

PIPELINES 101

Chester County Association of Township Officials
Fall Conference - November 8, 2018

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Disclaimers

- I'm an attorney, but not your attorney.
- My client is the Pennsylvania Public Utility Commission.
- Nothing I say is binding on the Commission or Commissioners per 52 Pa.Code Section 1.96.

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Today's Topics

- Overview of Natural Gas and Hazardous Liquids Transportation Pipelines
- Federal and State (Pennsylvania) Regulation
- Public Utility status under Pennsylvania Law
- Act 127 (PUC regulation of non-public utility pipelines)
- Quiz
- Questions

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Pending Cases/Ex Parte

- PUC Complaints
 - Sen. Dinniman et al, C-2018-3001451 (stayed)
 - Andover Homeowners Assoc., C-2018-3003605
 - Baker, C-2018-3004294
 - DiBernardino, C-2018-3005025
- Appellate Court
 - Interlocutory Appeal re Sen. Dinniman's Standing
 - 1169 CD 2018
 - Briefing Schedule issued October 31, 2018

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The PUC

- Creature of statute – the Public Utility Code
 - 66 PaCS
- Independent Agency
- Quasi legislative powers (rulemaking)
- Quasi adjudicative powers (ALJ)
- Review by Commonwealth Court

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PUC Jurisdiction v. No Jurisdiction

Public Utilities

- Investor-owned utilities
 - Distribution of gas, electricity, water, wastewater, telecom
 - Pipelines and high voltage transmission
- Municipal Utilities
 - Serving outside municipal boundaries
- Transportation
 - Rail, taxis, common carriers

Non-Public Utilities

- Cable Television
- Cooperatives
- Cellular Telephone Service
- Municipal Authorities
- Private utilities
 - Industrial parks
 - Master meter operators
- Gas Producers

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Semi-Regulated Entities

- Licensed Entities
 - Competitive suppliers of electric generation supply and natural gas supply
 - EGSs and NGSS
- Registered Entities
 - Conservation Service Providers under Act 129 Energy Efficiency and Conservation Plans
 - Pipeline Operators under Act 127

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Public Utility – 66 Pa.C.S. § 102

- Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
 - Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
 - Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
 - Transporting passengers or property as a common carrier.
 - Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.
 - **Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.**

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Public Utility continued

- Conveying or transmitting messages or communications, except as set forth in paragraph (2)(iv), by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.
- Sewage collection, treatment, or disposal for the public for compensation.
- Providing limousine service in a county of the second class pursuant to subchapter B of Chapter 11 (relating to limousine service in counties of the second class).

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Public Utility - Exclusions

- Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself.
- Any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.
- Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.
- Any person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service.
- Any building or facility owner/operators who hold ownership over and manage the internal distribution system serving such building or facility and who supply electric power and other related electric power services to occupants of the building or facility.
- Electric generation supplier companies, except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue neutral reconciliation).

