. Beard, Esq. (PA ID No. 325837)
Phillip D. Demanchick Jr., Esq. (PA ID No. 324761)
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
brbeard@hmslegal.com
pddemanchick@hmslegal.com

Attorneys for Sunoco Pipeline L.P.

Dated: May 12, 2022

TABLE OF CONTENTS

I. INTRODUCTION

Sunoco Pipeline L.P. ("SPLP") has reviewed the Comments submitted by interested parties regarding the Notice of Proposed Rulemaking Order of the Pennsylvania Public Utility Commission ("Commission") at Docket No. L-2019-3010267 entered July 15, 2021, which proposes to significantly modify and expand the Commission's existing regulations at Chapter 59 of Title 52 of the Pennsylvania Code ("NOPR"). In total, approximately 49 Comments were submitted by a variety of individuals, entities, municipalities, legislators, and industry experts.

Both the need and timing for the proposed regulations are questionable. Consistent with SPLP's Comments, various commenters have correctly identified that the Commission has neither identified nor evaluated the costs of implementing these proposed regulations, let alone performed a cost-benefit analysis. Relatedly, the Commission has not demonstrated the need for its proposed regulations, including (1) why the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") existing regulations, developed with specific technical and engineering expertise, are insufficient, or (2) how any of the proposed regulations would allegedly increase pipeline safety on a scientific or technical basis. Commenters further point out that the proposed regulations will cause unnecessary disruption to communities and landowners and detrimentally impact the economy of Pennsylvania by potentially impeding access to critical raw materials and imposing significant costs[1] to pipeline operators that would increase the cost of the commodities themselves.

[1] As the Marcellus Shale Coalition points out, the Commission has not requested input on anticipated compliance costs.

Notably, every commenter with pipeline safety expertise[2] has raised significant technical and engineering issues with the proposed regulations. Most importantly, the entities that author numerous standards that are already incorporated into the federal regulations (NACE and API) have explained to the Commission that the serious technical flaws with the proposed regulations would have a detrimental impact on pipeline safety.

At the same time, today we are facing an alarming rate of inflation and rising costs and prices of energy, petroleum products and the many goods derived from industrial feedstocks that pipelines and their commodities make possible, at a time when global energy supply and reliability issues are paramount. One would be pressed to find a worse time to enact these unnecessary, vague and counter-productive regulations. The regulations will not only cause supply disruption and extra costs to provide the many products and day-to-day goods businesses and families rely on,[3] but they will harm Pennsylvania's and the country's economy and potentially the safety, convenience and welfare of all.

Many commenters, like SPLP, remarked that pipelines that transport the ***same*** commodities at issue, but operate as private pipelines instead of public utilities, cannot be regulated by the Commission ***beyond the PHMSA regulations*** under the General Assembly's most recent Act on the issue.[4] It is simply wrong for the Commission not to acknowledge, follow and legally abide

---

[2] Commenters with pipeline safety expertise include the Association for Materials Protection & Performance, which includes the Society of Protective Coatings and the National Association of Corrosion Engineers (NACE), American Fuel and Petrochemicals Manufacturers and the American Petroleum Institute, the Marcellus Shale Coalition, PureHM, and Richard Kuprewicz of Accufacts on behalf of West Whiteland Township. It is particularly notable that even a pipeline opponent like West Whiteland Township, when engaging expertise, has engineering and technical objections to the PUC's proposed regulations.

[3] SPLP Comments at nn. 3-4.

[4] Gas and Hazardous Liquids Pipelines Act, 2011 Pa. Legis. Serv. Act 2011-127 (codified at 58 P.S. §§ 801.101, *et seq.*) ("Act 127")

by that clear signal from the General Assembly, and instead treat two identical commodity-carrying pipelines differently solely because one pipeline is a public utility, and because the authors of the NOPR want to treat them differently from the PHMSA regulations that were deemed sufficient by the Pennsylvania General Assembly. Moreover, nowhere in the NOPR is there any statement, nor are there any stated facts, that the superior PHMSA regulatory regime is ineffectual or that these pipelines are unsafe under PHMSA's comprehensive regulations. To the contrary, pipelines are the safest method of transporting hazardous liquids, as has been stated by the U.S. Department of Transportation.

Consistent with SPLP's Comments, many of the commenters expressed concern over the Commission's attempts to further regulate a field that already is heavily and sufficiently regulated by existing federal regulations promulgated by PHMSA. Indeed, many commenters expressed that the Commission's proposed regulations would unnecessarily and illegally conflict with federal requirements, as well as subvert well-developed and comprehensive industry standards resulting in less protection than presently required. As the Marcellus Shale Coalition pointed out, there are various upcoming changes to PHMSA's regulations currently being considered, so the Commission's regulations[5] for hazardous liquid pipelines will be undergoing significant changes in the months and years ahead regardless of the outcome in this proceeding. At a minimum, the Commission should stay these regulations until the PHMSA regulations are adopted and considered.

Importantly, like SPLP, many commenters emphasize that PHMSA has a present rulemaking in progress and may very well conflict with or render meaningless the Commission's

[5] Any changes that PHMSA adopts to Part 195 will become applicable to public utilities operating hazardous liquid pipelines in Pennsylvania within 60 days of their federal effective date, unless the Commission publishes a notice in the *Pennsylvania Bulletin* indicating otherwise. 52 Pa. Code § 59.33(b).

proposed regulations. It is inefficient in terms of time and expense allocated to the NOPR, and counter-intuitive for the Commission, at the very least, not to stay this rulemaking process and await the outcome of the PHMSA rulemaking. The federal rulemaking is based on sound engineering and technical data by many more technical, industry and operational commenters, than involved in the NOPR Rulemaking, especially when compared to the often subjective and unjustified proposals in the NOPR and the lay input from those who are not experts in the field.[6]

Many commenters asked that the Commission reject the pending NOPR and defer to PHMSA's federal requirements that adequately provide for pipeline safety. Members of the Pennsylvania House Environmental Resources and Energy Committee succinctly summarized these concerns:

> Our pipelines in Pennsylvania are pivotal to our state's economy. Pipelines keep our energy prices lower than many of our neighboring states, which is of the utmost importance to our residents and businesses and manufacturing operations throughout the county. Pipelines transmit vital materials such as butane, propane, and ethane, which has a large number of essential uses in Pennsylvanians' everyday lives. Pipelines projects within Pennsylvania lead directly and indirectly to many family sustaining jobs for our citizens.
>
> At this moment when inflation is at a record high and supply chain issues are disrupting every state of our economy, the absolute last thing we should be doing as a government is adding new regulatory uncertainty, costs, and barriers to our utility infrastructure. Companies across the county are considering which areas to invest

[6] The NOPR is a highly technical rulemaking and requires expert input as opposed to lay opinions on these matters. For instance, under Pennsylvania law, a lay person in a legal proceeding cannot offer expert technical testimony nor can a court rely on that in making a decision. *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602 (personal knowledge), 701 (opinion testimony by lay witnesses) and 702 (testimony by expert witnesses) are generally applicable in agency proceedings); *Nancy Manes v. PECO Energy Company*, Docket No. C-20015803, 2002 WL 34559041, at *1 (May 9, 2002) (the Commission abides by the Pennsylvania Supreme Court's standard "that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue"). It stands to reason here that the many commenters who have made technical/expert requests or suggestions should not be relied upon for the regulations they request.

> in and taking an action such as adopting this regulation puts Pennsylvania at a clear competitive disadvantage compared with our neighboring states and those in other regions.
>
> This is especially so when there is absolutely no need for this regulation. Pipelines have been consistently found to be the safest method for transporting oil and gas products. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has set robust standards which apply in Pennsylvania to ensure pipeline safety and protect the public's health and the environment.[7]

SPLP agrees and urges the Commission to reconsider the NOPR and not adopt the proposed requirements set forth therein.

As the Marcellus Shale Coalition points out, the industry is already and indisputably committed to public safety. Pipelines are the safest method of transporting hazardous liquids. SPLP's implementation of the federal regulations, including SPLP's standard operating procedures, already go above and beyond regulatory requirements. The Commission should allow pipeline operators to continue to have the discretion to determine how to most safely construct and operate their pipelines.

Several commenters, largely fossil fuel opponents, have argued that the Commission has not done enough to address pipeline safety and that the Commission should impose even stricter requirements. For example, the comments submitted by the Environmental Advocates[8] and others suggest, *inter alia*, that the Commission should exercise siting authority over hazardous liquid

---

[7] Joint Comments from Rep. Darryl D. Metcalfe, Chairman, Rep. Mike Armanini, Rep. Stephanie Borowicz, Rep. Bud Cook, Rep. Joseph Hamm, Rep. R. Lee James, Rep. Joshua Kail, Rep. Ryan Mackenzie, Rep. Tim O'Neal, Rep. Jason Ortitay, Rep. Kathy Rapp, Rep. Tommy Sankey, Rep. Paul Schemel, Rep. Perry Stambaugh, Rep. Ryan Warner, Rep. Pam Snyder. ("Members of the House Environmental Resources and Energy Committee").

[8] The Environmental Advocates refers to Clean Air Council (the "Council"), Delaware Riverkeeper Network, Del-Chesco United for Pipeline Safety, Environmental Integrity Project ("EIP"), Food and Water Watch, Mountain Watershed Association, PennFuture, and the Pipeline Safety Coalition, who jointly submitted Comments.

public utilities, establish and enforce a best practices framework for pipeline public utilities, and require hazardous liquid public utilities to conduct remaining life studies and perform more frequent pressure testing and in-line inspections than already contemplated by the Commission's NOPR.

The Commission should not adopt the proposals set forth by these commenters, and, in particular, by the Environmental Advocates, Chester County, East Goshen Township, or Accufacts. The Commission's initial proposal is already replete with inconsistent, vague, and broad requirements that are unnecessary in light of the comprehensive federal regulations that are currently in effect. To adopt some of the proposals set forth by the commenters mentioned above would only further impede a hazardous liquid public utility's ability to safely operate in the Commonwealth, increase commodity costs, and establish conflicting requirements all with no proof that these proposals would increase pipeline safety. Rather, the Commission should not adopt the proposed rulemaking and should instead defer to PHMSA's federal requirements as Pennsylvania's General Assembly did recently in its latest pipeline legislation, which limited the Commission from regulating in excess of PHMSA's regulations for the very same pipelines that carry the same commodities but are private rather than public utility pipelines.

Accordingly, SPLP submits these Reply Comments in support of its position.

II. REPLY COMMENTS

As part of these Reply Comments, SPLP will first address comments surrounding the siting of hazardous liquid public utility pipelines. SPLP will then address each of the proposed regulations and the most problematic proposals of certain commenters, *in seriatim*.[9]

[9] Where SPLP elects not to address an issue or proposal of a commenter should not be interpreted as acceptance of that position. SPLP continues to find the entirety of the proposed regulations deeply flawed and respectfully requests that the Commission not adopt them.

A. Pipeline Siting

As a general matter, several of the commenters urge the Commission to assert jurisdiction over the siting of pipeline infrastructure, including natural gas, hazardous liquid, water and sewer pipelines built or operating in the Commonwealth.[10] In particular, the Environmental Advocates argue that the siting of public utility facilities is well within the Commission's authority.[11] The Environmental Advocates assert that the Commission could use a regulatory framework substantially similar to the Commission's review of high-voltage power line siting applications.[12] In a similar request, the Environmental Advocates also suggest that the Commission should add standards for when the Commission would grant Certificates of Public Convenience and Necessity ("CPCN") to new pipeline projects and establish a system for reviewing existing CPCNs when a project is being substantially extended or modified.[13]

The Commission should reject this position. Enacting such regulations for all utilities would require a separate rulemaking given the lack of notice to other utilities. As to petroleum product pipeline public utilities, contrary to the position of these commenters, the Commission's authority to control the siting of a petroleum products pipeline is limited. Pursuant to Section 1511 of the Business Corporation Law ("BCL"), 15 Pa. C.S. § 1511, a public utility corporation has the right to take, occupy and condemn property for, *inter alia*, the transportation of petroleum or petroleum products. The only express requirement for PUC pre-approval within the statute is that

---

[10] Chester County Comments at 6; Environmental Advocates Comments at 23-25; Uwchlan Township Comments; and Senator Carolyn Comitta Comments at 6.

[11] Environmental Advocates Comments at 24 (citing *Del. Riverkeeper v. Sunoco Pipeline L.P.*, 179 A.3d 670, 693–94 (Pa. Cmwlth 2018), *Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966)).

[12] *Id.*; *see also* 52 Pa. Code § 57.71, *et seq*.

[13] Environmental Advocates Comments at 41.

a public utility seeking to condemn property for aerial electric or telephone lines outside of a public right of way must first receive Commission approval. 15 Pa. C.S. § 1511(c). There is no similar legislative requirement for the siting of a petroleum or petroleum products pipeline. Under the doctrine of *expressio unius est exclusio alterius***,** the inclusion of a specific matter in a statute implies the exclusion of other matters. *See Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002). Thus, the Commission does not have the authority to restrict any eminent domain authority conferred upon public utilities by the General Assembly through the BCL in the manner described by the Environmental Advocates.

The Commission has likewise recognized that its authority to site pipelines is limited. *See Meghan Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3006116, et al., 2021 WL 5448060 (Opinion and Order entered Nov. 18, 2021); *see also West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018) ("with the exception of high voltage electric transmission lines, the Commission's authority regarding the siting of public utility facilities is limited . . . It is not clear that the Commission has the authority . . . to otherwise direct a valve location on a specific tract of land.") (*West Goshen*). Moreover, in the document referenced by the Environmental Advocates in their Comments, Chairman Dutrieuille testified that the siting of pipeline infrastructure is outside the authority of the Commission, stating:

> Finally, it is important to note that there are common threads to some recent high profile public complaints regarding pipeline development in Pennsylvania, which are currently out of reach of the PUC, including the absence of siting authority for pipelines, the "stacking" of multiple pipelines within a right of way corridor and increased residential and business development along existing pipeline rights of way. While different pieces of legislation have been introduced over the last few years related to these topics, most remain unresolved – leading to increased friction between operators and the communities they pass through. While these matters are

> outside the jurisdiction of the Commission, they are shaping the ongoing public discussion involving "pipeline safety" and are matters that the General Assembly may wish to consider. The Commission will continue to focus on the area where our jurisdiction lies, *pipeline integrity*.[14]

It should also be noted that the Commission has already expressly determined that SPLP's CPCNs do not restrict its petroleum product transportation service. As stated by the Commission:

> Thus, Sunoco has the authority to provide intrastate petroleum and refined petroleum products bi-directionally through pipeline service to the public between the Ohio and New York borders and Marcus Hook, Delaware County through generally identified points. This authority is not contingent upon a specific directional flow or a specific route within the certificated territory. Additionally, this authority is not limited to a specific pipe or set of pipes, but rather, includes both the upgrading of current facilities and the expansion of existing capacity as needed for the provision of the authorized service within the certificated territory. In light of the above analysis affirming Sunoco's authority to provide intrastate pipeline transportation service from Houston, Pennsylvania to Marcus Hook, Pennsylvania, there is a rebuttable presumption that Sunoco is a public utility in this Commonwealth.[15]

Thus, the Commission should not and cannot adopt the position of the commenters regarding pipeline siting as the Commission's authority is limited.[16]

---

[14] Public Hearing on the Public Safety Aspects of Pipeline Systems Before the House Veterans Affairs & Emergency Preparedness Committee, 2019-2020 Leg., 203rd Sess. (Pa. 2019) (Prepared Testimony of Gladys Brown Dutrieuille, Chairman, Pennsylvania Public Utility Commission) (available at https://www.puc.pa.gov/General/pdf/Testimony/BrownDutrieuille-HouseVAEP_053019.pdf) (emphasis added).

