



February 23, 2022

Mr. John A. Gale
Director, Office of Standards and Rulemaking
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

RE: Comments of the Association of Oil Pipe Lines, American Petroleum Institute and American Fuel & Petrochemical Manufacturers in Response to Pennsylvania Public Utility Commission Request for Written Regulatory Interpretation from PHMSA

Dear Mr. Gale:

On behalf of its member companies, the Association of Oil Pipe Lines (AOPL),¹ American Petroleum Institute (API)² and American Fuel & Petrochemical Manufacturers (AFPM)³ are providing comments in response to a request submitted by the Pennsylvania Public Utility Commission (PA PUC or Commission) Law Bureau for a regulatory interpretation related to integrity management reporting and corrosion control. Specifically, the Commission in a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) on Nov. 9, 2021 (Interpretation Request), sought an interpretation of whether a proposed service life study reporting regulation, if applied to liquid pipelines which are public utilities in Pennsylvania, aligns with the federal pipeline integrity management and corrosion control regulations. API, AOPL and AFPM members are dedicated to continuous improvement in pipeline safety, and as such appreciate the opportunity to provide necessary clarification regarding the PA PUC's proposed regulation, which

¹ AOPL is a national trade association that represents the interests of owners and operators of oil pipelines across North America and educates the public about the vital role oil pipelines serve in the daily lives of Americans. AOPL members safely, efficiently, and reliably transport approximately 97% of the crude oil and refined petroleum products shipped through pipelines that extend approximately 225,000 miles across the United States.

² API represents all segments of America's natural gas and oil industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API's mission is to promote safety across the industry globally and to influence public policy in support of a strong, viable U.S. oil and natural gas industry. Its nearly 600 members produce, process and distribute the majority of the nation's energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

³ AFPM is a national trade association representing the makers of the fuels that keep us moving, the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go. AFPM's member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the chemical building blocks that are used to make the millions of products that make modern life possible. AFPM member companies depend upon an uninterrupted, affordable supply of crude oil and natural gas as feedstocks for the transportation fuels and petrochemicals they manufacture.

is inadequately and incorrectly explained in the Interpretation Request, and incompatible with federal pipeline regulations. API, AOPL and AFPM would also appreciate the opportunity to meet with PHMSA and the PA PUC to discuss these issues further.

The PA PUC proposes through its economic regulations applicable to electric, water, and natural gas public utilities to manage pipeline safety in a manner that does not comport with federal regulation. Specifically, the PA PUC would require certain intrastate liquid pipeline operators to perform a “service life study” analysis based on tax, ratemaking, and accounting principles that is wholly incompatible with the concepts of pipeline integrity management and corrosion control which are the foundation of the federal pipeline safety regulations at 49 C.F.R. Part 195. The PA PUC’s Interpretation Request both incorrectly explains and expands the requirement by (1) neglecting to provide an accurate description of or a reference to the very state regulation at issue, and (2) articulating the Commission’s intent to expand the study requirement to include a detailed list of metrics not found in the regulation and the underlying rulemaking, many of which are not metrics even collected or capable of measurement by pipeline operators. For these reasons, API, AOPL and AFPM believe that the proposal is preempted by the federal Pipeline Safety Act.

I. Overview

Congress established the Pipeline Safety Act (PSA) for the purpose of providing “adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” *49 U.S.C. § 60102(a)(1)*. Pennsylvania is certified to regulate intrastate liquid and gas pipelines in the federal pipeline safety program administered by PHMSA under 49 U.S.C. § 60105(a). As such and specific to intrastate liquid pipelines, the PA PUC has incorporated 49 C.F.R. Part 195 into its regulations. *52 Pa. Code 59.33(b)*.

The PA PUC has pipeline safety and ratemaking authority over Pennsylvania public utilities pursuant to 66 Pa. C.S. §§ 101 *et seq.* The PUC’s pipeline safety authority over public utility pipelines is limited to imposing standards consistent with PHMSA regulations because Pennsylvania is a certified state in the federal pipeline safety program under 49 U.S.C. § 60105(a). As such, Pennsylvania may adopt more stringent regulations so long as they are compatible with minimum Federal standards. *49 U.S.C. § 60104(c)*. It is important to note that for intrastate liquid pipeline operators who are not Pennsylvania public utilities, the Pennsylvania legislature expressly limited the PA PUC’s authority from going further, providing that “[t]he regulations shall not be inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.” *See Pa Act 127, Section 501(a)*.