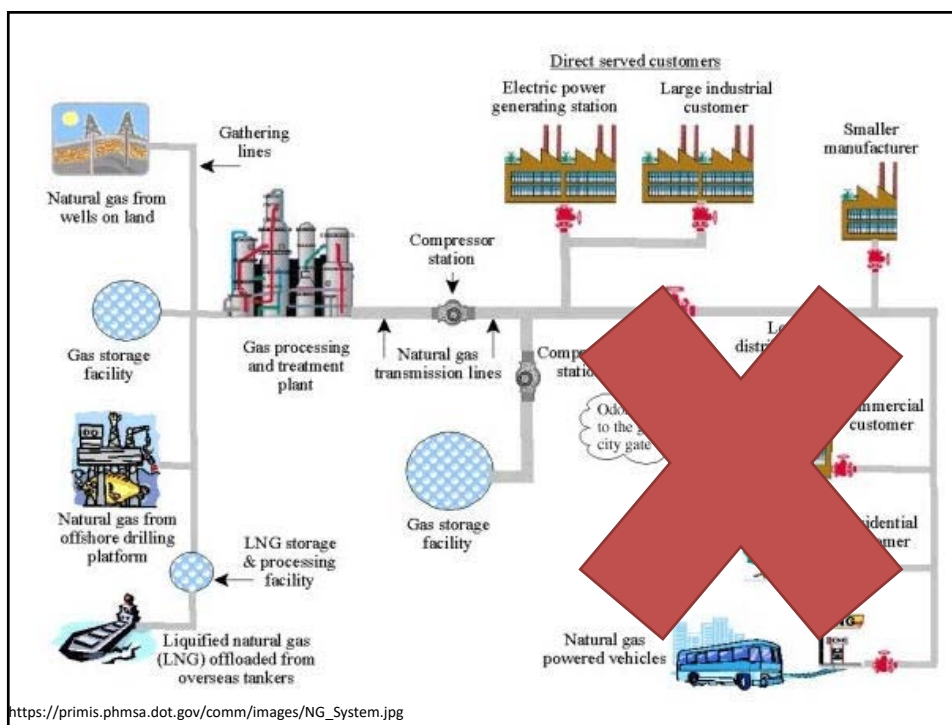
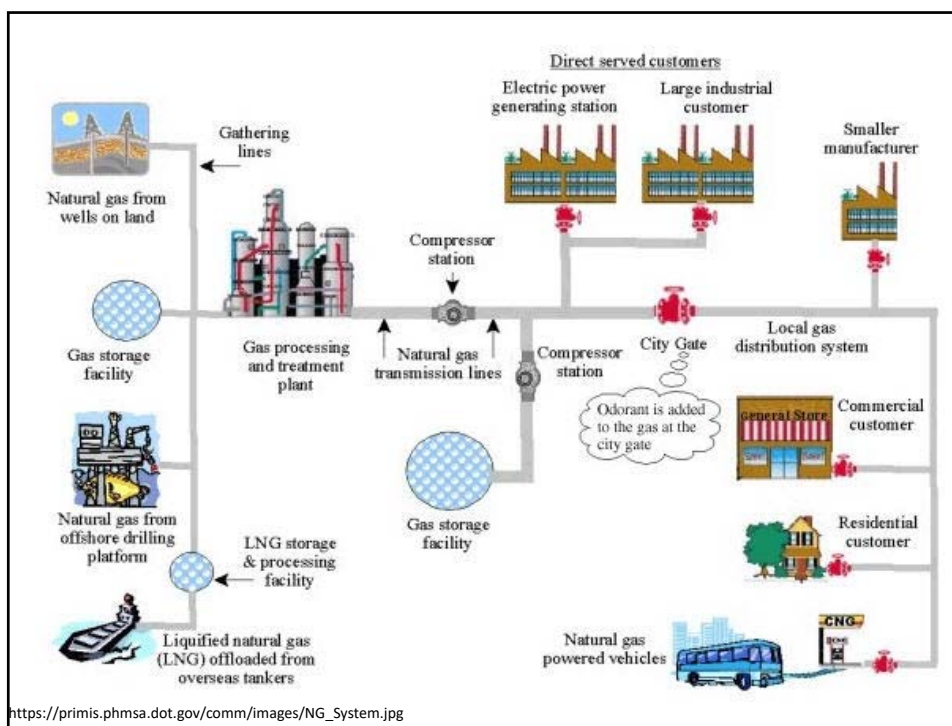
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Petroleum & Petroleum Products

- Crude oil
 - domestic
 - imported
- Refined products
 - gasoline, fuel oil, jet fuel, propane, etc.
- Other liquids
 - Ethane, benzene and other petrochemical feedstocks
- Granger Energy Petition, Docket No. P-00032043 (Order entered August 19, 2004).

