



# Natural Gas Development and the Pennsylvania Public Utility Commission

2010 Marcellus Summit: Building a Sustainable Future  
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# Disclaimers

- I'm an attorney, but I'm not your attorney.
- My client is the Pennsylvania Public Utility Commission.
- I can't talk about the substantive issues in pending cases – only procedural issues - (so don't ask).
- Nothing I say is binding on the Commission or Commissioners per 52 Pa.Code Section 1.96.

## § 1.96. Unofficial statements and opinions by Commission personnel.

- Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, **legal counsel**, employees or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.

# Overview of the PaPUC

- Independent Agency
  - Administrative Powers
  - Executive Powers
  - Judicial Powers
  - No comingling of advisory and prosecutory powers
- Size – approximately 500 employees

# Overview of the PaPUC continued

- Bureaus
  - Law Bureau
  - Fixed Utility Services
  - Consumer Services
  - Transportation and Safety
    - Rail
    - Motor carrier
    - Gas Safety
  - Administrative Law Judge

# PaPUC Bureaus

- Secretary's Bureau
- Administrative Services
- Audits
- Legislative Affairs
- Special Assistants
- Trial Staff

# Assessments

- Budget approved by General Assembly & signed by Governor
- Administratively broken down by regulated industries
- Not part of General Fund

# 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.

# 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).

# 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).

# Examples

## 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

# 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

# PaPUC Interest in Marcellus Shale

- PUC doesn't regulate gas production
- PUC does regulate/oversee
  - Natural gas supply costs
  - Water/wastewater
  - Truck transportation
  - Gas and hazardous liquids pipelines
  - Electric generation

# Public Utility or Not?

- “The Public” is not defined in the Public Utility Code
- Case Law
  - Pennsylvania Supreme Court
  - Commonwealth Court
  - PaPUC decisions

# Significant Cases

- Drexelbrook Associates, 212 A.2d 237 (Pa. Supreme 1965)
- Bethlehem Steel, 713 A.2d 1110 (Pa. Supreme 1998)
- Granger Energy, PaPUC  
(<http://www.puc.state.pa.us//PcDocs/491684.doc>;  
Docket No. P-00032043, August 19, 2004)
- Nutmeg Energy, PaPUC  
(<http://www.puc.state.pa.us//PcDocs/653802.doc>;  
P-00062204, November 30, 2006)

# Gas Safety “Jurisdiction”

- Commission included it in Granger, Nutmeg, Ardent, and Gasco/Knox cases
- Federal v. state pipeline safety
- With one exception, Gas Safety Division’s PHMSA duties are limited to jurisdictional public utilities
- Not surprisingly, not one of the “non-jurisdictional” entities said “we don’t want safety supervision by the PUC”

# Public Utility Status Determinations

- Formal
  - Application for Certificate of Public Convenience
  - Petition for Declaratory Order
  - Complaint
- Informal
  - Legal Advice
- Semi-Formal
  - PaPUC Policy Statement

# § 69.1401. Guidelines for determining public utility status

- 52 Pa.Code §69.1401  
(<http://www.pacode.com/secure/data/052/chapter69/s69.1401.html>)
- guidance to developers of all utility projects or services, including developers of alternative energy systems under the Alternative Energy Portfolio Standards Act (73 P. S. § § 1648.1—1648.8), in facilitating the design of projects and business plans.