As to its rate authority, Pennsylvania public utilities must “furnish and maintain adequate, efficient, safe, and reasonable service and facilities,” 66 Pa. C.S. § 1501, and utility rates must be just and reasonable. *Id.* at § 1301(a). The PA PUC’s ratemaking regulation of liquid transportation pipeline public utilities is not the same detailed methodology that is used for other public utilities, however. In contrast to the PA PUC’s detailed cost of service and rate base/rate of return ratemaking methodology that strongly considers concepts such as depreciation and future test year capital expenditures for natural gas, electric and water distribution services, the PA PUC has found it just and reasonable for liquid transportation pipeline utilities to consider and rely upon FERC-tariffed rates for these pipelines which provide both intrastate and interstate deliveries.

The PA PUC issued a Notice of Proposed Rulemaking (NOPR) in 2019 that proposed to extend an existing service life study requirement for Pennsylvania electric, water, and natural gas public utilities to Pennsylvania liquid pipeline public utilities.⁴ *Rulemaking regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Transportation Pipelines, Docket No. L-2019-3010270* (Jun. 13, 2019) (copy attached). The existing requirement, as originally intended, is focused on depreciation values for electric, water, and fixed natural gas distribution pipeline public utilities, whose rates are regulated by the PA PUC and recovered from customers, and which is wholly unrelated to pipeline safety.

In the NOPR seeking to apply that same requirement to liquid (gas and petroleum) pipeline utilities for whom the PA PUC does not exercise the same economic ratemaking authority, the PA PUC indicated that the service life study would serve to “determine whether a [pipeline] is capable ... of providing safe, efficient, and adequate service” by focusing on selecting an average service life.” *Id.* Commenters including AOPL and several of its members pointed out that the federal pipeline safety requirements for corrosion control and integrity management establish an entirely different construct for the evaluation and maintenance of pipeline facilities to continually assesses their fitness for service.

Under the PSA and its predecessor statutes, Congress expressly preempts states and local municipalities from regulating (1) interstate pipeline safety and (2) intrastate pipeline safety in a manner such as the PA PUC proposes, where the regulations are “incompatible with minimum federal standards” when a state or municipal authority like the Commission is authorized by the federal PHMSA within the Department of Transportation (DOT). *49 U.S.C. § 60104(c)*. This is reinforced by the legislative history and court decisions interpreting the PSA. For reasons further explained below, AOPL, API and AFPM believe that the PA PUC’s proposal is incompatible with the federal regulations.

II. PA PUC Existing Depreciation and Capital Planning Requirements

The existing PA PUC service life study report regulation that currently applies to Pennsylvania electric, water, and natural gas public utilities – and that the PA PUC intends to apply to Pennsylvania liquid transportation pipeline public utilities through its pipeline safety authority – is set forth in the Commission’s regulations at 52 Pa. Code Chapter 73, the purpose of which is to “establish uniform and industry-wide reporting requirements designed to improve the Commission’s ability to monitor on a regular basis the depreciation practices and capital planning of electric, telephone, gas and water public utilities subject to Commission jurisdiction.” *52 Pa. Code § 73.1* (emphasis added). Such utilities are required to average and estimate service life or average remaining life of utility facilities. *52 Pa. Code § 76.3*. The chapter requires that reports be filed every 5 years. *52 Pa. Code § 73.5*.

⁴ The Chapter 73 reporting requirements also apply to water and electric Pennsylvania public utilities with gross intrastate operating revenues greater than \$20 million.

The 25-year old PA PUC regulatory provision that establishes the specific content of service life study reports at present only applies to electric, water, and natural gas pipelines which are public utilities in Pennsylvania. The requirement is based on tax, ratemaking, and accounting principles, including the development of depreciation reports to be used in the ratemaking context for fixed distribution utilities on behalf of the PA PUC. The regulation specifically provides the following:

§ 73.6. Format for filing service life study report.

(a) The public utility shall include the following information in the service life study report:

(1) An explanation of methods used in selecting average service lives and survivor curves, if applicable; any significant changes in comparison with the previous service life study report; and the impact of the proposed service lives on annual depreciation expense.

