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April 13, 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; **COMMENTS OF SUNOCO PIPELINE L.P.**

Dear Secretary Chiavetta:

Enclosed for filing you will find Sunoco Pipeline L.P.'s 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
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Counsel for Sunoco Pipeline L.P.

TJS/PDD/das
Enclosure

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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	:	

COMMENTS OF
SUNOCO PIPELINE L.P.

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Dated: April 13, 2022

TABLE OF CONTENTS

I. INTRODUCTION

Sunoco Pipeline L.P. ("SPLP") appreciates the opportunity to provide Comments in response to the Pennsylvania Public Utility Commission's ("PUC" or the "Commission") Notice of Proposed Rulemaking Order at Docket No. L-2019-3010267 entered July 15, 2021, which proposes to significantly modify and expand its existing regulations at Chapter 59 of Title 52 of the Pennsylvania Code ("NOPR"). Through this NOPR, the Commission seeks to create more stringent and expansive regulations over the operation of public utilities that transport petroleum products through intrastate pipelines. The NOPR was published in the Pennsylvania Bulletin on February 12, 2022, requesting comments from interested parties within sixty (60) days of publication, or by April 13, 2022. As such, SPLP timely submits the following Comments on the NOPR.

Generally, SPLP has several fundamental concerns with the Commission's NOPR. Most notably, many of the proposed pipeline safety regulations will impermissibly conflict with the federal Pipeline Safety Act ("PSA") and the relevant federal regulations for hazardous liquid pipelines at 49 C.F.R. Part 195. These increased regulations will also impose an undue burden on interstate commerce and will create a patchwork of regulations that may impact the ability of affected public utilities to operate safely and efficiently. In addition, many of these proposed regulations are contrary to the sentiment of the General Assembly which gave the Commission the ability to regulate pipeline safety for non-utility pipelines that carry the same commodities as the public utilities that would be impacted by this rulemaking. Importantly, the General Assembly expressly ***limited that authority by mandating that any regulations must not exceed the federal pipeline safety regulations implemented by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA")***. *See* Gas and Hazardous Liquids

Pipelines Act, 2011 Pa. Legis. Serv. Act 2011-127 (codified at 58 P.S. §§ 801.101, *et seq.*) (emphasis added). Many of the proposed regulations appear to ignore the legislature's intent and go well beyond the federal requirement for public utilities. *See* 58 P.S. § 801.501.

In addition, the Commission's proposed regulations are, for the most part, vague, overbroad, and unreasonable. In many instances, the Commission appears to be creating arbitrary requirements without any basis in scientific or engineering fact or evidence that such requirements would, in actuality, prove beneficial rather than unreasonably onerous. As recognized by its own Regulatory Analysis Form, the Commission has plainly failed to adequately consider the costs associated with implementing these regulations. Moreover, these proposed regulations are written in such a way that could allow the Commission to unlawfully and unreasonably apply the proposed regulations retroactively to existing pipelines in conflict with the federal PSA statutory scheme, which prohibits retroactive application to existing pipelines. 49 U.S.C. § 60104(b). Altogether, these requirements will impose significant unreasonable and arbitrary costs on hazardous liquid public utilities, which the Commission has failed to carefully consider in violation of its obligations under section 5(a)(4) of the Regulatory Review Act. 71 P.S. § 745.5(a)(4).

Finally, the proposed regulations do not appear to give due consideration to confidential security information and in that sense are the exact opposite of what the General Assembly sought to protect in the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6 ("CSI Act") and the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq*.

The existing federal requirements provide a comprehensive, technical-based set of standards and industry best practices, vetted through an extensive stakeholder process, that reasonably and sufficiently address pipeline safety in the Commonwealth and in the United States. SPLP is committed to ensuring the safety of its pipelines, as demonstrated by SPLP's

comprehensive integrity management program and detailed construction practices that already go above and beyond federal regulatory requirements. Moreover, notwithstanding the Commission's concerns, as stated by PHMSA, "pipelines are the safest, most environmentally-friendly, and most efficient and reliable mode of transportation for gas and hazardous liquids."[1] For all these reasons, the Commission's NOPR is contrary to the public interest and should not be adopted by the Commission. The Commission should continue to defer to the federal pipeline safety requirements.

II. BACKGROUND

A. SPLP Operations

Sunoco Pipeline L.P. is a Pennsylvania certificated public utility holding several Certificates of Public Convenience for the intrastate transportation of petroleum and refined petroleum products through pipelines within the Commonwealth.[2] Consistent with those Certificates of Public Convenience, SPLP has also posted and received approval of tariffs from the Commission for the intrastate movement of various petroleum and refined petroleum products between defined points within the Commonwealth. Most notably, SPLP owns and operates the set of Mariner East pipelines, including Mariner East 1 ("ME1"), Mariner East 2 ("ME2") and Mariner East 2X ("ME2X"), which transport, among other refined petroleum products, critical

[1] *Pipeline Safety Stakeholder Communications: Pipeline Safety Regulations*, U.S. Dep't of Transp. Pipeline & Hazardous Materials Safety Administration (last accessed Apr. 5, 2022) (available at https://primis.phmsa.dot.gov/comm/SafetyStandards.htm#:~:text=Pipelines%20are%20the%20safest%2C%20most,stakeholders%20to%20improve%20pipeline%20safety).

[2] SPLP has more than eight decades of experience building and operating pipelines and since 2017 has been a subsidiary of Energy Transfer L.P. ("Energy Transfer"). Energy Transfer owns and operates one of the largest and most diversified portfolios of energy assets in the United States, with a strategic footprint in all of the major domestic production basins, including the Marcellus Shale. Energy Transfer began in 1996 as a small natural gas pipeline operator and today owns and operates more than 90,000 miles of natural gas, natural gas liquids, refined products and crude oil pipelines — carrying approximately 30 percent of the natural gas and crude oil that fuel the nation's economy every day.

natural gas liquids ("NGL") such as propane, ethane, and butane from the Marcellus and Utica Shale formations to the Marcus Hook Industrial Complex in southeastern Pennsylvania.[3] The Mariner East pipelines also deliver Ethane to the CPV Fairview Energy Center located in Cambria County, Pennsylvania, which is a 1,050 megawatt natural gas-fueled combined-cycle electric generation facility capable of generating electricity to power over 1 million homes and businesses. These NGLs are also used for industrial feedstocks for a wide array of essential products.[4] The

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[3] Propane is a common fuel for home and industrial heating, cooking, crop drying and motor vehicles. Propane can be used as a basic material in the manufacturing of chemicals such as propylene, which is used to make plastics, textiles and many other goods. It can also be used as a peaking fuel in electric power utilities. Over 95 percent of propane consumed in the U.S. is produced in North America, and today approximately 200 trucks leave the Marcus Hook Industrial Complex per day with propane for domestic/local use.

Ethane has uses as a fuel for generating electricity and is widely used as an essential building block of plastics, textiles, detergents and coatings. There are also a number of trucks delivering ethane locally out of the Marcus Hook Industrial Complex for use as a refrigerant. Butane and natural gasoline can be blended as an ingredient in gasoline, and butane can also be used as a fuel in industrial applications and refrigerant, and it has many other chemical applications.

Increased access to these economical supplies of NGLs has attracted and will continue to attract manufacturers into the mid-Atlantic region. For example, the CPV Fairview Energy Center in Cambria County, Pa., will receive NGLs from the ME2 pipeline that will be used to generate enough electricity to power over 1 million homes and businesses.

[4] Products made from butane and its derivatives include, but are not limited to:

> (1) fuel gas used for, among other things, butane lighters, outdoor grills, patio heaters, and fragrance extraction solvent;
>
> (2) feedstock for ethylene and butadiene production, which are used to make synthetic rubber; and
>
> (3) propellant used for, among other things, aerosol sprays, and refrigerants.

Meghan Flynn, et al., v. Sunoco Pipeline, L.P., Docket Nos. C-2018-3006116, *et al*., SPLP Statement No. 10: Rebuttal Testimony of Richard Billman at 13-14 (Jun. 15, 2020). Products made from propane and its derivatives include, but are not limited to:

> (1) fuel gas for home use (ranges, ovens, water heaters, and furnaces), farming use (drying crops, power indoor equipment, heat greenhouses), business use, and industry use (metal cutting torches, heating asphalt for highway construction and repair, equipment operation inside warehouses);
>
> (2) isopropanol and isopropyl alcohol used for medical applications (hand sanitizer, rubbing alcohol, disinfectant, preserving pathological specimens, medical liniments), solvents and cleaning applications, aerosol formulations (hair spray floor detergents, shoe polishes, insecticides), automotive products (antifreeze), and industrial applications (adhesives, agricultural chemicals, processing aids, separation agents); and

Mariner East system also supports and provides logistics for development of natural gas and related industries in Pennsylvania, Ohio, West Virginia, and Delaware. The Mariner East system has also been integral in meeting increased demand for ethane, which has outpaced growth in all other U.S. petroleum product consumption and is expected do so through 2023.[5] Additionally, as a result of construction, the Mariner East system has created 68,802 full-time equivalent jobs and a one-time economic impact of approximately $11 billion in the Commonwealth, alone.[6]

SPLP and its parent company, Energy Transfer, view the safety of their pipelines to be the highest priority. The safety of SPLP's pipelines is subject to the PSA and regulations issued thereunder by PHMSA. In contrast to the proposed regulations at issue, PHMSA regulations were developed with intensive technical input by and engagement with the pipeline industry and other

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> (3) polypropylene used for medical equipment (N95 masks, hospital gowns), plastics (flip-top bottles and containers, piping systems, nonabsorbable sutures, food containers, car batteries, prescription bottles, carpets and flooring, electric cable insulation, toys, concrete additive, drywall jointing, clothing, and polymer bank notes.

Id., at 14-18. Products made from ethane and its derivatives include, but are not limited to:

> (1) ethyl and polyethylene used to make polyvinyl chloride ("PVC"), which is used to produce pipes, doors, bottle manufacturing, plumbing, and electrical cable installation, monoethylene glycol ("MEG"), which is used to produce polyester resins, water-based adhesives, paper, antifreeze, coolant, packaging, kitchenware, upholstery, vaccine preparation, and silicon compounds, and acrylonitrile butadiene styrene ("ABS"), which is used in children's toys, musical instruments, golf club heads, automotive trim components, helmets, tendon prostheses, furniture, kitchen appliances, and keyboards; and
>
> (2) industrial applications for acetic acid production cryogenic refrigeration systems, and power plant fuel stock.

Id., at 18-20.

[5] Ethane to Outpace Growth in All Other U.S. Petroleum Product Consumption Through 2023, *U.S. Energy Information Administration* (last accessed Apr. 6, 2022) (available at https://www.eia.gov/todayinenergy/detail.php?id=51938).

[6] *Flynn, et al. v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116, *et al*., SPLP Statement No. 12: Rebuttal Testimony of Peter Angelides, Ph.D., AICP on Behalf of Sunoco Pipeline L.P. (Jun. 15, 2020); *see also* Energy Transfer Partners L.P., *A Pipeline of Opportunity for Pennsylvania*, MARINER PIPELINE FACTS, https://marinerpipelinefacts.com/about/economic-impact/.

relevant stakeholders. These regulations were designed to account for and include margins of safety to adequately protect people, property, and the environment.

Consistent with PHMSA requirements, SPLP's newly constructed pipelines operate with a variety of safety features – many of which go beyond PHMSA requirements. SPLP and Energy Transfer work closely with the manufacturers, contractors, and other personnel involved in the design, construction, and integrity management and operation of their pipelines. All new pipe is thoroughly tested and inspected to ensure that it meets or exceeds industry standards and all applicable state and federal pipeline safety requirements, including applying a protective bonded-epoxy coating to prevent damage and using corrosion and cathodic protection systems, which further inhibit corrosion. Moreover, as pipeline segments are welded together, an independent, third-party inspector visually inspects every weld and verifies the integrity of the weld with x-ray technology – again exceeding federal requirements.

Before placing any NGL pipeline in service and consistent with the federal pipeline safety regulations, SPLP and Energy Transfer test new pipe with water at pressures at least 25 percent above the highest pressure at which the line will be operating. This testing further confirms the pipeline's strength. Once a pipeline is placed into service, periodic inspections of the pipelines are also conducted to determine that they are operating safely and efficiently. In-Line Inspection tools (ILIs), commonly referred to as "smart pigs," travel internally through the line, measuring wall thickness and other features to detect defects, anomalies, and/or corrosion.

Regarding operations, SPLP and Energy Transfer also maintain a comprehensive Integrity Management Program. As required by the federal pipeline safety regulations, SPLP's program includes requirements for inspecting, evaluating, and, where applicable, addressing threats within its system or upgrading areas of pipe as a proactive precautionary measure. In 2018, SPLP and

Energy Transfer spent approximately $456 million on integrity management. SPLP regularly monitors its pipeline system by patrolling the pipeline right of way and remotely monitoring its pipelines 24 hours a day, 365 days a year through a control center and Control Room Management Program.

B. PHMSA Regulations

The federal PSA establishes minimum safety standards for all hazardous liquid pipelines in the United States. 49 U.S.C. §§ 60101, *et seq*. The PSA is implemented by PHMSA through regulations at 49 C.F.R. Part 195 ("Part 195") (applicable to hazardous liquid pipelines) and 49 C.F.R. Part 194 ("Part 194") (applicable to facility response plans).

Part 195 contains a comprehensive set of regulations that govern and regulate virtually all aspects of a hazardous liquid pipeline's design, construction, operations, and maintenance, including, but not limited to, accident and annual reporting, 49 C.F.R. §§ 195.48, *et seq*.; pipeline design, 49 C.F.R. §§ 195.100, *et seq.*; construction, 49 C.F.R. §§ 195.200, *et seq*.; pressure testing, 49 C.F.R. §§ 195.300, *et seq*.; operation and maintenance, 49 C.F.R. §§ 195.400, *et seq*.; pipeline personnel qualification, 49 C.F.R. §§ 195.501, *et seq.*; and corrosion control, 49 C.F.R. §§ 195.551, *et seq*. The regulations at Part 195 also incorporate by reference a variety of industry specifications and consensus standards published by industry groups with technical expertise, including the American Petroleum Institute ("API") and the American Society for Testing and Materials ("ASTM"). 49 C.F.R. § 195.3. These industry standards relate to, among other things, public awareness standards, line pipe specifications, in-line inspection systems, and pipeline control room management. *Id.*

The standards outlined in the PSA, as enforced by PHMSA through its regulations, prescribe the minimum safety standards for pipeline facilities and apply to all owners and operators of pipeline facilities "transporting hazardous liquid[s]." 49 U.S.C. § 60102(a)(2). These

requirements create a framework that operators must follow to ensure pipeline safety. When prescribing any standard pursuant to the PSA, PHMSA is required to ensure that the proposed standard is practicable, designed to meet the need for pipeline safety or safely transporting hazardous liquids, and protects the environment. 49 U.S.C. § 60102(b)(1). PHMSA is also required to consider the following factors:

> **(A)** relevant available—
>
> > **(i)** gas pipeline safety information;
> >
> > **(ii)** hazardous liquid pipeline safety information; and
> >
> > **(iii)** environmental information;
>
> **(B)** the appropriateness of the standard for the particular type of pipeline transportation or facility;
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> **(C)** the reasonableness of the standard;
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> **(D)** based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard;
>
> **(E)** based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard;
>
> **(F)** comments and information received from the public; and
>
> **(G)** the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.

49 U.S.C. § 60102(b)(2). Before finalizing any regulation, PHMSA is also required to perform a risk assessment that identifies the regulatory and nonregulatory options available in prescribing a proposed standard, the costs and benefits associated with the proposed standard, an explanation for why it has chosen the proposed standard and the technical data or other information upon which the risk assessment information and proposed standard is based. 49 U.S.C. § 60102(b)(3).

For pipelines that do not cross state boundaries, or intrastate pipelines, a state may be certified by PHMSA to undertake primary responsibility for oversight of pipeline safety in that state. 49 U.S.C. § 60105(a). Certification is only granted upon a showing that the applicable state authority has, among other things, adopted each applicable standard prescribed by the PSA, including PHMSA's regulations. 49 U.S.C. § 60105(b)(2). In addition, the PSA provides that a state authority "may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation *only if those standards are compatible with the minimum standards*…" 49 U.S.C. § 60104(c) (emphasis added).

The Commission, by way of 49 U.S.C. § 60105, participates as a certified state in the pipeline safety program administered by PHMSA and has adopted the federal minimum standards under section 59.33(b) of the Commission's regulations, 52 Pa. Code § 59.33(b); *see also Rulemaking Re Liquid Fuels Pipeline Regulations*, 42 Pa. B. 5967 (Order entered Mar. 1, 2012) (amending its Chapter 59 regulations to address the safety of petroleum products by incorporating the federal pipeline safety standards at 49 C.F.R. Part 195).

In 2011, the Pennsylvania General Assembly expressly authorized the Commission to regulate pipeline safety for non-utility pipelines. In granting that authority, the Commission expressly stated that any 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* Gas and Hazardous Liquids Pipelines Act, 2011 Pa. Legis. Serv. Act 2011-127 (codified at 58 P.S. §§ 801.101, *et seq.*).

The Commission now seeks to expand upon the federal pipeline safety standards as applied to intrastate petroleum and hazardous liquid public utilities by adopting the proposed regulations as drafted in the NOPR.

III. COMMENTS

As part of these comments, SPLP will first discuss its general concerns with the NOPR before providing specific comments on each proposed regulation.

A. The Proposed Regulations Are Fundamentally Flawed And Should Not Be Adopted By The Commission

As expressed above, SPLP has several fundamental concerns with the Commission's NOPR. More specifically, (1) many of the proposed pipeline safety regulations will impermissibly conflict with the PSA and PHMSA's Part 195 regulations, (2) the Commission's proposal is inconsistent with prior legislative enactments, unnecessarily creating a two-tiered regulatory regime that will create enforcement complexities, (3-4) the proposed regulations are largely vague, overbroad, and unreasonable, with no basis in scientific, engineering, or technical fact or study, (5) the Commission could unlawfully implement the regulations retroactively on existing pipelines, (6) the proposed regulations are devoid of any cost-benefit justification, in violation of section 5(a)(4) of the Regulatory Review Act, 71 P.S. § 745.5(a)(4), and would impose significant unreasonable and arbitrary costs on applicable pipeline operators that will be borne, one way or another, by the general public as the cost of these important commodities will increase[7], and (7) the proposal does not appear to give due consideration to confidential security information, which may contradict the legal protections for such information as provided in the CSI Act, 35 P.S. §§ 2141.1-2141.6 and the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq*. For all these reasons, the NOPR should not be adopted by the Commission. SPLP will address each concern below.

