SUNOCO PIPELINE
An ENERGY TRANSFER Partnership

SUNOCO PIPELINE
212 North Third Street, Ste. 201
Harrisburg, Pennsylvania 17101

August 27, 2019

Pennsylvania Public Utility Commission
Attn: Secretary Rosemary Chiavetta
400 North Street
Harrisburg PA 17120

Re: Docket No. L-2019-3010267 – Comments to Advanced Notice of Proposed Rulemaking (ANOPR)

Dear Secretary Chiavetta:

Sunoco Pipeline L.P. is a Pennsylvania certificated public utility holding several Certificates of Public Convenience for the intrastate transportation of petroleum and refined petroleum products through pipelines. Consistent with those Certificates of Public Convenience, Sunoco Pipeline L.P. has also posted and received approval of tariffs from the Commission for intrastate movement of various petroleum and refined petroleum products between defined points within the Commonwealth. In addition to operations within the Commonwealth, Sunoco Pipeline L.P. operates interstate pipelines in multiple states, and many of its pipelines provide both interstate and intrastate service. We appreciate this opportunity to provide comments the Pennsylvania Public Utility Commission (PUC or the Commission) to the ANOPR issued by the Commission on proposed regulations relating to hazardous liquids pipelines.

It is important in any comprehensive review of existing regulations and potential new regulation that the process be robust, science-based, transparent, and vigorous in vetting potential new regulations. The ANOPR is an important first step in this process. The ANOPR process should help to clarify whether there is an actual, objectively verifiable need for additional regulation.

We have ordered our comments around several themes relating to the issues in the ANOPR: (I) A background of pipeline safety regulation; (II) The risk of inconsistency with federal laws and regulations that must be accounted for in the rulemaking process; (III) The risk of attempting to promulgate regulations with retroactive applicability; (IV) Due process concerns regarding the promulgation process and pending adjudications; (V) The lack of statutory authority to promulgate regulations in certain areas; and (VI) The importance to adhere to statutory requirements relating to confidential security information.

I. Background Of Pipeline Safety Regulation

The federal Pipeline Safety Act (PSA) establishes minimum safety standards for all hazardous liquid and natural gas pipelines in the United States. 49 U.S.C. § 60101 et seq. The PSA is implemented by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration

(PHMSA). The regulations adopted by PHMSA for hazardous liquids pipelines are found at 49 C.F.R. Part 195, and the regulations applicable to facility response plans are found at 49 C.F.R. Part 194.

For pipelines that do not cross state boundaries, a state may be certified by PHMSA to undertake primary responsibility for oversight of pipeline safety in that state. 49 U.S.C. § 60105. Such state programs must adopt and enforce all federal pipeline standards, however, which for liquid pipelines includes 49 C.F.R. Part 195. A certified state may also promulgate additional regulations for pipeline safety that go beyond PHMSA federal regulations, but only if the state regulations are "compatible" with the PSA and PHMSA regulations. The PUC is certified by PHMSA to regulate pipeline safety with respect to oil, natural gas, petroleum products and natural gas liquids intrastate pipelines in Pennsylvania. For pipeline systems that cross state lines, PHMSA has primary responsibility for the oversight of pipeline safety, although certified states can participate in inspections and implementation of the PSA in their states through an agreement with PHMSA. 49 U.S.C. § 60106. The PUC has not entered into such an agreement with PHMSA to be an interstate agent.

II. Risk Of Inconsistency With Federal Laws And Regulations (II.A.3; II.A.6; II.A.7; II.A.8)

The ANOPR in general terms discusses possible new regulations on subjects that are currently regulated by PHMSA. As such, any proposed regulations must be consistent with the PSA and PHMSA regulations. Numerous courts have confirmed that the PSA grants PHMSA exclusive jurisdiction over interstate pipeline safety regulations. Further, state or local pipeline safety laws that are inconsistent with the PSA are uniformly held to be preempted. *See e.g.* Olympic Pipe Line Co. v. City of Seattle, 437 F.3d 872 (9th Cir. 2006)("The PSA expressly preempts Seattle's attempted safety regulation of the [pipeline]" and "[p]reemption is a power of the federal government, not an individual right of a third party that the party can 'waive'"); Kinly Corp. v. Iowa Utils. Bd., Utils. Div. Dep't of Commerce, 999 F.2d 354 (8th Cir. 1993)("Congress' intent to preempt state safety regulation of interstate hazardous liquid pipelines").

Several commenters who have submitted comments to the ANOPR appear to propose regulations that would be inconsistent with 49 C.F.R. Part 195. The PUC should be cautious in drafting proposed regulations to avoid inconsistency with Part 195. Inconsistency will inevitably lead to legal challenges and uncertainty, and the potential for a federal court to declare the regulations preempted and unenforceable.