# 69.1401 Policy Statement

- Fact-based determination
  - Service is merely incidental to nonutility business with the customers which creates a nexus between the provider and customer
  - The facility is designed and constructed only to serve a specific group of individuals or entities, and others cannot feasibly be served without a significant revision to the project
  - The service is provided to a single customer or to a defined, privileged and limited group when the provider reserves its right to select its customers by contractual arrangement so that no one among the public, outside of the selected group, is privileged to demand service without a significant revision to the project

# 69.1401 Options of Developer

- Chief Counsel Opinion Letter – 69.1401(f)
  - The opinion will be based solely on the facts provided and limited to the facts stated in the request
  - The Commission will publish public notice of the issuance of the letter in the *Pennsylvania Bulletin*. Opinion of counsel letters filed at the previous docket number will be available for public access upon request
  - Act of requesting an opinion of counsel letter may be considered as evidence of a good faith effort to operate in accordance with the law

# 69.1401 Options of Developer

- Notice & Disclosure Statement - 69.1401(g)
  - Voluntarily describing the nature and scope of the operation of a utility project or service with an assertion of its nonpublic utility status
  - Factual details and basis for nonutility status
  - The Commission will publish public notice of the filing in the *Pennsylvania Bulletin*; available for public access upon request
  - evidence of a good faith effort to operate in accordance with the law

# 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).

# Other Definitions

- Vehicle Code
  - "**Authorized vehicle.**" A vehicle or type of vehicle, other than an emergency vehicle, for which special operating or equipment privileges are given by law or regulation of the department based on design and utility for work within a highway.
  - Not limited to PUC certificated "public utilities"

# PennDOT Regulations

- 67 PaCode Chapter 459 Occupancy of highways by utilities
- *Utility*—A person owning a utility facility including any wholly owned or controlled subsidiary.
- *Utility facility or facility*—Privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, coal, water, steam, waste, storm water not connected to Department drainage facilities, and other similar commodities including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof.

# Ardent Resources, Inc.

- New York Corporation, Pittsburgh HQ
- 173 wells in 4 states & 2 provinces
- 10/31/06 - Applied to PaPUC for certificate of public convenience for intrastate pipeline and compression station.
- 3 customers, not actively seeking more, but will consider requests from other producers

# Ardent Resources, Inc.

- Application approved by PaPUC on April 13, 2007
  - *Independence Township School District Appeal*, 412 Pa. 302, 194 A. 2d 437 (1963) (3 customers)
  - *UGI Utils. v. Pennsylvania PUC*, 684 A.2d 225 (Commw. Ct. 1996) (2 customers, one of which was the parent)

# Ardent Resources, Inc.

- 7/10/08 Ardent filed a Petition to rescind the 4/16/07 Order granting the certificate
  - ZHW Oil & Gas to own; Ardent to operate –
  - Transportation service limited to an extremely narrow, limited group of affiliated producers (5 affiliates of ZHW listed in the petition) – not open to serving unaffiliated producers

# Ardent Resources, Inc.

- Public Meeting April 16, 2009
- Recission Approved with conditions
  - File copy of Pipeline Management Agreement
  - ZHW restrict its provision of pipeline services to the five identified producers
  - Gas Safety Division to review plans
  - ZHW seek Commission approval if it substitutes or adds a customer due to a change in circumstances

# Ardent Resources, Inc.

- May 1, 2009
- Petition filed for rescission, clarification and amendment of the 4/17/09 Order
- “In light of its non-utility status, ZHW questions whether the Commission has the authority to restrict ZHW in the manner specified....”
- Remove restriction on number of customers
- Notice, not “approval” of change in customers

# Ardent Resources, Inc.

- Commission acted at August 6, 2009 Public Meeting
  - Granted Petition
  - Removed “approval” requirement, replaced with “notice” to Commission
- Docket Number A-140005
- <http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=A-140005>

# Current Pipeline Cases

- Laser Northeast f/k/a Laser Marcellus Gathering Company, LLC
  - Case may go a long way in defining PaPUC role in pipeline construction, siting, and land acquisition/eminent domain
  - Filed January 19, 2010
  - Proposed Settlement filed September 13, 2010
  - In Briefing before ALJ Colwell
  - <http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=A-2010-2153371>