[7] *See Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards*, Docket No. L-2019-3010267, Regulatory Analysis Form at 6 (Jan. 25, 2022) ("The financial and economic impact of the proposed regulation would fall most squarely on the two hazardous liquid public utilities in the Commonwealth that would be required to comply with the more stringent safety standards."). The "financial and economic impact" will increase the cost of the transported products, directly impacting consumers and the public generally.

1. The Proposed Regulations Are Not Compatible And Conflict With PHMSA's Federal Requirements.

As stated above, a State authority certified under section 60105(a) of the PSA, 49 U.S.C. § 60105(a), "may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation *only if those standards are compatible with the minimum standards*. 49 U.S.C. § 60104(c) (emphasis added); *see also Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 878 (9th Cir. 2006) ("A state authority may regulate **intrastate** pipelines and impose safety requirements in addition to the federal standards only if: 1) the state authority applies and is approved by the DOT through an annual certification process pursuant to § 60105; and 2) the standards are compatible with the federal standards." (citing 49 U.S.C. § 60104(c))) (emphasis added).

Conflict preemption occurs when it is impossible for a private party to comply with both state and federal requirements. *Dooner v. DiDonato*, 971 A.2d 1187, 1193-94 (Pa. 2013). That is, conflict preemption occurs when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id*. ("[T]he purpose of Congress is the ultimate touchstone in every pre-emption case.").

To ensure compatibility between the federal requirements and any additional Commission regulations, PHMSA has not hesitated to reach out to the Commission in the past requesting that the Commission revise its existing regulations. *See, e.g., Request for Comments on Implementation of Potential Amendments to 52 Pa. Code § 59.34 Relating to Leakage Surveys of Customer-Owned Service Lines*, Docket No. L-2020-3019417, 51 Pa. B. 5331 (Tentative Implementation Order entered Aug. 21, 2021) ("In response to a PHMSA concern that Section 59.34(c) of the Commission's regulations, 52 Pa. Code § 59.34(c), conflicts with 49 C.F.R. Section

192.723(b)(2) (relating to Distribution Systems: Leak Repair), the Commission is revising its regulation to be consistent with the federal regulations.").

In recognition of potential preemption concerns, the Commission has also rightly been hesitant to adopt additional regulations where it appears that they could be incompatible with the federal requirements. For instance, the Commission paused adoption of its rulemaking regarding amendments to 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, because of potential incompatibilities. *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). Commissioner John F. Coleman Jr. stated the following:

> While the Commission has a reasonable basis for believing it has jurisdiction to move forward, the risk of federal preemption should not be casually dismissed. PHMSA recently directed the Commission to modify its regulations on customer-owned gas service lines due to a potential conflict with federal rules. The Commission must also demonstrate that it has the legal authority to promulgate a final rule, and that a proposed rule is not in conflict with some other regulation or statute before the Independent Regulatory Review Commission will give final approval. It would not be in the public interest to move forward now, only to have to withdraw or modify the rule, and significantly delay implementation, because of the preemption issue. If the Commission needs to move quickly and decisively to protect the public, there should be no ambiguity about our jurisdiction or authority that might impede our ability to act.
>
> PHMSA itself provides a process for state regulators to request interpretative guidance on pipeline safety issues. It would be wise for the Commission to ask PHMSA to verify that a service life study requirement is compatible with PHMSA standards, and to review our proposed regulatory language for any needed clarifications or suggestions for improvement. I will therefore move that the Law

> Bureau prepare appropriate correspondence to PHMSA for our review and approval within thirty days of the entry of this Order.

Id.

As it relates to the NOPR, SPLP respectfully submits that many of the proposed requirements will conflict substantially with existing federal requirements. For instance, there are several provisions that not only are unsupported by science, evidence or industry expertise, but that are directly at odds with PHMSA's regulations, including, but not limited to, the following:

- **Retroactive Application**: The Commission proposes to apply its regulations to existing pipelines that are "replac[ed] or otherwise chang[ed]." *See, e.g.,* Annex, §§ 59.136 - 59.138. Without defining or limiting these terms, the Commission could retroactively apply its proposed regulations to existing pipelines if the pipeline operator changes or fixes even minor components. Such retroactive application, however, is strictly prohibited by the PSA. *See* 49 U.S.C. § 60104(c).

- **Odorant**: The Commission proposes in section 59.140(h) to require pipeline operators to odorize HVL lines if the operator cannot install a leak detection system capable of identifying small leaks. Annex, § 59.140(h). The federal requirements, however, do not require odorant. Moreover, the addition of odorant would also impact the quality of the product and interfere with the contractual obligations of SPLP.

- **Pipeline Leak Detection System**: The Commission proposes in section 59.140(h) to require that leak detection systems be designed as a Real Time Transient Model capable of identifying small leaks. Annex, § 59.140(h). Conversely, the federal requirements, by way of API RP 1130, provides discretion to pipeline operators to employ different leak detection methods based on the unique attributes and conditions of their system. 49 C.F.R. §§ 195.3, 195.134. 195.444 (incorporates API RP 1130 by reference). Thus, the proposed standard conflicts with the federal requirements by eliminating the pipeline operator's discretion. Moreover, the Commission's proposal fails to recognize that technology is continually advancing and that Real Time Transient Models are not the only solution to address federal leak detection requirements. For example, there are new statistical computational pipeline modeling systems that some pipeline operators may adopt. Ultimately, pursuant to API RP 1130, a pipeline operator must consider a variety of factors to determine what computation modeling system is appropriate for their operations. A prescriptive solution is inappropriate and inconsistent with the federal standard.

- **Miter Joints**: The Commission proposes in section 59.137(c) to prohibit miter joints of any deflection. However, 49 C.F.R. § 195.216, allows pipe deflections up to 3 degrees caused by misalignment. The Commission has not provided any basis to demonstrate that the federal regulation is insufficient.

- **Underground Clearances**: The Commission proposes in section 59.137(f) that hazardous liquid public utilities must maintain a minimum of 12 inches of clearance between its pipe and other underground structures, with no exceptions. The federal requirements, however, allow an exception where such clearance is impracticable and adequate cathodic control protections are in place. 49 C.F.R. § 195.250.

- **Pressure Testing**: The Commission's proposed pressure testing regulations in section 59.139 are inconsistent with existing federal pressure testing requirements under 49 U.S.C. §§ 195.300, *et seq*. and the recent final rule issued by PHMSA: *Pipeline Safety - Safety of Hazardous Liquid Pipelines*, 84 F.R. 52260 (Oct. 1, 2019) (*Pipeline Safety - Safety of Hazardous Liquid Pipelines*). While federal requirements only mandate pipeline assessments every 5 or 10 years depending on location through either in-line inspection tools, or pressure testing where in-line inspection is not practical, the Commission seeks to require both, without exception, on a more frequent basis, eliminating any discretion provided to the pipeline operator. *See* 49 C.F.R. §§ 195.302, 195.416, 195.452(j).

- **Emergency Flow Restriction Devices**: The Commission proposes in section 59.140(i) that hazardous liquid public utilities must determine the need for Emergency Flow Restriction Devices ("EFRDs") in consultation with public officials in high-consequence areas. This conflicts with 49 C.F.R. § 195.452, which provides discretion to the pipeline operator to determine the location of EFRDs based on a variety of criteria, and could lead to inconsistent application of the regulation and divergent results.

When implementing these regulations, the Commission should consider that SPLP, as well as other operators impacted by these regulations, operate their Pennsylvania hazardous liquid utility pipeline facilities as part of a broad interstate pipeline network in a variety of states and across jurisdictions. Requirements different from or inconsistent with the federal pipeline safety requirements are likely to result in confusing patchwork of regulations that will be difficult for operators to implement. Preemption laws are intended to avoid such a result. *See also In re Air Cargo Shipping Servs. Antitrust Litigation*, 67 F.3d 154, 163 (2d Cir. 2012) (rejecting a plaintiffs' reading of preemption provision that would create "'a confusing patchwork' of state-by-state

regulation"). To accommodate differing requirements, operators will be required to create jurisdiction-specific policies and procedures that may complicate the operation of relevant pipeline facilities and require the unnecessary expenditure of resources that could better be used to increase pipeline safety. This could result in an undue burden on commerce in violation of the United States Constitution. *See, e.g.*, *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 529 (1959). The Commission has failed to demonstrate why these requirements survive federal preemption limitations or that the increased operational burden associated with requirements that differ from the federal pipeline regulations will provide an increased benefit to pipeline safety or the public.

More to the point, the Mariner East pipelines, like many others, are dual-jurisdictional pipelines, providing both interstate and intrastate transportation service. *See In re Sunoco Pipeline, L.P.*, 143 A.3d 1000, 1015-16 (Pa. Cmwlth. 2016) ("Based on our review, we conclude that the record establishes that the expanded service to be provided by the Mariner East 2 pipe-line will involve both interstate service (subject to FERC regulation) and intrastate service (subject to PUC regulation)…."). Because these pipelines fall under both spheres of regulation, this heightens the significance of federal preemption concerns and the potential that differing regulations may unduly burden SPLP's operation of these lines and interstate commerce.

In addition, the Commission has also failed to give due consideration to PHMSA's ongoing rulemakings, which seek to further modify and expand the minimum federal requirements. This includes, but is not limited, the following proposed rules:

- *Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments*, Docket No. PHMSA-2016-0002, 86 F.R. 3938 (Jan. 15, 2021) (seeking to incorporate additional or updated voluntary technical and industry standards related to pipeline safety, including, among others, API Standard 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks," API Standard 1104, "Welding of Pipelines and Related Facilities," ASME International ("ASME") Standard B31.4-2006, "Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids," ASTM International ("ASTM")

Standard A53/A53M-20, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless," and NACE International ("NACE") Standard SP0204-2015, "Standard Practice, Stress Corrosion Cracking (SSC) Direct Assessment Methodology").

- *Pipeline Safety: Regulatory Reform for Hazardous Liquid Pipelines*, Docket No. PHMSA-2018-0047, 85 F.R. 21140 (Apr. 16, 2020) (amending Part 195 requirements regarding reporting accidents, corrosion control, and guidance for implementation of an integrity management program).

The Commission should defer to these proposed rulemakings, which are more fulsome and have been vetted by a variety of stakeholders, as well as future PHMSA rulemakings, rather than establish inconsistent requirements as part of this rulemaking. If the Commission elects to impose regulations without deferring to PHMSA's ongoing rulemakings, the Commission may risk promulgating a regulation that is inconsistent or incompatible with the federal regulations or creating a regulatory requirement that makes compliance unnecessarily difficult.

In fact, during the comment period related to this NOPR, PHMSA announced a new final rule that amends Part 195's valve requirements, including location, operations and maintenance, and shutoff requirements. *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). The Commission's proposal does not account for PHMSA's rulemaking effort and risks creating requirements that are inconsistent or incompatible with the federal requirements. The new rule issued by PHMSA was developed through extensive coordination with interested stakeholders and with technical expertise. The Commission should defer to PHMSA's rulemaking efforts.

Because the Commission cannot impose regulatory requirements that are incompatible with the federal regulations, the Commission must carefully consider its proposed rulemaking to ensure that its requirements are not inconsistent with federal requirements. SPLP recommends

that the Commission consider whether it should consult with PHMSA before finalizing any regulations that are inconsistent with federal requirements.

2. The Proposed Regulations Conflict With Recent Statutory Enactments Creating An Unreasonable Two-Tiered Regulatory Regime

In 2011, the General Assembly passed the Gas and Hazardous Liquids Pipelines Act, which granted the Commission the authority to regulate all pipeline operators in Pennsylvania for pipeline safety purposes. *See* Gas and Hazardous Liquids Pipelines Act, 2011 Pa. Legis. Serv. Act 2011-127 (codified at 58 P.S. §§ 801.101, *et seq.*) ("Act 127"). Act 127 requires the Commission to adopt the federal safety requirements. It states:

> (a) General rule.--The safety standards and regulations for pipeline operators shall be those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B Ch. I Subch. D (relating to pipeline safety).

58 P.S. § 801.302. Act 127 also explicitly prohibits the Commission from implementing regulations that are more stringent than the federal safety requirements:

> (a) Commission authority.--The commission shall have general administrative authority to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws. The commission may adopt regulations, consistent with the Federal pipeline safety laws, as may be necessary or proper in the exercise of its powers and perform its duties under this act. *The regulations shall not be inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.*

58 P.S. § 801.501 (emphasis added). Thus, there is a clear directive from the General Assembly that the federal safety requirements should be applied to all pipeline operators in the Commonwealth.

In this instance, the proposed regulations are contrary to the sentiment of the General Assembly in that the proposed regulations exceed the federal pipeline safety regulations. *See* 58 P.S. § 801.501. In lieu of deferring to the federal regulations, the Commission seeks to treat

similarly situated pipelines carrying similar commodities differently simply because they are jurisdictional public utilities. This creates a two-tiered regulatory environment that is needlessly complex and without any demonstration that this will produce additional benefits for the public. This will create a significant burden on operators attempting to navigate this regulatory regime. Until this NOPR, the Commission has recognized the risk associated with creating a complicated, two-tier regulatory system and has avoided doing so. *Petition for Relief; Alexa Cab Co. and Pars Transport, Inc. Issuance of Additional Certificates of Public Convenience and Medallions*, Docket No. P-00021959, *et al*., 2002 WL 34559582 (Tentative Order entered Aug. 22, 2002) ("Second, a perpetual A-title requirement creates a two-tiered regulatory environment. Some medallions are burdened by the requirement and others are not. *While this may not constitute unlawful discrimination, it certainly does not constitute good policy. As a matter of fundamental fairness, the Commission strives to regulate similarly situated entities in a similar manner.* As a practical matter, a regulated community with different classes of medallions creates enforcement problems for the Commission.") (emphasis added); *See also id*., fn. 8 (citing *Chimenti v. Pa. Dep't of Corrections*, 720 A.2d 205 (Pa. Cmwlth. 1998), *aff'd*, 740 A.2d 1139 (Pa. 1999) (explaining that a regulation is a government agency's exercise of delegated legislative power to create a mandatory standard of behavior for similarly-situated persons)).

The Legislature's intention to maintain the federal PHMSA standards for pipeline operators in Pennsylvania demonstrates that similarly situated PUC-jurisdictional pipelines should be treated alike. The Commission has not provided any basis to support its attempt to treat similar pipelines differently.

3. The Proposed Regulations Are Unconstitutionally Vague

SPLP submits that the Commission's proposed regulations are also unconstitutionally vague because many of them do not provide intelligible standards or reasonable guidance to ensure compliance with the new standards.

A vague statute or regulation is a due process violation. *See, e.g., Vill. of Hoffman Ests. v. Flipside, Hoffman Ests.*, 455 U.S. 489, 497 (1982); *Commonwealth v. Stenhach*, 514 A.2d 114, 124 (Pa. Super. 1986). Vague regulations deny due process in two ways: "they do not give fair notice to people of ordinary intelligence that their contemplated activity may be unlawful, and they do not set reasonably clear guidelines for law enforcement officials and courts, thus inviting arbitrary and discriminatory enforcement." *Park Home v. City of Williamsport*, 680 A.2d 835, 838 (Pa. 1996). It is critical that any new regulation consider both the essential fairness of the law and the impracticability of drafting regulations with greater specificity. *Fabio v. Civ. Serv. Comm'n of City of Philadelphia*, 414 A.2d 82, 85 (Pa. 1980).

Pennsylvania courts have previously held that a statute or regulation is vague and unenforceable where terms are not defined or there is no reasonable standard by which the regulated party is supposed to act. *Watkins v. State Bd. of Dentistry*, 740 A.2d 760, 765 (Pa. Cmwlth. 1999) (holding that the term "appropriate monitoring equipment" is vague because the term is not defined and the term "appropriate" is subject to many different meanings) (*Watkins*). Moreover, the courts have held that, regardless of the public policy concerns that underlie a statute or regulation, such objectives cannot, no matter how appealing, contravene constitutional due process. *Pa. State Bd. of Pharmacy v. Cohen*, 292 A.2d 277, 283 (Pa. 1972) (*Cohen*). Ultimately, no agency may substitute a statute or a rule with a "purely subjective criterion which may reflect merely the personal or professional views of individual members of the [agency]." *Watkins*, 740 A.2d at 764.

For example, the Supreme Court of Pennsylvania held that 58 Pa. C.S. § 3215(b), which permitted waivers of setback restrictions for unconventional gas wells only if such waivers include additional terms and conditions "necessary to protect the waters of this Commonwealth," was unconstitutionally vague. *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 982-984 (Pa. 2013) (*Robinson II*). The Court reasoned as follows:

> …[W]e are constrained to conclude that what the crucial term "necessary" entails in the context of Section 3215(b) remains malleable and unpredictable. The statute does not provide any ascertainable standards by which public natural resources are to be protected if an oil and gas operator seeks a waiver of the Section 3215(b) setbacks. The statement of legislative intent, which simply articulates broad principles, offers no additional clarification regarding the environmental standard governing either the applicant or the Department of Environmental Protection.
>
> ***
>
> Considered in its totality, the Section 3215(b) scheme lacks identifiable and readily-enforceable environmental standards for granting well permits or setback waivers, which yields at best arbitrary terms and conditions and, at worst, wholly ineffective protections for the waters of the Commonwealth.

Id., at 983.

Similarly, the Pennsylvania Commonwealth Court found regulations issued by the Environmental Quality Board and the Department of Environmental Protection unconstitutionally vague because several of the terms used were overly broad and vague, making enforcement of the agencies' regulations unpredictable and compliance unduly burdensome. *Marcellus Shale Coal. v. Dep't of Envt'l Prot.*, 193 A.3d 447, 481 (Pa. Cmwlth. 2018) (holding that the regulatory definitions of the terms "common areas of a school's property" and "playground" as used in 25 Pa. Code § 78a.15(f) and (g) are "vague, overly broad, and unpredictable thereby making compliance unduly burdensome.") (*Marcellus Shale I*).

In similar respects, the Commission's proposed NOPR has several regulations that contain vague terms and requirements, making enforcement unpredictable and compliance impossible. For instance, SPLP submits that the following regulations, among others, contain vague terms or mandates:

- **Definition of Geotechnical Hazard**: The Commission proposes to define a Geotechnical Hazard in section 59.132 as "a geological or environmental feature which may be caused by natural or human-induced conditions, involve long-term or short-term geological processes, and lead to widespread damage or risk." The Commission further proposes in section 59.136(b) to require a pipeline operator to "account for anticipated external loads from landslides, sinkholes, subsidence, and other geotechnical hazards" when designing a pipeline. The term "geotechnical hazards" as used is unnecessarily broad and vague, not based on industry standard, and does not establish intelligible guidance on how an operator can comply with any related requirement.

- **Emergency Flow Restriction Devices**: The Commission proposes in section 59.137(g) to require a pipeline operator to install valves based on proximity to schools, churches, hospitals, daycares, etc., within the outer most area of the lower flammability limit ("LFL"). It is unclear what is meant by "proximity" as it is not defined. This proposed regulation would create unpredictable enforcement and make compliance unduly burdensome.