Pipelines

- Production & Gathering
 - Small scale gathering
- Midstream Transportation
 - Large scale gathering
- Interstate Transportation
- Local distribution



Not geographic terms

- Interstate – shorthand for FERC jurisdictional
- Intrastate – shorthand for not-FERC jurisdictional

FEDERAL LAWS

- Natural Gas Act
 - 15 U.S. Code Chapter 15B
 - Federal Energy Regulatory Commission (FERC)
- Interstate Commerce Act
 - Cite
 - FERC
- Pipelines Act
 - Cite
 - Pipelines and Hazardous Materials Safety Administration (PHMSA) (under federal Department of Transportation)
- Everything else (environmental, antitrust, etc)

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Natural Gas Act

- 15 USC §717(b): Transactions to which provisions of chapter applicable The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

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Natural Gas Act

- (c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

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Natural Gas Act

- Preemption
 - *Oneok, Inc. v. Learjet, Inc.*, **135 S.Ct. 1591 (2015)**
 - “purposes of pre-emption in the natural-gas context is the distinction between “measures *aimed directly at* interstate purchasers and wholesales for resale, and those aimed at” subjects left to the States to regulate.”
 - NGA preempts state regulation of construction, securities, etc. *Northern Natural Gas*, 83 S.Ct. 346 (1963)
 - NGA does not preempt state antitrust laws - *Oneok*

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Interstate Commerce Act

- 49 USC Part C
 - Pipeline Carriers 49 USC §§ 15101-16106
- 1887 – Railroads
- 1906 – Hepburn Act added oil common carrier pipelines (and ferries, etc)
- 1934 – Trucking added

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Interstate Commerce Act

- **FERC regulation of petroleum pipelines**
 - Rates
 - NO CPC requirement (unlike the NGA)
- **FERC does not regulate**
 - pipeline construction
 - abandonment of service
 - mergers and acquisitions
 - safety (PHMSA)

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Interstate Commerce Act

- **Preemption under the ICA**
 - Railroad provisions preempt state laws
 - Pipeline Carrier provisions do not apply to intrastate service
 - Minnesota Rate Cases, 230 U.S. 352 (1913)
 - Commonly called Simpson v Shepard

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Pipelines Act

- Safety
- Limited Preemption
 - Creates joint federal/state regulatory framework
- 49 USC Subtitle VIII
 - CHAPTER 601 - SAFETY (§§ 60101 to 60141)
 - CHAPTER 603 - USER FEES (§§ 60301 to 60302)
 - CHAPTER 605 - INTERSTATE COMMERCE REGULATION (§§ 60501 to 60503)

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Pipelines Act

- Regulations
- 49 CFR Part 190-199
 - Part 192 – Natural Gas
 - Part 195 – Hazardous Liquids
 - Adopted in PUC Regulations
 - 52 Pa.Code § 59.33(b)
 - Federal changes automatically adopted unless affirmatively rejected by the PUC
 - Public utilities (not Act 127 operators)

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Class Areas (Natural Gas)

- 49 CFR §192.5
- Continuous 1 mile length of onshore pipeline
- 220 yards (200 m) on either side of centerline
- Class 1 – 10 or fewer buildings
- Class 2 – more than 10 and less than 46 bldgs
- Class 3 – 100 yards of a building or small, well-defined outside area occupied by 20 or more people/ 5 days per week for 10 weeks
- Class 4 – buildings of 4 or more stories

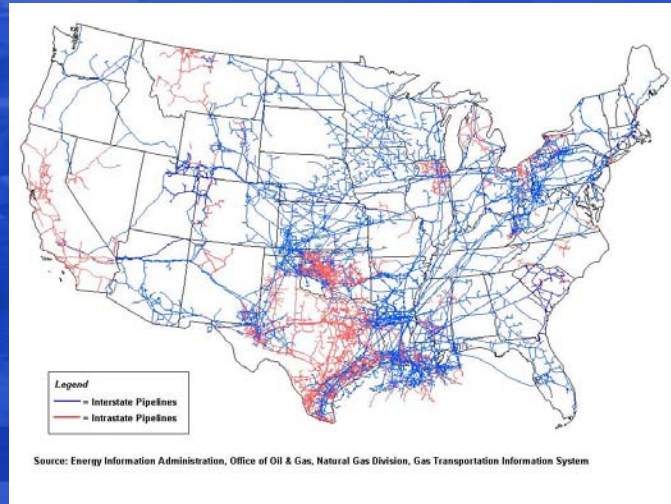
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Class Areas (Hazardous Liquids)