(2) The exhibits shall include the following:

(i) Account or category number.

(ii) Account or category description.

(iii) Present average service life or average remaining life.

(iv) Present survivor curve, if applicable.

(v) Proposed average service life or average remaining life.

(vi) Proposed survivor curve, if applicable.

(3) An explanation by account or category of the individual factors used in selection of an average service life, survivor curve or other depreciation parameter. When a change from the previous average service life, survivor curve or other depreciation parameter is proposed, the utility shall provide an explanation of what developments brought about the change.

(4) When survivor curve comparisons are used, a graph showing the developed, experienced or projected plant data, parameters used to develop the plant data, and the selected survivor curve.

(5) An exhibit detailing the calculations done to develop plant data for survivor curve or other depreciation parameter comparisons, including a description of the parameters and an explanation of the life tables and other data used.

(6) Interim service life studies on individual accounts when circumstances indicate that a significant service life estimate change may be warranted, or when requested by the Office of Special Assistants.

(7) An exhibit of depreciation calculations by function, account or rate category supporting annual depreciation expense claims, including an explanation of methods used.

(b) When the information required by this section has been provided in another required report to the Commission, the utility shall notify the Office of Special Assistants as to the location of the information. If the information was not previously filed in the electronic format designated by the Office of Special Assistants, the information shall either be submitted in, or converted to, the electronic format required under this chapter.

III. PA PUC's Proposed Application of its Existing Depreciation and Capital Planning Requirements to Liquid Pipeline Utilities is Misplaced

In its NOPR, the PA PUC proposed to extend its existing depreciation and capital planning regulations described above to Pennsylvania public utilities which provide pipeline transportation of crude oil, gasoline, and petroleum products. As a basis for this proposal, the PA PUC stated that

“As noted by the Commission during development of the Chapter 73 regulations, the regular reporting of a public utility’s depreciation practices and capital planning is an important tool in helping to determine whether a public utility is capable (now and in the future) of providing safe, efficient, and adequate service.” *Rulemaking regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Transportation Pipelines, Docket No. L-2019-3010270* (emphasis added).

The PA PUC’s ratemaking regulation of liquid transmission pipelines is not, however, the same detailed methodology that is used for other electric, water, and natural gas distribution pipeline public utilities. In contrast to these distribution utilities, crude oil and refined petroleum products pipeline markets are characterized by robust competition. Oil pipelines do not have certificated, captive markets, and their customers are commercial enterprises that can typically rely on transportation alternatives. Congress and courts have acknowledged the strong influence of competition on the activities of oil pipelines and that traditional utility regulation is not suitable for the oil pipeline industry.⁵ Along those same lines, and in contrast to the PA PUC’s detailed cost of service and rate base/rate of return ratemaking methodology for natural gas, electric and water distribution services, the PA PUC has found it just and reasonable to consider and rely upon FERC-tariffed rates for liquid transmission pipelines which provide both intrastate and interstate deliveries.

The suggestion that the extent to which an oil pipeline may be depreciated, based on its number of years in service, does not bear upon whether the pipeline can continue to provide safe, efficient, and adequate service. Tax and accounting concepts such as “average service lives,” “survivor curves,” and “annual depreciation expenses” are not relevant to, and in fact are inconsistent with, providing adequate protection against risks to life and property. Moreover, these requirements as described by the Commission in its Interpretation Request differ substantially from those described above.

IV. PA PUC’s Interpretation Request is Disconnected from the Ratemaking Regulation and Order at Issue and Expands its Application

The PA PUC in its Interpretation Request does not provide PHMSA with the text of the very regulation at issue. More to the point, no element of the service life study that is described in the PA PUC’s Interpretation Request is set forth in the existing PA PUC regulation or the NOPR itself. Further, the Interpretation Request makes clear that the PA PUC intends to apply its existing regulation in a much broader and expansive manner than to simply examine a public utility’s depreciation practices and capital planning.

⁵ See e.g. *Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 412-413 (D.C. Cir. 1978) (“*Farmers Union 1*”), cert. denied, 439 U.S. 995 (1978) (where the court observed that oil pipelines have never been subject to the same level of pervasive regulation that Congress applied to other regulated industries, and stating that the court would “be especially loath uncritically to import public utility notions into this area.”) (emphasis added).