- **Definition of Emergency Responders**: The Commission proposes to define Emergency Responders in section 59.132 as "local fire, local police and local emergency medical services; county hazmat teams, Department of Emergency Services and 911 centers; and other emergency local, city, county or state officials or representatives." This broad definition is difficult to implement as the range of agencies and applicable individuals is expansive and unclear.

- **Geographic Area**: The Commission proposes as part of section 59.140(b)(3) to require operators to conduct table-top drills twice a year "on different pipelines and products and in each geographic area where the … pipelines are located." The proposed regulation does not define the term "geographic area." It is ambiguous as to what constitutes a geographic area for purposes of this requirement.

- **Meeting with Public Officials**: The Commission proposes as part of section 59.140(e) to require pipeline operators to meet with emergency responders and the affected public, but it does not define whether such meetings are to be held

> statewide, countywide, or by municipality.[8] If the Commission intends to require such meetings on a municipal-specific basis, such a requirement would be extremely burdensome for the pipeline operator. As drafted, however, the requirement is impermissibly vague.

For these reasons, the Commission's proposed regulations are repeatedly vague, ambiguous, and overly broad, making compliance unduly burdensome and potential enforcement unpredictable. As a result, many of these regulations are unconstitutionally vague and violate the due process rights of SPLP and other pipeline operators.

4. The Proposed Regulations Are Unreasonable

When promulgating a regulation, agencies must ensure that the regulations are: (1) within the agency's granted power, (2) issued pursuant to proper procedure and (3) reasonable. *Tire Jockey Serv., Inc. v. Commonwealth, Dep't of Envt'l Prot.*, 915 A.2d 1165 (Pa. 2007) (*Tire Jockey*). An agency action, such as promulgation of a legislative regulation, is unreasonable when "[w]hat has been ordered [is] so entirely at odds with fundamental principles as to be the expression of a whim rather than an exercise of judgment." *Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Review*, 983 A.2d 1231, 1242 (Pa. 2009) (quoting *Pa. Human Rel. Comm'n v. Uniontown Area Sch. Dist.*, 313 A.2d 156, 169 (Pa. 1973)).

As the Pennsylvania Supreme Court has stated, if a regulation is not rationally related to the legitimate state objectives set forth in the enabling statute and if the regulation is "unnecessarily stringent and unnecessary for the protection of the public health, safety and welfare," the regulation is unreasonable. *Commonwealth, Dep't of Envt'l Res. v. Locust Point Quarries, Inc.*, 396 A.2d 1205, 1211 (Pa. 1979) (quoting *Rochez Bros., Inc. v. Commonwealth*, *Dep't of Envt'l Res.*, 334 A.2d 790, 795 (Pa. Cmwlth. 1975)); *see, e.g., Marcellus Shale I*, 193 A.3d at 485 ("A 'playground

[8] *See also* Section III.B.2.a, *infra*. The term "affected public" is itself vague and in conflict with the federal PHMSA requirements, which provides some managerial discretion to determine the size and scope of the "affected public."

owner' may be a corporation, homeowners' association, estate, trust, or private citizen. Even if the playground owner is identified, the point of contact for such private 'owners' may be unknown, unidentified, or unlisted. Requiring a permit applicant to identify and notify 'playground owners' is unduly burdensome and unreasonable."). There must also be proper "factual support or a foundation for the adoption of the regulation." *Marcellus Shale Coal. v. Dep't of Envt'l Prot.*, 216 A.3d 448, 496 (Pa. Cmwlth. 2019) (*Marcellus Shale II*).

As an example, the Pennsylvania Supreme Court upheld the Commonwealth Court's invalidation of the Philadelphia Parking Authority's regulations of taxicab service in Philadelphia because it ignored the material differences between medallion taxicab operators and partial rights taxicabs relating to the services provided, the clientele, geographic footprints, and business models (fleet vs. medallion) when promulgating the regulations. *Bucks Cnty. Servs., Inc. v. Philadelphia Parking Auth.*, 195 A.3d 218, 237-38 (Pa. 2018) ("It is these material differences which drive our conclusion that the 2011 regulations, which place an unreasonable and arbitrary burden on appellees without a proper rationale supporting uniform application of the regulations, constitute an arbitrary exercise of PPA's rule-making authority.")

In this instance, the Commission's NOPR includes several regulations that are unreasonable because they are overly burdensome, are an arbitrary exercise of the Commission's authority and ignore the legal principle that the Commission shall not invade a utility's "managerial discretion," and are not based on any technical or scientific evidence that is rationally related to the public interest.[9] There are several proposals that create overly burdensome requirements, including the following:

[9] *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.") (*Met-Ed*); *see also Bell Telephone Co. of Pa. v. Driscoll*,

- **Accident Reporting**: The Commission is proposing as part of section 59.134 that a pipeline operator conduct a failure analysis and root cause analysis on every accident causing any of the results identified in 49 C.F.R. § 195.50 (including a release of only 5 gallons), using an independent, Commission-approved laboratory and consultant. It would be unreasonably burdensome to require the operator to find a third-party consultant that has not "conducted work on behalf of the [pipeline operator] in the past five years," because there are a limited number of professionals that can perform such work and oftentimes these analyses need to be completed timely and efficiently.

- **External Loads**: The Commission is proposing as part of section 59.136, that a pipeline operator account for any "geotechnical hazard" when designing a pipeline, where a geotechnical hazard itself is an overly broad term encompassing any geological or environmental feature.

- **EFRDs**: The Commission's proposal in section 59.137(g) would require that EFRDs be installed at least every five miles on a pipeline. The Commission has not provided any technical basis to support this requirement. Moreover, in section 59.140(i) the Commission proposes to require hazardous liquid public utilities to determine the need for EFRDs in consultation with public officials in high-consequence areas. This can become unduly burdensome in light of the conflicting needs of public officials and because incumbent officials are frequently replaced by newly elected officials creating additional logistical problems. It is also unclear what the Commission means by 'consulting' as that term is not defined or clarified.

- **Lower Flammability Limit ("LFL") Restrictions**: The Commission proposes in section 59.140(i) to require that "the need for emergency flow restriction devices in [high-consequence areas ("HCAs")] must be based on limiting the LFL to 660 feet on either side of a pipeline." Annex, § 59.140(i). This is simply not achievable or warranted from a technical perspective on most pipelines. There are many factors which control the flammability limit of a pipeline, including factors outside of the pipeline operator's control. Based on this arbitrary and unreasonable requirement, the Commission may entirely limit the ability of HVL pipelines to operate in the Commonwealth.

- **Valves**: The Commission's proposal in section 59.137(g) would require that a hazardous liquid public utility install valves based on a pipeline's proximity to schools, churches, hospitals, daycares, nursing facilities, commercial facilities,

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*).

> industrial facilities, sport complexes and public parks within the outer most area of LFL, which could be interpreted to require hundreds of valves on a single pipeline.

In addition to these arbitrarily-established requirements, there are several proposed regulations that arbitrarily create requirements without any demonstration that such requirements will actually benefit the public. For instance, the Commission proposes a five-mile requirement for EFRDs under proposed section 59.137(g), that does not appear to be based on any scientific or technical evidence, let alone any evidence that this requirement will impact or improve safety. Moreover, the Commission proposes as part of section 59.140(h), that pipeline operators design a leak detection system as a robust, Real Time Transient Model, under API Recommended Practice 1130: Computational Pipeline Monitoring for Liquids ("API RP 1130"), without any consideration of any alternative, more advanced leak detection systems. Lastly, the Commission, in several instances, proposes to increase the frequency of pipeline inspections, without recognizing that pipeline operators already frequently inspect their pipeline systems, such that more frequent inspections provide no real or measurable benefit. *See, e.g.*, § 59.142(d)(2) and (3). These unreasonable requirements are particularly concerning because of the increased compliance costs that the Commission has failed to seriously consider, even though it is required to by way of the Regulatory Review Act. 71 P.S. § 745.5(a)(4)

Additionally, the Commission has not demonstrated that the existing federal pipeline safety regulations are deficient or insufficient. The federal requirements implement a comprehensive regulatory framework designed to protect the public and the environment. The Commission has not demonstrated that the proposed additional requirements beyond the federal regulations will increase safety or that the cost of implementing these requirements is justified.

Collectively, and as discussed further below, there is a lack reasonableness in many of these proposed regulations. Instead of technical evidence, the NOPR appears to have been based

on what amounts to a subjective and arbitrary set of preferences or public opinion[10]. Put simply, the NOPR has not carefully balanced the facts, safety-benefits, science, feasibility, and cost-benefit concerns and other factors that require consideration by PHMSA when promulgating its federal requirements pursuant to the PSA. *See* 49 U.S.C. § 60102(b). These considerations are vital and should be comprehensively vetted before the Commission approves any of the regulations set forth in the NOPR.

5. The Proposed Regulations Allow For Retroactive Application

Throughout the proposed regulations, the Commission uses the following phrase several times: "[t]his section establishes requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or *otherwise changing existing pipelines*." *See, e.g.,* NOPR, Annex, §§ 59.136, 59.137, 59.138, 59.139. By applying these new regulations to existing pipelines on the basis of merely "changing" or "replacing" the pipeline, the Commission could significantly impact existing pipelines, particularly if the terms "relocating, replacing, or otherwise changing" are not defined or limited to include only certain qualifying modifications. This would amount to an impermissible retroactive application of regulatory requirements.

Fundamentally, the retroactive application of pipeline safety requirements is expressly at odds with the PSA, which states that "[a] design, installation, construction, initial inspection, or initial testing standard[s] do[ ] not apply to a pipeline facility existing when the standard is adopted." 49 U.S.C. § 60104(b). The language in the proposed regulations borrows from language used in the federal pipeline safety regulations at Part 195. *See, e.g.*, 49 C.F.R. §§ 195.100 and 195.200 (implementing design and construction requirements when "relocating, replacing, or

[10] In its Regulatory analysis form, the PUC asserts that the regulation is necessary "to address the concerns of the public regarding aging pipeline infrastructure and pipeline integrity."

otherwise changing existing pipeline system"). In guidance, PHMSA has been clear that the language related to "otherwise changes" applies to "construction or some physical alteration to an existing pipeline." PHMSA Interpretation to B. Smiley from C. De Leon (Mar. 12, 1980) (interpreting 49 C.F.R. § 195.200) (available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/Pipeline/1980/PI80007.pdf). As drafted, the Commission's proposed requirements do not clearly include any limitations on the broad language used throughout the regulations. Without any such limitation, the Commission's proposed regulations may impose retroactive requirements for existing pipeline facilities, which would expressly conflict and be incompatible with the federal law and unlawful under 49 U.S.C. § 60104(c).

Moreover, it is an undisputed rule of Pennsylvania statutory construction that statutes, other than those affecting procedural matters, must be construed prospectively, except in those instances where the legislative intent to apply a statute retrospectively is clear. *R&P Sers., Inc. v. Commonwealth, Dep't of Revenue*, 541 A.2d 432 (Pa. Cmwlth. 1988). A retrospective law exists where it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Landgraf v. USI Film Products*, 511 U.S. 244, 269-70 (1994). The material question to determine whether a retrospective law has been unlawfully applied "is whether the new provision attaches new legal consequences to events completed before its enactment." *Id.* (citations omitted). "The largest category of cases in which [the U.S. Supreme Court] ha[s] applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance." *Id.*, at 271.

Here, the Commission seeks to impose its new requirements on existing pipelines if the pipelines are "changed," without defining or limiting the term. Thus, strict application of the Commission's regulations could be read to impose new duties on existing pipelines if the pipeline operator changes even minor components. This would include, but not be limited to, the pipeline setback requirement, section 59.137(b); requirements to eliminate all deflections less than three degrees, section 59.137(c); underground clearance between existing pipeline and underground structures, section 59.137(f); and installation of valves and EFRDs consistent with section 59.137(g). If applied to existing pipelines, these regulations could potentially require a complete overhaul of existing pipelines operating safely in order to comply with the new requirements. An operator's failure to comply with these impermissible retroactive requirements would be punishable conduct under section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, which would be in violation of the U.S. Constitution and Pennsylvania Constitution's prohibition on *ex post facto* laws. U.S. CONST. art. I, § 9-10; *see also* PA. CONST. art. 1, § 17.

6. The Commission Has Failed to Appropriately Consider the Cost To Comply With The Proposed Regulations

The Supreme Court of Pennsylvania has held that "[t]he Commission, as an arm of the legislature, has power to make certain regulations for utilities, but if the cost of compliance therewith is arbitrarily and unreasonably oppressive, such orders will be void." *Pa. R. Co. v. Driscoll*, 9 A.2d 621, 631-32 (Pa. 1939). In this regard, the NOPR has failed to consider the unreasonable costs that will be imposed by its proposed regulations.

In the regulatory analysis form ("RAF") submitted to the Independent Regulatory Review Commission ("IRRC") accompanying the NOPR, the Commission stated the following:

> The [Commission] has not quantified the total costs associated with complying with those Federal regulations and has not yet discerned the additional costs that would be incurred to meet the proposed regulations.

Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards, Docket No. L-2019-3010267, Regulatory Analysis Form at 6 (Jan. 25, 2022) (*RAF*). The Commission then summarily concludes that:

> While compliance with heightened standards may increase costs for hazardous liquid public utilities, these costs would be outweighed by the safety and infrastructure integrity concerns raised by the public who seek incremental additions to existing Federal pipeline safety standards as well as greater communication about emergency and accident preparedness from hazardous liquid public utilities.

Id. Failure to estimate these costs directly contravenes the requirements of section 5(a)(4) of the Regulatory Review Act, which requires the promulgating agency to provide "[e]stimates of the direct and indirect costs to the Commonwealth, to its political subdivisions and *to the private sector*. 71 P.S. § 745.5(a)(4) (emphasis added).

As demonstrated above and in more detail below, however, the Commission has proposed regulations that are inconsistent with the federal standards, are vague and overly broad, and could apply retroactively to existing and operational pipelines. Taken together, these proposed regulations, if adopted, will impose unreasonable, arbitrary, and onerous costs upon affected pipeline operators to comply with these requirements. SPLP estimates that the added **cost to** implement the requirements to existing pipelines, as currently laid out in the proposed rulemaking, would vary by location – ranging from **$7 to $10 million per mile in rural areas** to **$30 million or more per mile in urban and suburban areas**.

Moreover, the Commission should consider the potential costs and impacts to interstate commerce. As provided above, many pipeline operators, including SPLP, operate across a variety of jurisdictions. Imposing additional requirements on the *intrastate* operation of SPLP's system will also impact SPLP's *interstate* operations. This will significantly increase compliance costs and may impact SPLP's ability to transport product through interstate commerce impacting SPLP

and the public in violation of the U.S. Constitution. The Commission should consider these costs and the impacts to interstate commerce when evaluating whether the proposed regulations increase pipeline safety.

Importantly, the unwarranted and unreasonable costs incurred by the affected pipeline operators will ultimately be borne by the general public as the cost of these important NGL commodities will increase. This is concerning, particularly in light of the current economic environment. With inflation at all-time-high levels, now is not the time to impose unnecessary regulatory costs that will trickle down and increase prices of these essential items, including propane, which is a widely used energy source for homes and businesses, butane, which is blended into gasoline, and ethane, which has seen increased demand in recent years.

SPLP submits that the Commission's failure to fully consider the costs and impacts these proposed regulations could have on affected pipeline operators and the public is problematic. The Commission should strongly reconsider the proposed regulations based on the financial harm that could occur, the potential chilling effect these regulations could have on the intrastate transportation of petroleum products, the impact that these regulations may have on the interstate transportation of these products and interstate commerce, whether the potential cost of the regulation outweighs the intended benefit, and whether such additional costs are necessary in light of PHMSA's extensive federal requirements.

7. The Commission's Regulations Could Violate Statutory Protections Related To Confidential Security Information

SPLP also submits that several of the Commission's requirements could expose confidential information regarding public utility pipeline operations, which should be avoided at all costs. The importance of protecting pipeline records and infrastructure is evident throughout federal and state law. At the federal level, regulations protect critical energy infrastructure

information from public disclosure, *see, e.g.*, 18 C.F.R. § 288.133, and broader statutes like the Freedom of Information Act, 5 U.S.C. § 552, require the government to withhold confidential information that could endanger communities living near the relevant infrastructure if publicly disclosed. In Pennsylvania, the CSI Act, 35 P.S. §§ 2141.1-2141.6, and the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq*., expressly protect a breadth of confidential security information regarding public utility and pipeline operations, including, but not limited to, facility locations and vulnerability assessments of public utilities from public disclosure. *See, e.g., Final Rulemaking Regarding Implementation of the Pub. Util. Confidential Sec. Info. Disclosure Prot. Act.*, Docket No. L-00070185, 2008 WL 8013878, at *2 (Final Rulemaking Order entered May 2, 2008) ("Generally, for most of the type of records that will be labeled as containing 'Confidential Security Information,' such as vulnerability assessments, emergency response plans, cyber security plans, maps showing the location of community drinking wells and surface water intakes and the like, the utility must maintain those records onsite so long as that particular plan, map, *etc.* remains the current plan, map, *etc.* of the utility.").

To promulgate regulations that violate the CSI Act or the Right-to-Know Law would otherwise violate Pennsylvania statutes, which this Commission may not do. *Peake v. Dep't of Human Servs.*, 132 A.3d 506, 522 (Pa. Cmwlth. 2015) ("[A]n agency is bound by the language of the statute it is charged to enforce…"). Moreover, according to the Government Accountability Office ("GAO"), protection of confidential information regarding pipelines is critical:

> According to TSA, pipelines are vulnerable to physical attacks—including the use of firearms or explosives—largely due to their stationary nature, the volatility of transported products, and the dispersed nature of pipeline networks spanning urban and outlying areas. The nature of the transported commodity and the potential effect of an attack on national security, commerce, and public health make some pipelines and their assets more attractive targets for

> attack. Oil and gas pipelines have been and continue to be targeted by terrorists and other malicious groups globally.

U.S. Gov't Accountability Off., GAO-19-48, *Critical Infrastructure Protection Actions Needed to Address Significant Weaknesses in TSA's Pipeline Security Program Management*, pgs. 10-11 (Dec. 2018) (available at https://www.gao.gov/assets/700/696l23.pdf).

Here, the Commission's proposed regulations, particularly regarding public awareness, can create serious concerns related to public disclosure of confidential security information. For example, in section 59.140, the Commission seeks to require pipelines to establish and maintain liaison with emergency responders by divulging, among other things, pipeline location information and a hazard assessment zone analysis. Moreover, the Commission also seeks to require pipeline operators to identify all schools within the LFL of a pipeline facility and furnish detailed information to the school administrators, upon request.

