





Environmental Litigation

Commissioner Norman J. Kennard
April 4, 2019



PUC Regulatory Authority



Core Values:

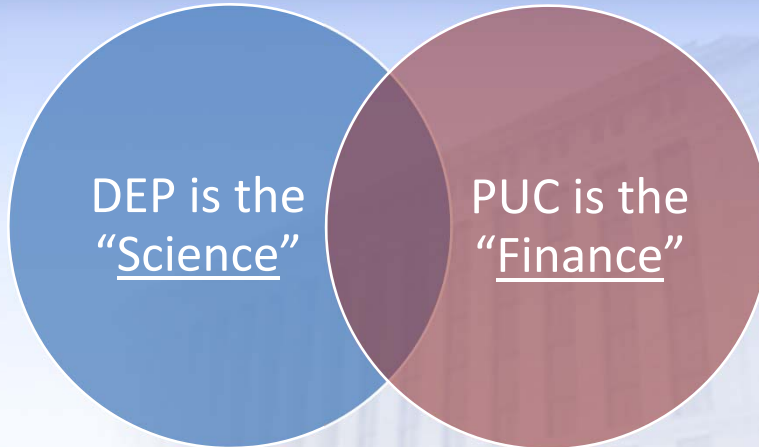
- Just & Reasonable Rates
- Adequate, Safe, & Reliable Service

Rural Broadband	Pipeline Infrastructure
Taxis & TNCs	Rooftop Solar
Truck Safety	Ability to Pay
Electric Vehicle Charging	Natural Gas Expansion
Electric & Gas Competition	Local Telephone Rates
	Gas Pipeline Safety

2



The Overlapping Regulatory Relationship between the DEP and PUC



3



PUC Financing Mechanisms



- Base Rate Case
 - Utilities can recover the cost of prudently incurred expenses and used and useful plant (infrastructure).
- Distribution System Improvement Charge (DSIC)
 - Utilities can recover certain infrastructure improvement costs between base rate cases through a surcharge on customers' bills.

4



PUC Environmental Jurisdiction Examples

- 66 Pa. C.S. § 1501 (“Reasonable Service”)
 - *Mattu vs. West Penn Power Company*, Docket No. C-2016-2547322 (Oct. 2018)
 - PUC has subject matter jurisdiction over a public utility’s vegetation management practices.
- Section 27 of the Declaration of Rights in the Pennsylvania Constitution (“Environmental Rights Amendment”)
 - *Robinson Township, et al. v. Commonwealth et al.*, No. 284 M.D. 2012 (Pa. 2013)
 - Commonwealth has a duty as “trustee” of Pennsylvania’s public natural resources.
- 52 Pa. Code §§ 57.71-57.77 (“Transmission Line Siting Regulations”)
 - Applicable to lines operating at and in excess of 100 kV (high voltage lines).
 - Commission considers the “the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment...” 52 Pa. Code § 57.72(c)(7).

5



PWSA Environmental Issues



Pittsburgh
Water & Sewer
Authority

- DEP Consent Order and Agreement (2017)
 - Required PWSA to replace at least 7% of its lead service lines (1,341 lines) by June 30, 2018
 - \$2.4 Million Civil Penalty
 - \$1.8 million set aside to low-income customer to replace private lead service lines
 - **Update:** On 2/1/19, the PA Attorney General also filed 161 criminal charges against PWSA regarding lead line replacement notice violations
- DEP Administrative Order (2017)
 - **Required improvements include:** new cover for Lanpher Reservoir, upgrades to the Bruecken Pump Station, treatment upgrades for the Highland No. 1 Reservoir and Microfiltration Plant
- DEP Comprehensive Performance Evaluation (2017)
 - **Performance-limiting factors:** key management position vacancies, Pittsburgh residency requirement, compartmentalization of organization duties, and process control issues

6



Environmental Remediation Requires Money!



Pittsburgh
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Authority

- Rate Case Settlement Approved by the PUC on 2/7/19
 - **\$21 million** rate increase approved to fund critical infrastructure investment
 - 13% increase in rates to customers
- Consolidated Compliance Plan Proceeding and LTIIP Pending before PUC
 - Main components:
 - Infrastructure repair and replacement
 - Lead line replacement
 - Metering plan
 - Future implementation of a stormwater tariff
 - Customer service management compliance

7



66 Pa. C.S. §529



- The PUC may order a capable public utility to acquire a small water or sewer utility if the PUC, after notice and an opportunity to be heard, determines that:
 - The small water or sewer utility is in violation of statutory or regulatory standards;
 - The small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the DEP or the PUC concerning the safety, adequacy, efficiency or reasonableness of service; or
 - The small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

8



PA “One Call”



- Pennsylvania’s Underground Utility Line Protection Act (“One Call” Law)
 - Act 50 of 2017
 - **Goal:** reduce the number of “hits” on underground utilities
- PA One Call Damage Prevention Committee (DPC)
 - Holds public meetings to review alleged violations of the Act
 - Allegations made (no call, mismark, etc.); not a formal hearing, but evidence and testimony
 - DPC is comprised of **13** appointees, including facility owner, excavator, municipal government, and municipal authority representation
 - DPC filed disciplinary action against **42** facility owners, excavators, and project owners during its second meeting in January

9



Act 127: Gas Safety



- **Act 127 of 2011: Gas & Hazardous Liquids Pipeline Act**
 - Expands PUC authority to enforce federal pipeline safety laws
 - Requires the PUC to develop and maintain a registry of pipeline operators within Pennsylvania
 - PUC recovers Act 127 program costs by assessments on pipeline operators based on the total intrastate pipeline miles
- **Regulatory Gap:**
 - Pipeline siting
 - Emergency Evacuation Planning

PUC’s Gas Safety Inspectors monitor the safety of over 46,000 miles of pipeline

10



Energy Transfer Partner Pipelines

- PUC Action:
 - PUC Mariner Pipeline Injunction (June 2018)
 - August 2018: Injunction was discontinued on the ME2 and ME2X pipelines upon Sunoco receiving permitting authority from DEP to continue construction activities
 - 7 complaints currently pending before the PUC regarding the Sunoco Mariner pipelines
- DEP Action:
 - Permit bar on all Energy Transfer Partner (and subsidiaries) pipelines
 - ME2 → 27 permits needed
 - Revolution Pipeline → closed until full compliance

11



Revolution Pipeline Explosion September 10, 2018

- DEP Order (October 2018)
 - Ordered Energy Transfer Partners to stabilize disturbed areas near the explosion site, as well as prevent further erosion in its construction areas.
- Ongoing PUC Investigation
 - I&E determining the cause of the explosion



*<https://waterkeeper.org/wp-content/uploads/2018/09/dt.common.streams.StreamServer.jpeg>

12



Nuclear



*<http://ddf912383141a8d7bbe4-e053e711fc85de3290f121ef0f0e3a1f.r87.cf1.rackcdn.com/power-plant-1.png>

- House Bill 11 of 2019 (“Keep Powering Pennsylvania Act”)
 - EDCs and EGSs must purchase “zero-emission credits” equal to 50% of all in-state electric load
 - Cost of credits purchased is passed onto ratepayers through a non-bypassable surcharge on customer bills
 - PUC to determine which plants are Tier III eligible
 - PUC to administer AEPS credit transfers

13



Electric

- Electric Vehicle Charging
- Distributed Generation
- Smart Grids



14



Thank You

Questions?

15