# Laser – Next Steps

- Initial Decision
- Exceptions/Reply Exceptions
- Commission Decision
- Appeals

# Newest Pipeline Case

- Peregrine Keystone Gas Pipeline, LLC
  - Filed September 17, 2010
  - *Penna. Bulletin* publication October 2, 2010
  - Protest Period ends November 1, 2010
  - <http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=A-2010-2200201>

# Corporations Code § 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.**

# Corporations Code – 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.

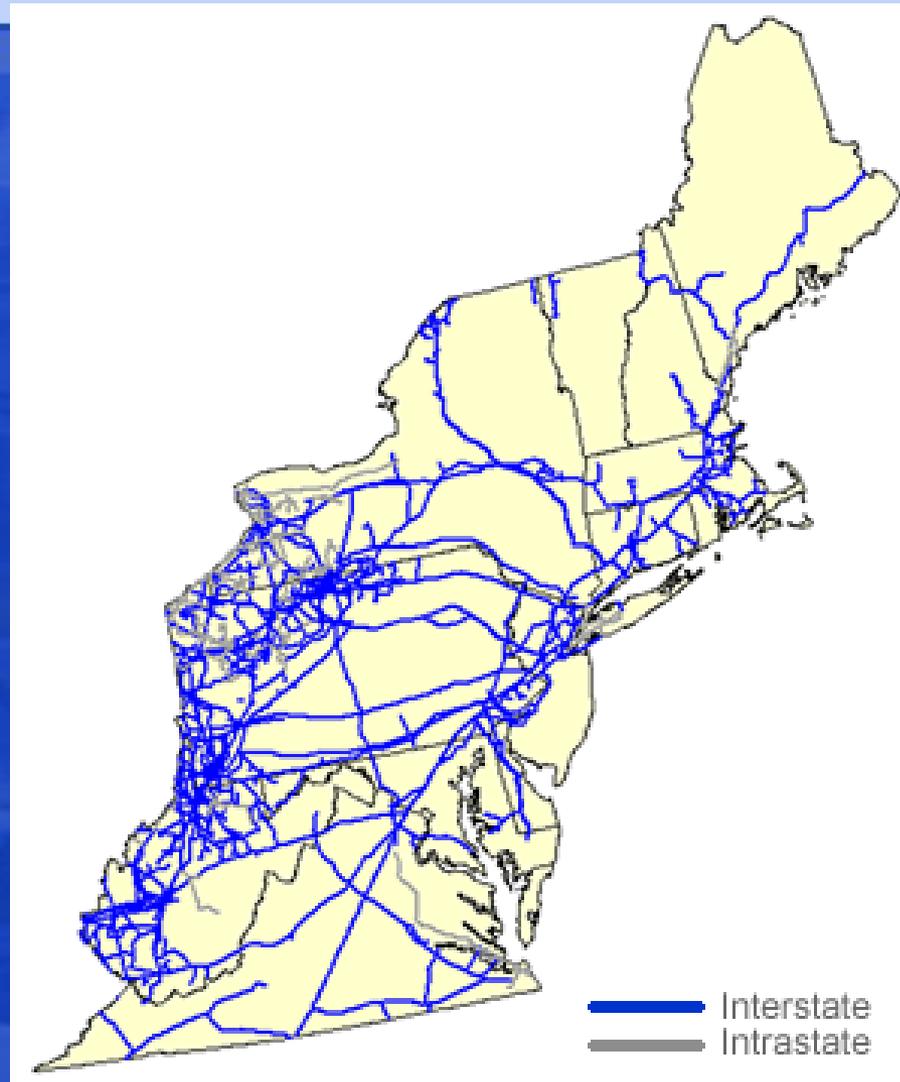
# Corporations Code - 1103

- "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.

# Public Utility Code

- § 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).