These regulations create numerous security concerns by increasing the number of people that have access to critical security information about a pipeline and the potential for public disclosure, particularly given that the agencies in question do not have regulations implementing the CSI Act, despite the Act's express requirement to do so. For these reasons, any information required to be provided to emergency responders and school officials should be limited to non-confidential information. SPLP is confident that it can cooperate with and ensure that emergency responders and school districts are prepared for potential emergencies without having to disclose some of the information contemplated by the Commission's NOPR and using its discretion to determine if, how, when, and the extent that it will share confidential information with these agencies.

SPLP also contends that such requirements go beyond the Commission's legislative directive set forth in 66 Pa. C.S. § 1512, which sets forth what information must be shared and to whom it must be shared. It states in relevant part:

> § 1512. Emergency response plans.
>
> (a) Plans. – A public utility that engages in the delivery of natural gas liquids through a high consequence area in this Commonwealth as defined in 49 CFR 192.903 (relating to what definitions apply to this subpart?) shall make available upon written request the public utility's emergency response plans to all of the following:
>
> (1) The secretary of the commission.
>
> (2) The Pennsylvania Emergency Management Agency.
>
> (3) The emergency management director of each county in this Commonwealth where the high consequence area is located.

66 Pa. C.S. § 1512(a). Section 1512(b) also requires that these reviewers strictly comply with the CSI Act to protect the dissemination of CSI from the public. This statute, along with the CSI Act and Right-to-Know law, demonstrate that such information should not be disclosed to the affected public or emergency responders as contemplated by the proposed regulations, but protected due to the sensitive nature of this information.

8. Conclusion

For all the reasons set forth above, the Commission should not adopt these proposed regulations. The existing federal requirements provide sufficient standards for the safety of the community and the PUC has not demonstrated otherwise. Adoption of these additional standards, however, would create conflicting state requirements that may unduly impact interstate commerce and that are, in many respects, vague, overly broad, unduly burdensome, unreasonable, and with no showing of any benefit outweighing the significant costs of compliance.

In further support of these broad issues, SPLP will also provide its specific comments as to each proposed regulation below.

B. Comments on Specific Sections

1. Proposed Section 59.131 – Purpose

By way of section 59.131, the Commission seeks to codify that while the Commonwealth, as a certified State participating in PHMSA's federal hazardous liquid pipeline safety program, must adopt and enforce all federal pipeline safety standards under Part 195 and that it can also adopt additional regulations that are more stringent than the federal regulations if state regulations are compatible with the PSA and PHMSA's Part 195 regulations. Proposed section 59.131 also details that the safety standards are applicable to all hazardous liquid public utilities in the Commonwealth.

SPLP reiterates its concern that many of the Commission's proposed regulations are incompatible with the federal standards. *See* Section III.A.1, *supra*. Any such incompatibilities are expressly preempted by the PSA and PHMSA's Part 195 requirements.

2. Proposed Section 59.132 – Definitions

As a general matter, the Commission should strive to reference the definitions of terms as they are used in Part 195, rather than re-write or expand the definitions as it has proposed to do here. This will ensure consistency with federal requirements and allow operators to maintain uniform procedures and practices across assets, including those that may be located in other states. For example, the Commission separately defines "hazardous liquid," "pipe or line pipe," and "pipeline facility," rather than reference or incorporate the existing PHMSA definition. In this regard, the Commission creates potential conflicts with the federal requirements that can affect compliance with federal regulations that rely on those terms. Below is a chart highlighting the relevant differences:

Term		NOPR Definition - § 59.132		Federal Definition – 49 C.F.R. § 195.2
Hazardous Liquid		crude oil, gasoline, petroleum, or petroleum products.		petroleum, petroleum products, anhydrous ammonia, and ethanol or other non-petroleum fuel, including biofuel, which is flammable, toxic, or would be harmful to the environment if released in significant quantities.
Pipe or Line Pipe		a tube *that may be used or* is used for the transportation of a hazardous liquid.		a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another.
Pipeline Facility		new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of hazardous liquids.		new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.

The Commission should utilize the federal definitions, where appropriate, to prevent inconsistencies. In certain instances, the Commission has referenced the federal definition for other terms in its NOPR. *See, e.g.,* NOPR, Annex, § 59.132 ("API Recommended Practice 1162," "Computational pipeline monitoring system," "High consequence areas," and "Highly volatile liquid"). SPLP respectfully recommends that the Commission adopt this practice as it relates to all of the proposed defined terms to ensure consistency with the federal pipeline safety regulations.

a. Affected Public

The Commission proposes to define the term, "Affected Public" as "residents and places of congregation (businesses, schools, and the like) along the pipeline and the associated right-of-way within 1,000 feet, or within the [Lower Flammability Limit ("LFL")], of a pipeline or pipeline facility, whichever is greater."

Conversely, the PHMSA regulations expressly incorporate by reference certain portions of API RP 1162 – a widely accepted industry standard – for its public awareness requirements. API

RP 1162 defines "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. It then goes on to say that "it is recommended that transmission pipeline operators provide communications with a minimum coverage area distance of 660 feet on each side of the pipeline, or as much as 1000 feet in some cases." *Id*., at 33.

Consistent with API RP 1162, 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. In this regard, rather than unilaterally broadening the requirement to include all individuals and places of congregation within 1,000 feet, or within the LFL, the federal regulations provide important discretion to operators. Consistent with the federal approach, the Commission should continue to allow pipeline operators to exercise their managerial discretion to determine the size and scope of the affected public.

b. Covered Task

The Commission proposes to define the term "Covered Task" as "the term as defined in 49 C.F.R. § 195.501 (relating to scope) but modifying that term to also include a construction task identified by a hazardous liquid public utility." By modifying this definition, the Commission is proposing to require pipeline operators to establish a qualifications program for construction tasks. *See* NOPR, Annex, § 59.141. Conversely, Part 195 defines a "covered task" as "an activity, identified by the [pipeline] operator, that: (1) is performed on a pipeline facility; (2) is an operations or maintenance task, (3) is performed as a requirement of this part; and (4) affects the operation or integrity of the pipeline." 49 C.F.R. § 195.501. It does not, however, include new construction tasks.

The Commission's proposal to expand the definition of a covered task to include a construction task is premature and the Commission should await guidance from PHMSA before adopting this provision. In 2017, PHMSA expressly considered amending its Part 195 operator qualifications ("OQ") requirements to cover new construction, add clarification for covered tasks, clarify training and documentation requirements, and add program effectiveness requirements for operators. *Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes*, Docket No. PHMSA-2013-0163, 82 F.R. 7972, 7980 (Jan. 23, 2017). Upon further consideration, however, PHMSA stated that "a decision was reached to not move forward with revised OQ requirements in order to further evaluate the costs and benefits of this issue." *Id*., at 7980-81. PHMSA further noted that "revised OQ requirements will be published in a subsequent final rule in the near future, and it will consider and discuss, at length, all of the comments received […] along with the recommendations of the Pipeline Advisory Committees, in that final rulemaking." *Id*., at 7981.

Accordingly, the Commission should wait for PHMSA to move forward with its pending rulemaking regarding operator qualifications before expanding the definition of a 'covered task' to include construction tasks. When implementing a federal standard, PHMSA will provide the necessary guidance for structuring any qualification program that covers new construction tasks and ensure that operators across jurisdictions uniformly implement this requirement. Any regulations finalized by the Commission could create incompatible requirements with PHMSA's federal standards and problems for operators attempting to comply with those requirements.

c. Emergency Responders

The Commission proposes to define the term "Emergency Responders" as "local fire, local police, and local emergency medical services; county hazmat teams, Department of Emergency

Services and 911 centers; and other emergency local, city, county or state officials or representatives." Moreover, the Commission seeks to require pipeline operators to, among other things, immediately notify emergency responders during certain pipeline releases, § 59.134(e), communicate and conduct liaison activities at least twice a year with emergency responders, § 59.140(c), and provide emergency responders with a hazard zone assessment analysis every year, § 59.140(c)(3).

This definition, however, is broad and unreasonably expands the existing requirements under Part 195 without justification or evidence that this requirement would provide meaningful additional safety benefits. The federal definition of "Emergency Officials," as incorporated by way of API RP 1162, includes only "local, state, or regional officials, agencies and organizations with emergency response and/or public safety jurisdiction along the pipeline route." API RP 1162 at 18.

In contrast to the federal definition, the Commission's proposed definition unnecessarily expands the definition of emergency responders. The Commission's definition does not limit the term to those officials with emergency response and/or public safety jurisdiction along the pipeline route. Failure to do so creates highly burdensome requirements for pipeline operators to communicate even with those officials who do have emergency response or public safety jurisdiction along the pipeline route. For example, the Mariner East pipelines traverse 17 counties in Pennsylvania and approximately 92 municipalities.

Moreover, inconsistent definitions at the state and federal level likely run afoul of preemption limitations and create practical challenges for pipeline operators. To comply with both federal and state requirements, operators would be required to create Pennsylvania specific procedures for interstate systems. Operating with different procedures based on the location of a

particular pipeline will make compliance more complicated and may create an unreasonable burden on interstate commerce. *See also* Section III.A.1, *supra*. Accordingly, SPLP recommends that the Commission keep the existing definition as set forth in Part 195 because it strikes the appropriate balance between communicating with key stakeholders while maintaining clear and direct requirements for pipeline operators. In contrast, unnecessarily expanding these requirements misappropriates key resources that could be used elsewhere to meet public safety needs.

d. Geotechnical Hazard

The Commission proposes to define the term "Geotechnical Hazard" as "a geological and environmental feature which may be caused by natural or human-induced conditions, involve long-term or short-term geological process, and lead to widespread damage or risk." The term is used in the Commission's proposed section 59.136 (relating to design requirements), requiring pipeline operators to account for anticipated external loads, including, landslides, sinkholes, subsidence, and other "geotechnical hazards."

The Commission's proposed definition of "Geotechnical Hazard," however, is unreasonably vague and overly broad, making it difficult for pipeline operators to determine what actions are required to achieve compliance with the regulations. Put simply, it allows for subjective interpretation and is not based on any industry practice or standard.

Although the federal regulations do not include a definition for geotechnical hazards, the industry, through the Interstate Natural Gas Association of America ("INGAA"), has developed guidance for the management of landslide hazards for pipelines. Geosyntec Consultants, Inc., et al., *Guidelines For Management of Landslide Hazards for Pipelines* (1st ed. 2020) (available at https://www.ingaa.org/File.aspx?id=38070). According to this guidance, a "landslide" is

> The naturally occurring or human-caused downward (or downslope) movement of a mass of soil or rock due to gravity. The term 'landslide' encompasses a wide variety of processes that result in the downward movement of soil or rock. These materials may move by falling, toppling, sliding, spreading, or flowing.

Id., at 17. SPLP recommends that the Commission consider limiting its current definition of "Geotechnical Hazard" to be consistent with industry guidance

e. Pipe or Line Pipe

The Commission proposes to define the term "Pipe or Line Pipe" as "a tube that *may be used* or is used for the transportation of a hazardous liquid." (emphasis added). Consistent with the PSA, Part 195 defines "pipe or line pipe" as a "a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another." 49 C.F.R. § 195.2. That is, the federal standard only identifies pipe or line pipe that is currently transporting hazardous liquids, whereas the Commission's proposed definition includes pipe that could potentially transport hazardous liquids. This subtle, yet significant difference, is inconsistent with longstanding jurisdictional limitations established by Congress in the PSA and by PHMSA in the Part 195 definition of "pipe or line pipe" that must be used in transportation to be subject to the regulatory regime; the mere possibility for use is not sufficient. The Commission's proposed definition would greatly expand the definition of a pipeline currently authorized under federal law. Due to this inconsistency, the Commission should defer to the federal definition of "pipe or line pipe."

3. Proposed Section 59.133 – General

Under proposed section 59.133(d)(1), the Commission requires pipeline operators to provide the Commission with notice sixty (60) days prior to converting a pipeline "from service not previously covered by this part." The Commission also seeks to apply this requirement to pipelines already designed for bi-directional flow. Additionally, proposed section 59.133(d)(2) requires that a hazardous liquid public utility engaged in conversion, flow reversal or commodity

change of pipelines subject to 49 C.F.R. § 195.5, adhere to *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, and any updates thereto.

First, SPLP is concerned with the Commission's reference to bi-directional lines in subsection (d)(1), as it appears that the Commission proposes to require notice every time a pipeline operator reverses flow on a bi-directional line. This is not practicable and conflicts with PHMSA regulations at 49 C.F.R. § 195.5, where no such notice is required. *See* 49 C.F.R. § 195.64(c)(iii) (requiring notice when an operator reverses "product flow direction when the reversal is expected to last more than 30 days," except when the pipeline is designed for bi-directional flow). If a pipeline is bi-directional, it should be able to reverse flow without any notification and the PUC has not provided any reasoning to support its notice requirement. This flexibility is critical to ensuring efficient flow reversal to meet operational needs.

SPLP is also concerned with the Commission codifying PHMSA guidance which is not legally required and does not have the force and effect of law. As stated on PHMSA's website:

> PHMSA guidance is intended to help regulated entities and the public to understand PHMSA's regulations. The guidance documents contained herein lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. DOT may not cite, use, or rely on any guidance that is not available through this guidance portal, except to establish historical facts.

PHMSA, PHMSA Guidance (available at https://www.phmsa.dot.gov/guidance) (last accessed Nov. 17, 2021); *see also Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 97 (2015) ("Interpretive rules 'do not have the force and effect of law….'") (quoting *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 99 (1995)). In addition, incorporating the advisory bulletin codifies certain recommendations that were never intended to be mandatory. *See* Advisory Bulletin, 79 F.R. at 56121-56122 (providing an overview of "PHMSA's expectations" related to flow reversals, product changes and conversion to service and noting that operators "may consider," are

"encouraged to consider" or "should consider" implementing certain recommendations). Because the advisory bulletin provides voluntary recommendations for operators to consider, 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.

In addition, this proposed regulation would violate the non-delegation doctrine. "At the heart of the non-delegation doctrine… is the tenet that the General Assembly cannot delegate 'to any other branch of government or to any other body or authority' the power to make law." *Protz v. Workers' Comp. Appeal Bd. (Derry Area School District)*, 161 A.3d 827, 833 (Pa. 2017) (citations omitted) (*Protz*). While the General Assembly is free to adopt a particular set of standards in existence at the time of adoption, the non-delegation doctrine prohibits the General Assembly "from incorporating, sight unseen, subsequent modifications to such standards without also providing adequate criteria to guide and restrain the exercise of the delegated authority." *Id*., at 838-39; *see also 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). Thus, codifying PHMSA guidance and any updates thereto violates the non-delegation doctrine by tying an agency's authority to another agency's future decisions, sight unseen. This is unconstitutional and raises substantial due process concerns. Thus, because future changes to any standards adopted as part of this rulemaking would require its own rulemaking proceeding, it is more practical and

reasonable to defer to PHMSA's existing requirements rather than incorporate voluntary guidance into a Commission regulation and risk inconsistency in the future.

4. Proposed Section 59.134 – Accident Reporting

The Commission's proposal seeks to require a pipeline operator to provide an unredacted copy of a failure analysis report and a root cause analysis within 120 days or 10 days of completion, whichever is sooner, of any accident causing any of the results identified by 49 C.F.R. § 195.50, including releases as small as 5 gallons. *See* Annex, § 59.134(b-c). Moreover, both the root cause analysis and the failure analysis must be conducted by a third-party laboratory and third-party consultant that is approved by the Commission. *See* Annex, § 59.134(d). The Commission must find that the laboratory and consultant are not affiliated with the pipeline operator, have not conducted work on behalf of the pipeline operator in the past 5 years that could potentially create a conflict of interest, and are capable of performing the failure analysis and root cause analysis using the necessary equipment and industry best practices. *See* Annex, § 59.134(d)(2). This requirement applies to a hazardous liquid public utility following "an accident that causes any of the results identified in 49 C.F.R. § 195.50."

The Commission's proposed selection process for a third-party laboratory and consultant is untenable, particularly in light of the strict requirements for eligible third parties, the number of incidents, including very small releases of 5 gallons, this selection process could apply to, and the narrow timelines that a pipeline operator has to select a third-party to conduct the analysis and complete it. Under the proposed requirement, an operator must identify a third-party consultant and complete a failure analysis and root cause analysis within 120 days of an accident. This timeframe does not provide flexibility for the PUC's review and approval of a third-party consultant, including an operator's potential appeal of the Commission's decision. Taken together,

with the proposed time requirements, this proposed regulation represents an undue burden for hazardous liquid pipeline operators and would add unnecessary reporting requirements.

Moreover, the Commission's proposal is also squarely inconsistent with PHMSA requirements that provide pipeline operators with the discretion to prepare their own set of written procedures for investigating an accident. 49 C.F.R. § 195.402(c)(5). It states in relevant part:

> **(a) General.** Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.
>
> ***
>
> **(c)** ***Maintenance and normal operations.*** The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:
>
> **(5)** Analyzing pipeline accidents to determine their causes.

49 C.F.R. § 195.402.[11] Conversely, by forcing pipeline operators to perform a failure analysis and root cause analysis in every instance, the Commission impermissibly limits the pipeline operator's managerial discretion in violation of past Pennsylvania precedent.[12] Under the Commission's broad reaching requirement, operators will be required to expend valuable resources on relatively

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[11] The PHMSA regulations also require pipeline operators to assist the Department of Transportation in its investigation of any accidents and requires operators to perform a post-accident review of employee activities to determine whether procedures were effective in each emergency and to take corrective action where deficiencies are found. 49 C.F.R. §§ 195.60, 195.402(e)(9).

[12] *Met-Ed*, 437 A.2d at 80; *see also Driscoll*, 21 A.2d at 916 (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.").

small releases (including releases of 5 gallons). The PUC has not adequately considered the cost of imposing such a broad requirement or whether it provides any meaningful safety benefit. Under federal requirements, operators already have procedures and processes for investigating accidents. The Commission should refrain from modifying these requirements without any technical basis to support its proposal.

Based on existing federal regulations, there is no need to impose additional burdens and costs on an operator seeking to investigate the cause of an accident. Furthermore, the consultants qualified to perform this type of analysis are limited as these analyses are performed by Professional Engineers who must comply with ethical standards as part of their certification/registration. Imposing requirements that may limit an operator's ability to coordinate with third party consultants may impair an operator's ability to effectively assess an accident and take corrective actions in an efficient manner.

Notwithstanding these concerns, if the Commission adopts this proposed regulation, which it should not, SPLP requests that the Commission allow an operator to use an approved vendor for future accidents without requiring the operator to seek re-approval of the vendor.