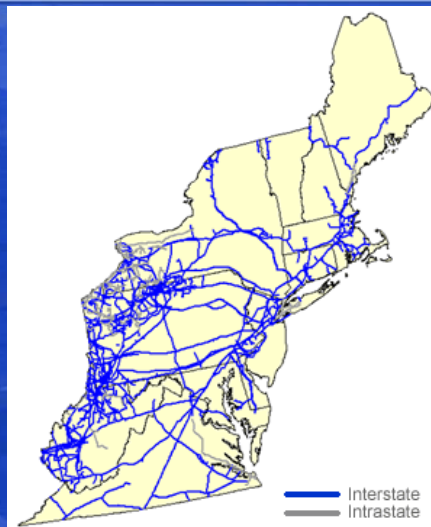
- High Consequence Areas (195.450)
 - Unusually Sensitive Areas (195.6)
 - Commercially navigable waterways
 - High population areas (>1,000 people/sq. mile)
 - Other populated area (concentrated population)

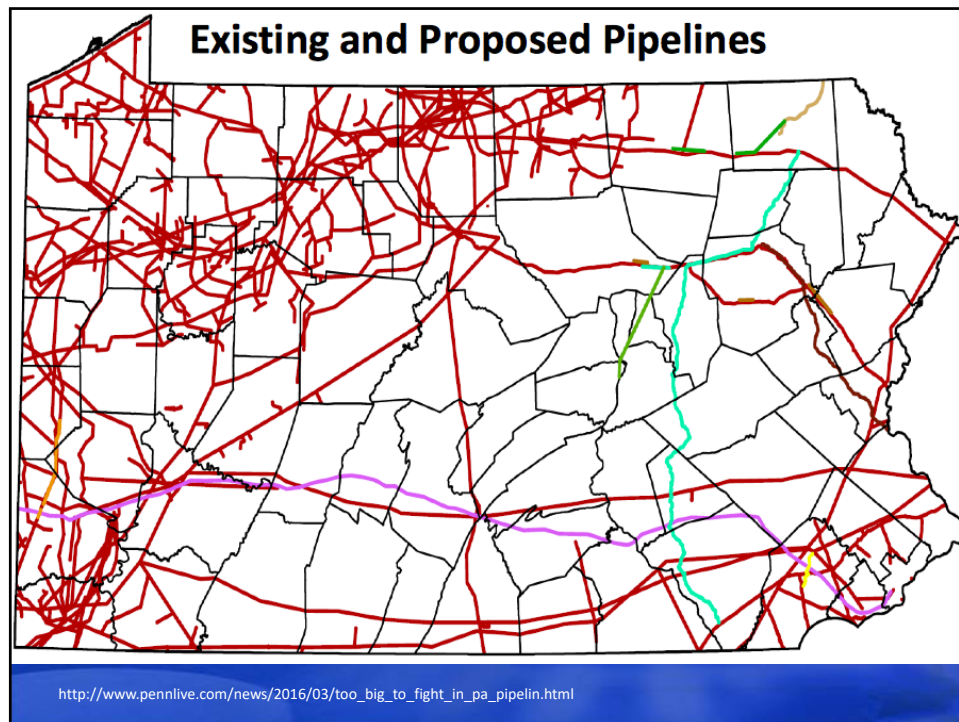
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Interstate and Intrastate Pipelines – National Map



Pipelines – Regional Map





NPMS/PIMMA

- <https://www.npms.phmsa.dot.gov/>



Federal/State Jurisdiction

Hazardous Liquids	Natural Gas
Natural Gas Liquids Oil & Petroleum Products	Methane
Interstate Commerce Act	Natural Gas Act
Dual federal/state jurisdiction	FERC Exclusive Jurisdiction over interstate transportation
Federal – common carrier State – public utility (as common carrier)	Public Utilities (CPCs)
No federal or state siting	Federal siting, no state siting

Intrastate - Public Utility or Not?