[15] *Petition of Sunoco Pipeline, L.P. for a Finding that a Building to Shelter the Walnut Bank Valve Control Station in Wallace Township, Chester County, Pennsylvania is Reasonably Necessary for the Convenience or Welfare of the Public, et al*., Docket No. P-2014-2411941, *et al*., 2014 WL 5810345, at *24 (Opinion and Order entered Oct. 29, 2014) (*2014 Sunoco Petition*).

[16] *Pickford v. Pa. Pub. Util. Comm'n,* 4 A.3d 707, 713 (Pa. Cmwlth. 2010) ("As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the [Public Utility] Code.") (*Pickford*).

B. Proposed Section 59.131 – Purpose

The Environmental Advocates state that proposed Section 59.131 should be amended to state that the Hazardous Liquid Public Utility Safety Standards are intended to protect the public and the natural environment and that the purpose is to ensure that the design, construction, operation, and maintenance of hazardous liquid pipelines is grounded in best practices.[17]

The Commission should reject this recommendation. As described further in its Reply Comments, the Commission does not have the necessary resources or expertise to establish and maintain a prescriptive set of best practices regarding the operation of hazardous liquid public utility operations. In addition to SPLP, industry experts have demonstrated that the Commission has misapplied various industry standards in the NOPR in an arbitrary manner leading to confusion and concern among the various stakeholders. For instance, the Association for Materials Protection & Performance ("AAMP") noted that in its opinion "the proposed criteria for cathodic protection in §59.143(c) constitutes a *less stringent* standard than the federal regulations contained in 49 CFR 195."[18] Likewise, Accufacts, Inc. ("Accufacts") noted that the Commission's proposed pressure testing requirements in Section 59.139 is inappropriate because requiring "pipeline assessments more often is dangerous in that it creates an illusion of an increased level of safety. More frequent inappropriate hydrostatic and/or improper and unverified ILI assessments more often…adds no safety benefit to a pipeline operation."[19] Moreover, PHMSA's process for incorporating industry standards into its regulations requires the Commission to consider various criteria and concerns that the Commission does not, as well as coordinate with industry

---

17 Environmental Advocates Comments at 6.

18 AAMP Comments at 5.

19 Accufacts Comments at 14 (submitted on behalf of West Whiteland Township).

stakeholders and relevant committees.[20] For these reasons, any attempt by the Commission to establish best industry practices can create impermissible conflicting requirements with the federal standards and, in some instances, even less stringent standards. Thus, the Commission should defer to PHMSA and those best industry practices that PHMSA has incorporated by reference.[21]

C. Proposed Section 59.132 – Definitions

The Environmental Advocates put forth several suggestions for the Commission's proposed rulemaking.[22] In particular, the Environmental Advocates suggest that the Commission add a definition to clarify that conversion includes inactive pipelines being brought back into service.[23] The Commission should reject the proposal to define pipeline conversion to include a reactivated pipeline. 49 C.F.R. § 195.5 sets forth the federal requirements for pipeline conversion, which is defined as converting a steel pipeline previously used in service not subject to 49 C.F.R. §§ 195.1, *et seq*. ("Part 195"), that now qualifies for use under Part 195. It does not include any reference to reactivated or inactive pipelines. Moreover, this concern is unwarranted in light of the fact that PHMSA retains continued jurisdiction and oversight over 'idled' or 'inactive' pipelines. As stated by PHMSA:

> PHMSA regulations do not recognize an "idle" status for a hazardous liquid or gas pipelines. The regulations consider pipelines to be either active and fully subject to all parts of the safety regulations or abandoned. The process and requirements for pipeline abandonment are captured in §§ 192.727 and 195.402(c)(10) for gas

---

20 *See* SPLP Comments at 7-8, *see also* 49 U.S.C. § 60102(b)(2).

21 *See* 49 C.F.R. § 195.3.

22 The Environmental Advocates suggest that the Commission expand the definition of "covered task" as discussed in its comments regarding Section 59.141. SPLP will likewise address this issue in its response to the Environmental Advocates' comments regarding Section 59.141.

23 Environmental Advocates Comments at 7; *see also* Environmental Advocates Comments at 14 (The Environmental Advocates also state that the Commission should expand Section 59.132 to include regulations for inactive pipelines more generally. They suggest that the Commission require an inactive pipeline to be surveyed for leaks and/or disconnected after a specified time frame of 2–5 years.).

> and hazardous liquid pipelines, respectively. Pipelines abandoned after the effective date of the regulations must comply with requirements to purge all combustibles and seal any facilities left in place. The last owner or operator of abandoned offshore facilities and abandoned onshore facilities that cross over, under, or through commercially navigable waterways must file a report with PHMSA. PHMSA regulations define the term "abandoned" to mean permanently removed from service.
>
> ***
>
> Pipelines not currently in operation are sometimes informally referred to as "idled," "inactive," or "decommissioned." These pipelines may be shut down and still contain hazardous liquids or gas. Usually, the mainline valves on these pipelines are closed, isolating them from other pipeline segments. If a pipeline is not properly abandoned and may be used in the future for transportation of hazardous liquid or gas, PHMSA regulations consider it as an active pipeline. Owners and operators of pipelines that are not operating but contain hazardous liquids and gas must comply with all applicable safety requirements, including periodic maintenance, integrity management assessments, damage prevention programs, response planning, and public awareness programs.[24]

Moreover, pursuant to the Protecting our Infrastructure of Pipelines and Enhancing Safety ("PIPES") Act of 2020, PHMSA is required to promulgate regulations prescribing the applicability of the pipeline safety requirements to idled natural or other gas transmission and hazardous liquid pipelines not later than two years after the enactment of the PIPES Act of 2020.[25] At this time, PHMSA has not yet promulgated proposed regulations regarding idled pipelines.[26] Thus,

---

[24] Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status, Dep't of Transp. Pipeline and Hazardous Materials Safety Administration, ADB-2016-0075, 2016 Fed. Reg. 19,494 (issued Aug. 16, 2016).

[25] Protecting our Infrastructure of Pipelines and Enhancing Safety ("PIPES") Act of 2020, Pub. L. No. 116-260, Div. R, § 109, 134 Stat. 1182, 2223-2224 (codified at 49 U.S.C. § 60143).

[26] *See* U.S. Dept. of Transp. Pipeline and Hazardous Materials Safety Administration, Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 Web Chart (last accessed May 4, 2022) (available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-04/4.6.22%20PIPES%20Website%20Chart.pdf).

the Commission should defer to PHMSA's future rulemaking and not adopt the recommendation of the Environmental Advocates.[27]

The Environmental Advocates also recommend explicitly adding "school" officials or representatives to the definition of emergency responders, as it is unclear whether they are included as local, city, county, or state officials and representatives.[28] As SPLP indicated in its Comments, however, the term "emergency responders" is unreasonably vague and overly broad, including an ill-defined and extensive number of individuals, which will only serve to interfere with safety and confound prompt response to incidents.[29] To further expand this definition to also include school officials or 'representatives' is equally troubling.[30] Moreover, the American Petroleum Institute's Recommended Practice 1162, which is incorporated by reference in 49 C.F.R. §§ 195.3 and 195.440 and addresses the federal public awareness requirements, expressly includes schools within the 'affected public,' not 'emergency responders.'[31] While SPLP submits that the Commission should not adopt the proposed rulemaking, any requirements addressing

---

[27] SPLP also submits that the Commission does not have appropriate authority to regulate or impose obligations regarding inactive pipelines. As stated by the Commonwealth Court, "Both FERC and PUC regulate the shipments of natural gas and petroleum products or service through those pipelines, and not the actual physical pipelines conveying those liquids." *In re Sunoco Pipeline, L.P.*, 143 A.3d 1000, 1004 (Pa. Cmwlth. 2016). Once a pipeline is inactive and is no longer conveying liquids, the Commission does not have jurisdiction to require operators to survey or periodically inspect those pipelines.

[28] Environmental Advocates Comments at 7.

[29] *See* SPLP Comments at 37-39.

[30] Judith McClintock supports the Commission's proposed definition of 'affected public' stating that it will force the pipeline operator to disclose the lower flammability limit ("LFL"). Judith McClintock Comments at 1. SPLP opposes any requirement to disclose the LFL to the public as it does not provide any additional safety benefit, nor is it required by PHMSA's public awareness requirements.

[31] *See* 49 C.F.R.§ 195.3(b)(8) API Recommended Practice 1162: Public Awareness Programs for Pipeline Operators at 2, (1st ed., 2003) ("API RP 1162"), IBR approved for § 195.440(a), (b), and (c).) ("API RP 1162").

communications with school representatives should be dealt with separately as is currently contemplated by Section 59.140(d).[32]

The Environmental Advocates also recommend expanding the definition of "hazardous liquid" to include liquid carbon dioxide, because carbon capture and storage projects continue to be proposed and the potentially vast network of new CO_2 pipelines could pose a serious risk of potentially extreme harm to public safety and the environment.[33] The Commission should not amend the definition of "hazardous liquid" to include liquid carbon dioxide. Part 195 separately defines hazardous liquid and carbon dioxide and regulates both types of pipelines.[34] Thus, the Commission should not conflate liquid carbon dioxide and hazardous liquids. Rather, the Commission should defer to PHMSA, which comprehensively addresses the safety surrounding the transportation of liquid carbon dioxide by pipeline.

The Pennsylvania Department of Environmental Protection ("PA DEP") recommends that the Commission consider amending "residents and places of congregation" in "Affected Public" to:

> [S]urface landowners whose property is within 1,000 feet from the limit of disturbance of the pipeline project; the municipality or municipalities in which the tract of land upon which the pipeline project is located; water supply users with water supplies within 1,000 feet from the limit of disturbance of the pipelines project; and

---

[32] Other commenters suggest that while they agree with the Commission's proposed definition of 'affected public,' the distance should be much greater. *See* George Alexander Comments, Patrick Robinson Comments. As SPLP stated in its comments, the Commission's proposed definition of "affected public" is not consistent with API RP 1162. API RP 1162 defines the "affected public" as residents, and places of congregation (businesses, schools, etc.) along the pipeline and the associated right of way. API RP 1162 at 2. The federal standard grants the pipeline operator discretion to determine the affected public and tailor a public awareness plan necessary to communicate with them. The federal requirements are sufficient. Conversely, commenters suggesting that that scope of the 'affected public' should be greater or more stringent do not provide any technical or scientific justification.

[33] Environmental Advocates Comments at 7.

[34] 49 C.F.R. §§ 195.1-195.2.

> the owners of buildings located within 1,000 feet from the limit of disturbance of the pipeline project.[35]

For the purposes of this definition, PA DEP also recommends including a definition of "building" as "an occupied structure with walls and roof within which person live or customarily work."[36] PA DEP recommends that the 1,000 feet be measured from the limit of disturbance.[37] PA DEP also recommends the Commission provide information, including any scientific or technical rationale, that establishes that these particular distances afford an appropriate level of protection to the public.

As SPLP stated in its Comments, the federal standard provides discretion to the pipeline operator to determine the extent of the individuals and places of congregation along the pipeline route that are considered as part of the affected public.[38] In this regard, rather than prescriptively setting a limit on the affected public as recommended by PA DEP, the Commission should retain the discretion provided to operators in the federal regulations. SPLP would also note that the 'limit of disturbance' is a technical term that refers to the area where earth disturbance activities will occur during construction.[39] This disturbance area, however, has no impact or relevance once the pipeline is operational, nor would it be relevant in determining the potential impact of a pipeline incident. Thus, the Commission should not adopt the PA DEP's proposal.

---

35 PA DEP Comments at 1.

36 *Id*., *see also* 25 Pa. Code § 78a.1.

37 *Id*. "Limit of disturbance" is defined in 25 Pa. Code § 78a.1 as "The boundary within which it is anticipated that earth disturbance activities (including installation of best management practices) will take place." *Id*.

38 *See* API RP 1162.

39 25 Pa. Code § 78a.1.

D. Proposed Section 59.133 – General

Regarding part (b), the Environmental Advocates recommend that the Commission set forth a non-exhaustive list of additional specific enforcement options in a separate section of the rulemaking. The Environmental Advocates assert that enforcement measures should be based on several factors, including, *inter alia*, whether a particular enforcement action is necessary for public safety, the severity of the violation, and the gravity of the violation. The Environmental Advocates also suggest that the Commission rely on fines, injunctions/temporary shutdowns, and suspension or revocation of a pipeline's certification of public convenience and necessity ("CPCN")[40] for its enforcement measures. Additionally, the Environmental Advocates urge that the Commission also consider the enforcement factors when deciding whether to grant a new CPCN for a utility.[41]

The Commission should reject the Environmental Advocates recommendations regarding potential enforcement measures. The Environmental Advocates' suggestions are redundant in light of the Commission's authority under the Public Utility Code and its regulations and do not meaningfully address any issues currently before the Commission.[42] Moreover, the factors set forth by the Environmental Advocates are duplicative of the *Rosi* standards that the Commission commonly applies in any enforcement proceeding.[43]

---

[40] Environmental Advocates separately recommend that the Commission explicitly condition future CPCNs upon compliance with applicable regulations and that the Commission consider the enforcement factors when deciding whether to grant a new CPCN for a utility. Environmental Advocates Comments at 11.

[41] Environmental Advocates Comments at 11.

[42] *See*, *e.g.*, 66 Pa. C.S. § 3301, 52 Pa. Code §§ 3.2, 3.6.

[43] *See Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409, 2000 WL 1407936 (Opinion and Order entered Mar. 16, 2000).