# Pipelines – Regional Map



# Pipelines – Summary

- Interstate – generally subject to exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC)
  - Siting
  - Developed based on economic justification

# Pipelines – Summary

- Intrastate
  - May (or may not) be subject to PaPUC jurisdiction
  - PUC does not site intrastate lines
  - Economic justification

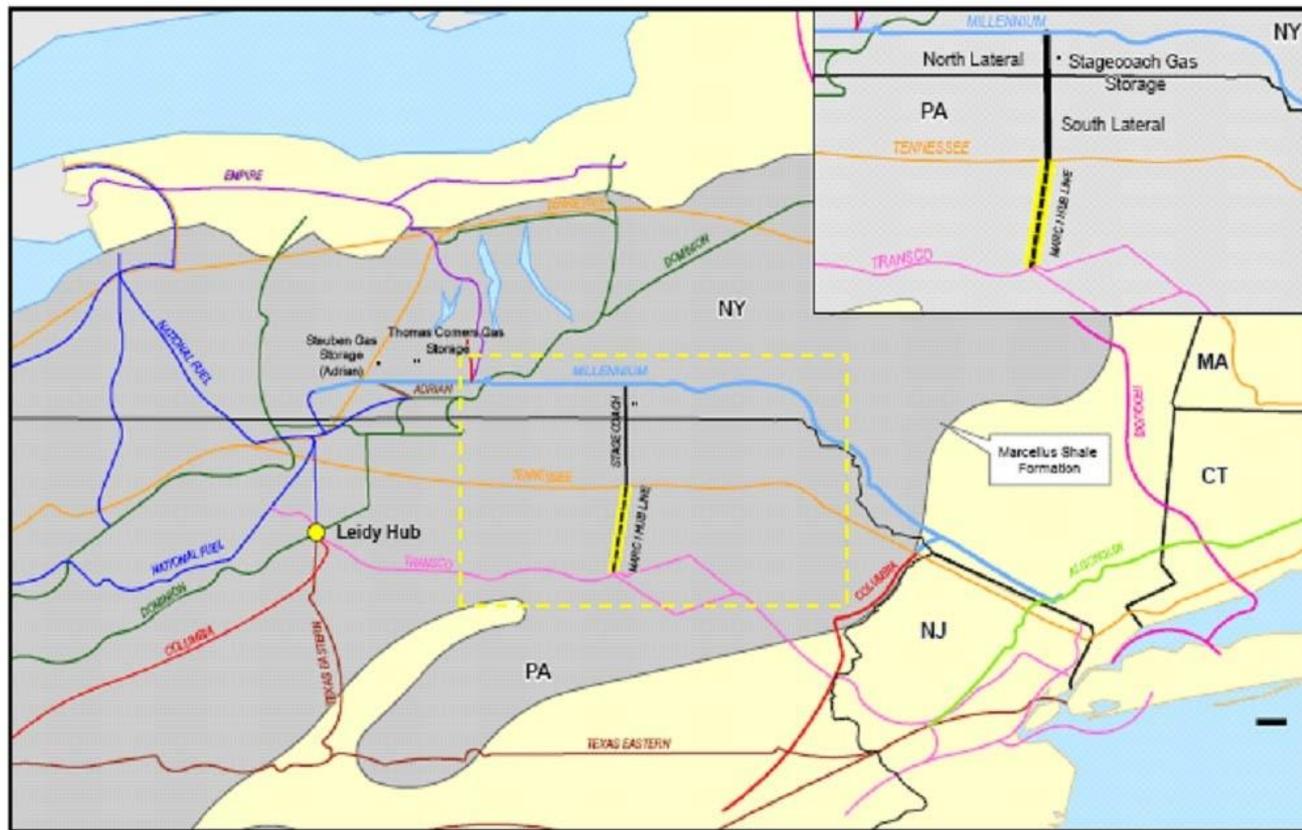
# Pipelines - Quiz

Interstate or intrastate?



