

#3330

PUBLIC STATEMENT



Amended Prepared Statement of

Elizabeth H. Barnes

Deputy Chief Counsel, Pennsylvania Public Utility
Commission

before a public meeting of the

Independent Regulatory Review Commission

June 20, 2024



Pennsylvania Public Utility Commission

400 North Street

Harrisburg, Pennsylvania 17120

Telephone (717) 787-5000

<http://www.puc.pa.gov>

Good morning, Commissioners. My name is Elizabeth Barnes, Deputy Chief Counsel at the Pennsylvania Public Utility Commission (PA PUC). With me are Kriss Brown, Deputy Chief Counsel, and Robert Horensky, Manager of the Safety Section of the PUC's Bureau of Investigation and Enforcement. Thank you for this opportunity to make these brief remarks regarding our Revised Final Form Rulemaking Order amending existing regulations at Chapter 59, title 52 of the Pennsylvania Code regarding Gas Safety. This final rule adopts the federal safety regulations and adds compatible State – specific regulations tailored to the unique attributes of Pennsylvania.

I would like to thank the many commenters to this rulemaking proceeding. This final rule represents at least a partial consensus between interested parties in that it has support from the regulated industry, members of the public residing near the pipelines, government officials and environmental advocates.

However, we recognize that Sunoco Pipeline, LP, one of the regulated hazardous liquid pipeline utilities, recently filed comments on June 17, 2024, raising three issues that I would like to address briefly.

First, Sunoco claims Section 59.138(c)(1) improperly transforms guidance into a regulation resulting in a lack of standard so unclear as to be void for vagueness.

In response, the main requirement in this Section is that the utility must conduct an analysis of geological and environmental impacts of using horizontal directional drilling (HDD) or trenchless technology (TT) methodology. The Section merely goes on to state that an analysis similar in format to the Department of Environmental Protection's Trenchless Technology Guidance, Document No. 310-2100-003, as amended and updated, or, in a manner at least as protective of public health, public safety and the environment meeting all applicable statutory and regulatory requirements, shall satisfy this requirement.

The Department of Environmental Protection Trenchless Technology Technical Guidance document is extensive and we are not requiring mandatory compliance with another agency's guidance document. However, we would like the hazardous liquid public utilities to consider factors enumerated in the guidance document and conduct a similar analysis for review by the Pipeline Safety Section upon its request. PA PUC changed the term "comply with" to "developed in conformance with" and inserted the word "or" into the regulation, giving the utilities the option of either developing an analysis in conformity with a guidance document on trenchless technology by another agency, or another type of analysis that protects the public on an equivalent level. Thus, there is no mandatory requirement that the utility comply with the Guidance Document and no illegal delegation of our rulemaking authority to the Department of Environmental Protection. If the utility has questions as to intent and interpretation, the Commission's

Bureau of Investigation and Enforcement may be consulted or a Petition for Declaratory Judgment or Clarification may be filed by any utility. Thus, Section 59.138(c)(1) requires an analysis of geological and environmental impacts and provides an example of what type of document will satisfy this requirement. Ultimately, the utility has the discretion to choose the type of geological and environmental impact analysis it will use. See Preamble at p. 197.

Second, Sunoco commented to Section 59.138(d)(3) – Testing of Water at End Use Points for Public Water System Customers.

In response, PA PUC stated in its Preamble at page 201, that the intent of this provision is for these utilities to ensure that public and private water supplies which may be at risk of contamination from HDD or TT activities or from subsequent adverse impacts, are identified and protected from such activities. If Sunoco can demonstrate that water testing is already being done by another entity, the utility may seek a waiver or seek clarification that the testing being done is adequate. However, it is the intent of the PA PUC to require testing at the tap as this is a constant variable when the water is tested for contaminants. Public and private water comes from different sources. The other variables of timing, construction, and the contaminant levels could then be analyzed to show correlation or causation between construction activities of the utility and the contamination levels. Testing at the tap before gives you a baseline, during and after construction show whether the amount of contaminants increase or stay the same. Thus, the data is more reliable in showing whether the water is potable at the tap, where it is consumed, used for bathing, or used in cleaning. A reason for testing during construction is so that the utility may take actions to mitigate the amount of contaminants flowing into the water supplies or provide alternative sources of water for residents whose wells and other water supplies have been compromised.