In addition to these concerns, subsection (e) of the proposed regulations should be revised. As drafted, this section would require a hazardous liquid public utility to report accident information to (1) the National Response Center under 49 C.F.R. § 195.52, (2) the Commission's Pipeline Safety Section, and (3) to emergency responders at the earliest practicable moment following discovery of a release resulting in an event described in 49 C.F.R. § 195.50, but no later than one hour. The additional requirement to report to the Pipeline Safety Section and emergency responders is unnecessary because, as part of 49 C.F.R. § 195.52, an accident that meets certain requirements is communicated to the National Response Center, which is a centralized notification

center that will make the relevant notifications, including to the relevant emergency response centers, *i.e.*, local 911 operator. Moreover, the federal regulations require that the National Response Center is informed of every accident as the term is broadly defined under Part 195. Not every accident reported the National Response Center, however, is an emergency necessitating mobilization of emergency responders. In other words, immediate notification to the Commission and emergency responders should be reserved for true emergencies, not every accident that could potentially occur (including the release of 5 gallons).

Based on the broad definition of "emergency responders" proposed in the NOPR, the accident reporting requirement will impose a significant burden on pipeline operators that may be difficult to manage in the event of an emergency. Thus, rather than requiring multiple agency communications, the pipeline operator should only be responsible for calling one agency during emergency situations. This will ensure that critical resources are devoted to responding to an accident, rather than contacting a variety of agencies, including "emergency local, city, county or state officials or representatives," as proposed under § 59.132. SPLP submits that the National Response Center is the appropriate contact in this situation.

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

The Commission, as part of section 59.135, proposes the following notification requirements:

- That a pipeline operator must notify the Commission 45 days prior to any construction or maintenance involving of $300,000 or 10% of the cost of the pipe in service.
- That a pipeline operator must notify the Commission 10 days prior to any maintenance, verification digs, and assessments involving an expenditure in excess of $50,000, and the unearthing of suspected leaks, dents, pipe ovality features, cracks, gouges or corrosion anomalies, or other suspected metal losses.

- That a pipeline operator immediately notify the Commission of any excavation damage, washouts, or unplanned replacements.
- That a pipeline operator provide a 30-day notice prior to any variation to construction methodologies.
- That a pipeline operator provide a 30-day notice prior to the introduction of any hazardous liquid to a pipeline.

See Annex, § 59.135.

SPLP has several concerns with these potential notice requirements. First, SPLP submits that the requiring notice when there is "[a]ny variation to the hazardous liquid public utility's established construction methodologies," is unreasonably vague and overly broad, particularly in light of the requirement that such notice be provided 30-days prior to the variance. For one, the term "variation" is not defined anywhere within the proposed regulations. Moreover, it is not uncommon for a pipeline operator to face circumstances during construction that would require a construction variation, even in minor cases. For example, there are situations where SPLP is conducting a typical sloped trench excavation but determines based upon the stability of the soil that a trench box is needed. If this proposed regulation were adopted, a pipeline operator would be forced to wait 30-days to implement the construction variance, potentially causing additional issues, including potential safety concerns, such as in the above scenario, keeping a trench open for 30 days upon filing the notice. There is also no exception for emergency situations. The alternative would be to violate the notice requirement and be subjected to potential civil penalties. It is simply impractical and not feasible to adopt this requirement. Additionally, the PUC has not considered the potential costs associated with this requirement that may be caused by the delays in construction based on providing notice to the Commission.

Secondly, the reporting thresholds and dollar amounts for the notice requirements are too low. Neither pipeline operators nor the Commission likely have the resources to review and consider the number of notifications that would result from such extensive notice requirements.

Moreover, the timelines may not be achievable as pipeline activity, including operations and maintenance tasks that meet the Commission's notice requirements, could potentially have to be undertaken within a quick period of time, such that 30-day notice is impossible to comply with. Similarly, the Commission proposes that pipeline operators provide 10-day notice for maintenance, verification digs, and assessments in excess of $50,00, and the unearthing suspected leaks, dents, pipe ovality features, cracks, gouges, or corrosion anomalies. These types of issues, particularly addressing suspected leaks, where the pipeline operator believes maintenance or assessment should occur within less than 10 days of discovery should not be subject to this requirement. The Commission's proposal frustrates the overarching need to ensure pipeline safety and integrity, by placing an operator in the position of violating the notice regulation or requiring it to wait unnecessarily to investigate an issue. It is also highly concerning that there are no exceptions for emergency situations. The Commission should not place pipeline operators in a catch-22 scenario of either not addressing an issue the pipeline operator believes should be addressed on an expedited basis or facing a violation of the notice regulation.

In addition, these notice requirements are unnecessary, and would duplicate notifications already required by the Underground Utility Line Protection Law ("One-Call Law"), which requires notice when excavators intend to perform excavation, demolition, or similar work. *See* 73 P.S. §§ 176, *et seq*.

Rather, notifications should be limited to a subset of construction or maintenance activity that actually warrants notification to the Commission. SPLP submits that the existing federal notification requirements are sufficient to meet the intent of the PUC proposed regulations and include sufficient pre-construction notice (49 C.F.R. § 191.22(c)), safety-related condition

reporting (49 C.F.R. §§ 195.55, 195.56), accident reporting (49 C.F.R. §§ 195.50, 195.52), and other reporting requirements.

6. Proposed Section 59.136 – Design Requirements

This proposed section requires that when a hazardous liquid public utility designs a pipeline, it shall account for anticipated external loads from landslides, sinkholes, subsidence, and other geotechnical hazards. This requirement applies to hazardous liquid public utilities constructing new pipelines and converting, relocating, replacing, or otherwise changing existing pipelines.

For the reasons stated above, SPLP objects to this regulation to the extent it relies on the term "geotechnical hazards," as it is vague, overly broad, impractical to comply with, and lacks any cost-benefit analysis. Moreover, SPLP objects to the extent the Commission is seeking to impose these requirements upon existing pipelines beyond new pipeline construction or significant physical alteration of a pipeline. *See also* Section III.A.5, *supra*. As the terms "otherwise changed" and "replaced" are undefined and not limited, this amounts to impermissible retroactive rulemaking if strictly applied and would be impracticable for a pipeline operator to comply.

Further, there is no justification for requiring that all newly constructed pipelines anticipate loads from landslides, sinkholes, subsidence, or other geotechnical hazards unless there is evidence that the pipeline will be located in areas susceptible to these hazards. Rather, the existing Part 195 requirements sensibly and adequately address this issue, which requires the following:

> **(a)** Anticipated external loads (e.g.), earthquakes, vibration, thermal expansion, and contraction must be provided for in designing a pipeline system. In providing for expansion and flexibility, section 419 of ASME/ANSI B31.4 must be followed.
>
> **(b)** The pipe and other components must be supported in such a way that the support does not cause excess localized stresses. In designing attachments to pipe, the added stress to the wall of the pipe must be computed and compensated for.

49 C.F.R. § 195.110. Moreover, the Commission has not adequately considered the cost associated with implementing this requirement and whether such requirement will provide an increased safety benefit. The existing federal pipeline safety requirements are sufficient to address the concern raised by the Commission and the PUC should defer to those existing standards.

7. Proposed Section 59.137 – Construction

a. Scope

SPLP reiterates its concerns with the Commission attempting to apply these regulations to existing pipelines. As the terms that are "otherwise changed" and "replaced" are undefined and not limited, this could amount to retroactive application of construction requirements to existing pipelines, which is not only unlawful and inconsistent with the PSA, but would be significantly cost prohibitive and unduly burdensome.

b. Location of Pipelines

Proposed subsection (b) provides that pipelines cannot be located under private dwellings, industrial buildings, or places of public assembly. SPLP submits that there needs to be a grandfather clause for existing pipelines, as retroactive application to pipes already in the ground would be unduly burdensome and cost prohibitive. *See also* Part III.A.4, *supra*. The Commission has not considered the significant costs that would be incurred if operators are required to move existing lines to accommodate the proposed requirement. Moreover, the Commission should specify that such restrictions apply only to enclosed or indoor buildings. Otherwise including outdoor structures, where the public could potentially assemble, could make it impractical to comply with when siting a new pipeline facility.

c. Miter Joints

Subsection (c) seeks to prohibit miter joints of any deflection without exception. This expressly conflicts with the federal requirements that allow for deflections up to three (3) degrees

that are caused by misalignment. 49 C.F.R. § 195.216. Deflections up to three (3) degrees are a common industry practice and there is nothing unreasonable about permitting such deflections. *See, e.g.*, American Society of Mechanical Engineers, ASME B31.4: Pipeline Transportation Systems For Liquid Hydrocarbons And Other Liquids, at 24 (2002) (available at https://law.resource.org/pub/us/cfr/ibr/002/asme.b31.4.2002.pdf) ("Deflections caused by misalignment up to 3 deg. are not considered miter bends.") ("ASME B31.4"). The Commission has failed to provide any technical justification to support this proposed requirement. Under this proposed requirement, pipeline operators may be required to replace miter joints with deflections below federal thresholds without providing any benefit to public safety.

d. Non-Destructive Testing of Welds

Subsection (d) seeks to require that all girth welds, without exception, must be non-destructively tested ("NDT"). Conversely, the federal pipeline safety requirements state that, while all girth welds must be NDT, there are exceptions to the general rule. As set forth in 49 C.F.R. § 195.248:

> **(d)** During construction, at least 10 percent of the girth welds made by each welder and welding operator during each welding day must be nondestructively tested over the entire circumference of the weld.
>
> **(e)** All girth welds installed each day in the following locations must be nondestructively tested over their entire circumference, except that when nondestructive testing is impracticable for a girth weld, it need not be tested if the number of girth welds for which testing is impracticable does not exceed 10 percent of the girth welds installed that day:
>
> > **(1)** At any onshore location where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water, and any offshore area;
> >
> > **(2)** Within railroad or public road rights-of-way;
> >
> > **(3)** At overhead road crossings and within tunnels;

> **(4)** Within the limits of any incorporated subdivision of a State government; and
>
> **(5)** Within populated areas, including, but not limited to, residential subdivisions, shopping centers, schools, designated commercial areas, industrial facilities, public institutions, and places of public assembly.

The exceptions contained in the PHMSA regulations are reasonable and consistent with industry best practice. *See* ASME B31.4 at 42. The Commission has not provided any basis to demonstrate that the exceptions are not warranted and should defer to the federal standard.

e. Cover Over Buried Lines

Proposed subsection (e)(1) would require that, in addition to the federal requirements under 49 C.F.R. § 195.248, all pipe under active commercial farms that have been cultivated 2 or more of the past 5 years must be buried below the level of cultivation with at least 40 inches of cover and that the pipeline operator shall verify and maintain the depth of cover for active commercial farms at least every 3 years. Additionally, subsection (e)(2) would require pipeline operators to specify the intervals at which to verify and maintain the depth of cover for all pipe.

Here, the Commission's proposal is inconsistent with the existing PHMSA regulations. PHMSA's depth of cover regulations apply only at the time of pipeline construction. *See* 49 C.F.R. § 195.248. In other words, there are no ongoing depth of cover maintenance requirements, unless the pipeline is unsafe. *See* 49 C.F.R. § 195.401(b)(1) ("Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time.").

The Commission's proposal, however, mandates that hazardous liquid pipeline operators remain responsible to check for any reduction in depth of cover along the entire pipeline route and remediate it, regardless of how it was caused, the extent that depth of cover has eroded, or whether

depth of cover impacts safety. Such a requirement would impose a significant burden on pipeline operators and require extensive resources. Not only would this be unlawful under 49 U.S.C. § 60104(c) as it is inconsistent with the federal standard, but it would also be impracticable to require pipeline operators to identify where depth of cover is not exactly in compliance with the federal requirements at any given time. The Commission has not properly considered the cost of implementing such an expansive requirement or demonstrated that such a requirement will provide a meaningful safety benefit. Moreover, retroactive application of this requirement to existing pipelines would compound compliance costs without any technical justification demonstrating that federal requirements are insufficient.

The current depth of cover requirements under Part 195 and the duty of a pipeline operator to remediate any unsafe conditions within a reasonable period of time are an appropriate standard and method for ensuring pipeline safety. In addition, the comprehensive Pennsylvania One-Call Program and SPLP's Right-of-Way Surveillance Program also work to protect the pipeline during operation, among other things. The Commission should not impose additional burdensome requirements without any meaningful basis for doing so.

f. Underground Clearances

Subsection (f), as proposed, would require 12 inches of clearance between the outside of the pipe and the extremity of any other underground structure, including other structures owned by the hazardous liquid public utility and foreign structures. This is inconsistent with the PHMSA regulations, which also requires at least 12 inches of clearance, but allows exceptions where such clearance would be impracticable to comply with, so long as the pipeline operator ensures that there is cathodic protection on the pipeline. 49 C.F.R. § 195.250.

The exception provided in the federal regulations is critical because a 12-inch clearance between the pipe and other underground structures can be impracticable in some circumstances, particularly in heavily urbanized areas. To establish an absolute prohibition would render the installation of pipe in certain areas impossible. There is no factual or technical basis to demonstrate that imposing such a requirement will result in increased safety.

Moreover, the Commission should clarify that any requirement would not apply to existing pipelines. To hold otherwise, would require rerouting of existing pipelines, many of which are located in urbanized areas and operating safely. This would also result in unnecessary significant costs to operators and the public, construction disruptions, and community inconvenience. In Southeast Pennsylvania, for example, it would cost tens of millions of dollars per mile to comply and impose extensive disruption to local communities. Moreover, requiring operators to reroute existing pipelines may result in the unnecessary disturbance of existing pipelines that are operating safely pursuant to the federal pipeline safety requirements, imposing an impermissible impact on interstate commerce and the transmission of critical products.

g. Valves

Under subsection (g), the Commission proposes several requirements related to the installation of valves. Particularly, the Commission proposes to require (1) emergency flow restriction devices ("EFRDs") on a main line at intervals not to exceed every 5 miles and (2) the installation of "valves based on a pipeline's proximity to schools, churches, hospitals, daycares, nursing homes, commercial facilities, industrial facilities, sport complexes and public parks within the outer most area of the LFL."

Part 195 already requires the installation of valves during construction based on location. 49 C.F.R. §§ 195.258, 195.260. More specifically, it requires that valves must be installed at the following locations:

> **(a)** On the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment in the event of an emergency.
>
> **(b)** On each line entering or leaving a breakout storage tank area in a manner that permits isolation of the tank area from other facilities.
>
> **(c)** On each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas.
>
> **(d)** On each lateral takeoff from a trunk line in a manner that permits shutting off the lateral without interrupting the flow in the trunk line.
>
> **(e)** On each side of a water crossing that is more than 100 feet (30 meters) wide from high-water mark to high-water mark unless the Administrator finds in a particular case that valves are not justified.
>
> **(f)** On each side of a reservoir holding water for human consumption.

49 C.F.R. § 195.260.

The federal regulations provide operators with discretion to determine valve spacing based on the unique conditions of their lines. *See West Goshen Twp. v. Sunoco Pipeline, L.P.*, Docket No. C-2017-2589346 (Recommended Decision entered Jul. 16, 2018) ("ASME B3 l.4 is neither a law nor a regulation, which the Commission can enforce per se. It is an engineering standard based upon the best engineering practices of the industry. The fact that it is not being adhered to can be considered by the Commission in its analysis as to whether section 59.33 of the Commission's regulations or section 1501 et. seq. of the Public Utility Code are violated, but there is no codification or incorporation of ASME B3 l.4 in Title 49 CPR Part 195, so I am not persuaded to find a violation of section 59.33 or a federal regulation based upon the distance of .9 miles over

the ASME B3 l.4 limit of 7.5 miles between valves alone. I am unpersuaded that the Commission should direct Sunoco to comply with ASME B31.4 and place a valve on the SPLP Use Area in order to keep linear distance between valves below 7.5 miles."), *affirmed Slip Op.* at 22 (Opinion and Order entered Oct. 1, 2018).

Moreover, PHMSA has recently finalized a new rule related to the subject of valves and rupture detection that is pending publication in the federal register. *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) (available at https://www.federalregister.gov/documents/2022/04/08/2022-07133/pipeline-safety-requirement-of-valve-installation-and-minimum-rupture-detection-standards). The new rule implements additional valve spacing requirements during construction that are fundamentally different from the Commission's proposed regulation (including by allowing valves to be spaced up to 15 miles apart for pipeline segments that could affect or are in HCAs, as defined in § 195.450, and 20 miles for pipeline segments that could not affect HCAs). To ensure that state regulations are compatible with federal regulations or that the state regulations do not impose unnecessary requirements, the Commission should defer to PHMSA's expertise and rulemaking effort.

In addition to the above, SPLP submits that the Commission's proposed regulation raises several additional concerns. First, the 5-mile requirement for the installation of EFRDs is arbitrary. The Commission has not provided evidence or a technical justification to support its assertion that the installation of an EFRD every 5 miles will serve or improve public safety. Moreover, the Commission has not established that the existing federal pipeline safety requirements, including PHMSA's more recent rulemaking, are deficient.

Secondly, the Commission's requirement to have a pipeline operator install numerous valve stations based on proximity to certain places of public assembly is ambiguous, and if strictly applied, overly burdensome. The facilities listed in 59.136(g) broadly include, among other locations, "commercial facilities," "sport complexes," and "public parks." Given the broad scope of these terms and the vague requirement to install valves "based on the pipeline's proximity" to these locations, an operator may be required to install a large number of valves, without any indication that the location of the valves provides a benefit to the public. The PUC has not sufficiently considered the enormous costs that may be imposed in order to achieve compliance with the proposed regulation.

In addition to the impracticability of complying with this requirement, the proposal would also create additional logistical issues. That is, the installation of the valve site itself raises additional concerns, related to eminent domain, electric hookups, which itself may require the use of eminent domain, stormwater management, and the possible installation of long driveways to allow authorized employee access to valve stations. In total, this requirement will create additional legal hurdles, disruption to the community, and significant compliance costs – without any justification or basis to support that this requirement will increase pipeline safety.

Rather than imposing valve spacing requirements, decisions related to valve spacing and the installation of EFRDs should be left to the managerial discretion of pipeline operators. The addition of valves and EFRDs, while appropriate in some circumstances, can introduce additional operational complexities for a pipeline. *See West Goshen Twp. v. Sunoco Pipeline, L.P.*, Docket No. C-2017-2589346 at (Recommended Decision entered Jul. 16, 2018). For example, valves being above grade can subject the pipeline to additional vandalism and security vulnerabilities.

SPLP submits that the requirements related to the location of valves and EFRDs should be based around high-consequence areas, as defined in 49 C.F.R. § 195.450, and should be determined, at an operator's discretion, based on scientific and engineering study, not an arbitrary 5-mile spacing requirement.