Regarding Part (d), the Environmental Advocates recommend that the Commission should explicitly state that operators are required to actually implement the measures recommended in the PHMSA guidance, *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, PHMSA Advisory Bulletin ADB-2014-04, Docket No. 2014-0040; 79 FR 56121-56122.[44] The Environmental Advocates also urge the Commission to require that for each type of test recommended in the guidance, operators must follow the more stringent of the protocols from the most current iteration of the guidance.[45]

The Environmental Advocates' assertion is flawed. These guidance documents were never intended to be mandatory. Moreover, as stated in the Joint Comments of American Fuel & Petrochemicals Manufacturers ("AFPM"), American Petroleum Institute ("API"), Association of Oil Pipe Lines ("AOPL"), and GPA Midstream Association ("API, *et al*."):

> PHMSA's ADBs provide guidance to the regulated community and do not have the force and effect of law. PHMSA does not follow the notice-and-comment rulemaking requirements in the Administrative Procedure Act and Pipeline Safety Act in issuing ADBs, and PHMSA can repeal or modify the guidance provided in an ADB at any time without providing affected stakeholders with prior notice or the opportunity to comment[46].

The Commission should not require mandatory adherence to the PHMSA advisory bulletin and should provide operators with the flexibility to consider implementing the best practices recommended by PHMSA based on the unique conditions of their systems.

East Goshen Township Board of Supervisors ("East Goshen") also notes its concern that the 60-day pipeline conversion notice may not be sufficient in all cases, such as conversion to a

---

44 Environmental Advocates Comments at 12.

45 *Id*., at 13.

46 API, *et al*. Comments at 5.

more volatile product or at a higher pressure.[47] East Goshen recommends that these types of conversions should require advanced notification and approval from the Commission, that the Commission should consult with a certified third-party industry expert prior to granting any approval for such a conversion and perform a detailed risk assessment with consideration given to factors such as age of pipeline; commercial/residential development of surrounding areas; initial use of pipeline, history of leaks; and proposed operating pressure. If any of these factors demonstrates a potential risk to public safety, East Goshen asserts that such conversion should be prohibited.

SPLP notes, however, that the 60-day notice for pipeline conversion is consistent with the requirements set forth in 49 C.F.R. § 195.5(d). Pipeline operators are also required, pursuant to 49 C.F.R. § 195.64, to notify PHMSA through the National Registry of Operators when it converts a pipeline for service or there is a change in commodity. Moreover, 49 C.F.R. § 195.5 requires a pipeline operator to, *inter alia*, thoroughly review and test converted pipelines, correct known unsafe defects and conditions, and comply with the corrosion control requirements within 12 months after being placed into service. Importantly, PHMSA does not render approval or prohibit the conversion of a pipeline segment becoming a Part 195 pipeline if the pipeline operator is complying with the relevant law. Similarly, there is no approval process where there is a change to a transported commodity in a pipeline already governed by Part 195.[48] Adopting East Goshen's proposal would then create an arbitrary and ill-defined approval process that will result in a waste of infrastructure and disincentivize utilities from using existing infrastructure, leading to its

---

47 East Goshen Township Comments at 1.

48 *See* Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, U.S. Dep't of Transp. Pipeline and Hazardous Materials Safety Administration, ADB 2014-0040, 2014 Fed. Reg. 56,121 (Sept. 8, 2014).

abandonment and, potentially, the more disruptive procedure of new pipeline construction, which the Commission does not prefer.[49]

The Environmental Advocates next recommend that the Commission adopt a new Part (e) – Best Practices Framework.[50] According to the Environmental Advocates, subsection (e) would require the Commission to maintain a library of "Commission-Recognized Best Practices" covering a comprehensive list of tasks, procedures, and practices and that, at a minimum, the Commission should commit to reviewing and updating it at least every five years. The Environmental Advocates then assert that the Commission should provide utilities with a curated list of mandatory best practices with which it requires operators to comply. They also recommend that if an operator wants to try a new practice, the operator should be required to first submit a proposal for the Commission's review and approval.

The Commission acting alone is not the right agency to determine or establish a compendium of pipeline operation best practices. Federal pipeline safety regulations already incorporate standards and practices from well and long recognized industry standard organizations such as API, ASME, and NACE/AMPP which are developed through standards committees through a rigorous drafting, reviewing and editing process, while still providing pipeline operators with the flexibility to adopt standards that best fit the unique aspects of their individual pipeline systems. The flawed proposals contained in the NOPR demonstrate that the Commission is not

---

[49] *See 2014 Sunoco Petition*, 2014 WL 5810345, at * 24 ("We also reject the argument…that the Sunoco pipeline implicated in this proceeding is limited to east-to-west transportation…Importantly, there is no directional restriction contained in any of the controlling Certificates or Commission Orders, nor do we believe it to be good public policy to adopt or interpret any such directional restrictions. To do so would likely result in the construction of new and redundant pipeline facilities, while existing facilities of the exact same nature, capable of providing the exact same services, would sit useless. This restriction, if accepted, could force the unnecessary expenditure of billions of dollars, which costs would be absorbed by the energy-using public through increased commodity prices.").

[50] Environmental Advocates Comments at 14-15.

equipped to make such determinations, nor does it have the resources. For example, several commenters noted that the Commission's proposed regulations either ignore or only contain portions of applicable industry standards, which can result in less public safety than currently required under PHMSA's federal requirements.[51] Any prescriptive requirement of select industry standards by the Commission would only prevent a pipeline operator from reasonably managing its operations and, thus, substantially interfere with a pipeline operator's managerial discretion.[52] Rather, PHMSA, through its deliberative, technical-based process, is the appropriate entity to adopt and implement industry standards. Further, future adoption of any such best practices would require additional notice and comment rulemaking to make the standards enforceable.

Regarding aging pipelines generally, the Environmental Advocates recommend that the Commission should require a study, at least as rigorous as that in PHMSA's guidance, for any change of service proposed by any operator, that each hazardous liquids pipeline operator conduct a periodic "end-of-life" or "remaining life" review and incorporate then-current best practices. They also assert that the Commission should require studies for pipelines over 30 years old (or another evidence-based age), and for pipelines constructed with materials other than epoxy coated steel pipe. The Environmental Advocates then suggest that the Commission should aggregate the

---

[51] *See* AAMP Comments at 2-4 (recommending incorporation of NACE SP0102, *In-Line Inspection of Pipelines*, and that the Commission's proposal misquotes or deliberately rewrites NACE SP0169-2007); PureHM Comments at 1 ("The PUC's proposed changes in relation to Docket L-2019-3010267 do not fully incorporate the most recent version of NACE SP0169, but rather selects parts of the safety standard to leave out. Using this standard piecemeal is a perplexing approach not seen in other states, and it will lead to technical confusion, mismanagement, and misapplication.").

[52] *Metropolitan Edison Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981); *see also Bell Telephone Co. of Pa. v. Driscoll*, 21 A.2d 912, 916 (Pa. 1941) (The PA Supreme Court stated: "The Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them. Its sole power is to see that in the matter of rates, service and facilities, their treatment of the public is fair.").

data from all pipelines, including in-line testing results, to assist the Commission's Bureau of Investigation and Enforcement (BIE) in evaluating how pipelines age.[53]

The Commission should reject this position. It is unclear what study the Environmental Advocates want pipeline operators to perform when proposing a change of service. There is no evidence that any alleged benefits of such study would outweigh the costs or that such study would have a positive impact on pipeline safety. The existing PHMSA requirements are more than sufficient in that they require ongoing inspection, maintenance, and repair of pipelines. Properly maintained and repaired as needed, pipelines do not have a defined end-of-life and the concept is one associated with asset depreciation, not integrity.

Additionally, the Commission separately dealt with remaining life studies in its *Rulemaking Regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Products Transportation Pipelines*, Docket No. L-2019-3010270, Notice of Proposed Rulemaking Order (entered Jun. 13, 2019). In that proceeding, rather than promulgate this requirement, the Commission sought PHMSA guidance regarding whether requiring end-of-life studies is inconsistent with the federal regulatory scheme.[54] 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 pipeline operators, inspect, maintain and repair their pipelines, including through integrity management programs.[55] This entails ongoing monitoring, inspection,

---

[53] Environmental Advocates Comments at 13.

[54] *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, Motion of Commissioner John F. Coleman Jr. (adopted Oct. 7, 2021) (seeking PHMSA guidance as to whether requiring a service life study requirement is compatible with PHMSA standards).

[55] *See, e.g.,* 49 U.S.C. § 60108; 49 C.F.R. Part 195, Subpart F (Operation and Maintenance including integrity management regulations at 195.450, 195.452) and Subpart H (Corrosion Control).

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. That is, simply because it is old does not mean it needs a date to terminate.[56] Indeed, in its Comments, SPLP referenced studies showing threats on even pre-1970 pipe are non-time dependent.[57] Moreover, over the life span of a pipeline significant portions of pipe are often completely replaced with new pipe for a host of reasons during the course of maintenance and integrity management, thus a remaining life study that focuses on the initial installation date is not a representative measure of the age or condition of a pipeline. Accordingly, the Commission should not adopt this requirement.

E. Proposed Section 59.134 – Accident Reporting

The Environmental Advocates make a number of recommendations regarding Section 59.134. Regarding the status update requirements in Section 59.134(b) and (c) (relating to failure analysis reports and root cause analysis reports), the Environmental Advocates state that these updates should be detailed, provide an explanation for any delay, and a timeline for completion so the Commission can ensure the analysis is proceeding appropriately[58]. The Environmental Advocates also request the Commission to identify circumstances in which a status update must include draft findings and analysis and establish a timeline under which failure to produce the final reports will trigger enforcement mechanisms.[59]

---

56 *See 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, Sunoco Pipeline, L.P. Comments at 3 (filed Nov. 4, 2019).

57 SPLP Comments at 66; *see also* Accufacts Township Comments at 5 ("There is vintage pipe manufactured years earlier than 1970 where the pipe is satisfactory in the weld seam or related heat affected zone, or HAZ, integrity wise, and there is pipe manufactured some years after 1970 that is considered at-risk due to various seam weld risk threat factors introduced during manufacture that usually result in pipeline rupture.").

58 Environmental Advocates Comments at 17.

59 *Id*.

SPLP opposes the Commission's proposed requirements in parts (b) and (c), and SPLP is equally opposed to the recommendations made by the Environmental Advocates. As proposed, the Commission would require pipeline operators to select an independent third-party laboratory and consultant approved by the Commission to conduct the failure analysis and root cause analysis reports, but the Environmental Advocates would also seek to have the pipeline operators penalized for any delay in reporting. This is unreasonable and should not be adopted by the Commission. Moreover, it is not in the interest of the Commission, the pipeline operator, or the public to penalize a public utility because it needs additional time to carefully evaluate an incident and prepare the relevant reports. Moreover, root cause failure analyses are not necessary for every incident and, because they are conducted by third parties, a pipeline operator cannot exercise complete control over the timeline for completion of an analysis.

The Environmental Advocates also recommend several changes to the Commission's proposed immediate notice requirement under Section 59.134(e). SPLP objects to these for the reasons that follow. Namely, the Environmental Advocates assert that the Commission should: (1) expand the proposed rule to include incidents that may threaten public safety even absent a release of a hazardous liquid, *i.e.,* sinkholes, landslides, and other hazardous geological conditions, (2) require immediate reporting of releases that occur in high consequence or ecologically sensitive areas, (3) lower the property damage threshold for reporting, (4) require notice of spills or releases confined to the pipeline operator's right of way, eliminating the exception in 49 C.F.R. § 195.50, (5) require that pipeline operators provide immediate notice to emergency responders, including appropriate school officials or representatives, and (6) require pipeline operators to provide direct

and immediate notice to owners of drinking water supplies when there is an accident or release that has the potential to impact drinking water supplies.[60]

The Commission should not adopt the Environmental Advocates' proposed modifications. 49 C.F.R. § 195.52 appropriately addresses immediate notice for certain pipeline accidents. Importantly, it requires that notice be provided to the National Response Center ("NRC"), which will direct and coordinate an appropriate response. When notice is provided to the NRC, that immediately triggers notifications to relevant emergency response agencies and other relevant governmental and municipal agencies. To otherwise adopt the above proposals would only delay a pipeline's response to operational concerns through extensive notice requirements and create confusion and concern among the communities where none may be warranted.

Representative Kristine Howard, Senator Carolyn Comitta, and Chester County recommend that the Commission make the failure analysis and root cause reports required under proposed Section 59.134(b) and (c) public.[61] Contrary to these recommendations, the Failure Analysis and Root Cause Analysis reports should not be provided to the public. The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6 ("CSI Act") defines CSI as "Information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities …"[62] The CSI Act then defines CSI to include, *inter alia*, vulnerability

---

60 Environmental Advocates Comments at 17-20.

61 Representative Kristine Howard Comments at 1; Senator Carolyn Comitta Comments at 1-2; Chester County Comments at 1.

62 35 P.S. § 2141.2.

assessments.[63] Releasing the failure analysis and root cause reports would violate the CSI Act, which the Commission cannot do.[64] Moreover, there is no showing that release of these materials would have any positive impact on pipeline safety.

F. Proposed Section 59.135 – Construction, Operation, Maintenance, and Other Reports

In its Comments, Chester County states that: (1) the $50,000 threshold for notice in (b)(2) is too high and that there should be no dollar threshold for anomaly notification and verification digs, (2) the pipeline operator should be required to provide a summary of the in-line inspection findings to BIE without having to request it, (3) where in-line pigging equipment detects an anomaly, operators should be required to notify the Pipeline Safety Section should be made aware and provided plans and procedures that the operator will take to verify the pig findings, (4) the information provided for in part (d) should be provided automatically with notice under subsection (b)(1)-(3), and (5) the information under part (e), should be provided automatically with notice under subsection (b)(2) and the $50,000 expenditure threshold should be removed.[65]

As stated in SPLP's Comments, the Commission should not remove the $50,000 threshold for notice under part (b) and (e), but rather increase the monetary threshold for notice. There is no showing of any benefit to public or pipeline safety and this proposal will result in a waste of Commission and operator resources. In particular, seeking to require 10-day notice for every

---

63 *Id*.

64 *Pa. Hum. Rels. Comm'n v. St. Joe Minerals Corp., Zinc Smelting Div.*, 382 A.2d 731, 735-36 (Pa. 1978) ("The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist… Only those powers within the legislative grant, either express or necessarily implied, can be exercised by the administrative body.") (citations omitted).