The PA PUC Interpretation Request details its expansive expectations for the content of a service life study applicable to liquid pipelines with little basis in any of its existing state regulations or PHMSA pipeline safety regulations. The non-exhaustive list includes the following:

- Corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;
- Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of the pipeline to the present time;
- Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;
- Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;
- A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;
- A summary of the portions of the pipeline that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;
- A listing and description of threats specific to the pipeline, with a summary of how each threat and the associated risks are mitigated;
- A summary of the top ten (10) highest risks identified on the pipeline with an explanation as to how the risks are mitigated;
- An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;
- A summary of the leak history on each pipeline including a description of the size of each leak;
- A discussion of the history of the pipeline, including when cathodic protection was installed, when coating was applied, and the various measures performed by the pipeline operator, including the implementation of new procedures; and
- A discussion to illustrate how managing integrity lengthens pipeline life.

The proposed report would also include a list of the next year's planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on the pipeline the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. *Interpretation Request*, pp. 3-4.

V. The PA PUC Proposed Requirement is Preempted by Federal Law

The service life study report would require liquid pipeline utilities in Pennsylvania to average and estimate service life or average remaining life of utility facilities. *52 Pa. Code § 76.3*. The concept that a pipeline has a finite life is in direct conflict with the federal PSA statutory and regulatory scheme, where pipeline operators are required to operate, inspect, evaluate, maintain, and repair their pipelines, including through integrity management and corrosion control programs, without regard to age but rather to ensure the safe condition of the pipe. As detailed in the Commission's

Interpretation Request and described above, it is clear that the PA PUC intends to go well beyond the plain language of the regulation proposed in the NOPR and that its proposal will conflict with PHMSA's pipeline safety regulations. The PA PUC is, through its economic regulations, attempting to manage pipeline safety in a manner that does not comport with federal regulation.

PHMSA has an extensive regulatory framework to ensure the safety of oil and gas pipelines. Because PHMSA comprehensively occupies the field of pipeline safety regulation, PHMSA's regulations preempt any state regulatory requirement that is inconsistent, or incompatible, with federal pipeline safety laws. 49 U.S.C. 49 U.S.C. § 60104(c). Courts have explained that the federal interest in preemption remains strong as it relates to intrastate pipeline safety issue. *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465,470 (8th Cir. 1987) (“[e]ven with regard to intrastate safety issues, the federal interest remains strong, and [...] state regulatory authority is subject to federal approval.”). Further, states are limited to prescription of safety standards that are compatible with the federal requirements in the PSA. *Was. Gas Light Co. v. Prince George's County Council*, 2012 WL 832756, 5 (D. Md. 2012) (finding that a state authority that submitted annual certification to the DOT had authority under the PSA to prescribe and enforce safety standards where those standards were compatible with the standards prescribed in the PSA). Where a state regulation makes it impossible to comply with federal pipeline safety standards or otherwise serves as an obstacle to compliance, the state regulations will be preempted. *See e.g., Colo. Interstate Gas Co. v. Wright*, 707 F. Supp. 2d 1169, 1186-1187 (D. Kan. 2010), citing *Northern Border Pipeline Co. v. Jackson County, Minn.*, 512 F. Supp. 1261, 1265 (D. Minn. 1981) (quoting H.R. Rep. No. 1390 (1968) reprinted in 1968 U.S.C.C.A.N. 3223, 3245).⁶

The service life study seeks to encroach upon integrity management in a way that contradicts the purpose and intent of PHMSA's pipeline safety regulations. PHMSA's hazardous liquid integrity management rule within 49 C.F.R. Part 195 (§§ 195.450 and 195.452) specifies how pipeline operators must identify, prioritize, assess, evaluate, repair, and validate the integrity of hazardous liquid pipelines that could, in the event of a leak or failure, affect high consequence areas (HCAs). 65 *Fed. Reg.* 75,377 (Dec. 1, 2000; eff. date March 31, 2001). At a high level, the integrity management regulations require an operator to develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these HCAs, through internal inspection, pressure testing, or other means. *Id.*