Finally, SPLP also objects to the extent this requirement could be applied to existing pipelines. To the extent that the Commission promulgates this regulation, the Commission should clarify that the onerous requirement of installing valves at 5-mile increments does not apply to existing pipelines. Any retroactive application to existing pipelines is inconsistent with federal law, and, it would be particularly inappropriate if the Commission seeks to impose these requirements on existing pipelines if they are undergoing merely minimal or minor changes or upgrades.

h. Vehicle Barriers

Subsection (h) seeks to require pipeline operators to install vehicle barriers at above-ground valve stations adjacent to the roadway. SPLP notes that certain valves have natural berms or barriers that would render an additional vehicle barrier unnecessary. Thus, the Commission should modify this requirement to provide exceptions based on the physical characteristics of the valve station. Moreover, any requirement to install vehicle barriers at valve stations adjacent to the roadway should specify that it should only install a vehicle-barrier based on the largest-anticipated vehicle.

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

The Commission proposes to establish several requirements for hazardous liquid public utilities using Horizontal Directional Drilling ("HDD"), Trenchless Technology ("TT"), or direct

buried methodologies to construct new pipelines, or convert, relocate, replace, or otherwise change existing pipelines. This includes the following requirements:

- That pipeline operators provide notice to the Pipeline Safety Section and the affected public at least 30 days prior to commencement;

- For pipelines with a bore diameter eight inches or greater, a bore depth greater than ten feet, or pipeline length greater than two hundred and fifty feet, the pipeline operator shall (1) consider geological and environmental impacts and comply with the Pennsylvania Department of Environmental Protection's ("PA DEP") Trenchless Technology Guidance and (2) conduct a geotechnical evaluation of subsurface conditions every 250 feet using certain techniques;

- That pipeline operators take certain actions to mitigate risk, including (1) mitigating all adverse impacts as soon as practicable, but no later than 30 days after identification of the impact if anomalous conditions exist, (2) perform pipeline shut in or pressure reductions, and (3) comply with 49 C.F.R. § 195.55;

- That pipeline operators provide the Commission's Pipeline Safety Section with certain information upon request;

- That, where a pipeline is near a private and/or public water source and is utilizing HDD, TT, or other direct buried methodologies, a pipeline operator shall:

    - Comply with relevant PA DEP regulations and Trenchless Technology Technical Guidance;

    - Identify public and private water supply wells within ½ mile of the HDD or TT construction or [operations and maintenance ("O&M")] activities, surface water intakes within one mile, and other water supplies potentially at risk;

    - Identify public and private water supply owners within 1,000 feet of the HDD or TT construction or O&M activities;

    - Notify the identified owners prior to the HDD or TT construction or O&M activities and provide them with an opportunity to have their water supplies tested before, during and after the activity; and

- Where such activities cause adverse impacts to private and/or public water supplies, the pipeline operator shall:

    - Comply with relevant PA DEP regulations and Trenchless Technology Technical Guidance;

- Immediately notify the Commission's Pipeline Safety Section and the affected well owner immediately, but not later than 24 hours;

- Supply the water supply owners with alternative clean water sources immediately, but no later than 24 hours; and

- Implement corrective action under PA DEP regulations, including restoration or water supply replacement.

SPLP will address and provide its comments on each subsection in turn.

a. Geological and Environmental Impacts

Regarding the requirements for consideration of geological and environmental impacts and geotechnical evaluations of subsurface conditions, SPLP recommends that the Commission delete "at a minimum of every 250 feet using seismic, gravitational and electric resistivity" in section 59.137(c)(2) and insert "using appropriate *geophysical*…"[13] Also, SPLP proposes deleting "with results of high resolution" and inserting "as recommended by a Professional Geophysicist, Professional Geologist or Professional Geotechnical Engineer licensed in that field." In addition, in section 59.137(c)(3), SPLP submits that the Commission should replace "geological" with "geotechnical" and delete the phrase "in paragraph (2)" and insert "as recommended by the Professional Geophysicist, Professional Geologist or Professional Geotechnical Engineer in paragraph (2)." Both changes remove any arbitrary requirements from the Commission's proposal and allow operators to coordinate with professional engineers in the field who are best equipped

[13] An important distinction needs to be made between the terms "geotechnical" and "geophysical." A geotechnical analysis or investigation determines the current soil status and subsurface conditions through soil samples to determine the feasibility of construction. Geophysical analysis or investigation seeks to obtain a better understanding of subsurface conditions, without consideration of building upon it, through graphs, maps, and images produced through seismic, gravitational, or electrical resistivity techniques. Geophysical testing does not include taking soil samples. In this instance, the Commission inadvertently refers to "geotechnical evaluation" while listing geophysical assessments of subsurface conditions. *See* Annex, § 59.138(c)(2).

to make such decisions based on the facts of each unique situation and professional training and experience.

SPLP is also concerned with section 59.138(c)(4), particularly with the Commission's proposed 30-day period for requiring operators to maintain the integrity of the affected pipeline by mitigating all adverse impacts, including by performing shut ins or implementing pressure reductions. First, a 30-day period of time may not be sufficient to begin mitigation procedures due to right-of-way limitations and other practical considerations. Moreover, the requirement to perform a shut in or implement a pressure reduction is arbitrary and inconsistent with federal regulations. Where there is no risk to safety, there is no basis in safety or science to require a shut in or pressure reduction. Such requirements only apply when there is a safety related condition warranting such action. 49 CFR § 195.452. Any action taken in response to any geological issues found should be based on data and technical assessments instead of mandated by inflexible regulations.

In addition, the PUC has failed to provide support for its requirement to perform geotechnical sampling every 500 feet and to maintain such information. The decision to perform geotechnical sampling should be based on technical expertise and advice from professional engineers and geologists. To otherwise impose arbitrary requirements would create burdensome costs without providing any meaningful benefit to the public.

Lastly, to the extent the Commission seeks to rely upon the PA DEP's Protection Trenchless Technology Technical Guidance and any updates thereto in section 59.138(c)(1), the Commission exceeds its authority, violates the non-delegation doctrine, and is, thus, unconstitutional. *See Protz*, 161 A.3d at 838-39; *see also* Section III.B.3, *supra*.

b. Protection of Water Wells and Supplies

SPLP is concerned with the proposed requirements that mandate operators to take certain actions when water wells of supplies are within the vicinity of construction or maintenance that requires HDD, TT, or other direct buried methodologies. These requirements impose certain identification, notification, and sampling requirements. SPLP recommends that the Commission forgo imposing these requirements and defer to the PA DEP for the regulation of water wells and supplies.

The quality and location of water supply sources is within the jurisdiction of PA DEP, not the Commission. As set forth in the Pennsylvania Safe Drinking Water Act:

> The [Department of Environmental Protection] shall adopt and implement a public water supply program which includes, but is not limited to, those program elements necessary to assume State primary enforcement responsibility under the Federal act. The public water supply program shall include, but not be limited to, maximum contaminant levels or treatment technique requirements establishing drinking water quality standards, monitoring, reporting, recordkeeping and analytical requirements, requirements for public notification, standards for construction, operation and modifications to public water systems, emergency procedures, standards for laboratory certification, and compliance and enforcement procedures.

35 P.S. § 721.5(a). Moreover, PA DEP is tasked with developing and implementing procedures, including rules and regulations, for monitoring, inspecting and maintaining an inventory of public water systems. 35 P.S. § 721.5(b). The Commission does not have authority to issue regulations regarding the monitoring and inventory of public or private water systems and should defer to PA DEP on this issue. *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 713-14 (Pa. Cmwlth. 2010) ("'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.'") (*Pickford*).

In addition to the jurisdiction of the PA DEP, these proposed regulations are also unnecessarily duplicative because they refer to regulations that already apply to hazardous liquid public utilities. *See* 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines), 25 Pa. Code Chapter 102 (relating to erosion and sediment control), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), and 25 Pa. Code Chapter 109 (relating to safe drinking water). The Commission cannot expand its jurisdiction by incorporating the regulations of another agency when the Commission has no such authority in the first place. *Pickford*, 4 A.3d at 713 ("As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code… Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.").

Moreover, notwithstanding these concerns, this proposal presents practical concerns for pipeline operators. The location of public and private water supplies is not public information, and such information is only available to the well owner and the PA DEP. Pipeline operators do not have the authority to require public/private owners of water supplies to share location information. Thus, rather than placing the burden on the pipeline operator, the appropriate vehicle to identify water supply sources should be coordinated through the PA DEP.

SPLP would also note that there appears to be conflicting requirements between section 59.138(d)(2) and (3). That is, subsection (2) requires the pipeline operator to identify public and private water supply wells within ½ mile of the HDD or TT construction or O&M activities, but subsection (3) requires the pipeline operator to identify public and private water supply owners

within 1,000 feet of HDD or TT construction or O&M activities. To the extent that the Commission adopts this requirement, SPLP recommends that subsection (2) be modified to only require a pipeline operator to identify public and private water supplies within "1,000 feet" of HDD, TT, or O&M activities. It is unlikely that HDD or TT operations would impact any water supplies beyond 1,000 feet.

Relatedly, SPLP is also concerned with the language that would require pipeline operators to identify "water supplies deemed at potential risk due to geological structures." This language is not based on any industry standard and is not defined by the proposed regulations. Moreover, the proposed language does not impose any distance requirement at which a pipeline operator must identify water supplies at potential risk due to geological structures. As a result, the proposed requirement is vague, overly broad, and does not provide clear expectations for compliance.

Lastly, to the extent the Commission seeks to rely on PA DEP's regulations and its Protection Trenchless Technology Technical Guidance and any updates thereto in section 59.138(d)(1), the Commission exceeds its authority, violates the non-delegation doctrine, and is, thus, unconstitutional. *See Protz*, 161 A.3d at 838-39; *see also* Section III.B.3, *supra*.

c. Adverse Impacts to Water Wells and Supplies

In addition to its proposed identification and notification requirements, SPLP reasserts its concern regarding the Commission's lack of jurisdiction to issue these regulations. The Commission should defer to PA DEP and its procedures as they have the appropriate jurisdictional authority and technical expertise in these matters.

Moreover, to the extent the Commission seeks to rely upon the PA DEP's regulations and its Protection Trenchless Technology Technical Guidance and any updates thereto in section

59.138(e)(1), the Commission exceeds its authority, violates the non-delegation doctrine, and is, thus, unconstitutional. *See Protz*, 161 A.3d at 838-39; *see also* Section III.B.3, *supra*.

9. Proposed Section 59.139 – Pressure Testing

The Commission seeks to establish several pressure testing requirements for intrastate pipelines operating in the Commonwealth. These proposed requirements include:

- Hydrostatic testing of pipeline installed before 1970 every 10 years and in-line inspection ("ILI") assessments every 2 years;
- Hydrostatic testing of pipeline installed after 1970 every 3 years;
- ILI assessments every year for pipelines that have been placed back in service after a leak has been detected until 6 years pass without a leak;
- Hydrostatic testing and ILI assessments whenever a new pipeline is going to be placed into service, or whenever an existing pipeline is converted relocated, replaced, or otherwise changed;
- Hydrostatic testing when a pipeline, or segment thereof, has its maximum operating pressure ("MOP") increased; and
- Notification to the Commission's Pipeline Safety Section and public officials at least five business days "prior to starting a test," with shorter notice permitted if necessary to maintain continuity of service during emergencies.

SPLP has several significant concerns with these requirements that are addressed more specifically below.

a. Hydrostatic Testing and Reassessments Generally

With respect to the pressure testing requirements set forth in subsection (b), SPLP submits that they are inconsistent with PHMSA's requirements. PHMSA currently requires the following:

- Pressure testing prior to placing a pipeline into service or returning a pipeline to service after it has been replaced, relocated, or otherwise changed (49 C.F.R. § 195.302);
- For onshore line pipe that can accommodate in-line inspection tools and is not subject to the integrity management requirements under section 195.452, the operator must initially assess each pipeline

segment by 2029 and every 10 years thereafter using appropriate in-line inspection tools or, where impractical, a pressure test, external corrosion tests, or other technology that can provide an equivalent understanding (49 C.F.R. § 195.416); and

- For HCAs, the pipeline operator must establish a 5-year assessment interval to continually assess the pipe's integrity using a combination of in-line inspection tools, pressure testing, external corrosion direct assessment, or other technology providing equivalent understanding (49 C.F.R. § 195.452(j)).

PHMSA's requirements were established based on industry experience and technical input. The Commission has failed to show that additional testing would significantly increase safety beyond what is already required by Part 195 or that the federal pipeline safety requirements are insufficient. Even studies on pre-1970 pipe have proven that a threat can be stable and non-time dependent. Conversely, it is well established in the industry that frequent and periodic testing can be destructive to the pipes and do more harm than good.[14]

The proposed regulation also illegally – and without supporting evidence – removes the operator's "managerial discretion"[15] to determine the testing methodology most appropriate for each segment of pipe tested. The Commission's attempt to remove this discretion contradicts the federal requirements. As stated by PHMSA:

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[14] Industry experts have emphasized the limitations of hydrostatic testing and highlighted by comparison the benefits of in-line inspection technologies. *Kiefner and Maxey, The Benefits and Limitations of Hydrostatic Testing (2002)* ("First and foremost [. . .], the use of an appropriate in-line-inspection tool is always to be preferred to hydrostatic testing if there is sufficient confidence in the ability of the tool to find the defects of significance. [. . .] The industry now has access to highly reliable tools for dealing with corrosion-caused metal loss, and tools are evolving rapidly to detect and characterize cracks."); *see also Kiefner, Role of Hydrotesting Testing in Pipeline Integrity Assessment (2003)* ("There are limitations to the use of hydrostatic testing to revalidate integrity. Some are economic, some are technical, and some are economic and technical in nature [. . .] Repeated test failures may actually reduce confidence in the final margin of safety demonstrated by the test, and such failures will add significantly to the cost of the test and the time out of service,").

[15] See footnotes 9 and 12 above stating that the courts have long held that under the Public Utility Code, which is the law under which the Commission has the power to establish regulations, the Commission may not invade "managerial discretion" and start functioning as a "super-board of directors" making business decisions, particularly when, as here, there is no evidence to support that there was an abuse of managerial discretion. *See also Driscoll*, 21 A.2d at 916 (Pa. Supreme Court decision). Because the Commission cannot remove managerial discretion directly under its enabling statute, it stands to reason that it cannot remove such discretion indirectly through these proposed regulations.

> To assess a pipeline's integrity, operators generally choose between three methods of testing a pipeline: in line inspection (ILI), pressure testing, and direct assessment (DA). In 2017, PHMSA estimates that slightly over 90 percent of the hazardous liquid line mileage in HCAs is already piggable and almost 90 percent of these lines were being inspected with ILI tools.
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> ***
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> Operators perform ILIs by using special tools, sometimes referred to as ''smart pigs,'' which are usually pushed through a pipeline by the pressure and flow rate of the product being transported. As the tool travels through the pipeline, it identifies and records potential pipe defects or anomalies. Because these tests can be performed with product in the pipeline, the pipeline does not have to be taken out of service for testing to occur, which can reduce cost to the operator and possible service disruptions to consumers. Further, ILI is a non-destructive testing technique, and it can be less costly on a per-unit basis to perform than other assessment methods. However, a very small portion of hazardous liquid pipe segments cannot be inspected through ILI because they are too short in length, which makes getting accurate ILI tool results impractical due to tool speed variations. Other hazardous liquid pipelines might not be inspected through ILI because they do not have enough operating pressure or flow rate to run the tool.
>
> Pipeline operators typically use pressure tests to determine the integrity (or strength) of the pipeline immediately after construction and before placing the pipeline in service. In a pressure test, a test medium (typically water) inside the pipeline is pressurized to a level greater than the normal operating pressure of the pipeline. This test pressure is held for a number of hours to ensure there are no leaks in the pipeline.
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> ***
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> Both regulators and operators have expressed interest in improving ILI methods as an alternative to hydrostatic testing for better risk evaluation and management of pipeline safety. Hydrostatic pressure testing can result in substantial costs and occasional disruptions in service, whereas ILI testing can obtain data that is not otherwise obtainable via other assessment methods, such as pipe wall loss, dents, and cracking.

84. F. R. at 52265-66. In the proposed rulemaking, the Commission has not adequately justified why both hydrostatic and ILI testing must be performed at different specified time intervals for

each pipe segment. Moreover, the Commission has failed to justify why it, and not the pipeline operator, is best suited to make that determination without consideration of the pipeline characteristics, operational history, and relevant integrity threats.

Lastly, the potential costs of these requirements are concerning. For example, depending on the length of the run and other factors, a single in-line inspection can cost anywhere between $200,000 to $1 million, in addition to labor and vendor costs. The pipeline operator would also have to take the pipeline out of service for multiple weeks at a time to perform a pressure test, which would disrupt commodity sales, impair service, and hamper the reliable operation of these pipelines. These additional costs are unnecessary in light of the existing federal requirements, which appropriately balance pipeline safety, operator discretion, and reliable operation of these pipelines.

b. Hydrostatic Testing in HCAs

This proposed regulation seeks to require that all new pipeline, including converted, relocated, replaced, or otherwise changed pipeline, or a reactivated segment of pipeline be hydrostatically tested and reassessed using in-line inspection to substantiate the current or proposed maximum operating pressure. The Commission also seeks to require hydrostatic testing where the maximum operating pressure is to be increased.

SPLP submits that the title of this section does not appropriately reflect what this regulation seeks to address. While it mentions the term high-consequence areas (HCA) in the title, HCA is not referred to at all in the proposed regulation. The proposed regulation also refers to in-line inspection and is not limited to hydrostatic testing, as the title of the regulation would suggest. While SPLP does not believe these regulations should be adopted by the Commission, the title of this section should be renamed consistent with what it intends to address.

Additionally, the Commission's regulation is unnecessary in light of the federal requirements. 49 C.F.R. §§ 195.300, *et seq*., sets forth extensive pressure testing requirements for new pipe and pipe that has returned to service, including replaced, relocated, or otherwise changed pipe. *See* 49 C.F.R. § 195.302. Importantly, the federal requirements allow for risk-based testing methods to ensure pipeline integrity, rather than the prescriptive solutions that the Commission seeks to establish in this rulemaking. Likewise, converted pipelines are already required to be pressure tested in accordance with 49 C.F.R. § 195.5. Moreover, the Commission has not adequately justified why both hydrostatic and ILI testing must be performed for new, converted, replaced, or relocated pipelines. The Commission should defer to the federal standards, which are based on stakeholder feedback and industry best practices.

10. Proposed Section 59.140 – Operation and Maintenance

This proposed regulation addresses numerous requirements related to a pipeline operators' emergency procedures manual and activities, liaison activities with emergency responders, liaison activities with school administrators, public awareness communications, line markers, inspections of pipeline rights-of-way, and leak detection and odorization. SPLP addresses each subsection in turn.

a. Emergency Procedures Manual and Activities

In subsection (b), the Commission proposes to require pipeline operators to establish and maintain liaison with emergency responders and consult with them to develop an emergency procedures manual that addresses (1) reasonable and practicable steps to inform emergency responders of the practices and procedures to provide them with relevant pipeline information, (2) the development of a continuing education program for emergency responders and the affected public to inform them of the pipeline location, potential emergency situations, and safety procedures, and (3) table-top drills to be conducted twice a year and a response drill conducted

annually simulating a pipeline emergency that must be conducted on different pipelines and in each geographic area where the pipeline is located.