65 Chester County Comments at 1-2; *see also* Senator Carolyn Comitta Comments at 2.

maintenance, verification dig[66], and assessment involving the unearthing of suspected leaks, dents, pipe ovality features, cracks, gouges or corrosion anomalies, or other suspected metal losses, in addition to those notices proposed for 'major construction,' would be extremely burdensome, potentially delay necessary assessment and construction, and would inundate the Commission with unnecessary information.[67] These concerns are also shared by API, *et al*., wherein they stated:

> PHMSA uses a $10 million threshold in its 60-day advance notification requirements in 49 C.F.R. § 195.64(c)(1), which is more than 30 times greater than the $300,000 threshold that the Commission is proposing for major projects. Using the monetary threshold proposed by PAPUC would require advance notification of various types of routine maintenance work, which cannot be fairly characterized as major projects. The Associations recommend the PAPUC assess whether it is staffed to timely respond to the influx of notifications that can be expected under this section.[68]

API, *et al.*, also states that the Commission should allow an exception to the notice requirements where compliance is not practicable due to unforeseen circumstances, an emergency, or where an immediate repair is required under PHMSA's regulations.[69] SPLP agrees. Additionally, in the gas context, PHMSA recently *increased* the property threshold for incident reporting, recognizing that the lower threshold for property damage did not adequately reflect the original intent of the reporting obligations. Final Rule, Pipeline Safety: Gas Pipeline Regulatory Reform, 86 F.R. 2210 (Jan. 11, 2021) ("The revision to the incident definition has no direct safety impact, better reflects the intent of the original property damage criterion, and only impacts reports of releases without significant safety or environmental consequences.")

---

66 Separately, SPLP finds it unnecessary to provide notice of verification digs. The purpose of verifications digs is to ensure that the assessment tool is functioning properly and is accurate. It has nothing to do with pipeline safety.

67 *See* SPLP Comments at 47-48.

68 API, *et al*. Comments at 6.

69 API, *et al*. Comments at 6-7; *see also* 49 C.F.R. § 195.64(c)(1)(i).

SPLP also opposes Chester County's recommendation that the pipeline operator provide the in-line inspection results to the Commission's Pipeline Safety Section. Providing this information, particularly if there are no detected anomalies, does not directly benefit or enhance pipeline safety, but rather would inundate the Commission with more information than is needed. Moreover, it is not clear what the Commission's Pipeline Safety Section would do with such information in the absence of an investigation or inspection.

In addition to the suggestions offered by Chester County, the Environmental Advocates next recommend that: (1) the reporting requirements be triggered by potential impacts in addition to (not instead of) projected expenditures, (2) pipeline operators should be required to notify the Commission within 14 days from the day the operator receives a Notice of Violation ("NOV") from PA DEP associated with activities covered by Chapter 102 or 105 of the PA DEP's regulations; and (3) pipeline operators should, under part (d), be required to provide copies of requested documents associated with the NOVs, including operator responses and subsequent related correspondence with PA DEP.[70] The Environmental Advocates also recommend that the Commission expand this section to promote intra-agency cooperation and information sharing among the Commission, PA DEP, the U.S. Environmental Protection Agency ("EPA"), and the Occupational Safety and Health Administration ("OSHA").[71]

SPLP opposes the above recommendations. First, the suggestion that reporting requirements should be triggered by potential impacts is vague, unreasonable, and subjective.[72] It

---

[70] Environmental Advocates Comments at 20-21; *see also* Accufacts Comments at 11 (recommending removing the $50,000 threshold limitation in Section 59.135(b)(2) & (e)).

[71] Environmental Advocates Comments at 21-22.

[72] *See Park Home v. City of Williamsport*, 680 A.2d 835, 838 (Pa. 1996) ("Vague statutes deny due process in two ways: they do not give fair notice to people of ordinary intelligence that their contemplated

is not clear what standard pipeline operators would be relying upon to determine potential impacts of a proposed activity. Moreover, the Commission does not have authority to require or interpret NOVs issued by PA DEP. *See* Section II.I, *infra*. Similarly, the Commission does not have the authority to mandate inter-agency cooperation, especially with federal agencies.

In its Comments, East Goshen requests that the Commission should require advanced notification at least 90 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file with the Commission a report stating the proposed originating and terminating points for the pipeline, municipalities to be traversed, size and type of pipe to be used, type of service, design pressure, the length of the proposed line, and confirmation that they have provided written notification to each of the municipalities to be traversed with the report.[73]

For the reasons stated in SPLP's Comments, extensive notice, such as a 90-day notice, without any exceptions for emergency situations, can result in prolonged unsafe conditions and commodity shipment delays.[74] Moreover, extensive notice requirements to the Commission and municipalities are without any additional safety benefit, particularly considering the existing federal notification requirements.[75] Thus, the Commission should not adopt East Goshen's recommendation.

---

activity may be unlawful, and they do not set reasonably clear guidelines for law enforcement officials and courts, thus inviting arbitrary and discriminatory enforcement.").

73 East Goshen Comments at 1.

74 *See* SPLP Comments at 47-49.

75 *See* 49 C.F.R. §§ 195.18, 195.64.

G. Proposed Section 59.136 – Design Requirements

The Environmental Advocates make a number of suggestions regarding Section 59.136. The Environmental Advocates recommend that in determining anticipated external loads, the Commission should: (1) require pipeline operators to account for the impacts of climate change, changes in development of the area around the construction site, and changes in depth of cover when designing a pipeline, (2) review pipeline deigns at appropriate intervals, suggesting every 10 years, to verify that the associated pipeline can still withstand updated projections of external loads, and (3) require pipeline operators to account for any potentially relevant impacts from hazardous events, including whether it is a warning of increasing geophysical instability.[76]

The Environmental Advocates' recommendations are misplaced. Importantly, requiring pipeline operators to consider the impacts of climate change when designing a pipeline is a vague and subjective standard, and, not to mention, beyond the authority of the Commission.[77] Likewise, any suggestion to periodically assess pipeline design at appropriate intervals is unnecessary because the federal requirements already require it. Pursuant to 49 C.F.R. § 195.452(j), pipeline operators must assess the integrity of a pipeline segment located in a high consequence area every five years. Pipeline segments not located within a high-consequence areas are subject to periodic reassessments every 10 years.[78] Moreover, as API, *et al*., indicated in its Comments:

> [A]n API standard is currently under development that will address pipeline geohazards, and the Interstate Natural Gas Association of America (INGAA) recently published a white paper titled

---

76 Environmental Advocates Comments at 22-23.

77 *See, e.g., Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, (Pa. Cmwlth. 1995) (holding that the Public Utility Code does not grant the Commission authority to regulate air quality and offensive odors produced by a public utility); *Rovin v. Pa. Pub. Util. Comm'n*, 502 A.2d 785, (Pa. Cmwlth. 1986) (holding that the Commission does not have authority to regulate the quality of water).

78 49 C.F.R. § 195.416(b).

> "Guidelines for Management of Landslide Hazards for Pipelines" that the industry uses to manage the risk of geohazards. The Associations encourage the PAPUC to postpone the proposed requirements in Section 59.136 and revisit the topic once an industry-wide standard is developed. The Associations also welcome participation from the PAPUC in the standard development process.[79]

Thus, the Commission should defer to the federal requirements and defer to those entities with proven and accepted expertise in this highly technical area.

The Environmental Advocates next recommend that the Commission require operators to implement the procedures recommended in PA DEP's proposed Trenchless Technology Guidance.[80] As stated in SPLP's Comments, the Commission should not incorporate PA DEP's Trenchless Technology guidance. As the PA DEP indicated, the guidance has not yet been finalized and is currently in a public comment period.[81] Moreover, the Trenchless Technology Guidance is not a binding rule or regulation promulgated by PA DEP, but a document setting forth policies, procedures and best practices regarding construction utilizing trenchless technology for the prevention of adverse environmental impacts. Indeed, as stated by the PA DEP:

> The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the PADEP to give the rules in these policies that weight or deference. This document establishes the framework within which PADEP will exercise its administrative discretion in the future. PADEP reserves the

---

79 API, *et al*. Comments at 8.

80 Environmental Advocates Comments at 22; *see also* Trenchless Technology Guidance Document, Section 3.B: Disclaimer, Pa. Dep't of Envt'l Protection, 52 Pa. B. 1693 (published Mar. 19, 2022) (available at https://files.dep.state.pa.us/PublicParticipation/Advisory%20Committees/AdvCommPortalFiles/TAC/2020/February/TGD%201_DRAFT.pdf) (Trenchless Technology Guidance).

81 PA DEP Comments at 2.

> discretion to deviate from this policy statement if circumstances warrant.[82]

Accordingly, given that this document is not a binding rule or regulation of PA DEP and subject to PA DEP administrative discretion in the future, incorporation of this document is not appropriate.

Incorporation of PA DEP's Trenchless Technology Guidance raises substantial due process and non-delegation concerns. Particularly, PA DEP's guidance is not being promulgated pursuant to the notice and comment rulemaking procedures under the Regulatory Review Act, 71 P.S. § 745.1, *et seq*., but is rather, as acknowledged by PA DEP, an interpretive document that has no binding authority.[83] For the Commission to require hazardous liquid public utilities to comply with PA DEP's guidance as a binding regulation, without the guidance itself being subject to formal notice-and-comment rulemaking procedures, would violate the affected parties' due process rights and fundamental concepts of administrative law. Similarly, the Commission would be incorporating, sight unseen, any future changes that PA DEP sees fit, without any opportunity for the regulated entities to challenge it or present evidence to the Commission, thus, violating the non-delegation doctrine.[84] SPLP would also note that PA DEP's Trenchless Technology Guidance

---

[82] Trenchless Technology Guidance at 6.

[83] As the Supreme Court of Pennsylvania summarized:

> Interpretive rules also garner deference deriving from the specialized role and expertise of administrative agencies. Nevertheless, since interpretive rules may not rest on legislatively-conferred rulemaking powers (and, correspondingly, do not abide notice-and-comment and regulatory review processes), the validity of such a rule may depend "upon the willingness of a reviewing court to say that it in fact tracks the meaning of the statute it interprets."

Northwestern Youth Serv., Inc. v. Cmwtlh, 66 A.3d 301, 310-311 (Pa. 2013) (citations omitted).

[84] *Protz v. Workers' Comp. Appeal Bd. (Derry Area School District)*, 161 A.3d 827, 838-39 (Pa. 2017) (holding that the General Assembly may not incorporate, sight unseen, subsequent modifications to such

was issued pursuant to PA DEP's enabling statutes.[85] The Commission has included no justification as to why it has the authority to adopt, interpret, or enforce PA DEP's guidance.[86]

Judith McClintock recommends that the pipeline operator should be required to provide water supply testing to all well owners that reside within 1000 feet of pipelines.[87] The Commission, however, should defer to PA DEP with regards to impacts to water supply sources. These are matters outside the scope of the Commission's jurisdiction because they do not relate to

---

standards without also providing adequate criteria to guide and restrain the exercise of the delegated authority) (*Protz*).

85 As stated by PA DEP:

> This document is established in accordance with Section 1917-A of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended,71 P.S. § 510-17; The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1- 691.1001; Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, as amended, 32 P.S. §§ 693.1- 693.27; Flood Plain Management Act, Act of October 4, 1978, P.L. 851, No. 166, as amended, 32 P.S. § § 679.101- 679.604; Oil and Gas Act of 2012, Act of February 14, 2012, P.L.87, No.13, 58 Pa. C.S. §§ 3201-3274; the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, as amended, 35 P.S. §§ 721.1- 721.17; the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101-6018.1003; and the regulations promulgated under these statutes, including 25 Pa. Code Chapters 78, 78a, 91, 92a, 93, 95, 96, 102, 105, 106, 109, 250, 287, 288, 289, 293 295, 297 and 299.

Trenchless Technology Guidance at 6.

86 As stated by the Supreme Court of Pennsylvania:

> Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute. An administrative agency cannot by mere contrary usage acquire a power not conferred by its organic statutes. It is settled that jurisdiction of a court cannot be extended or conferred by agreement. it must follow, A fortiori, that an administrative agency cannot acquire jurisdiction by agreement. Nor is it for the agency to seek to create or assure its own jurisdiction by insisting that applicants subscribe to the agency's view of what public policy requires.

Western Pa. Water Co. v. Pa. Pub. Util. Comm'n, 370 A.2d 337, 353 (Pa. 1977) (citations omitted) (*Wester Pa. Water Co.*).

87 Judith McClintock Comments at 1 (filed Aug. 30, 2021).

the provision of water service but rather to alleged impacts to quality of water outside the scope of water utility service *Polites v. Pa. Pub. Util. Comm'n*, 928 A.2d 388, 391 (Pa. Cmwlth. 2007) ("In Pennsylvania, pursuant to Section 5 of the [Pennsylvania Safe Drinking Water Act], 35 P.S. § 721.5, the task of preserving water quality and monitoring for contaminants is within the authority of the [PA DEP].") (*Polites*).

H. Proposed Section 59.137 – Construction

Chester County states that Section 59.137 (relating to construction), including part (g) (relating to valves for pipelines transporting highly volatile liquids) and part (h) (relating to vehicle barriers), should apply retroactively and be mandated in high-consequence areas ("HCAs"), giving operators two years to comply.[88]

The Commission should reject any proposal to apply the proposed regulations retroactively. Pennsylvania's Pipeline Safety Act expressly prohibits retroactive application to pipeline facilities existing at the time a standard is adopted.[89] Moreover, pursuant to 49 U.S.C. § 60104(c), the Commission may not adopt standards that are incompatible with the standards prescribed under the Pipeline Safety Act. Accordingly, the Commission may not retroactively apply the proposed regulations.[90] As further stated by API, *et al*.:

> [R]etroactively applying the proposed additional construction requirements to converted pipelines creates a direct conflict with PHMSA's regulations. PHMSA's conversion-to-service requirements exist to provide operators with a process for placing previously-unregulated pipelines in Part 195 service without requiring compliance with the construction requirements. Operators are only required to review the construction history of the pipeline and, if sufficient historical records are not available, to conduct

88 Chester County Comments at 2-3.

89 49 U.S.C. § 60104(b); *see also* SPLP Comments at 26-28.

90 *See also R&P Sers., Inc. v. Commonwealth, Dep't of Revenue*, 541 A.2d 432, 434 (Pa. Cmwlth. 1988); *see also* 1 Pa. C.S. § 1926.