# Other Pipeline Projects

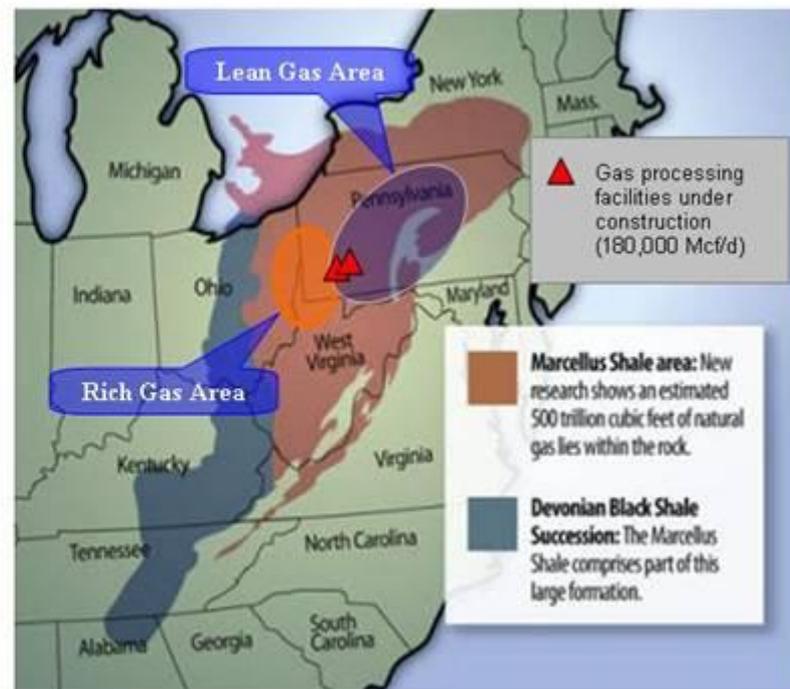
Diagram of the Marc I Hub Line



# Other Pipeline Projects

## Opportunities In Marcellus Shale

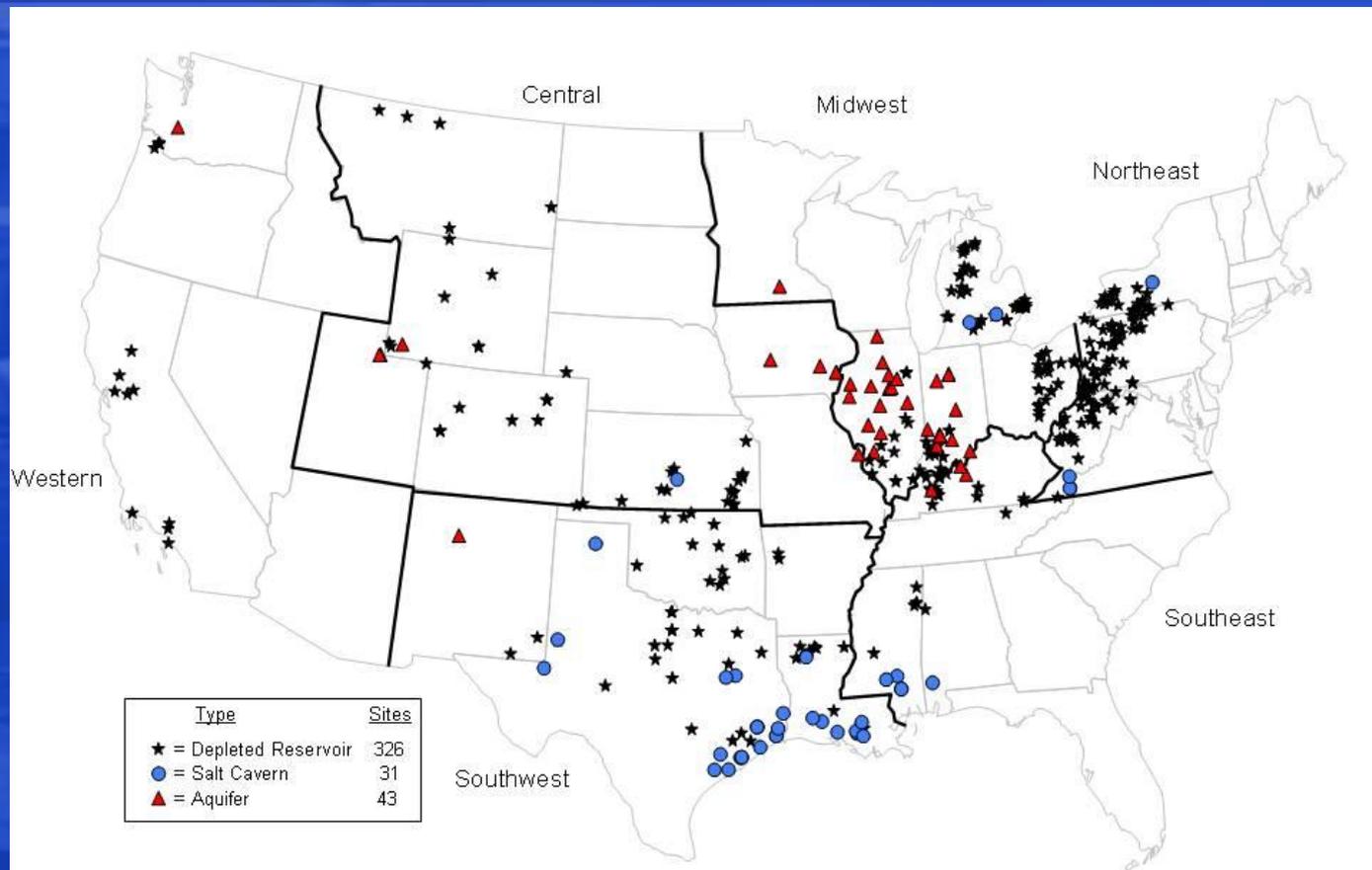
- MarkWest is currently building significant gathering and processing infrastructure in the rich-gas area of the Marcellus shale.
- Our agreements with Range Resources will require ongoing investment to construct gathering and processing facilities for many years in both the wet-gas and dry-gas areas.
- NGL fractionation and marketing are critical in the Marcellus and our existing facilities give us a tremendous advantage. We believe we may need to construct a new fractionation complex in the future with as much as 25,000 Bbl/d of capacity. Combined with Siloam, we would have almost 50,000 Bbl/d of fractionation capacity in Appalachia.
- Looking ahead, we believe our agreement with Range Resources, and long-standing relationships with other producers in the Appalachian basin, will continue to provide significant opportunities for additional investment.