As discussed previously, SPLP reasserts its concerns with the definition of "emergency responders." Importantly, the lack of specificity and vagueness in describing the term "emergency responders" will present challenges in implementation. As defined, the Commission's new regulation would require pipeline operators to communicate with "local fire, local police and local emergency medical services, county hazmat teams, Department of Emergency Services and 911 centers; and other emergency local, city, county or state officials or representatives." *See* Annex, § 59.132. Requiring a pipeline operator to communicate and consult with that many agencies, however, would be unduly burdensome, time consuming, and costly. It would hamper the ability of the pipeline operator to craft a reasonable emergency response plan in an efficient manner.

Moreover, many of the entities included in the definition of emergency responders, particularly local police and firefighters and other public officials, do not have responsibility over developing emergency response plans; that is the responsibility of County and Township Emergency Management Coordinators. Thus, rather than require pipeline operators to coordinate the development of emergency procedures manual with local emergency response agencies and elected officials who have no jurisdiction over emergency response planning, it would be more appropriate to require pipeline operators to communicate with those agencies or officials actually tasked with emergency response planning. This will help to streamline the development of emergency procedures and ensure that all necessary officials are involved.

In addition to issues with the potential scope issues, section 59.140(b), is duplicative of the PHMSA requirements, particularly 49 C.F.R. § 195.440 and API RP 1162 (incorporated by

reference at 49 C.F.R. § 195.3). More specifically, section 195.440(d)-(f) already requires the development of a continuing public education program, which includes the following:

> (d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:
>
> (1) Use of a one-call notification system prior to excavation and other damage prevention activities;
>
> (2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;
>
> (3) Physical indications that such a release may have occurred;
>
> (4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and
>
> (5) Procedures to report such an event.
>
> (e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.
>
> (f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid or carbon dioxide.

49 C.F.R. § 195.440(d)-(f). The Commission has failed to demonstrate that the federal requirements related to the development of emergency procedures are insufficient. SPLP submits that the Commission's proposal is unnecessary in light of the requirements set forth in section 195.440. Moreover, to the extent that the Commission is requiring something in addition to the federal requirements, the Commission's proposal is overly broad and unreasonably vague.

Regarding section 59.140(b)(3), SPLP also submits that there is significant ambiguity as to the number of table-top and response drills that must be conducted annually. The proposed regulation states that "table-top drills and response drills must be conducted on different pipelines and products and in each geographic area where the hazardous liquid public utility pipelines are

located." *See* Annex, § 59.140(b)(3). The Commission, however, fails to define the term "geographic area" and does not explain what it means by "different pipelines" and "different products." This proposed regulation is unreasonably vague and lacks any clear direction to indicate what is actually required to achieve compliance with this requirement. *Watkins*, 740 A.2d at 764 ("A statute that forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process. Only if the statute contains reasonable standards to guide prospective conduct does it satisfy the requirements of due process.").

SPLP submits that if a pipeline operator must conduct 2 table-top and 1 response drill every year in each municipality along the entire route of a pipeline, such a requirement would be unduly burdensome and extremely costly. The Commission has not provided any basis to justify such a burdensome requirement. In addition, pipeline operators may have difficulty getting local municipalities to participate in such frequent drills, particularly given that some locations are rural and emergency responders are volunteers. If implemented, operators may have difficulty complying with this requirement. As a result, to the extent that the Commission adopts this requirement, SPLP recommends that the requirement be amended to require only that pipeline operators offer drills to municipalities.

Consistent with this request, SPLP recommends that the Commission revise section 59.140(b)(3) to state:

> Tabletop drills to be offered once a year in each county to simulate a pipeline emergency. The table-top drills must be conducted considering the actual products in the utilities' pipelines in the area and in each county where the hazardous liquid public utility's pipelines are located. Emergency responders having public safety jurisdiction along the pipeline right of way shall be invited to participate in the Table-Top drills.

b. Liaison Activities with Emergency Responders

In section 59.140(c), the Commission proposes to require that pipeline operators communicate and conduct liaison activities, as required by 49 C.F.R. § 195.402(c)(12), at least twice a year with emergency responders. The Commission also seeks to mandate that such liaison activities be conducted in person, unless the pipeline operator has taken efforts to schedule an in-person meeting and one cannot be arranged. In that case, the pipeline operator can either host a telephone conference with emergency responders or deliver required information by certified mail. The Commission also seeks to require pipeline operators to conduct an annual hazard assessment zone analysis and provide such information to emergency responders that have executed a non-disclosure agreement within 60 days of completing the analysis.

As a general matter, SPLP submits that the Commission should defer to the federal public awareness standards and procedures as required by 49 C.F.R. § 195.440. Section 195.440 requires that pipeline operators develop and implement a written continuing public education program in accordance with provisions of industry standard, API RP 1162 (2003), incorporated by reference at 49 C.F.R. § 195.3. For its part, API RP 1162 provides guidance for pipeline operators for communicating with emergency responders and the public. It includes industry best practices and recommendations for developing a public awareness program, providing relevant information to the public, and updating and evaluating the program's effectiveness. *See, e.g.,* API RP 1162 (2003). The federal requirements for operators to maintain public awareness programs are sufficiently comprehensive and the PUC has not demonstrated otherwise.

Moreover, API RP 1162 provides pipeline operators with critical discretion to structure their public awareness programs in a way that appropriately balances the need for stakeholders to have sufficient information about a pipeline without flooding stakeholders, including emergency

responders and the public, with too much information. This balance is important because the more focused and tailored the information about a pipeline is, the easier it is to understand. The Commission should defer to the federal requirements which provides pipeline operators with discretion when developing their public awareness programs.

In addition, consistent with API RP 1162's recommendation that pipeline operators continually update their public awareness programs, SPLP and Energy Transfer collaborate with a research company to measure whether their public awareness program is effective in achieving its communications objectives in three key areas: outreach, knowledge and behavior. Data in 2019 revealed that 56% of public officials prefer written material as compared to only 12% that prefer face-to-face meetings. For emergency officials, 55% indicated that they prefer written materials as compared to 21% who prefer face-to-face meetings. Moreover, 83% of emergency officials and 77% of public officials agreed that pipeline operators provide them with the information they need for emergency planning purposes. The Commission should defer to the federal public awareness requirements, which already require pipeline operators to develop a comprehensive public awareness program that includes communications with relevant stakeholders.

In addition to the comprehensive federal requirements already in place, SPLP also has concerns with the requirement in subsection (c)(3), which would require pipeline operators to conduct an annual hazard assessment zone analysis and present its findings to emergency responders. A "hazard assessment zone analysis" is undefined in the proposed regulations and has no basis in the federal pipeline safety regulations. As a result, SPLP is unable to discern what would be required to comply with this requirement.

Additionally, it is also unclear why the assessment would need to be conducted annually. The Commission has not demonstrated that there is any benefit associated with conducting an

annual assessment or that any associated benefits with the assessment would outweigh the associated costs.

Compounding those issues, the lack of specificity and vagueness in describing the term "emergency responders" also creates additional challenges for operators attempting to implement this requirement. As written, operators would be expected to provide this information to a wide range of "emergency responders," many of which are not tasked with emergency planning. Additionally, it may be practically unworkable to obtain nondisclosure agreements with every official for every jurisdiction where a pipeline is located. The information that may be required under the proposed regulation is also broad, which may create confidentiality and security issues. The Commission has not demonstrated that this assessment or the requirement to share such broad safety information with a large group of individuals provides any safety benefit to the public. Nor has the Commission sufficiently considered the risk associated with the release of this type of highly confidential and sensitive security information. The framework proposed by the Commission is unworkable and will be costly and burdensome for pipeline operators to implement.

Likewise, the requirement to maintain records related to emergency responder liaison activities for seven years from the date of the event is beyond the current requirement of five years established by API RP 1162, as incorporated by 49 C.F.R. §§ 195.440 and 195.3. No clear benefit can be discerned as a result of increasing this document retention period. The federal standard of five years is sufficient.

Altogether, the requirements of this section create costly and burdensome barriers to compliance, which will have detrimental impacts to the operation of pipelines. In no uncertain terms, the frequency of outreach required is dramatically beyond what is currently required by the federal pipeline safety regulations and will require significant costs to implement. SPLP is

concerned that the Commission has not adequately studied whether there is any benefit to these proposed regulations, the costs necessary to comply with all these requirements, the labor involved, and the difficulty in interpreting the requirements. As a result, SPLP recommends that the Commission reject these proposed regulations in favor of deferring to the comprehensive federal requirements that are already in place.

c. Liaison Activities with School Administrators

In proposed subsection (d), the Commission seeks to apply additional requirements to pipeline operators that have school buildings with classrooms or facilities where students congregate located within 1,000 feet, or within the LFL, of the pipeline. This includes requiring the pipeline operator to maintain records of the school facilities and provide them to the Commission's Pipeline Safety Section, upon request. Additionally, the proposed regulation seeks to require pipeline operators to provide records to school administrators, upon request, including, among other things, a description of the pipeline or pipeline facilities, the product(s) transported by the pipeline, and information on how to recognize, report, and respond to a product release. This subsection also requires these pipeline operators to attend a regularly scheduled meeting of school administrators, upon request by the school administration.

As an initial matter, SPLP is concerned about the potential disclosure of confidential security information required by this proposed subsection. This requirement, which includes providing a broad category of information, could potentially expose critical infrastructure information. SPLP recommends that this section be revised to specifically not require the disclosure of such information.

Additionally, it is important that the Commission define the term "schools." Without clarification, it is unclear whether this term is limited to primary and secondary schools, or whether

it also includes daycares, pre-schools, and post-secondary education facilities at universities and colleges. SPLP recommends that the Commission clarify this term so that operators clearly understand what is required for compliance purposes.

Lastly, SPLP is concerned with the Commission's proposal to require pipeline operators to attend a regularly scheduled meeting of school administrators, upon request. As drafted, this section gives no consideration to a pipeline operator's inability to attend such a meeting in the absence of sufficient notice. Moreover, the proposed regulation does not limit the number of school administrator meetings that a pipeline must attend if requested. In other words, a school administrator could potentially request pipeline operators to attend every regularly scheduled school meeting. This would create burdensome compliance obligations that may not otherwise result in any perceptible benefit to the community. Accordingly, this requirement must be narrowed in scope. SPLP recommends that the Commission revise this requirement to allow pipeline operators to offer to attend an annual meeting with school administrators, so that the operator can provide all necessary information in an efficient and reasonable manner.

d. Public Awareness Communication Requirements Beyond API RP 1162.

In subsection (e), the Commission sets forth the following proposed requirements:

- That a hazardous liquid public utility provide baseline messages, as prescribed in Table 2-1 of API RP 1162, with additional frequency and supplemental efforts as determined by specifics of pipeline segment or environment under Section 6 of API RP 1162:
    - To the affected public at least twice a year;
    - To emergency responders at least twice a year; and
    - To public officials annually.
- That a hazardous liquid public utility shall:

- Hold at least one open house or group meeting annually whereby the affected public can receive information or an overview as part of the hazardous liquid public utility's Supplemental Activities for the Affected Public, as prescribed in Table 2-1 of API RP 1162;

- Meet with emergency responders once per quarter to discuss emergency response as part of the hazardous liquid public utility's Baseline Activities for Emergency Officials, as prescribed in Table 2-1 of API RP 1162; and

- Meet with public officials annually, upon request.

- That a hazardous liquid public utility shall evaluate its written continuing public education program annually, with an update provided to the Pipeline Safety Section for review for compliance with 49 C.F.R. § 195.440.

In contrast to the Commission's requirements, the federal requirements are based on API RP 1162 (2003), which is incorporated at 49 C.F.R. §§ 195.440 and 195.3. API RP 1162 requires operators to provide baseline messages to residents located along the pipeline right-of-way and places of congregation once every 2 years, emergency officials once a year, and public officials once every 3 years. API RP 1162 at 10-11. API RP 1162 also recommends that operators provide baseline messages through the targeted distribution of print materials to public officials and residents along the pipeline right-of-way. Further, API RP 1162 recommends that operators participate in in-person meetings with emergency responders but also indicates that this coordination can also be done through the targeted distribution of print materials. *Id*.

SPLP has concerns with the increased frequency of baseline messaging and the requirement for in-person meetings as contemplated by section 59.140(e). First, the federal regulations appropriately provide pipeline operators with discretion to determine what elements are part of its baseline and supplemental public awareness program. This discretion ensures that a pipeline operator can offer targeted outreach with affected stakeholders, ensuring that the information is appropriately tailored while not overwhelming stakeholders. Additionally, the

meetings included in the proposed requirements as baseline activity are specifically listed as supplemental activities in API RP 1162. The federal requirements are sufficient and the Commission should defer to those requirements, which were developed based on industry standards and best practices.

Moreover, there is no indication that increasing the frequency of baseline messaging and in-person meetings will sufficiently benefit the public or outweigh the substantial burdens imposed upon pipeline operators to comply with this requirement. For example, pipeline operators already perform outreach to public officials as part of the API RP 1162 requirements. In 2019, SPLP and Energy Transfer invited 8,929 public officials in Pennsylvania to attend face-to-face liaison meetings. Only 159 of those public officials attended a liaison meeting – a 1.8% attendance rate. These meetings with public officials will likely only provide limited benefit to the community given the low historical attendance rates. Conversely, the Commission has not provided any justification that providing baseline messages to the affected public four times more than what is recommended in API RP 1162, twice as often to emergency responders, and three times as often to public officials, will increase pipeline safety. Nor has the Commission considered whether any meaningful safety benefit will substantially outweigh the costs associated with this requirement.

Ultimately, the Commission should defer to the existing requirements set forth in API RP 1162 as they provide appropriate discretion and flexibility for pipeline operators to communicate with stakeholders. Notwithstanding these concerns, the Commission should, at a bare minimum, allow pipeline operators to consider other forms of communication, with in-person meetings being one potential method to communicate with the applicable groups in order to satisfy the proposed baseline messaging requirements.

e. Line Markers

In subsection (f), the Commission seeks to require pipeline operators to place line markers for buried and above-ground pipelines along a pipeline right-of-way so that 2 line markers can be visible in either direction at any point while standing at ground level in the right-of-way, except in urban areas where such placement is impractical, in which case low-profile markers shall be used. Additionally, the Commission also seeks to require operators to place line markers at either side of a water crossing and at all above-ground pipeline appurtenances.

SPLP submits that the Commission should defer to the federal requirements set forth in 49 C.F.R. § 195.410, which sets forth sufficient requirements for the content and location of line markers. The federal standard requires "markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known." 49 C.F.R. § 195.410(a)(1). It also appropriately provides exceptions for buried pipelines that are offshore, or at crossings of or under waterways or other bodies of water, and heavily developed urban areas where marker placement is impractical. *See* 49 C.F.R. § 195.410(b).

The Commission's additional requirements, which requires having markers visible in both directions at any point on the line, will likely burden both pipeline operators and public stakeholders, including homeowners and farmers. For instance, even the use of low-profile markers in urban areas does not remedy the impracticality of traditional markers in these areas. Likewise, the proposed regulations do not make an allowance for farm fields. Line markers can damage farm equipment and it is very common for pipelines to cross corn fields where the markers will not be visible. The proposed requirement also does not consider that it may be burdensome for a pipeline operator to place a line marker at every above ground location. The Commission

has not provided any justification to support that line markers, in addition to those already required by the federal pipeline safety standards, will increase safety. As a result, the Commission should defer to the federal standards in 49 C.F.R. § 195.410.

f. Inspection of Pipeline Rights-of-Way

In addition, the Commission seeks to require, as part of subsection (g), that pipeline operators inspect pipeline facilities in non-HCAs using ground patrol at least twice a year and in HCAs using ground patrol at least 4 times a year. The Commission also seeks to impose limits on the required ground patrols by requiring these patrols to inspect along the right-of-way to ascertain surface conditions on or adjacent to the right-of-way and mandating that the patrol path cannot exceed 25 feet from the center of the right-of-way.

49 C.F.R. § 195.412 already provides requirements for inspections of pipeline rights-of-way. Importantly, the federal standard provides operators with the flexibility to determine which patrols are most appropriate under the circumstances. In relevant part, it states:

> Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

49 C.F.R. § 195.412(a). The federal standard provides sufficient frequency and discretion to pipeline operators to ensure that existing pipelines are adequately inspected.

Conversely, the proposed standard is unreasonably burdensome by requiring specific ground patrols multiple times per year. While ground patrol is an effective tool to periodically monitor geologic conditions after severe weather events in discrete zones, four times per year is excessive – particularly when the federal standard already requires pipeline operators to observe the pipeline 26 times per calendar year via a diverse array of methods. The Commission has not

provided a justification for imposing burdensome and costly additional ground patrol requirements.

g. Leak Detection and Odorization

As part of subsection (h), the Commission seeks to require pipeline operators to design and install a leak detection system that is "a robust, Real Time Transient Model, under API RP 1130, capable of identifying small leaks." *See* Annex, § 59.140(h). It also requires that any computational pipeline modeling system ("CPM") "be designed with high sensitivity to commodity releases" and installed within 5 years. Failure to meet this requirement within 5 years would require the hazardous liquid public utility to odorize all highly volatile liquid ("HVL") pipelines.

SPLP has several significant concerns with this proposed regulation. Most notably, PHMSA has recently issued a final rule that already sets forth deadlines for pipelines to implement leak detection and requires that any CPM system must be designed in accordance with API RP 1130 (incorporated by reference at 49 C.F.R. § 195.3). *See* 49 C.F.R. §§ 195.134, 195.444; *see also Pipeline Safety - Safety of Hazardous Liquid Pipelines*, 84 F.R. at 52295-96. More specifically, the PHMSA standard requires pipelines constructed prior to Oct. 1, 2019, to install a leak detection system that complies with 49 C.F.R. § 195.444 by Oct. 1, 2024. 49 C.F.R. § 195.134. Given the applicability of the existing federal standard, the Commission's proposal is unnecessary.

Moreover, the Commission's proposal would require that any pipeline leak detection system be designed as a Real Time Transient Model under API RP 1130. This is inconsistent with API RP 1130, which allows for operators to adopt different methods to meet the leak detection requirements. As stated by PHMSA when issuing its final rule:

> Certain commenters questioned the methods of leak detection that PHMSA would require to comply with this provision. PHMSA notes that negative pressure wave monitoring, real-time transient modelling, or other external systems are not necessarily required to comply with the rule. The costs of using or installing these leak detection system components were not explicitly analyzed in the RIA; however, operators may voluntarily choose to use these components, as well as any others, to comply with the leak detection requirements of the rule.