> appropriate tests to demonstrate that the pipeline is in satisfactory condition for safe operation. Operators are not "constructing new pipelines" as part of the conversion-to-service process and cannot be practicably required to comply with additional construction requirements, including retroactive limitations on pipeline location, welding, depth-of-cover, underground clearance, and valves. These limitations effectively ban operators of certain existing pipelines from using the conversion-to-service process, a requirement that is clearly incompatible with the text, structure, and history of PHMSA's regulations. The Associations urge the Commission to eliminate the reference to "converting" pipelines from the text of the final regulation.[91]

Regarding the Commission's siting requirement in §59.137(b), the Environmental Advocates support the siting restrictions, but ask the Commission to further restrict the use of eminent domain for transportation of petroleum products within any part of the reasonable curtilage of a dwelling house within 100 meters therefrom.[92] They also recommend that the Commission not allow new pipeline installations under residential buildings, parking areas, or immediate yards which would endanger the public in the event of an incident next to someone's home, and that the Commission follow California's practices concerning construction in environmentally and ecologically sensitive areas.[93]

The Commission should reject the Environmental Advocates above proposals. Contrary to the Environmental Advocates' comments, 15 Pa. C.S. § 1511(b) expressly exempts petroleum or petroleum product transportation lines from the 100-meter setback restriction and the Commission cannot by regulation amend or nullify another statute and usurp powers held by the Pennsylvania Legislature. Again, and as explained in Section II.A, *supra*, the Commission's siting

---

91 API, *et al*. Comments at 8-9; *see also* Marcellus Shale Coalition Comments at 5.

92 Environmental Advocates Comments at 25 (citing *In re: Condemnation by Sunoco Pipeline L.P. (Katz)*, 165 A.3d 1044, 1047 fn. 5 (Pa. Cmwlth. 2017) (quoting 15 Pa. C.S. 1511(b)).

93 *Id*. (citing Cal. Gov't. Code 51013.3(a) (requiring the more stringent standard of best available technology in ecologically sensitive areas)).

authority over hazardous liquid public utilities is limited. Moreover, if the Commission were to impose siting restrictions, which it should not, it is important to expressly state that any such restrictions do not apply to existing pipelines.

Regarding construction materials and methods, the Environmental Advocates urge the Commission to mandate that operators use best practices for pipeline infrastructure construction and that operators be required to state which best practices they will utilize and report any relevant emerging best practices.[94] The Environmental Advocates recommend that the Commission require double mechanical seal pumps as a best practice and avoid product lubricated pumps. They also recommend that the Commission consider what requirements are needed specific to CO_2 pipelines and suggest, at a minimum, the pipelines must be lined with chrome. Similarly, East Goshen asserts that the Commission should approve the construction plans of pipeline projects for quality and safety control and that independent third-party inspections should be required routinely to ensure that the process of construction is following the permit requirements.[95]

Generally, SPLP is opposed to the above suggestions and, in particular, East Goshen's recommendation that the Commission should approve the construction plans of pipeline projects and the Environmental Advocate's recommendation that the Commission impose regulations construction in environmentally and ecologically sensitive areas. First, it is the statutory role of PA DEP and its permitting process and not this Commission's role to regulate construction in such areas under existing environmental statutes. Second, the law in Pennsylvania is well-defined that utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions including what to place where or what to build unless there is a manifest

94 Environmental Advocates Comments at 25-26.

95 East Goshen Comments at 1.

abuse of the utility's managerial discretion.[96] Thus, the Commission cannot under the Public Utility Code as invited by the Environmental Advocates invade a utility's managerial discretion including how or where the utility sites or constructs a pipeline.

The Commission should also reject the Environmental Advocates proposed use of double mechanical seal pumps. The Commission should not require prescriptive solutions or enforce one-size-fits-all solutions. Pipeline operators should be given flexibility to address conditions unique to their pipeline.

Regarding construction impacts, the Environmental Advocates recommend that the Commission require operators to reasonably accommodate landowners during activities which generate noise, vibrations, dust, and emissions on the landowner's property, including by developing noise abatement plans, approved by local townships and the Commission, whenever anticipated noise levels exceed Commission-defined limits for a sustained period.[97] The Environmental Advocates suggest that the requirement be triggered when levels would exceed 60 decibels during "normal sleep times" or 70 decibels. The Environmental Advocates also recommend that the Commission require that construction activities accommodate and allow for emergency vehicle access by establishing secondary emergency response access ways.

The Commission should reject the Environmental Advocates suggestion to require pipeline operators to account for noise, vibration, dust, and emissions on a landowner's property, and that to file noise abatement plans. The Commission does not have jurisdiction to enforce or interpret local ordinances or local construction standards or codes.[98] Moreover, the Commission does not

---

96 *Welch v. Pa. Pub. Util. Comm'n*, 569 A.2d 413, 415 (Pa. Cmwlth. 1990).

97 Environmental Advocates Comments at 26-27.

98 *See Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying In Part Preliminary Objections at 7 (entered Jan. 28, 2021).

have the expertise to interpret and enforce these related standards, such as what level of sound from a construction site is unreasonable. A regulation to that effect would be subjective, vague, unreasonable, and inappropriate.

Regarding part (e), depth of cover, East Goshen recommends that new and repurposed pipelines should be buried at a depth of at least four feet, particularly in high-consequence areas. East Goshen also states that highly volatile liquids warrant a greater depth than other hazardous liquids and that qualified Pennsylvania-licensed professional engineers and geologists, with credentials approved by the Commission, should assess projects prior to approval and make recommendations regarding the appropriate depths for pipelines to be buried.[99]

For the reasons set forth in SPLP's Comments, the Commission should not require pipeline operators to assess and maintain the depth of cover over a pipeline, absent any circumstances that would indicate a safety issue.[100] This would otherwise require operators to perform obtrusive activities along the pipeline right of way, potentially interfere with agricultural operations, and unnecessarily disturb safely operating pipeline. As indicated by Shirley Township:

> In addition to the fact that the proposed regulations will increase energy costs in a time when the cost of gasoline is at an all-time high, I am specifically troubled by the requirements in…§ 59.137(e) and § 59.137(f) that overhaul the existing federal depth of cover and separation of pipe requirements. As you are aware, these proposed regulations are in conflict with the federal regulations that have ensured safe pipeline operations for many years. Exceeding the existing federal regulations in this case will create significant additional impact in our community to the extent an operator is required to add additional depth of cover to existing pipelines.[101]

---

99 East Goshen Comments at 2.

100 *See* SPLP Comments at 52-53.

101 Shirley Township Comments at 1-2.

Moreover, it is not necessary, nor is the Commission equipped, to require and approve the credentials of a Pennsylvania-licensed professional engineer or geologist to determine the necessary depth of cover. Rather, the existing federal regulations, which set forth reasonable depth of cover requirements, *at the time of construction*, is a reasonable standard that appropriately ensures pipeline safety.[102]

Regarding § 59.136 (g)(1), valves for transporting HVLs, Accufacts states that a requirement not to exceed minimum mainline valve spacing of five miles is reasonable. The additional requirements of § 59.137 (g)(2) will in all probability require closer valve spacing than five miles for the sensitive gathering areas identified in that section, especially for larger diameter HVL pipelines.[103]

The Commission should not adopt the proposed regulation. As stated in SPLP's Comments, the Commission's statutory authority is limited with respect to siting valves.[104] Secondly, prescriptive requirements do not provide additional safety benefits. Rather, pipeline operators should work in tandem with professional engineers to determine the most appropriate valve locations. The Commission should also defer to PHMSA on this issue because of PHMSA's recently issued new Final Rule, which sets forth new standards for valve installation.[105]

Lastly, in its Comments, the Marcellus Shale Coalition stated that the Commission should "remove the requirement within subsection (g) that requires the placement of Emergency Flow Restriction Devices ("EFRDs") at least every five miles" because "[e]ach EFRD is extremely

---

102 49 C.F.R. § 195.248.

103 East Goshen Comments at 12.

104 SPLP Comments to Advanced Notice of Proposed Rulemaking at 4 (citing *West Goshen*, at 10-11).

105 Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards, Docket No. 2013-0255, 87 Fed. Reg. 20,940 (Apr. 8, 2022) (to be codified at 49 C.F.R. Parts 192 and 195).

expensive" and "PHMSA is currently working on a regulation to address EFRD spacing".[106] SPLP agrees. As SPLP indicated in its Comments, PHMSA recently issued a new final rule, which addresses, *inter alia*, EFRD spacing.[107] The Commission should defer to PHMSA, rather than establish the onerous and expensive requirements currently contemplated.

I. Proposed Section 59.138 – Horizontal Directional Drilling and Trenchless Technology, or Direct Buried Methodologies

The Environmental Advocates make several recommendations related to Section 59.138. More specifically, they recommend that the Commission (1) enforce the guidance generated by PA DEP's trenchless technology and alternatives analysis workgroups in this section; (2) assert its full siting and regulatory authority to require that operators adhere to the guidance for all Horizontal Directional Drilling ("HDD") operations, (3) consider implementing other regulatory measures instituted by its counterparts in other jurisdictions such as New Jersey, which requires that a pipeline operator prepare HDD guidelines as part of its operating and maintenance standards and submit them to the Commission for review,[108] (4) expand the Commission's obligations under proposed subsection (d), "Protection of water wells and supplies," to include more categories of underground facilities, (5) require operators to notify all landowners within a reasonable radius of a subsurface project when there will be an earth disturbance, (6) require operators to provide a clear mechanism for landowners to report impacts, and then to inform the Commission of responses, and (7) require operators to identify and monitor private sanitary or water disposal

106 Marcellus Shale Coalition Comments at 5.

107 *Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards*, Docket No. PHMSA-2013-0255, 87 Fed. Reg. 20,940 (Apr. 8, 2022) (to be codified at 49 C.F.R. Parts 192 and 195).

108 *See* N.J.A.C. 14:7-1.25(a). It also requires operators to (1) locate all underground facilities using test-hole excavation, (2) utilize "window" excavations—or an equally-effective and Commission-approved alternative—to ensure the integrity of HDD-installed piping, and (3) keep an inspector on site at all times when pipelines are being crossed by HDD. See N.J.A.C. 14:7-1.25(d), (f), (h).

systems within a reasonable impact radius of a project, test them for any impacts from the utility project, and mitigate any damages.[109]

SPLP opposes the recommendations put forth by the Environmental Advocates. As SPLP indicated previously, the Commission should not and cannot incorporate PA DEP's Trenchless Technology Guidance into the instant rulemaking. *See* Section II.G, *supra*. Moreover, the Commission has limited siting authority over hazardous liquid public utility pipelines. *See* Section II.A, *supra*. In addition, contrary to the position of the Environmental Advocates, the Commission does not have the authority to monitor and protect water wells and supplies or private sanitary and water disposal systems. For the reasons stated in SPLP's Comments, this is properly within the jurisdiction of the PA DEP.[110] Moreover, review and approval over HDD plans should be left to PA DEP, considering that it has direct permitting authority over these activities pursuant to The Clean Streams Law, 35 P.S. §§ 691.1, *et seq*., the Flood Plain Management Act, 32 P.S. §§ 679.101, *et seq*., and the Dam Safety and Encroachments Act, 32 P.S. §§ 693.1, *et seq*. The requests that operators notify all landowners of an earth disturbance and provide a mechanism for landowners to report impacts is highly burdensome, unreasonable, and is untethered from pipeline safety.

PA DEP also puts forth a number of suggestions in its Comments regarding HDD and trenchless technology activities. In numerous instances, PA DEP recommends that the Commission issue regulations requiring hazardous liquid public utilities to comply with PA DEP's regulations and its Trenchless Technology Guidance, including the submission of HDD plans to

---

109 Environmental Advocates Comments at 27-28.

110 SPLP Comments at 62-63; *see also Pickford,* 4 A.3d at 713-14 ("'Water quality in Pennsylvania is statutorily regulated by the provisions of the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act' and '[e]nforcement of those statutes is specifically vested in [PA DEP] and the Federal Environmental Protection Agency.'").

the Commission conforming to the Trenchless Technology Guidance.[111] Chester County makes a similar request asserting that all PA DEP permit applications should be submitted to the Commission for separate Commission approval of the construction method.[112]

The Commission should reject the PA DEP's recommendations in this regard. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code.[113] The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.[114] In this regard, nothing in the Public Utility Code grants the Commission the authority to interpret or enforce PA DEP's enabling legislation or, for that matter, PA DEP regulations.[115] For its part, PA DEP recognizes that the Commission may be beyond its authority in issuing the regulations concerning HDD activities. In its Comments, PA DEP requested that

---

111 *See* PA DEP Comments at 2-3 (regarding subpart (c)), 3-4 (regarding subpart (d)), 4-5 (regarding subpart (e)).

112 Chester County Comments at 3.

113 *Commonwealth of Pa., et al. v. Energy Serv. Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-2427656, 2014 WL 4374212, at *5 (Order entered Aug. 20, 2014).

114 *Id*., at *5 (citing Feingold v. Bell, 383 A.2d 791 (Pa. 1977)).

115 66 Pa. C.S. § 318 also demonstrates that the Commission's powers under the Public Utility Code are not meant to subvert or diminish the authority of the PA DEP. It states:

> (b) Purity of water supply.--The commission may certify to the Department of Environmental Resources any question of fact regarding the purity of water supplied to the public by any public utility over which it has jurisdiction, when any such question arises in any controversy or other proceeding before it, and upon the determination of such question by the department incorporate the department's findings in its decision.
>
> (c) Powers of certain governmental agencies unaffected.--Nothing in this part shall be construed to deprive the Department of Health or the Department of Environmental Resources of any jurisdiction, powers or duties now vested in them.

66 Pa. C.S. § 318(b)-(c).

the Commission provide an explanation in the rulemaking preamble as to why the Commission has statutory authority to regulate water supply impacts.[116] PA DEP also indicated that the Commission's proposed subpart (e) should be removed entirely, stating:

> [PA DEP] believes that adverse impacts to water wells and supplies are already adequately addressed by existing rules and regulations that [PA DEP] implements and does not believe that additional regulation of such issues by the Commission is necessary. [PA DEP] recommends that subsection (e) be removed from the rule.[117]

SPLP further believes that this is true of many of the proposed HDD and trenchless technology regulations, which appear to rely on PA DEP's authority and existing regulations, which the Commission cannot do.