Regarding Sunoco's third and final comment on Section 59.137(a) – Pipeline Conversion, Sunoco claims that requiring conformance to construction regulations for conversion is inconsistent with other determinations. Sunoco offered no cost burden for this regulation. While we agree with Sunoco that 49 CFR Part 195.5 authorizes a pipeline operator to convert service to hazardous liquid if a written procedure is followed, nothing in Part 195.5 precludes the State of Pennsylvania from adding an extra safety regulation preventing the steel pipeline being converted from being located under a building or dwelling. The utility would have to relocate the pipeline out from under a building or dwelling, but it would still be able to complete the conversion. The Pennsylvania regulation adds a safety requirement to the federal regulation but it does not obstruct the operator's ability to comply with the federal regulation at all. This section applies to new pipelines or pipelines for which the grandfathering clause has been nullified by specifying that the regulations apply only if the pipeline has been repurposed for hazardous liquid use, "converted, relocated, or replaced." See Preamble at p. 174.

During the construction of the Sunoco Mariner East Project and other pipeline construction projects, the Commission processed many complaints from the public prompting the initiation of this rulemaking proceeding.

These regulations will improve communications between the utilities and members of the public; local, county and State government; and excavators, contractors, emergency responders, and school administrators. The regulations delegate authority to the Pipeline Safety Section to make certain determinations and to request and receive key reports necessary for the Pipeline Safety Section to do its job of ensuring compliance with these standards. The final rule prevents construction, relocation or conversion of existing pipelines under any buildings or dwellings except for repairs or replacement of existing pipelines. The rule requires nondestructive tests of all girth welds with few exceptions. The rule requires regular inspection and maintenance of proper depth of cover required by federal law for all pipe in use for transporting hazardous liquids, construction and the maintenance of 12 inches clearance between the outside of the pipe and the extremity of other underground structures. The rule requires geological and environmental impact studies regarding construction. The rule requires the utility be responsible for ensuring land agents interacting with the public regarding easements hold a valid PA license in law, real estate, engineering, land surveying, geology or membership in good standing with the international right of Way Association or its successor as the association has a code of conduct. The rule requires additional training of emergency personnel. Any regulations regarding new construction standards are going forward, not applicable to pipeline facilities in existence on the effective date of these regulations. Existing facilities will only be subject to the new construction standards if and when they are converted, relocated, or replaced.

We would be happy to answer any questions and would like to reserve a little time to respond to any public statements adverse to the Revised Final Rule.

Remarks of Susan Sunhee Volz, Clean Air Council,

on Item # 3330, Regulation #57-335: Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59; Notice of Proposed Rulemaking

June 20, 2024

Good morning Commissioners,

My name is Susan Sunhee Volz, and I am an Advocacy Coordinator for Clean Air Council, an environmental advocacy nonprofit working throughout Pennsylvania on energy issues, including utility and pipeline issues. I appreciate you taking the time to consider a critical matter of public health and safety: the PUC's proposed rulemaking on Hazardous Liquid Public Utility Safety Standards.

The environmental and public safety community speaks with one voice in saying that IRRC must approve these standards in full, without weakening them. The urgent need for these standards has been evident since at least 2017, when Energy Transfer's reckless construction of the Mariner East 2 pipeline project began damaging neighborhoods across our beautiful Commonwealth. These rules have been years in the making at the PUC. Pennsylvanians can't wait any longer for their families' safety to be put first. Please approve these standards now.

Let me be clear: While Clean Air Council and the public interest community support these regulations, they have been watered down greatly over the course of this regulatory process. We have participated in this process at every stage, and it has been tragic to watch good, strong standards fade under the relentless lobbying of Energy Transfer, a criminal enterprise that has done many millions of dollars of damage to the property and health of Pennsylvanians from Washington County to Delaware County and everywhere in between. You'll see in the written record that even the lobbyists of the Marcellus Shale Coalition have been pleased with the progress PUC has made in weakening these standards. They should not be weakened anymore.

Yet even in their weakened state, these affordable, commonsense measures will take Pennsylvania light-years ahead in avoiding such preventable disasters as the dozens of hazardous liquid pipeline releases or spills we've seen in the last several years. Hazardous liquids pipeline spills can be deadly, and the industry has used eminent domain to snake them through some of our densest communities. IRRC and PUC have an opportunity here to make sure that the next pipeline disaster does not happen. We are asking you to seize that opportunity.

Let me close by noting that this is very personal for us at Clean Air Council. We have fielded hundreds of calls by residents living near the Mariner East project since its construction began. People have been pleading with us to help. Many of them were sickened or had their families sickened due to Energy Transfer's construction poisoning or depleting their well water. Others have had their children endangered by Energy Transfer's careless choices to route the pipelines

near or under elementary schools or ball fields. Yet others are still dealing with the repercussions of the damage to their yards, their houses, their businesses. We are not painting a broad brush here that all utility companies are like this. But some indisputably are. That's why we rely on our government to require good standards: to protect our neighbors who didn't choose for this to be under their crop fields, their lawns, and their children's playgrounds. Commissioners, please do the right thing and approve this rulemaking.

Thank you.