

**Before the
Consumer Affairs Committee
of the
Pennsylvania House of Representatives**

**Testimony of John C. Leary
on behalf of the
Borough of Chambersburg**

RE: House Bill 344, p.n. 299

February 24, 2011

Good morning, and thank you for the opportunity to testify today before the Consumer Affairs Committee on House Bill 344. I am John Leary, the Gas Superintendent of the Borough of Chambersburg, and I am presenting this testimony on behalf of the Chambersburg Town Council, and the approximately 5,300 residents and businesses in Chambersburg which receive gas service from the Chambersburg natural gas municipal system. This legislation, in its current form, would have a significant negative impact on the Borough of Chambersburg's natural gas distribution system, and would result in upward pressure on the gas rates for the residents and businesses in Chambersburg, without any new safety or other public benefit whatsoever.

Before turning to the specifics of our unique local issue, let me say that Chambersburg does not oppose the overall goal of House Bill 344, which is aimed at promoting and ensuring the safety of gas lines in the state which are not currently subject to regulation. Rather, as I will explain, Chambersburg believes that it should be properly exempted from this legislation.

In order to explain this, let me first provide you with some brief background. Chambersburg's natural gas distribution system has been owned and continuously operated by the Borough since 1946. Aside from PGW in Philadelphia, which is already subject to the safety jurisdiction of the Public Utility Commission (PUC), the Chambersburg system is Pennsylvania's only municipal gas system. I am responsible for all operational and regulatory compliance functions of the Borough's Gas Department, and all aspects of the Chambersburg gas system are directly regulated and locally controlled by the Chambersburg Town Council, to which I report. The Chambersburg gas system is not a "public utility" under the Public Utility Code, and thus not within the jurisdiction of the PUC. Chambersburg's system is however subject to the safety jurisdiction, gas safety regulations, assessments and enforcement powers of the US Department of Transportation (DOT) (see: 49 CFR Part 192). In years past,

the DOT conducted periodic safety inspections of the Chambersburg gas system to ensure compliance with the Federal gas safety regulations. In recent years under a contract with the DOT, the PUC has conducted these safety inspections of the Chambersburg gas system for the DOT, and the PUC is compensated by the DOT for those inspections. We have never had any problems or complaints in that regard. In fact, because of the work of the professional engineering staff in the Chambersburg Gas Department, the Borough's safety record is exemplary.

House Bill 344 would change that longstanding regulatory scheme, by placing the Chambersburg gas system under PUC jurisdiction for safety regulation, in addition to the identical DOT regulations and reporting requirements, with which we already comply. The legislation in its current form would also give the PUC duplicative enforcement powers, as well as the duplicative duty to assess Chambersburg for its regulatory costs.

Let me further explain that duplicative PUC assessment aspect. Under Federal law (49 U.S.C. Section 60301, *et seq.*), the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) assesses interstate pipelines for local distribution company inspection costs, and with FERC approval, the pipeline, which is Texas Eastern in Chambersburg's case, passes that inspection cost directly through to Chambersburg. Our

ratepayers already pay for the costs of the government's inspections. Thus, the PUC assessment aspect of House Bill 344 would result in Chambersburg inappropriately paying twice. This would result in increased costs to Borough gas customers, due to redundant regulation and double assessments that will burden our rate payers.

The PUC's own estimate of its assessment to Chambersburg under this legislation is as high as approximately \$54,000 per year. This would represent over a 2% increase in the operating budget of the Borough's Gas Department, and a \$10 per ratepayer cost per year. Again, this would be on top of the full regulatory costs which the Borough already pays for the exact same function, and again, would provide no new safety or other public benefit whatsoever. We will have no good explanation to our ratepayers for these increased costs if the General Assembly enacts this bill in its current form. Therefore, this legislation should properly be amended to exempt Chambersburg from its provisions.

Over the past two weeks, our representatives have engaged in extensive and detailed discussions with senior PUC staff in an effort to resolve this problem. Despite these discussions however the PUC staff has not yet agreed to support an amendment to House Bill 344 to exempt Chambersburg, and so we must turn to this Committee to protect the

Borough's ratepayers from the inappropriate costs of redundant regulation and duplicate assessments. I understand that the main areas of disagreement on this matter with the PUC staff are as follows:

[1] We understand from both the PUC staff and from the DOT, that without jurisdiction over all gas lines in PA, including Chambersburg, the PUC would lose some amount of Federal funding in its DOT grant applications. While Chambersburg is sympathetic to this internal PUC budgetary issue, we certainly do not find it appropriate to punish the innocent ratepayers of Chambersburg so that the PUC itself might realize some small funding benefit.

[2] The PUC staff stressed that the DOT wants the PUC to take over all responsibility for safety inspections in PA. Our response is that it does not matter to Chambersburg which of the two agencies performs the inspections. Chambersburg was previously satisfied when the DOT did the inspections, and is currently quite happy with the PUC performing the inspections. Chambersburg simply does not want to have duplicative regulatory and reporting requirements, and it does not want to pay duplicative assessments. The fact that the DOT may desire to outsource its inspection responsibilities simply is not a valid argument to support unnecessarily and unfairly increasing the gas rates in Chambersburg.

[3] The PUC staff indicated that if Chambersburg is exempted from the bill, then the PUC might choose to cease its inspections of the Borough, and they speculated that the DOT likewise might not inspect the Borough's system. This is an unfounded concern, since the DOT has a Federal statutory mandate to perform the inspections and, as I have already discussed, Chambersburg already pays the DOT for those inspections. Also, since the DOT regularly inspected the Chambersburg system long before the PUC started to do the inspections for the DOT, there is absolutely no reason to think that Chambersburg's system will not be inspected if it is exempted from HB 344.

[4] Finally, the PUC staff also indicated that they were unwilling to agree to exempt Chambersburg from the legislation because they are concerned that other small gas suppliers, particularly the state's three small gas cooperatives, might then also seek exemption. Our response to that concern was that the Chambersburg situation is unique, and that Chambersburg is clearly distinguishable from those other small suppliers, in that the Borough has a full-time professional gas department staff, adequate resources and an exemplary safety record, as compared to the others which are thinly capitalized, have no day to day staff, and rely on independent contractors to perform all construction and O&M work on their small systems.

The Borough management and the Chambersburg Town Council, which is responsible for setting the gas rates, have an absolute duty to ensure safe and reliable gas service at reasonable rates, and otherwise to protect the interests of our ratepayers, in the very same fashion as the PUC protects the ratepayers of its jurisdictional utilities. Because of this duty, and the substantial additional costs which would result from HB 344, Chambersburg believes that an amendment to the bill is appropriate, expressly exempting its municipally owned and operated natural gas distribution system.

That completes my testimony today. Again, on behalf of the Borough, we appreciate this opportunity to testify. I would be happy to take any questions which you may have.