Chester County's Comments recommend that the Commission should require a pipeline operator to perform base line geotechnical evaluations prior to and after construction based upon the same 250 feet criteria, compare the two evaluations, and submit that evaluation to PA DEP for technical review and any necessary enforcement. The Commission should not be enforcing prescriptive, arbitrary requirements such as geophysical sampling every 250 feet. Evaluation of subsurface conditions should be done in conjunction with professional engineers and professional geologists in the field who are best equipped to make such decisions based on the facts of each unique situation and professional training and experience. There is no scientific basis in requiring geophysical sampling every 250 feet. Moreover, it is unclear what additional safety benefit this

---

116 PA DEP Comments at 6.

117 PA DEP Comments at 4. PA DEP also recommends deleting paragraph (e)(4) as the Department is best positioned to determine compliance with its corrective actions. *Id.*

would provide, particularly because, as indicated by Chester County, the Commission is not appropriately equipped to review these reports.[118]

Chester County also recommends that, for subpart (4)(i), mitigation of an earth feature should begin within two hours of identification and that the pipeline operator should provide the Commission's Pipeline Safety Section an action plan within 24 hours. The County asserts that additional mitigation time should only be provided under a waiver request to the Pipeline Safety Section immediately after anomaly detection, with an action plan and estimated time for completion. Likewise, Chester County recommends that the Commission should add language requiring operators to notify the Commission's Pipeline Safety Section within one hour of any discovered sink holes, subsidence, or other geotechnical anomaly in the pipeline ROW, that a geotechnical analysis should be immediately performed to determine the root cause, that the Commission's Pipeline Safety Section must approve any plan to fill the subsidence, and that an operator must notify immediately all governing bodies in the ROW. Chester County also asserts that the pipeline operator should provide engineering calculations to the Commission's Pipeline Safety Section and to local and county emergency management, which should provide details as to safe length of unsupported pipeline span.

SPLP is equally concerned with Chester County's proposed notification and mitigation requirements. While SPLP strives to work efficiently and effectively to address any anomalies or earth features in coordination with the Commission and the relevant authorities, creating inflexible requirements could delay and inhibit an operator's ability to address emergency situations. As a point of comparison, PHMSA does not impose arbitrary timelines with which to respond to identified anomalies. Part 195 requires that a pipeline operator take prompt action to address

---

118 Chester County Comments at 4-5.

anomalous conditions identified as part of an integrity management plan and utilize operating pressure reductions where necessary.[119] Moreover, the Commission is not equipped to review remediation plans as they are not professional geologists. Lastly, much of this information that Chester County seeks to have pipelines disclose, particularly the critical span calculations, is considered CSI and should not be disclosed to the public. Thus, the Commission should not adopt Chester County's recommendations.

Regarding Chester County's for subpart (d), that a base line geotechnical evaluation should be performed and then compared to a re-evaluation post-construction,[120] this proposal should not be adopted as there is no scientific basis it. Any geotechnical analysis should be decided based on other factors (geophysics) and not required. There is no reasonable basis for arbitrarily requiring pipeline operators to test subsurface conditions.

Lastly, regarding Section 59.138(c)(5)(i)(A), Accufacts suggests removing "exact" location wording as such specificity can create a dangerous misimpression about the location of the pipeline, especially if the exact location can and often does change for various reasons.[121] SPLP agrees with this recommendation. A pipeline operator should not be required to disclose the exact location of the pipeline due to security concerns.

J. Proposed Section 59.139 – Pressure Testing

The Environmental Advocates put forth several recommendations related to pressure testing in their Comments. Regarding testing frequency, the Environmental Advocates

---

119 49 C.F.R. § 195.452(h); *see also* 49 C.F.R. § 195.422 ("Each operator shall, in repairing its pipeline systems, [e]nsure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.").

120 Chester County Comments at 4.

121 Accufacts Township Comments at 12.

recommend that the age of the pipeline should be used as a criterion rather than a static installation date for testing frequency.[122] They assert that age is a key criterion because metal in the ground for decades may have lost any protective coating, may have corroded to questionable wall thicknesses, and may otherwise have been compromised over time. The Environmental Advocates suggest a baseline of pressure testing every five years for the first 20–30 years after installation and more frequently thereafter.[123] Other factors, such as placing a repaired line back in service, should trigger more frequent pressure tests. Similarly, East Goshen Township recommends that all pipelines which transport hazardous liquids be hydrostatically tested every three years and assessed using appropriate in-line inspection tools at least every two years regardless of when they were installed.[124]

These recommendations are unnecessary considering PHMSA's existing requirements. More specifically, 49 C.F.R. § 195.452 requires a pipeline operator to perform periodic assessments on a pipeline located in a high-consequence area, not to exceed 68 months, and prioritize pipeline segments based on a variety of risk factors.[125] The factors that a pipeline operator must consider include, but are not limited to: (i) Results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate; (ii) Pipe size, material, manufacturing information, coating type and condition, and seam type; (iii) Leak history, repair history and cathodic protection history; (iv) Product transported; (v) Operating stress level; (vi) Existing or projected activities in the area; (vii) Local environmental factors that

122 Environmental Advocates Comments at 29.

123 *Id*.

124 East Goshen Comments at 2.

125 49 C.F.R. § 195.452(e), (j).

could affect the pipeline (e.g., seismicity, corrosivity of soil, subsidence, climatic); (viii) geo-technical hazards; and (ix) Physical support of the segment such as by a cable suspension bridge.[126] Indeed, the age of the pipeline is a factor for consideration.[127] Similarly, pipeline segments outside of a high-consequence area are also subject to an assessment at least every 10 years.[128]

Furthermore, assessments of a pipeline may be accomplished through a combination of in-line inspection tools,[129] pressure tests, external corrosion direct assessments, or other technology that an operator can demonstrate provides an equivalent understanding of the condition of the

---

126 49 C.F.R. § 195.452(e).

127 *See* 49 C.F.R. Part 195, App. C, Sec. III.

128 49 C.F.R. § 195.416.

129 On the ILI requirement proposed in (b)(1), Accufacts recommends, *inter alia*, ILI tool runs should be at least every 5 years if a pipeline operator can demonstrate the ILI tools claimed capabilities via field verification digs with compatible fracture mechanics science/analysis that should be made public. Accufacts Comments at 9. For the reasons stated, this recommendation is unnecessary because PHMSA already requires periodic testing every five years on pipeline segments in high consequence areas and ten years for other pipeline segments, by using various assessment methods. This is reasonable and sufficient. Moreover, Accufacts also states that:

> Hydrotesting and ILI assessments are not appropriate for many crack risks assessments, especially in lower toughness steels. these proposed assessment approaches, either hydrotest or ILI, are gravely deficient in preventing pipeline ruptures from cracks or crack like anomalies. For example, a pipeline operator under 49 C.F.R. § 195.304 can lower the hydrotest pressure, and thus the MOP, to avoid a hydrotest failure. More frequent hydrotesting is not sufficient for pipelines containing crack threats especially if the cracks are in low toughness steels. There are also currently no ILI smart pigging technology/tools that have the capabilities and proper tolerances to reliably determine or permit evaluation of certain pipe anomalies, such as pipe crack weld anomalies, especially those associated with vintage at-risk steel welds exhibiting extremely low toughness, and with modern double submerged arc welded (DSAW) pipe. PHMSA, after undertaking extensive research, made it very clear that a special high-pressure spike hydrotest (in excess of 100% specified minimum yield strength, or SMYS) should be performed in combination with the historical MOP strength test currently in federal regulation for pipe at higher risk to failure from crack threats.

Accufacts Comments at 6. This further demonstrates why it is necessary for the pipeline operator to maintain discretion over the assessment methods that are used rather than being prescriptively required by the Commission.

pipeline.[130] That is, operators have discretion to determine what assessment method is utilized, rather than being forced to pressure test its pipeline.[131] To otherwise mandate pressure testing removes necessary discretion from the pipeline operator, will interrupt service on the pipeline resulting in commodity shipment delays, will be costly to pipeline operator, and provides no additional safety benefit.[132] Thus, the Commission should defer to the federal requirements which ensure that pipeline operators are periodically assessing pipeline segments through a variety of assessment techniques.

Regarding testing against live valves, the Environmental Advocates recommend prohibiting pressure testing against live valves based on an Indiana state requirement applicable to gas utilities ("No testing, by a medium other than natural gas under this subpart, may be done against a valve on a jurisdictional part of the system that is connected by the valve to a source of gas, unless a positive suitable means has been provided to prevent the leakage or admission of the testing medium into a jurisdictional part of the system.").[133] They also recommend that pipeline operators should be required to block in adjacent segments during pressure testing to better isolate the pressure test from live operations in the event that an isolation valve on one or more service ends of a segment were to fail during a pressure test.

---

130 49 C.F.R. § 195.452(j)(5).

131 AAMP stated in its comments that the Commission's proposed regulations does not allow a pipeline operator to use other acceptable methods of pipeline assessment where an in-line inspection tool "is impracticable based on operational limits, including operating pressure, low flow, and pipeline length or availability of in-line inspection tool technology for the pipe diameter." AAMP Comments at 2 (citing 49 C.F.R. § 195.416). SPLP is also concerned and submits that the exception must be reinstated. As API, *et al*. noted, certain pipelines were not designed for the passage of ILI tools. API*, et al*. Comments at 11.

132 *See also* Accufacts Comments at 10 ("Regarding (b)(2), Accufacts states that requiring an MOP strength test every 3 years has no technical justification where modern higher toughness steel pipe doesn't exhibit crack threats and that has undergone a previous hydrotest, without a justifiable reason, unless that pipe has never undergone a hydrotest without failure.").

133 Environmental Advocates Comments at 29-30 (citing 29 170 IAC 5-3-2 (5)(e)).

SPLP disagrees with the proposal to prohibit pressure testing against live valves or blocking in adjacent sections of a pipeline during pressure testing because it is too prescriptive and limits a pipeline operator's ability to design and carry out a pressure test as needed for a specific asset. The ability to perform a pressure test on a segment of pipeline against a valve is dependent upon the valve shell rating and the rating of the internal valve components. Valve shells are rated for pressures above MOP so as to not be a limiting factor in overall MOP of the entire pipeline. If internal valve seats may be overstressed if utilized to block in a segment for pressure testing then the valve would either be open for testing or removed and a test flange or test head installed for testing purposes. There is no reason to prescriptively prohibit testing against all live valves without considering the valve's pressure rating compared to the test pressure.

Regarding additional safety measures, the Environmental Advocates recommend that (1) utilities conducting repairs should be required to conduct non-destructive testing on repairs before a pressure test of the line, and then to conduct a pressure test before resuming service, (2) the Commission should evaluate the use of hydrotesting when the product in the line would, if released, not be readily contained or confined and could cause a potential inhalation, explosion, fire, or other public hazards, and (3) the Commission should update testing regulations to require a testing pressure that provides a substantial margin of safety over the proposed or current Maximum Allowable Operating Pressure ("MAOP") for the line being tested. They assert that a safety margin between 150 and 200 percent of MAOP is appropriate to better protect the public, especially in older lines or lines experiencing noticeable corrosion (more than 20 percent wall thickness loss).[134]

---

134 Environmental Advocates Comments at 30.

SPLP also objects to the Environmental Advocates' proposals in this regard. Adopting requirements to hydrotest a pipeline each time a repair is made is contrary to PHMSA regulations, which expressly consider and allow for certain repairs to be performed while a pipeline is in service. It would require every pipeline to be taken out of service and purged for repairs and subsequent hydrostatic pressure testing, thus causing significant impacts to public utility service. Further, all pipe utilized to make a full cylinder replacement or utilized for relocation purposes is already required by 49 CFR 195.302(a) to be tested to a pressure commensurate with the pipeline maximum operating pressure. Requiring additional hydrotesting also adds additional permitting requirements for both sourcing the hydrotest water as well as treatment and discharge of the water once the hydrotest is complete. This permitting process could cause significant delays in the ability to perform a hydrotest, thus further significantly impacting pipeline operations and provision of public utility service. Moreover, this requirement would unnecessarily increase demand for millions of gallons of water per year. The Commission should not adopt these additional hydrotesting proposals.

In addition to the concerns previously raised above, the Environmental Advocates suggestion that a pipeline operator perform a pressure test at 150 to 200 percent of MAOP is not feasible. The federal regulations require that a test pressure must be maintained for four continuous hours at a pressure equal to 125 percent, or more, of the maximum operating pressure and, in the case of when a pipeline is not visually inspected for leakage during the test, for at least an additional four continuous hours at a pressure equal to 110 percent or more of the maximum operating pressure.[135] These testing pressures are sufficient. Anything greater than that over a sustained period of time could create unnecessary and unsafe conditions. For example, if a pipeline

[135] 49 C.F.R. § 195.304.

is operating at 72 percent specified minimum yield strength ("SMYS"), the pipe cannot physically be tested at 200 percent MAOP, otherwise it would result in failure. The Commission should reject this recommendation.

The Environmental Advocates also suggest that the Commission should require best practices in handling and disposing of pressure testing fluids and coordinate with PA DEP and that the operator should be required to provide the Commission with copies of any report or other document the operator files with PA DEP or any other competent agency (i.e., wastewater treatment authority) concerning the fate of such waters.[136] PA DEP also recommends adding a requirement to "comply with all regulations of the Department of Environmental Protection including but not limited to 25 Pa. Code §92a, 93, and 95 as it relates to the discharge water from hydrostatic testing of pipelines to waters of the Commonwealth."[137]

As discussed above, the Commission should reject this recommendation. The Commission's jurisdiction is limited to ensuring safe and reasonable operation of public utility service and facilities, not water quality.[138] Moreover, the Commission is bound by its enabling statute.[139] Accordingly, the Commission has no jurisdiction over the fate of pressure testing fluids

---

136 Environmental Advocates Comments at 30.

137 PA DEP Comments at 6.

138 *Polites,* 928 A.2d at 391 ("In Pennsylvania, pursuant to Section 5 of the [Pennsylvania Safe Drinking Water Act], 35 P.S. § 721.5, the task of preserving water quality and monitoring for contaminants is within the authority of the [PA DEP].").

139 As stated by the Supreme Court of Pennsylvania:

> Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute. An administrative agency cannot by mere contrary usage acquire a power not conferred by its organic statutes. It is settled that jurisdiction of a court cannot be extended or conferred by agreement. it must follow, A fortiori, that an administrative agency cannot acquire jurisdiction by agreement. Nor is it for the agency to seek to create or assure its own jurisdiction by insisting

as that is the sole responsibility of PA DEP, nor can it incorporate PA DEP regulations where it does not have authority to enforce them in the first place.

Pipeline Safety Trust recommends that pipes susceptible to cracking, of any age, and whether or not subject to integrity management rules, should be subject to "spike" tests in combination with the Maximum Operating Pressure ("MOP") strength test required under federal code.[140] Similarly, Accufacts recommends that for pipelines of any vintage possibly containing crack risk threats, especially such threats in low toughness steel, a spike hydrotest in combination with a MOP strength hydrotest be performed. They recommend that if the pipe experiences numerous hydrotest failures that pipe should be considered unfit for service.[141]

SPLP objects to the notion that the Commission consider a pipe permanently unfit for service if it fails numerous hydrotests. The federal requirements allow a pipeline operator to remediate a pipeline for service where there is an unsafe condition.[142] Moreover, where a pipeline exhibits significant stress corrosion cracking ("SCC") and fails a pressure test, the pipeline operator can repair the pipeline by replacing the pipeline segment and completing another successful pressure test without leakage.[143] Thus, Accufacts' suggestion to find a pipeline unfit

---

> that applicants subscribe to the agency's view of what public policy requires.