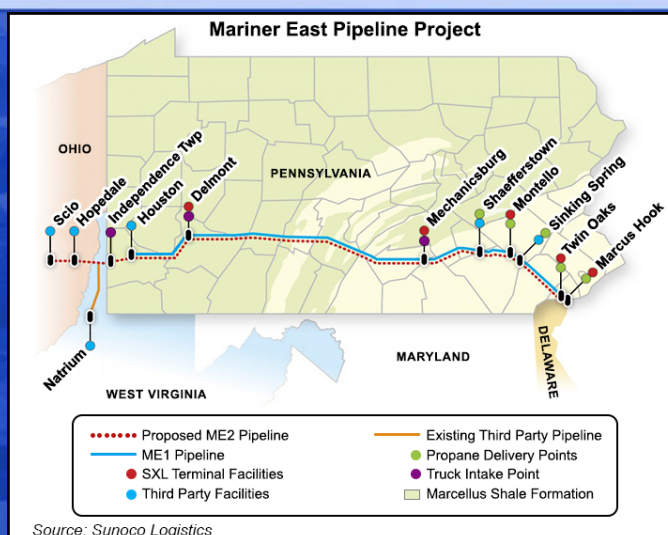
- “The Public” is not defined in the Public Utility Code
- Case Law
 - Pennsylvania Supreme Court
 - Commonwealth Court
 - Pa.PUC decisions
- Policy Statement
 - 52 Pa.Code §69.1401
 - 35 Pa.B. 6906 (M-00051865)

Is Sunoco Pipeline a “public utility corporation”?

Yes	No
CPC issued by PaPUC	NGLs are not covered by PaPUC CPC
SPLP is regulated by the FERC	FERC’s “lighthanded” regulation is as “common carrier”
Can condemn for “petroleum products”	Are NGLs “petroleum products”?
Open to all shippers	Range Resources is anchor shipper

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Mariner East



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Marcus Hook – PA & DE

Over the line

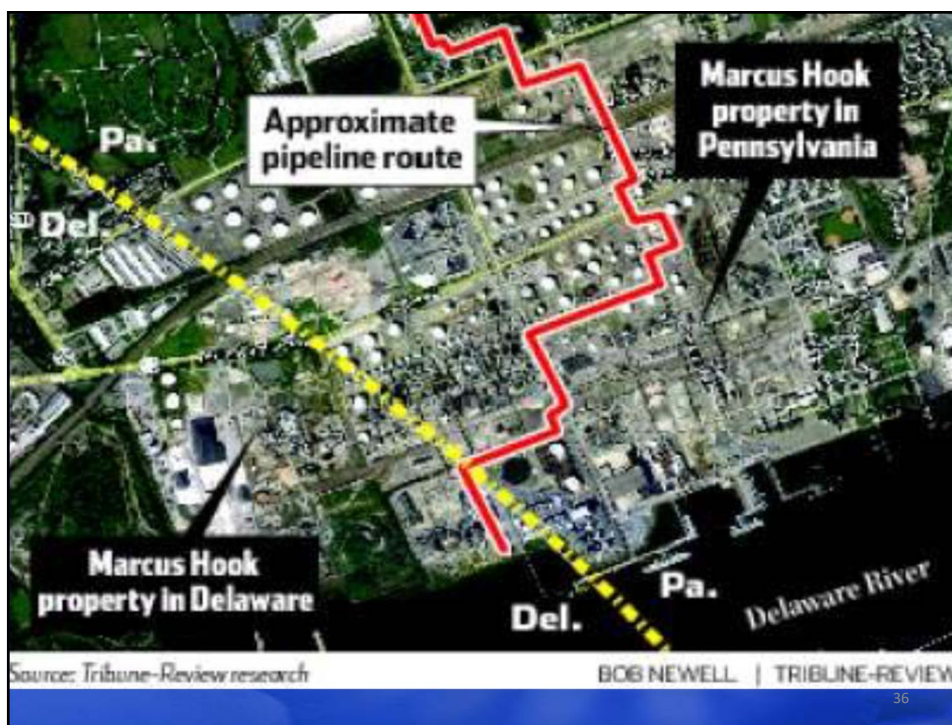
Sunoco Logistics Partners LP now owns the Marcus Hook Industrial Complex outside of Philadelphia. That gas terminal straddles the Pennsylvania-Delaware border, with federal maps showing its pipeline ending a half mile into Delaware. Under federal and state law, that short trip across the border qualifies it as interstate commerce, empowering Sunoco Logistics to use eminent domain and take land for a pipeline extension in Western Pennsylvania.