# Other Pipeline Projects



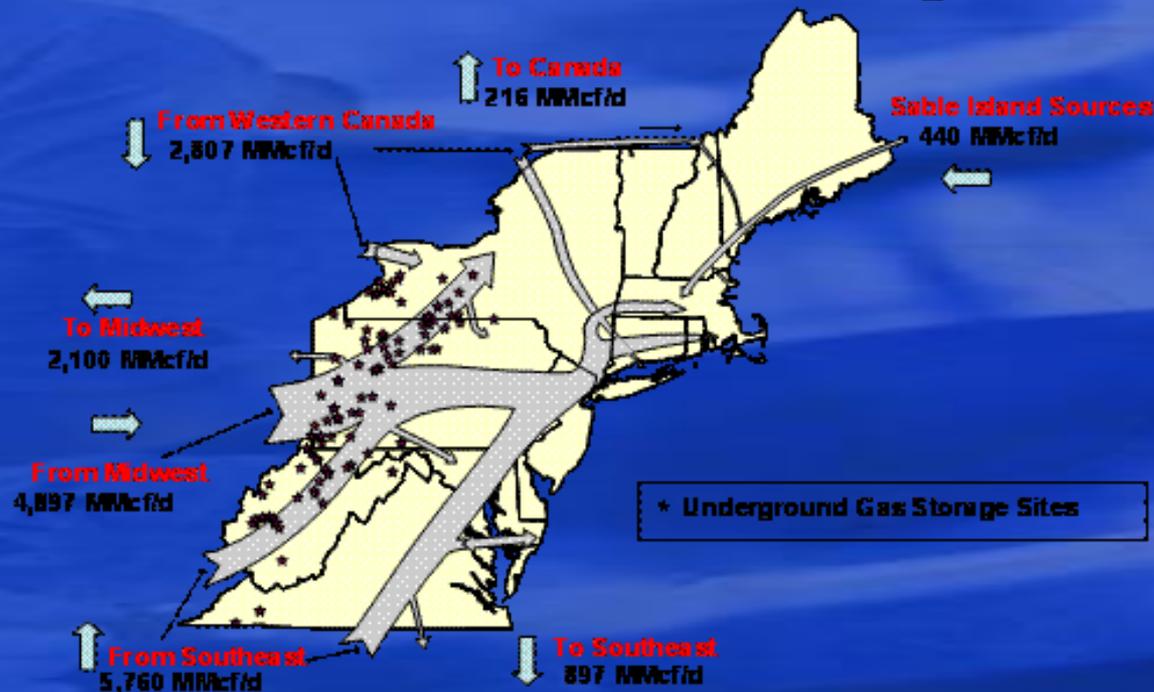
# Storage Fields



Source: Energy Information Administration, Office of Oil & Gas, Natural Gas Division Gas, Gas Transportation Information System, December 2008.

# Where does the gas go?

**Figure 8. Gas Pipeline Capacity Into and Out of the Northeast Region**



Note: MMcf/d = million cubic feet per day.  
Source: Energy Information Administration, Office of Oil and Gas, Natural Gas Pipeline Capacity Database.

# Back to Marcellus Shale and Natural Gas Production in General

- DEP regulates oil and gas wells
- PaPUC regulates “Public Utilities”
  - Distribution
  - Transportation
- Who regulates safety on gathering lines and non-public utility intrastate pipelines?
- Federal standards but no federal inspectors

# PaPUC Legislative Priorities

- January 2007 LB&FC Performance Audit  
pp132-133
  - **Recommendation:** The appropriate House and/or Senate committees should consider holding hearings to determine whether the PUC should have jurisdiction over propane and landfill gas distribution systems that provide service to the public.

# PUC Legislative Priorities

- Chairman's 2/25/09 testimony to the House Appropriations Committee
  - “Commissioners and staff will be in touch with our oversight committee Chairmen and staff members about several issues during the new session, including establishing gas-safety jurisdiction over unregulated entities essentially providing public utility service with landfill gas and propane; ....”
  - “The Commission also has offered proposed legislation to the Governor's Office per request to assume natural gas safety jurisdiction over otherwise non-jurisdictional entities such as private natural gas producers which are not public utilities, gathering systems, and any entity distributing flammable gas via pipeline and "master meter" to residential, commercial or industrial consumers. This is related to Marcellus Shale, a geologic formation underlying much of Western and Northern Pennsylvania long known to contain large amounts of natural gas.”

# PUC Legislative Priorities

- HB 1128 - amends Section 3301(c) to increase civil penalties for pipeline safety violations from \$10,000/\$500,000 (day/maximum for series) to \$100,000/\$1,000,000 to match federal levels.
- Rep. Preston; PN 1331

# PUC Legislative Priorities

- Limited jurisdiction over otherwise non-jurisdictional entities
- Follow US DOT safety standards in 49 CFR Parts 191-199
- HB 2693 (Status uncertain)
- Senate version being drafted as part of a comprehensive legislative package

# HB 2693

- Introduced by Rep. Matt Baker with 50 bipartisan co-sponsors
- Brings all non-public utility gas pipeline facilities under PUC for safety regulation by the federal pipeline safety laws
- Registry requirement
- Assessments
- Not limited to Marcellus Shale pipelines

# Thank you

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