Western Pa. Water Co., 370 A.2d at 353 (citations omitted).

140 Pipeline Safety Trust Comments at 2. In addition to these concerns, Pipeline Safety Trust also recommends that in Section 59.139(e), the records retention requirement should include an obligation on the part of the operator to transfer these records to any subsequent owner or operator. SPLP is not opposed to this requirement, provided that the records are available. Similar qualifying language should be added if this recommendation is adopted.

141 Accufacts Comments at 9.

142 *See* 49 C.F.R. §§ 195.401, 195.452(h).

143 49 C.F.R. § 195.588(c)(ii).

for service due to failed pressure tests conflicts with PHMSA's federal requirements and should not be adopted by this Commission.

Accufacts also recommends that (b)(2) be rewritten to capture those pipelines that have not been hydrotested previously to a strength test limit and do not have potential crack or crack-like threats, and if a pipeline exhibits a release even during a hydrotest, the cause of failure must be identified by a prudent forensic analysis that is made public.[144] SPLP, however, reiterates its concern about making any vulnerability assessments public. To do so would impermissibly conflict with the CSI Act, which the Commission cannot do.[145]

K. Proposed Section 59.140 – Operation and Maintenance

In their Comments regarding public awareness and emergency response plans, the Environmental Advocates recommend that the Commission address each issue that was deferred to this rulemaking by the Commission in its November 18, 2021, Order and Opinion.[146] They also assert that the Commission should, at minimum, require operators to (1) submit emergency response and public awareness plans to the Commission for approval; (2) set appropriate criteria for approval; (3) establish required intervals for updates to plans (Environmental Advocates recommend annual updates); (4) authorize BIE to audit public awareness programs; and (5) require operators to provide written draft plans to local public officials, solicit feedback, and then implement recommended changes whenever possible.[147] They also submit that, when deciding whether to approve a plan, the Commission should seek the involvement of municipal,

144 *Id*.

145 *See* Section II.E, *supra*.

146 Environmental Advocates Comments at 31 (citing *Flynn, et. al., v. Sunoco Pipeline L.P.*, Docket No. C-2018-3006116, *slip op.* at 33 (Opinion and Order entered Nov. 18, 2021) (*Flynn*)).

147 Environmental Advocates Comments at 32.

institutional, educational, and citizen groups.[148] Moreover, the Environmental Advocates argue that the Commission must establish minimum required content for mailers and meetings with the affected public, public officials, and emergency responders, as well as detailing minimum training which operators must provide to emergency responders and affected school districts.[149] The Environmental Advocates also argue that the Commission should require that awareness and response plans be tailored to the character and needs of the local area and not accept generic, "one-size-fits-all" plans.[150]

By way of 49 C.F.R. § 195.440, PHMSA requires pipeline operators to develop and implement a public education program that complies with guidance and general program recommendations in API RP 1162. Pipeline operators are required to develop programs consistent with API RP 1162 that educate the public, municipalities, schools, and businesses through baseline and supplemental messaging. These Public Awareness Plans are updated periodically and are designed to best reach the affected public and emergency officials. In accordance with 49 C.F.R.

---

148 *Id*.

149 Environmental Advocates Comments at 32-33. Similarly, the Pipeline Safety Trust also makes several recommendations. They assert that § 59.140(b) should be amended to require transmittal of system specific information to emergency responders, at a minimum including pipeline size, location, operating pressure and contents, in addition to the proposed requirement of education relating to the associated risks of the pipeline and its contents. Pipeline Safety Trust also asserts that in § 59.140(d)(2), furnishing records to schools, this information, including the list of things currently not included, such as location of the pipeline relative to the school, the depth of cover within school grounds, the behavior of the contents of the pipeline if released from the pipeline, etc., should be a mandatory part of an operator's outreach to school administrators and boards, and should be required at least every four years, in addition to any time there is a change in the contents of the pipeline. Pipeline Safety Trust Comments at 3. SPLP opposes these recommendations. They go far beyond the provisions of API RP 1162 incorporated by 49 C.F.R. Part 195, which already provide basic message content components for varying stakeholder audiences, including emergency responders and places of congregation such as schools, including that they should be provided in the language(s) spoken by a significant portion of the intended audience. Further, with respect to emergency responders, existing PHMSA regulations require liaison activities and training (see e.g., 49 C.F.R. §§ 195.402(e); 195.403).

150 *Id*.

§ 195.440, pipeline operators submit these plans upon request to PHMSA and, in the case of an intrastate pipeline facility operator, to the appropriate state agency. Such plans must also be made available for periodic review by the appropriate regulatory agencies. The current requirements are sufficient to ensure that the Commission receives information concerning SPLP's Public Awareness Plan and that regulators and relevant stakeholders remain informed. To otherwise subject these plans to Commission review or specify specific content could result in plans that are inconsistent with the requirements of Section 195.440 and API RP 1162, neither of which mandate the specific content or language that an operator must use,[151] and prevents effective communication with the affected public and emergency responders. Moreover, it is not appropriate to solicit feedback from local officials as they are not responsible for or experts in the public awareness requirements of pipeline operators.

The Environmental Advocates also recommend that the Commission should require a hazardous liquid public utility to generate a comprehensive evacuation plan for the community, which should be approved by the Commission and the local municipality. SPLP opposes this recommendation. Emergency management is the responsibility of the Pennsylvania Emergency Management Agency as separately implemented by local political subdivisions.[152] The Commission does not have the authority to determine or approve an appropriate community

[151] API Section 4 1162 provides: "An operator should select the optimum combination of message, delivery method, and frequency that meets the needs of the intended audience [. . .] The communications should include enough information so that in the event of a pipeline emergency, the intended audience will know how to identify a potential hazard, protect themselves, notify emergency response personnel, and notify emergency response personnel, and notify the pipeline operator." API 1162 Section 4 also provides "The operator is reminded that communications should be provided in the language(s) spoken by a significant portion of the intended audience."

[152] *See* 35 Pa. C.S. § 7501(a) ("Each political subdivision of this Commonwealth is directed and authorized to establish a local emergency management organization in accordance with the plan and program of the Pennsylvania Emergency Management Agency. Each local organization shall have responsibility for emergency management, response and recovery within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such services outside of its jurisdictional limits as may be required under this part.")

response to a pipeline incident. Moreover, to the extent the Commission has authority to require an emergency response plan, PHMSA's regulations already contain the relevant requirements.[153] Thus, the Commission should deny the Environmental Advocates' evacuation plan recommendation.

Regarding monitoring and alert systems, the Environmental Advocates state that the Commission needs to require hydrocarbon and thermal monitoring by operators on remote valve sites, pump stations, and pipeline stations and that operators should also install a supervisory control and data acquisition ("SCADA") silent alarm system wired to their control rooms to facilitate a rapid response to any release.[154] The Environmental Advocates also urge the Commission to require operators to install audible mass warning devices, which will not create a spark along pipeline rights of way.[155]

In response, SPLP notes that the PHMSA federal requirements comprehensively address this issue by requiring multiple warning systems. For instance, by way of 49 C.F.R. § 195.402, operators are required to adopt a procedural manual for operations, maintenance, and emergencies, which requires complying with applicable control room management procedures in 49 C.F.R. § 195.446. 49 C.F.R. § 195.446 applies pipeline operators with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system and requires, *inter alia*, an alarm management plan to ensure effective response to alarms, such as reviewing alarm operations and management plans, verifying set-point values and alarm descriptions, and addressing any deficiencies. In addition to the SCADA requirements, 49 C.F.R.

153 49 C.F.R. § 195.402(e).

154 Environmental Advocates Comments at 33.

155 *Id*.

§ 195.134 requires pipeline operators to implement a computational pipeline monitoring ("CPM") leak detection system designed in accordance with API RP 1130 on pipelines constructed prior to October 1, 2019 and on those constructed after this date by October 1, 2024 and October 1, 2020 respectively. These requirements sufficiently ensure that operators are monitoring the pipeline for any leaks or anomalies. An auditory warning system for the public is not required by PHMSA and should not be required by the Commission.[156]

Regarding cybersecurity, the Environmental Advocates recommend that the Commission should (1) require utilities to build cybersecurity best practices into their operation and maintenance procedures, (2) add SCADA and electronic control, and control room operations and maintenance to the list of "operator qualification" ("OQ") covered tasks, and (3) require training in cybersecurity for relevant personnel, and that utilities violating such provisions are liable for any consequences.[157]

The Commission should not adopt the proposed cybersecurity recommendations. The Commission's Office of Cybersecurity Compliance and Oversight ("PUC – OCCO") regulates cybersecurity for all public utilities, including hazardous liquid public utilities. Any cybersecurity requirements should be dealt with in the context of a statewide generic proceeding, rather than separately through the instant rulemaking. Moreover, for the reasons set forth in Section II.L, *infra*, the Commission should not include SCADA and electronic control, and control room maintenance to the list of OQ covered tasks. Further, SPLP Pipeline operations controllers already

[156] SPLP would also note that if a mass warning system malfunctions or is falsely triggered, it would create significant confusion and concern amongst residents, which should be avoided. There are sufficient systems in place to ensure the safety of residents.

[157] Environmental Advocates Comments at 33-34.

do hold OQ for certain covered tasks related to pipeline startup and shutdown, emergency response, operating valves, etc.

Regarding part (h), leak detection and odorant, the Environmental Advocates, among others, argue that the Commission should require the addition of an odorant sooner than five years.[158] Likewise, East Goshen Township recommends that all valve and compressor stations should be required to install gas monitoring and central alarm devices that cover 100 percent of the footprint of the station.

As stated by SPLP in its initial Comments, odorant should not be required by the Commission.[159] The addition of odorant would impact the quality of the product being transported and interfere with the contractual obligations of SPLP, which is prohibited by the Pennsylvania Constitution. PA. CONST. art. 1, § 17 ("No ex post facto law, nor any law impairing the obligation of contracts…shall be passed."). The products that SPLP transports through its Mariner East pipelines are used for certain goods, such as textiles and plastics (including those for medical purposes), where the addition of odorant would render them unfit for such purposes. Accufacts likewise agrees that the addition of odorant is not viable, stating:

> This section's proposal, though apparently well meaning, does not appear to be technically achievable on leak detection, nor does the alternate to require odorant appear viable, given my experiences with the dynamics of pipeline HVL releases.[160]

Thus, the Commission should not adopt any odorant requirement. Moreover, the Commission should defer to PHMSA's existing leak detection requirements.

---

158 Environmental Advocates Comments at 34; s*ee also* George Alexander Comments, Patrick Robinson Comments, and Rosemary Fuller Comments.

159 SPLP Comments at 84-85.

160 Accufacts Comments 13.

Lastly, the Environmental Advocates recommend that the Commission should also require operators to verify both line markers and depth of pipeline cover at least annually, promptly replacing any missing markers and restoring any reduced cover to required levels.[161] SPLP objects to this suggestion. Pursuant to 49 C.F.R. § 195.412, pipeline operators are required to regularly inspect surface conditions on or adjacent to each pipeline right of way. Moreover, pursuant to Section 195.414, pipeline operators must inspect potentially affected pipeline facilities after extreme weather events that may adversely affect the safe operation of a pipeline and eliminate any unsafe condition in the pipeline right of way. Collectively, these requirements ensure that pipeline operators are routinely examining pipeline rights of way for any unsafe conditions that may exist. Moreover, a pipeline operator is also required to restore depth of cover any time an existing pipeline is replaced, relocated, or otherwise changed.[162] Thus, to otherwise require the operator to check depth-of-cover levels on an annual basis would impose burdensome requirements, require the pipeline operator to disturb safely operating pipe, and create community concern. The Commission has not demonstrated that there are any additional safety benefits in light of existing federal requirements.

Finally, Pipeline Safety Trust recommends that § 59.140(h) needs significantly more clarity to be enforceable. In particular, they state that adjectives including "robust," "small," and "high-sensitivity" are completely subjective and will be very difficult if not impossible to enforce, and that leak-detection systems should be required to meet measurable performance standards that are defined in the regulations.[163]

---

161 Environmental Advocates Comments at 35.

162 *See* 49 C.F.R. §§ 195.200, 195.248.

163 *Id*.

SPLP agrees in part with the Pipeline Safety Trust on this issue. As SPLP stated in its initial Comments, the current proposal by the Commission is vague and unenforceable. More specifically, the Commission does not define a "small leak," nor does it set any threshold to measure compliance with this requirement. Most advance leak detection systems detect leaks based as a percentage of flow. Generally, most CPM's can only effectively detect leaks around 1 to 1.5 percent of nominal flow at best. As a result, the Commission's proposal potentially creates a compliance threshold that no leak detection system can achieve. Rather, the Commission should defer to the federal requirements, which allow the pipeline operator to design a computational pipeline monitoring leak detection system that is compliant with API RP 1130 and considers, *inter alia*, the length and size of the pipeline, type of product carried, the pipeline's proximity to the high-consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.[164]

L. Proposed Section 59.141 – Qualification of Pipeline Personnel

The Environmental Advocates first urge the Commission to define "covered tasks" as any task that impacts operation, construction, maintenance, or the integrity of a regulated pipeline, including necessary tasks involving control centers, SCADA equipment and infrastructure, and other critical control systems directly impacting pipeline operations.[165] The Environmental Advocates also recommend the Commission consider requiring operator qualification (OQ)

---

164 *See* 49 C.F.R. §§ 195.134, 195.444(b), 195.452(i)(3); *see also* API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids: Pipeline Segment," 3rd edition, September 2007, ("API RP 1130"), IBR approved for §§ 195.134 and 195.444.

165 Environmental Advocates Comments at 35.

certifications for on-site security workers during construction projects pursuant to its authority under the Section 1501 general duty clause.[166]

As SPLP indicated in its Comments, the Commission should await guidance from PHMSA before adopting a regulation that expands operator qualification requirements. PHMSA has expressly considered amending its Part 195 OQ requirements to include new construction tasks, clarify the list of covered tasks, clarify training and documentation requirements, and add program effectiveness requirements for operators, but decided not to move forward pending further evaluation.[167] Moving forward with the Environmental Advocates' proposal would be premature and may create state requirements that are incompatible with PHMSA's federal standards. SPLP also supports the comments of API, *et al*., which states:

> Critical tasks on new construction are already governed by industry standards and qualification programs, such as welding qualifications and NACE certifications. Operating companies are required to provide inspection and oversight of work performed by contractors on new construction programs. And there are already multiple quality control steps and standards for new construction. If there are perceived shortcomings with the current oversight for new construction projects, then attention should be narrowly focused on those areas, rather than sweeping changes to an existing program that was designed for operations tasks.
>
> The Associations recommend the PAPUC delete this proposed requirement and instead refer to the four-part test in Part 195, without adding construction tasks. Adding construction tasks would further complicate the four-part test [. . .].[168]

---

166 *Id*.