An operator's integrity management program must provide for periodically evaluating pipeline segments through comprehensive information analysis, remediating conditions identified through the assessment and evaluation process that require corrective action, and ensuring additional protection through preventive and mitigative measures. This robust analysis considers the full range of pipeline integrity threats and information gathered and integrated from operation and maintenance activities, including corrosion control monitoring and cathodic protection surveys. Operators must also evaluate, prioritize, and repair or address any defects identified through the

⁶ *See also Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872 (9th Cir. 2006) (“The PSA expressly preempts Seattle's attempted safety regulation of the [pipeline]” and “[p]reemption is a power of the federal government, not an individual right of a third party that the party can ‘waive’”); *S. Union Co. v. Lynch*, 321 F. Supp. 2d 348, 341-42 (D.R.I. 2004) (“The cumulative effect of these definitions [intrastate pipeline facilities and intrastate pipeline transportation] makes plain that the preemptive force of section 60104(c) extends to all intrastate piping whose function is the transportation, conveyance, or distribution . . .”).

assessment and analysis that could impair a pipeline's integrity. Periodic assessments were recently extended beyond HCAs under PHMSA's operations and maintenance regulations, including data analysis, response, and remediation requirements (49 C.F.R. § 195.416).

By expanding its current ratemaking regulation applicable to electric, water, and natural gas public utilities under the auspices of pipeline safety, the Commission will frustrate the very purpose of the pipeline safety and integrity management regulations. As a certified state for intrastate pipelines, the PA PUC already has the access and ability to inspect any liquid transportation pipeline public utilities in Pennsylvania for their compliance with PHMSA regulations at 49 C.F.R. §§ 195.450 and 195.452, which would include some of the information listed in the Commission's Interpretation Request. Other aspects of the metrics in the PA PUC Interpretation Request have no basis in PHMSA's liquid pipeline safety regulations or guidance, including retirement thickness or remaining life calculations, to develop schedules for portions of a pipeline to be replaced or remediated within 5 years, and to summarize and explain prior retirements, etc. *Interpretation Request*, p. 3. These proposed requirements are not supplemental to what is already required under Part 195 regulations. Rather, they are inapposite to the fundamental approach which underlies the integrity management and corrosion control regulations: to assess the safety and integrity of a pipeline comprehensively and continuously. The Commission's stated intention in expanding the existing regulation is "to gain insight into whether aging infrastructure carrying hazardous liquids will affect a utility's ability to continue providing safe, efficient, and adequate service." *Interpretation Request*, p. 4. That purpose is easily achieved through the existing PHMSA integrity management regulations and there is no need to expand an economic ratemaking regulation in a manner that is incompatible with pipeline safety regulations.

VI. Conclusion

The PA PUC is, through its economic ratemaking regulations, attempting to manage pipeline safety in a manner that was not articulated in its own rulemaking and which does not comport with federal pipeline safety regulations. The PA PUC's proposed imposition of a ratemaking requirement to perform a "service life study" on liquid pipeline public utilities in Pennsylvania would require the preparation and submission of remaining life calculations of pipeline segments every 5 years, among other metrics that may not be capable of quantification, and which would be available to the public. Not only does the PA PUC's Interpretation Request incorrectly explain the content and application of the regulation that the PA PUC intends to extend to liquid pipelines, in so doing, it emphasizes the incompatibility of the PA PUC's proposed approach with federal pipeline safety regulation.

API, AOPL and AFPM believe that the proposal is, therefore, preempted by the federal PSA. AOPL, API and AFPM appreciate the opportunity to offer their comments and perspective on these issues. If PHMSA is amenable, AOPL, API and AFPM would welcome the opportunity to meet with PHMSA and the Commission to discuss these issues further and to ensure that PHMSA has all relevant information to consider for its response.

Respectfully Submitted,



Andy Black
President and CEO
Association of Oil Pipe Lines (AOPL)
900 17th St, NW Suite 600
Washington, D.C. 20006
ablack@aopl.org



Dave Murk, Pipeline Director
American Petroleum Institute
200 Massachusetts Ave NW
Washington, D.C. 20001
(202) 682-8080
murkd@api.org



Rob Benedict
Vice President, Petrochemicals and Midstream
Regulatory Affairs
American Fuel & Petrochemical
Manufacturers
1800 M Street, NW
Suite 900 North
Washington, DC 20036
202.457.0480 office
202.844.5491 direct
202.457.0486 fax
RBenedict@afpm.org

Attachment: PA PUC Rulemaking regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Transportation Pipelines, Docket No. L-2019-3010270 (Jun. 13, 2019).