— Existing pipeline
— Mariner East extension
■ State border



Source: Tribune-Review research

BOB NEWELL | TRIBUNE-REVIEW



Pipeline Safety Act

- Act 127 of 2011 (effective Feb. 20, 2012)
- Implementation Docket No. M-2012-2282031
 - www.puc.state.pa.us search for documents
- Implementation Order issued February 16, 2012
- Final Order issued June 7, 2012
- Secretarial Letter re 2013 Registrations issued February 25, 2013
- Codified at 58 P.S. §§ 801.101-801.1101 (Chapter 13)

Pipeline Safety for non-Public Utilities

- PUC legislative priority since 2004
- Issue lurking below the surface in Laser and other public utility status cases
- Another issue was eminent domain
 - But that topic is for later

Purpose

Act 127 creates a statewide registry for non-public utility gas and hazardous liquids pipeline operators, equipment and facilities within the Commonwealth and gives the PUC limited jurisdiction (i.e., safety, not rates) over them, such as to conduct inspections and enforce Federal pipeline safety laws on certain classifications of pipeline.

Note – not limited to Marcellus shale entities!

Impetus

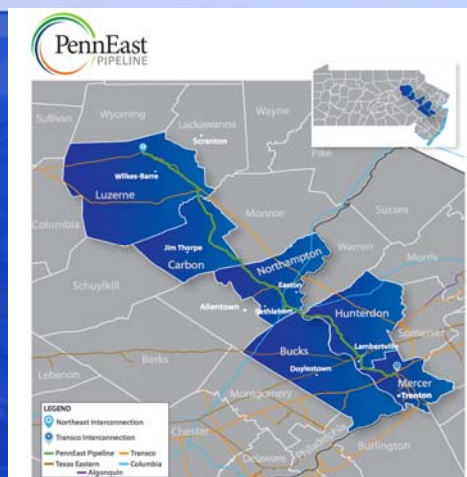
- Marcellus Shale growth
- San Bruno, CA pipeline explosion
- Allentown, PA explosion