Pipeline Safety - Safety of Hazardous Liquid Pipelines, 84 F.R. at 52285. The Commission has provided no basis, technical or otherwise, for restricting the flexibility provided by the federal regulations.

Additionally, the Commission's requirement is inconsistent with current industry standards and best practices. API RP 1130, as incorporated by 49 C.F.R. §§ 195.3, 195.134, and 195.444, sets forth a variety of considerations and factors that a pipeline operator should take into account when determining what computational pipeline modeling system is appropriate for their pipeline operations. *See* API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids: Pipeline Segment," Section 4.2, "Selection Criteria," 3rd edition (2007). In other words, Real Time Transient Models are not the only solution to meeting federal leak detection requirements. Indeed, there is a new Statistical CPM that may be appropriate for some pipeline operators. As a result, the Commission's requirement is not only in conflict with federal requirements, but it is also arbitrary and inconsistent with current industry practices. A prescriptive solution requiring a Real-Time Transient Model is not appropriate.

Furthermore, the Commission's proposal states that any leak detection system must be "… capable of identifying small leaks." *See* Annex, § 59.140(h). The Commission, however, 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, without clarification, the Commission's proposal potentially creates a compliance threshold that no leak detection system can achieve. SPLP recommends that the Commission remove this requirement.

Moreover, the proposed regulations fail to acknowledge that there are many unique and important circumstances that dictate how sensitive the CPM for any given pipeline can be. For instance, API RP 1130 defines 4 CPM performance metrics: reliability, sensitivity, accuracy and robustness. By requiring a system to be highly sensitive, the reliability of the system may be impacted. For example, a low threshold may result in false positive leak results. For that reason, SPLP suggests that any requirement related to a CPM leak detection system should only require that the system be designed to a sensitivity level that does not compromise the confidence in the CPM.

Lastly, SPLP submits that the Commission should not require odorization of HVL pipelines. As an initial matter, the federal pipeline safety requirements do not require odorization. More importantly, 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.[16] In other words, the addition of odorant would impact the quality of the product 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."). Moreover, the impact to SPLP's contractual obligations and ability to transport products may also unreasonably

[16] See footnote 4, *supra*, for a list of products that are produced from the NGLs shipped by SPLP's Mariner East pipelines.

interfere with its ability to transport products across jurisdictions and interfere with interstate commerce in violation of the United States Constitution.

For all these reasons, the Commission should defer to the current federal requirements in 49 C.F.R. § 195.134 and 49 C.F.R. § 195.444.

h. Emergency Flow Restriction Devices

In subsection (i), the Commission seeks to require, pipeline operators to "determine the need for remote controlled EFRDs in consultation with public officials in all HCAs" and that the need for such devices in HCAs "must be based on limiting the LFL to 660 feet on either side of a pipeline." *See* Annex, § 59.140(i).

The current federal PHMSA standard pursuant to 49 C.F.R. § 195.452(i)(4) states:

> If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors - the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

This standard was also modified as part of a recently issued PHMSA rule, setting forth additional requirements. *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. pts. 192 and 195) (available at https://www.federalregister.gov/documents/2022/04/08/2022-07133/pipeline-safety-requirement-of-valve-installation-and-minimum-rupture-detection-standards).

As demonstrated by the federal standard, installation of EFRDs should be based on a risk analysis, not preferences with no technical or scientific basis. A requirement to determine the need

in consultation with public officials would be inconsistent with PHMSA regulations and violate the managerial discretion to which pipeline operators are entitled.[17] Additionally, SPLP is equally concerned that this requirement may result in unreasonable requests for valve placement that are not supported by any technical justification or that do not provide any safety benefit to the public. The preferences of local officials, who typically have no technical expertise, should not impact the decision-making process of a pipeline operator and its engineers. Particularly when adding numerous valves can create additional operational complexities, including security vulnerabilities. *See* pg. 57, *supra*. SPLP recommends that the Commission remove this requirement from its proposed regulations.

Lastly, and most importantly, minimizing the LFL to 660 feet is not scientifically achievable in most pipelines. There are many factors which control the flammability limit of a product released from a pipeline, including factors outside of the pipeline operator's control. Based on this requirement, the Commission may limit the ability of HVL pipelines to operate. The Commission has not provided any justification to support this limit that is arbitrary and lacks technical support. The federal standard appropriately balances the need for EFRDs in HCAs with the discretion of a pipeline operator to ensure that valves and EFRDs are reasonably and efficiently located to best protect the surrounding communities. The Commission should defer to those federal standards.

11. Proposed Section 59.141 – Qualification of Pipeline Personnel

In section 59.141, the Commission seeks to require pipeline operators to develop a qualification program that includes a written qualification program for construction tasks, a

[17] *Met-Ed*, 437 A.2d at 80; *see also Driscoll*, 21 A.2d at 916 (Pa. Supreme Court decision).

process for training qualified individual to identify and react to specific abnormal operating conditions, and periodic requalification intervals for each covered task. *See* Annex, § 59.141.

As stated above, the Commission should await guidance from PHMSA before adopting this provision. PHMSA has expressly considered amending its Part 195 OQ requirements to include a new construction task, 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. *Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes*, 82 F.R. at 7980-81. Because PHMSA intends to publish revised OQ requirements in a subsequent final rule, the Commission should wait for PHMSA to move forward with its pending rulemaking regarding operator qualifications. *Id*., at 7981. Any effort to adopt the current proposal would be premature and may create state requirements that are incompatible with PHMSA's federal standards.

12. Proposed Section 59.142 – Land Agents

Proposed section 59.142 states that a land agent employed or contracted by a hazardous liquid public utility must hold a valid Pennsylvania professional license as an attorney, real estate salesperson, real estate broker, professional engineer, professional land surveyor, or professional geologist. As an initial matter, the Commission lacks jurisdiction over this subject and cannot regulate employment or professions directly and, in this case, indirectly by regulation. Moreover, the Pennsylvania professional licenses listed in this section are not directly applicable to purchasing rights-of-way or easements for public utilities within the Commonwealth of Pennsylvania. If the Commission adopts this requirement, which it should not, the more appropriate membership or certification is through the International Right of Way Association ("IRWA") or through a similar professional organization or state registry. SPLP recommends that the Commission remove this proposed requirement.

13. Proposed Section 59.143 – Corrosion Control

The Commission next proposes to issue a comprehensive set of regulations related to corrosion control. This includes the following:

- Requires a pipeline operator to have written procedures for the design, installation, operation, and maintenance of cathodic protection systems. The pipeline operator must also determine the average and worst-case corrosion rate on a pipeline segment.
- Implements criteria for cathodic protection. Pipeline operators must meet one of the listed criteria.
- Implements pipeline operator testing requirements to determine the adequacy of cathodic protection as follows:
    - Pipeline operators are required to test each pipeline at least once per calendar year. HVL pipelines must be tested twice per year.
    - Pipeline operators are required to inspect rectifiers once each calendar month with physical inspections required every other month.
    - Pipeline operators are required to check current switches, diodes or each interference bond that could jeopardize protection on a pipeline transporting HVLs 12 times a year.
- Requires pipeline operators to take remedial measures within 14 days of discovery to correct any deficiencies indicated by the monitoring, with remediation to be completed prior to the next schedule inspection.
- Requires pipeline operator to conduct close interval surveys, including over paved surfaces, every three years.
- Requires pipeline operators to have written continuing program to minimize the detrimental effects of stray currents from foreign sources.

Annex, § 59.143.

As a general matter, SPLP submits that corrosion control requirements are already sufficiently addressed by Subchapter H of Part 195. *See, e.g.*, 49 C.F.R. § 195.551 (relating to corrosion control), § 195.559 (relating to coating material), § 195.563 (relating to cathodic protection), § 195.573 (relating to monitoring external corrosion control), § 195.579 (relating to mitigating internal corrosion control), and § 195.585 (relating to correcting corroded pipe). The Commission has not demonstrated that the federal pipeline safety requirements are insufficient

and should defer to the federal standards that have been developed based on experience, technical expertise, and industry standards.

SPLP will provide additional comments on the individual requirements in turn.

a. Corrosion Control Procedures

In section 59.143(b), the Commission proposes that pipeline operators must document the average and worst-case corrosion experienced for each pipeline segment. This analysis is performed by comparing in-line-inspection runs and evaluating pit-to-pit growth from one run to the next. SPLP submits that this type of analysis would be costly, labor-intensive, and unnecessary given that existing federal pipeline safety corrosion and integrity management regulations adequately address the threat of corrosion. More specifically, this analysis can only be done by comparing in-line-inspection runs and evaluating pit-to-pit growth from one run to the next. While the Company documents this information for pipeline segments located in high-consequence areas, the Commission seeks to expand this requirement to all pipeline segments regardless of location. That is, the Company would have to track extensive corrosion information and any changes thereto in subsequent inspections across its entire pipeline. Such an extensive requirement is unnecessary given the current federal requirements and, in particular, because the Commission has not specified what should be done with this information. Given a lack of any obvious safety benefit, the Commission should not adopt this provision, but defer to the current PHMSA requirements, which sufficiently address corrosion growth concerns.

b. Adequacy of Cathodic Protection

Subsection (d)(1) and (2) seeks to require pipeline operators to test each pipeline at least once per calendar year and HVL pipelines twice per year. The Commission has not provided any basis to support these testing requirements and SPLP submits that the increased testing frequency

for HVL pipelines will provide little to no benefit. Doubling the frequency in which an external corrosion cathodic protection survey is conducted based on whether or not the liquid being transported is an NGL or liquified petroleum gas ("LPG") is not supported by any technical or scientific evidence. The external corrosion threats on gas lines, refined liquid lines, crude oil lines or LPG lines are practically identical. Due to their relatively high compressibility properties, compared to other common hazardous liquids, LPG pipelines typically have lower and less frequent pressure cycling events during operation than pipelines carrying refined liquid or crude oil. Pressure cycling is a direct determining factor in the threat for corrosion assisted fatigue cracking and for stress corrosion cracking. Thus, increasing the frequency of annual cathodic protection surveys on NGL or LPG pipelines will provide little to no benefit in decreasing measurable corrosion rates on the pipelines.

Moreover, the Commission's proposal fails to consider the practical reality of conducting these tests and the increased associated costs. For pipeline operators, coordinating annual corrosion protection surveys takes time and careful planning. In many cases, there are dozens of rectifiers from other area operators that need to be included in the synchronized interruption cycle to obtain accurate polarized potentials. Increasing the burden of these planning efforts by requiring more tests per year requires the expenditure of resources that could otherwise be used to design, troubleshoot, and maintain existing cathodic protection systems. The Commission has inadequately considered whether these increased requirements justify the associated costs.

SPLP also submits that proposed subsection (d)(3), which seeks to require each cathodic protection rectifier to be inspected once each calendar month, provides little to no benefit over the current federal standard. The present rectifier inspection cycle of 6 times per calendar year, not to exceed 75 days, has proven to be effective in monitoring current output and alerting pipeline

operators of any systems that are not performing as designed. *See* 49 C.F.R. § 195.573(c). Moreover, remote monitoring devices are present on the vast majority of SPLP's cathodic protection systems. These devices alert technicians via e-mail if the rectifier output moves above or below defined limits, which allows the technician to react to the change in rectifier output within a few days. As a result, doubling the inspection frequency required by federal regulations will provide little to no benefit in decreasing measurable corrosion rates on the pipelines.

As to subsection (d)(4), which proposes electric checks 12 times a year of reverse current switches, diodes, and interference bonds on HVL pipelines, SPLP submits that this is not an appropriate requirement. The Commission has not provided any basis for doubling the frequency in which a critical bond inspection is conducted based on whether or not the hazardous liquid being transported is a LPG. The cargo being transported through the pipeline does not impact the threat of stray current interference. The present critical bond inspection cycle of 6 times per calendar year, not to exceed 75 days has proven to be effective in alerting pipeline operators to the possibility of stray current interference. *See* 49 C.F.R. § 195.573(c).

As to subsection (d)(5), which seeks to require the initiation of remedial measures within 14 days upon discovery of any deficiencies, SPLP submits that this requirement is impractical. Per SPLP procedures, remedial measures to mitigate a cathodic protection deficiency are presently required to be documented and initiated within thirty days of the deficient reading. With most rectifier or critical bond deficiencies, SPLP implements remedial action during the inspection/survey. If immediate action to mitigate the deficiency is not possible, however, SPLP develops a plan of action to be implemented within thirty days of discovery. SPLP's procedures require adequate corrosion protection to be restored by the next inspection cycle. In some cases, circumstances beyond the control of the operator may delay the mitigative action beyond the next

inspection cycle. In such a case, the documented remedial action plan outlines the causes of the delays and includes the expected dates of required actions to restore adequate cathodic protection to the facility. Temporary measures may be possible to improve or restore adequate cathodic protection while permanent actions are pursued. Any temporary actions are documented on the remedial action plan. SPLP's processes and procedures are consistent with NACE standards that the federal regulations incorporate and sufficient for ensuring that adequate cathodic protection is maintained on its system.

SPLP submits that fourteen days may not provide enough time to properly diagnose the cause of a deficiency or plan the proper remedial action. Indeed, some surveys may take two to three weeks to complete. If a deficiency is discovered at the beginning of a survey, fourteen days may pass before the survey is completed. Moreover, remedial action may require additional ROW or permits. Thus, it often requires up to thirty days to choose and implement the most expedient and efficient course of action to remediate any deficiencies. SPLP recommends that the Commission remove the 14-day requirement.

c. Close Interval Surveys

Subsection (e) seeks to require close interval surveys, including on paved surfaces, every three years, not to exceed 39 months. *See* Annex, § 59.140(e). This raises numerous concerns for SPLP. First, paved surfaces are very common in pipeline rights-of-way, especially in highly populated areas of the state. If an operator is required to drill holes every 3-5 feet in roadways, private driveways and parking lots, the operator may significantly damage this property – especially when considering the long-term impacts of this requirement. To comply with this requirement, pipeline operators would also be required to periodically shut down highways, airport runways, the turnpike, roads, and large municipal and commercial parking lots in order to safely

perform the required close interval surveys. This would very likely result in wide resistance from local townships, private property owners, and the Pennsylvania's Department of Transportation.

Moreover, a qualified corrosion control professional can identify such areas without survey readings directly over top of every foot of pipe. Thus, requiring pipeline operators to perform close interval surveys over smaller intervals of pipe, *i.e.,* every 5 to 10 feet, including paved surfaces, would not only be overly burdensome, but unnecessary. More specifically, when conducting close interval potential surveys, each individual pipe-to-soil reading represents an average potential over the pipeline anywhere from approximately 10-feet to several hundred feet upstream and downstream from the location of the reference cell. As the reference cell approaches a source for a low potential area, the potential measurements decrease (typically in a slow steady manner). Then as it moves away from the low potential area, the potentials increase in the same manner. Most driveways and roadways are less than 25 feet across. If a short section of the pipe is not meeting a polarized criterion under pavement, the survey readings are likely to point to that section based on readings from up and downstream points.

Per SPLP procedures, current flow trends (voltage drop measurement) are also measured at each test facility during a close interval potential survey. This allows the technician to determine if current accumulation between two test points is relatively more or less than in the previous section surveyed. This data can help indicate locations of relatively poor coating, compared to upstream and downstream sections. If a paved area shows marginal potentials as the survey approaches and moves away from it, additional data sets can be reviewed or obtained (such as ILI data, previous potential measurements, DC current flow on the pipe, location of foreign line(s) and potential measurements through the pavement). Accordingly, obtaining potential measurements through every paved surface over the line being surveyed is inefficient and would result in

spending unjustifiable time, resources, and effort to drill holes and repair damaged pavement. The Commission has not justified this proposed requirement or the associated costs with implementing such a broad requirement.

Lastly, conducting close interval surveys on a 3-year cycle, without any significant change to the physical configuration of the line or change in the cathodic protection system, will not yield useful data beyond that already obtained through annual surveys and bi-monthly rectifier/bond inspections. For instance, once a close interval survey has established that a pipeline is receiving adequate levels of cathodic protection, annual corrosion protection surveys and bi-monthly rectifier/bond inspections, as required by 49 C.F.R. § 195.573, provide data that can easily identify section(s) of pipe that may not have adequate protection. For this reason, it is common in the industry to conduct close interval potential surveys on a 5 to 7-year interval. Consistent with industry standards, SPLP procedures likewise require cycled close interval surveys within this same time frame (5 to 7 years). SPLP procedures also require that close interval potential surveys should be conducted within 6 months, but no later than 2 years, of scheduled in-line inspections, allowing the integration of the two data sets. This results in an efficient and thorough maintenance program, ensuring the safe operation of the pipeline. The Commission should defer to existing federal standards that provide operators with the discretion to develop their own practices based on industry standards and best practices.

IV. CONCLUSION

As stated above, Sunoco Pipeline L.P. appreciates the opportunity to submit its Comments regarding the Commission's Notice of Proposed Rulemaking. SPLP understands and shares the Commission's commitment to ensuring the safety of intra-state pipelines. SPLP is committed to protecting Pennsylvania's communities and citizens. SPLP submits that existing federal pipeline safety regulations, which are the product of extensive rulemakings, collaboration with industry stakeholders, and extensive technical data and evidence, accomplish these objectives and mitigate safety concerns while appropriately considering the associated cost-benefit analysis and providing flexibility to pipeline operators to develop programs and procedures based on the unique aspects of their systems. Ultimately, the Commission's NOPR, if approved, would only serve to create confusion among industry stakeholders and a complicated regulatory scheme, enact strict and burdensome requirements that detract from a pipeline operator's ability to adequately observe, maintain, and remediate its system, and will substantially conflict with the current federal requirements.

Moreover, the costs associated with many of the vague and unnecessary regulations identified in these comments, have not been carefully considered or weighed against the asserted safety benefit of each regulation. These costs will have material effects upon the cost and delivery of the commodities transported through pipeline and the myriad of goods made from them, which Pennsylvanians and their businesses use and need every day. These impacts may affect the ability of operators of hazardous liquid pipelines to transport products within the state and through interstate commerce. The Commission must consider these costs when implementing these regulations. The regulations are unsupported by technical and economic analysis, but rather based on vague and subjective standards, inviting arbitrary enforcement rather than the exercise of

reasoned judgment. *Watkins*, 740 A.2d at 764 (stating that no agency may substitute a statute or a rule with a "purely subjective criterion which may reflect merely the personal or professional views of individual members of the [agency]"); *see also Slippery Rock*, 983 A.2d at 1242 (stating that a regulation is unreasonable if it is "entirely at odds with fundamental principles as to be the expression of a whim rather than an exercise of judgment"). Ultimately, PHMSA's longstanding pipeline safety regulations are based on technical expertise and the input of a variety of interested stakeholders. These regulations fairly balance managerial discretion and best industry practices to promote and ensure the safety of pipelines.

SPLP submits that 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,

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