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 13, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
Norman J. Kennard
Andrew G. Place
John F. Coleman, Jr.

Rulemaking Regarding Depreciation
Reporting and Capital Planning for
Crude Oil, Gasoline, or Petroleum Products
Transportation Pipelines
52 Pa. Code Chapter 73

L-2019-3010270

NOTICE OF PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission) adopts this Notice of Proposed Rulemaking Order (Order) to seek comments on proposed amendments to our public utility reporting regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7 providing for annual depreciation reporting, service life study reporting, and capital investment reporting. The existing regulations at 52 Pa. Code §§ 73.1–73.9 currently apply to electric service, gas service, and water service public utilities. The Commission proposes to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file annual depreciation reports, service life study reports, and capital investment plan reports in accordance with the provisions established in 52 Pa. Code Chapter 73.

The Public Utility Code gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are just and reasonable and that the

service provided by public utilities to their customers and the public is safe, efficient, and adequate. 66 Pa. C.S. §§ 1301 and 1501. To accomplish these objectives, Section 501(b) grants the Commission the administrative authority to supervise and regulate all public utilities doing business within the Commonwealth of Pennsylvania and to make regulations necessary to exercise its powers. 66 Pa. C.S. § 501(b). Additionally, the Commission may require a public utility “to file periodical reports at such times, and in such form, and of such content” as the Commission may prescribe, including information concerning the valuation of its property. 66 Pa. C.S. §§ 504–506. The Public Utility Code, in pertinent part, defines a “public utility” as:

Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for... [t]ransporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa. C.S. § 102. Consequently, the Commission has the authority under the Public Utility Code to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to comply with the reporting provisions of Chapter 73.

In stating its purpose for promulgating the Chapter 73 regulations, the Commission determined that regular reporting of a public utility’s depreciation practices and capital planning is necessary to determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future. *See* 38 Pa.B. 4685 (Sept. 17, 1994); *Rulemaking Re Public Utility Depreciation Practices and Capital Planning*, Docket L-00920062 (Order entered July 22, 1994). The Commission also reasoned that it could not properly evaluate the justness and reasonableness of a public utility’s rates and rate structure without examining a company’s earnings and depreciation practices. However, the original rulemaking did not address the rationale for excluding petroleum transportation pipeline companies from the reporting requirements. At this time, the industry’s growth within the Commonwealth justifies including crude oil, gasoline, and petroleum products transportation pipeline public utilities in the list of

entities required to comply with the depreciation and capital planning reporting provisions of Chapter 73. Submission of these reports ensures the Commission receives the information necessary to fulfill the duties imposed upon it by the Public Utility Code.

Accordingly, under the authority granted the Commission in Sections 501, 504–506, 1301, and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501, 504–506, 1301, and 1501; the Commonwealth Documents Law, 45 P.S. § 1204; the Regulatory Review Act, 71 P.S. §§ 745.1 *et seq.*; the Commonwealth Attorneys Act, 71 P.S. §§ 732-204; and the regulations promulgated at 1 Pa. Code § 7.4, the Commission proposes the amendments to regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7, as set forth in Annex A;

THEREFORE,

IT IS ORDERED:

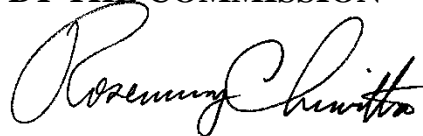
1. That a proposed rulemaking be opened to consider the regulations set forth in Annex A.
2. That the Law Bureau shall submit this Order and Annex A to the Office of Attorney General for review and approval and to the Governor’s Budget Office for review for fiscal impact.
3. That the Law Bureau shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Law Bureau shall deposit this Notice of Proposed Rulemaking Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties may submit written comments referencing Docket No. L-2019-3010270 within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania 17120. Comments may also be filed electronically through the Commission's e-File System.

6. That the Secretary shall serve this Order and Annex A upon all transportation pipeline public utilities. The Order and Annex A shall be posted and made available electronically on the Commission's website.