San Bruno – September 2010



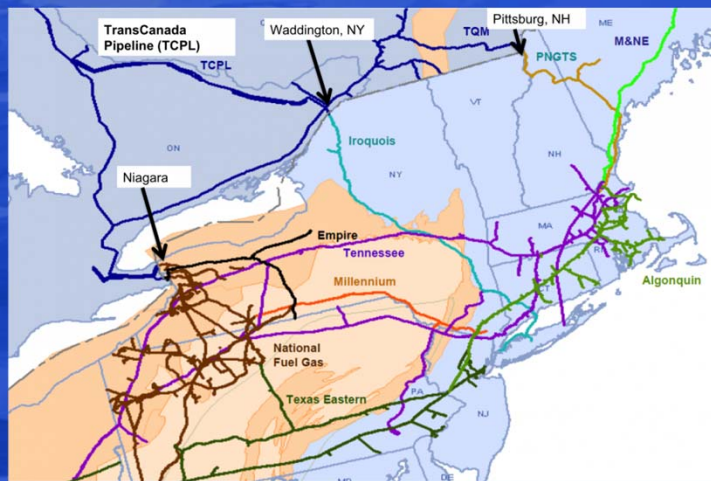
Allentown Explosion – February 2011





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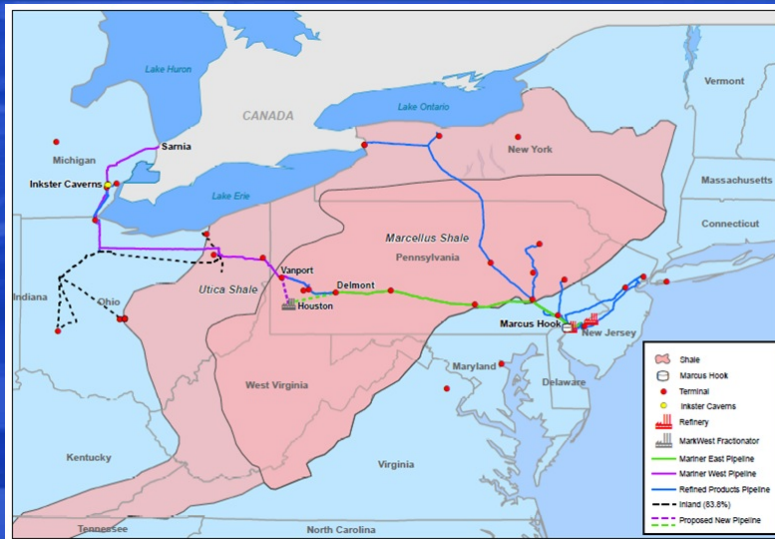
NGA Pipelines – Northeastern US



<http://meridianintl.co/attachment/full/natural-gas-pipeline-us-map/opposition-to-natural-gas-pipelines-may-hurt-new-england-energy.jpg>

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Petroleum Pipelines



Pipelines - Quiz

Interstate or intrastate?



Other Definitions - Title 26 Pa.C.S.A. Eminent Domain §103

- "Utility." A public utility as defined in 66 Pa.C.S. § 102 (relating to definitions).

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15 Pa.C.S. §1103

- "PUBLIC UTILITY CORPORATION." Any domestic or foreign corporation for profit that:
 - is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States; or
 - was subject to such regulation on December 31, 1980 or would have been so subject if it had been then existing.

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15 Pa.C.S. § 1511. Additional powers of certain public utility corporations

(a) General rule.--A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes:

.....

(2) The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances **for the public**.

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15 Pa.C.S. §1511

e) Streets and other public places.--A public utility corporation shall have the right to enter upon and occupy streets, highways, waters and other public ways and places for one or more of the principal purposes specified in subsection (a) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein. Before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof.

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Public Utility Code – 66 Pa.C.S.

- § 1104. Certain appropriations by right of eminent domain prohibited
 - Unless its power of eminent domain existed under prior law, no domestic public utility or foreign public utility authorized to do business in this Commonwealth shall exercise any power of eminent domain within this Commonwealth until it shall have received the certificate of public convenience required by section 1101 (relating to organization of public utilities and beginning of service).

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Sunoco Cases

- *In Re: Condemnation By Sunoco Pipeline, L.P.* (a/k/a Martin et al v. Sunoco)
 - 143 A.3d 1000
 - July 14, 2016
 - Allocatur denied December 29, 2016

Sunoco Cases

- *Delaware Riverkeeper Network, et al v. Sunoco Pipeline, L.P.*
 - 179 A.3d 670 (Pa.Commw., Simpson, *en banc* February 20, 2018)
 - Complaint for injunctive relief denied by trial court, affirmed by Commw. Court
 - Public Utility Code preempts local zoning of public utility facilities
 - Allocatur denied August 28, 2018

Sunoco Cases

- *Clean Air Council, et al v. Sunoco Pipeline, L.P.*
 - 185 A.3d 478 (Pa. Cmwlth., Brobson, *en banc* April 30, 2018)
 - Declaratory action regarding eminent domain
 - Commw. Court reversed & remanded – trial court did not have subject matter jurisdiction
 - Petition for Allowance of Appeal filed August 11, 2018 (no action on PAA or remand as of November 7, 2018)

Thank you

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