167 *Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes*, 82 F.R. at 7980-81.

168 API, *et al*. Comments at 14.

Moreover, contrary to the suggestions of the Environmental Advocates, there is no basis to require operator qualifications for security personnel because the activities they perform do not meet any aspects of the four part test, and in particular they do not affect the operation and integrity of the pipe.

The Environmental Advocates recommend that the Commission should consider providing a list of the minimum required standards for OQ certification for each covered task.[169] At minimum, the Environmental Advocates request that independent testing be required before a worker is OQ-certified and that each operator needs to be required to supplement the training with local and project-specific information that would be unavailable through standardized training.[170] The Environmental Advocates also recommend that OQ requalification intervals be determined by the Commission instead of by operators as currently proposed.[171] Additionally, qualifications for a covered task should expire if a worker has not performed the task for at least six months or another appropriate interval determined by the Commission.[172]

SPLP likewise is concerned with this proposal. Pursuant to existing PHMSA OQ requirements, pipeline operators have the discretion to develop a written qualifications program for operations and maintenance tasks that evaluates individuals on a periodic basis, through a process established and documented by the operator to determine an individual's ability to perform a covered task, and provides training when needed.[173] These requirements sufficiently ensure safe and reasonable protocols during operations and maintenance tasks. The Commission, however, is

169 Environmental Advocates Comments at 36.

170 *Id*.

171 *Id*.

172 *Id*.

173 49 C.F.R. § 195.505.

not appropriately equipped to enforce or design minimum OQ standards. Each pipeline operator should be allowed to develop a program that is specifically tailored to its operational staff.

Lastly, the Environmental Advocates recommend that when a project needs to be designed by an OQ-certified professional engineer or professional geologist, it should be designed and overseen by ones who are licensed in Pennsylvania because project integrity and safety could be compromised by out-of-state professionals who are less familiar with Pennsylvania's unique geology.[174]

This recommendation is not appropriate. The State Registration Board for Professional Engineers, Land Surveyors and Geologists regulates the practice, licensure and registration of engineers, land surveyors and geologists in the Commonwealth of Pennsylvania. To become a licensed professional engineer or geologist, an applicant must meet specific minimum requirements including a bachelor's degree, passing scores on the relevant examinations, engineering or geologist-in-training experience, and annual continuing education requirements.[175] In many respects, the requirements to become a licensed professional engineer or geologist demonstrate that it would be unnecessary to also establish minimum OQ standards for these positions. Accordingly, not only is the Commission not the appropriate agency to set forth minimum OQ requirements for professional engineers and geologists, but it is also unnecessary considering the current Pennsylvania licensure requirements.

---

174 Environmental Advocates Comments at 36.

175 *See* Professional Engineer: Pennsylvania Licensure Requirements, Pennsylvania Dept. of State (last accessed May 3, 2022) (available at https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/EngineersLandSurveyorsandGeologists/Pages/Professional-Engineer-Licensure-Requirements-Snapshot.aspx); *see also See* Professional Geologist: Pennsylvania Licensure Requirements, Pennsylvania Dept. of State (last accessed May 3, 2022) (available at https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/EngineersLandSurveyorsandGeologists/Pages/Professional-Geologist-Licensure-Requirements-Snapshot.aspx).

M. Proposed Section 59.142 – Land Agents

The Environmental Advocates make a number of suggestions to Section 59.142. The Environmental Advocates recommend that the Commission should:

1. Set minimum standards for the professional qualifications and conduct of land agents, likely within the proposed OQ framework detailed above.
2. Create and maintain a registry of land agents who are acting on behalf of public utilities, similar to the home improvement contractor registry maintained by the Pennsylvania Attorney General.
3. Establish a complaint system whereby a member of the public could inquire or complain about the conduct of land agents. The Commission must then investigate allegations of improper or prohibited conduct. If the Commission, using its ALJ system, finds that the land agent violated the public trust of their role, the Commission could both strip that agent of OQ qualification and report them to their professional oversight body within Pennsylvania for appropriate discipline. If, in reverse, the Commission becomes aware that the professional governing body disciplined the land agent for conduct related to their land agent duties, particularly if for fraud or misrepresentation, then the Commission should revoke their OQ qualifications.
4. Sanction the pipeline operator if a land agent engages in misconduct in the course of representing a company.
5. Require each land agent to provide any owner with whom they are negotiating a contract on behalf of a pipeline operator with a detailed written disclosure of the landowner's rights before commencing substantive negotiations. The handout should educate the landowner about the land agent registry, inform them that any oral representations not in a final written agreement may not be enforceable, state their right to seek counsel, and provide instructions on properly documenting the negotiations and agreements.
6. Require that all agreements entered into by an operator through a land agent be publicly recorded in the County Recorder of Deeds office.
7. Require land agents to disclose important information to landowners before commencing negotiations, including local site conditions, such as buildings and other structures; water and wastewater features; additional nearby underground utilities; landscaping; and other features which may be subject to damage

from pipeline construction, the utility's planned hours of construction or operation, the anticipated noise levels, any known or reasonably ascertainable disruptions the land owner may experience during construction; any foreseeable risks to their property or health; and any relevant emergency response plan.

8. Require land agents or their employers to immediately notify landowners in writing if a land agent is reassigned.[176]

The Commission should not adopt the recommendations of the Environmental Advocates. As an initial matter, pipeline operators, including SPLP, take employee and landowner interaction very seriously and strive to work with landowners to communicate with them in an effective and respectful manner. Contrary to Environmental Advocates' proposed (and illegal) irrebuttable presumption,[177] pipeline operators and their employees do not seek to take advantage of the landowner.

Moreover, the sweeping proposals of the Environmental Advocates go well beyond the authority of this Commission. Importantly, the Commission has acknowledged that it does not have jurisdiction over private easement agreements with landowners.[178] Moreover, the Commission has limited authority over the siting of hazardous liquid public utility pipelines in the Commonwealth. *See* Section II.A, *supra*. Similarly, the Commission has limited authority to interfere with a public utility's ability to manage it business operations, so long as it is fair and consistent with the public interest. As stated by the Superior Court of Pennsylvania:

---

176 Environmental Advocates Comments at 36-39.

177 *E.g.*, *Dep't of Transp. V. Clayton*, 684 A.2d 1060 (Pa. 1996) (irrebuttable presumptions violate due process).

178 *See Perrige v. Metro. Edison Co*., Docket No. C-00004110 (Opinion and Order entered July 11, 2003) (Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement); *Lou Amati/Amati Serv. Station v. W. Penn Power Co. & Bell Atl.-Pa., Inc.*, Docket No. C-00945842 (Final Order entered October 25, 1995) (real property issues such as trespass and whether utility facilities are located pursuant to valid easements are within the exclusive jurisdiction of the Courts of Common Pleas); *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008).

> While a business charged with public interest such as a utility is the proper subject of regulation, the State's powers in this respect are not without limitation. In *Banton v. Belt Line Ry. Corporation*, 268 U.S. 413…, it is said: "Broad as is its power to regulate, the state does not enjoy the freedom of an owner. Appellee's property is held in private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners." Management cannot be justified under the guise of regulation and we should be slow to interfere with practices adopted by those whose successful life experience well qualify them to determine what methods of operation will work a general improvement of the service.
>
> ***
>
> In short, the company manages its own affairs to the fullest extent consistent with the protection of the public's interest, and only as to such matters is the commission authorized to intervene, and then only for the special purposes mentioned in the act." "The Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them. Its sole power is to see that in the matter of rates, service and facilities, their treatment of the public is fair…[179]

For all these reasons, the Commission should properly defer to the pipeline operator regarding how it manages its employees and landowner interactions.[180]

It should also be noted that any requirements here will only apply to land agents working on behalf of jurisdictional public utilities. It would not apply to other pipeline operators in the

---

[179] *Pa. Tel. Corp. v. Pa. Pub. Util. Comm'n*, 33 A.2d 765 (Pa. Super. 1943); *see also Metropolitan Edison Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981) ("Recognizing the Commission's duty to the public and a utility's right of self-management, our courts adopted the further proposition that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown."); *see also Bell Telephone Co. of Pa. v. Driscoll*, 21 A.2d 912, 916 (Pa. 1941) (PA Supreme Court stated: "The Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them. Its sole power is to see that in the matter of rates, service and facilities, their treatment of the public is fair.") (*Driscoll*).

[180] As an additional point of comparison, the requirements for the siting of high-voltage transmission lines do not go nearly as far as the Environmental Advocates propose. Rather, the Commission allows each electric public utility to develop a Code of Conduct/Internal Practices governing the way public utility employees or their agents interact with landowners along the proposed right of way and provide that information. 52 Pa. Code § 69.3102.

Commonwealth. Thus, this would unnecessarily create a different regulatory regime for different land agents, resulting in confusion among the community and imperfect enforcement. Thus, the Commission should not adopt the recommendations of the Environmental Advocates.

N. Proposed Section 59.143 – Corrosion Control

The Environmental Advocates put forth several suggestions regarding corrosion control. Namely, regarding additional reporting and testing, the Environmental Advocates recommend that the Commission should require operators to (1) provide immediate notice when a pipeline requires leak or corrosion repair so that a BIE representative may, at its discretion, oversee the process or conduct an immediate inspection; (2) collect data and conduct studies necessary to ensure that corrosion protection will be effective when they initially plan construction or make major changes in construction plans, including evaluating potential interference with any cathodic protection systems of crossing utilities; (3) preserve pipe segments exhibiting signs of significant corrosion until a BIE inspector reviews the involved pipe or a reasonable period of time passes, not less than thirty (30) days; (4) report all instances of significant pipe loss, cathodic protection failure or interference, coating loss or disbonding events, surface equipment failures, and other events with the potential to cause property damage or a release; (5) conduct a cathodic protection study if a pipeline's wall thickness drops below the required minimum, or if there is a release, and report results to the Commission; and (6) report any pipe exposure within seven days of the exposure commencing.[181]

Existing PHMSA regulations already require monitoring of external, internal and atmospheric corrosion and they sufficiently establish best industry practices regarding corrosion control. For example, 49 C.F.R. § 195.571 incorporates, by way of reference, certain portions of

[181] Environmental Advocates Comments at 39-40.

the cathodic protection requirements in NACE SP 0169. 49 C.F.R. § 195.573 also requires periodic testing of pipelines to determine if adequate cathodic protection exists and mitigative measures as appropriate. Thus, there is no reason that the Commission should be establishing minimum requirements for corrosion control when the federal standards adequately address this issue. The Commission would only be risking creating inconsistent state standards that threaten pipeline safety.

Regarding aging and high-risk pipelines, the Environmental Advocates recommend requiring periodic corrosion protection reviews of pipelines or pipeline segments that are at least 30 years old, including in-line tool inspections of such lines at least every three years and, for high-risk segments, annual ILI inspections.[182] They also assert that BIE should set criteria for classifying a pipeline or segment as high risk based on experience factors, including age, coating type, wall thickness loss, pressure, prior issues, cover, damage events, changes in local environment.[183]

SPLP is likewise concerned with any Commission-mandated, in-line inspection requirements. The federal requirements comprehensively address the need for in-line inspections. PHMSA maintains in-line inspection requirements that are applicable to all onshore pipelines that can accommodate in-line inspections. Outside of high consequence areas, operators are required to perform routine pipeline in-line inspection assessments under 49 C.F.R. § 195.416 (with limited exceptions), with the initial assessment performed by October 1, 2029, and every 10 years thereafter or "as otherwise necessary to ensure public safety or the protection of the environment." For pipelines that could affect high consequence areas, 49 C.F.R. § 195.452, sets forth extensive

182 Environmental Advocates Comments at 40-41.

183 Environmental Advocates Comments at 41.

requirements for performing in-line inspections where a pipeline operator has an integrity management program. In developing an integrity management plan, pipeline operators are responsible for ensuring periodic assessments of the pipeline, using a combination of in-line inspections, pressure testing, external corrosion direct assessments, or by other methods.[184] The assessment schedule is based on a range of risk factors, not prescriptive time-based requirements. Here, the Environmental Advocates seeks to remove that discretion and force the operator to conduct an in-line inspection on a more frequent basis without any sufficient basis in scientific fact.

Moreover, giving BIE the ability to set criteria for determining whether a pipeline segment is high-risk is inconsistent with the federal requirements and the risk-based criteria listed in 49 C.F.R. § 195.452(e). It should be left to the pipeline operator to assess its pipeline and segments with the information it has to determine the risk level of each pipeline segment, not the Commission.

Lastly, the Environmental Advocates assert that corrosion control plans should be available for public review.[185] SPLP, however, objects to making this information public. First, it is not clear what specific information the Environmental Advocates would like the pipeline operators to disclose. Secondly, the pipeline operator's corrosion-control activities, including frequency of testing, records or maps of the pipeline facilities, and corrosion-control analysis records is confidential information and should not be disclosed pursuant to the CSI Act.[186] Third, there is no evidence showing that disclosure of this information would enhance pipeline safety.

---

184 As stated previously, pipeline operators must have the ability to use a range of assessment methods because it may be impractical to perform certain types of assessments on certain pipeline segments.

185 Environmental Advocates Comments at 41.

186 35 P.S. § 2141.2.

III. CONCLUSION

SPLP appreciates the opportunity to submit its Reply Comments regarding the Commission's Notice of Proposed Rulemaking. Ultimately, the Commission's NOPR, if approved, would only serve to create a complicated regulatory scheme and cause confusion among industry stakeholders; enact strict and burdensome requirements that detract from a pipeline operator's ability to adequately observe, maintain, and remediate its system, and provide reasonably continuous public utility service; and will substantially conflict with the current federal requirements.

The current federal pipeline safety regulations are sufficient and adequately ensure that pipelines are operating in a way that is protective of the public and the environment. Based on the foregoing, the Commission should not adopt the proposed regulations in the Notice of Proposed Rulemaking.

Respectfully Submitted,

Thomas J. Sniscak, Esq. (PA ID No. 33891)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Bryce R. Beard, Esq. (PA ID No. 325837)
Phillip D. Demanchick Jr., Esq. (PA ID No. 324761)
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
brbeard@hmslegal.com
pddemanchick@hmslegal.com

Attorneys for Sunoco Pipeline L.P.