7. The contact persons for this matter are Darren Gill in the Bureau of Technical Utility Services, 717-787-5244, dgill@pa.gov, and Colin W. Scott in the Law Bureau, 717-783-5949, colinscott@pa.gov.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 13, 2019

ORDER ENTERED: June 13, 2019

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 73. ANNUAL DEPRECIATION REPORTS, SERVICE LIFE STUDIES AND CAPITAL INVESTMENT PLANS

§ 73.1. Purpose.

The purpose of this chapter is to establish uniform and industry-wide reporting requirements designed to improve the Commission's ability to monitor on a regular basis the depreciation practices and capital planning of electric, telephone, gas, [and] water and crude oil, gasoline or petroleum products transportation pipeline public utilities subject to Commission jurisdiction.

§ 73.3. Annual depreciation report [reports].

(a) A public utility providing electric service, gas service, [or] water service or crude oil, gasoline or petroleum products transportation pipeline service which has gross intrastate [intraState] revenues in excess of \$20 million per year, except telecommunications interexchange carriers [and gas and petroleum transportation pipeline companies], shall file an annual depreciation report with the Bureau of Technical [Fixed] Utility Services under this chapter. The first annual depreciation report of a crude oil, gasoline or petroleum products transportation pipeline public utility shall be filed with the Office of Special Assistants by June 30, 2019.

(b) The due dates for the annual depreciation report are as follows:

(1) Electric, water, [and] gas and crude oil, gasoline or petroleum products transportation pipeline public utilities reports are due on or before June 30.

(2) When a public utility is also required to file a service life study report in the same year, the public utility shall notify the Secretary in writing, on or before the date its annual depreciation report would be due, stating that both the service life study and the annual depreciation report will be filed on or before August 31.

(3) When a public utility is required to file a depreciation report in response to a Commission Order, the report shall be prepared consistent with formats and filing deadlines specified in this chapter.

(c) The public utility shall file a copy of its annual depreciation report required by this chapter with the Office of Consumer Advocate and the Office of Small Business Advocate at the same time that it files the report with the Office of Special Assistants.

§ 73.5. Service life study report.

(a) A public utility with gross intrastate revenues in excess of \$20 million per year providing electric service, gas service, [or] water service or crude oil, gasoline or petroleum products pipeline transportation service], except gas and petroleum transportation pipeline companies,] shall file a service life study report every 5 years. The first service life study report shall be filed with the Office of Special Assistants by August 31, 2000. The first service life study report of a crude oil, gasoline or petroleum products pipeline transportation public utility shall be filed with the Office of Special Assistants by August 31, 2019.

(b) The due dates for the service life study report are as follows:

(1) Electric, water, [and] gas and crude oil, gasoline or petroleum products transportation pipeline public utilities are due on or before August 31.

(2) If a public utility is required to file a service life study report by an existing Commission Order or other directive, the study period shall commence on January 1 of the year in which the last report was filed.

(3) When a public utility is required to file a service life study in response to a Commission Order, the report shall be prepared consistent with formats and filing deadlines specified in this chapter.

(4) Service life studies shall be based upon the same body of historic data used in the annual depreciation reports.

(5) The public utility shall file a copy of the service life study report required under this chapter with the Office of Consumer Advocate and the Office of Small Business Advocate at the same time that it files the report with the Office of Special Assistants.

§ 73.7. Capital investment plan report.

(a) A public utility with gross intrastate revenues in excess of \$20 million per year providing electric service, gas service, [or] water service or crude oil, gasoline or petroleum products transportation pipeline companies], except gas and petroleum transportation pipeline companies,] shall file a capital investment plan report every 5 years. The first capital investment plan report shall be filed with the Office of Special Assistants by August 31, 2000. The first capital investment plan report of a crude oil, gasoline or petroleum products pipeline transportation public utility shall be filed with the Office of Special Assistants by August 31, 2019.

(b) Thereafter, the capital investment plan report for electric, water, [and] gas and crude oil, gasoline or petroleum products transportation pipeline public utilities shall be filed with the Office of Special Assistants on or before August 31 of the year in which the report is due.

(c) The public utility shall file a copy of its capital investment plan report required under this chapter with the Office of Consumer Advocate and the Office of Small Business Advocate at the same time that it files the report with the Office of Special Assistants.