It is also worth noting that there are currently three PHMSA pipeline safety rulemakings and a Congressional reauthorization of the PSA in progress. The PUC will need to reconcile any proposed regulations with the new regulations that will come out of PHMSA. These include: (1) the final hazardous liquid rule that which is expected to be issued in 2019 (Docket Number PHMSA-2010-0229; (2) the notice of proposed rulemaking regarding valve installation and rupture detection (RIN 2137-AF06); (3) the repair criteria notice of proposed rulemaking (RIN 2137-AF44); and (4) the 2019 PSA reauthorization statutory changes (a bill reported out of the House Energy and Commerce Committee, *H.R. 3432, The Safer Pipelines Act of 2019*, contains various provisions that if enacted may overlap or contradict with the subject areas covered in the PUC ANOPR).

Many of the PUC ANOPR topics overlap and risk contradicting pending PHMSA rulemakings and federal legislation. These topics include: pressure testing; emergency flow restriction devices (EDRDs), remote control valves (RCVs) and valve spacing; leak detection; corrosion control and cathodic

protection; interactions with local government and public awareness; and incident reporting. The PUC must also ensure that final regulations adhere to the PSA statutory amendments from the 2019 reauthorization and are compatible with PHMSA federal regulations. In addition, the PUC should take note of the comments provided by industry on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the topics listed above through the PHMSA rulemaking and the Liquid Pipeline Advisory Committee processes. Further, to the extent that PSA statutory amendments and/or PHMSA's pending rulemakings are duplicative of the PUC proposals, the PUC proposals would be redundant, unnecessary, and moot.

III. Risk Of Attempts To Promulgate Regulations With Retroactive Applicability (II.C.14)

ANOPR Section C.14 "Integration of new regulations on existing facilities" appears to imply that some effort would be undertaken to make new regulations retroactively applicable. The PUC should exercise extreme caution in this regard. Retroactive application of regulations would be prohibited by both the U.S. and Pennsylvania State constitutions. The U.S. Constitution, Article I, Section 9 applies to federal law, and Article I, Section 10 extends that prohibition to the States. The Pennsylvania Constitution acknowledges the prohibition on *ex post facto* laws at Article I, Section 17. Further the PSA expressly provides that "[a] design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted." 49 U.S.C. § 60104(b). Pennsylvania law clearly established that an agency may not promulgate retroactive regulations or apply regulations retroactively where retroactivity would "destroy vested rights, impair contractual obligations or violate the principles of due process and *ex post factor* laws." R&P Serv's, Inc. v. Dept. of Rev., 541 A.ed 432, 434 (Pa. Cmwlth. 1988).

In addition to expressly contemplating retroactive applicability as described above, the ANOPR proposes regulations on subject areas where retroactive applicability would be patently unconstitutional. These include all four topics under Section I, Construction: Pipeline Material and Specification (Section I.A.1); Cover Over Buries Pipelines (Section I.A.2); Underground Clearances (Section I.A.3); and Valves (Section I.A.4). Regulations on these subject areas, if promulgated, could only apply to new pipeline construction or pipeline upgrades, repairs or other major changes, in accordance with 49 C.F.R. Parts 195.101 and 195.200.

IV. Due Process Concerns Regarding Promulgation Process And Existing Adjudications

To the extent the Commission promulgates regulations that essentially grant relief or resolve issues against SPLP that have been requested or raised in proceedings currently pending before the Commission (*e.g.* Bureau of Investigation and Enforcement v. Sunoco Pipeline L.P., Docket Nos. C-2018-3006116 (consolidated)), we believe the Commission would be violating due process rights to an impartial tribunal that adjudicates cases on the facts of the record of each case before it. Moreover, if employees of the Commission's Bureau of Investigation and Enforcement, who serve in a prosecutorial role, authored and/or advised the Commission on the ANOPR, or participate in the regulatory process, that would be in violation of the separation of powers principles for administrative agencies and 66 Pa.C.S. § 308.2(b) ("A commission employee engaged in a prosecutor function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter."). In promulgating regulations on subjects that are directly related to enforcement actions, the Commission must be very careful to adhere to fundamental due process restrictions involving employees who are involved in a prosecutorial role.

V. Lack Of Statutory Authority To Promulgate Regulations In Certain Areas

A. Valves (II.A.4)

The Commission has, in recent decisions, recognized its lack of statutory authority to require specific location of valves:

> As such, we find it important to note, as we did in our prior Orders in this proceeding, that with the exception of high voltage electric transmission lines, the Commission's authority regarding the siting of public utility facilities is limited. The Commission's authority stems from Section 10619of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10619, which provides that the Commission is authorized to determine, *upon petition by such public utility and after notice and opportunity for a hearing,* whether a building proposed by a public utility is "reasonably necessary for the convenience or welfare of the public." *See* 53 P.S. § 10619 (emphasis added). The effect of such a determination would be to exempt the proposed public utility building from the local township or municipality's zoning authority under the MPC. It is not clear that the Commission has the authority to provide such an exemption in the context of the instant proceeding or to otherwise direct a valve location on a specific tract of land.

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018)(emphasis added).

Likewise with respect to valves, the PUC has relied on testimony that there is not an "absolute 'one size' fits all solution to the placement of mainline valves on liquid pipelines" in finding that a *decision not to site valve in strict adherence with engineering guidance (ASME B31.4) was not unsafe* where sound and experienced engineering judgment supported the valve spacing decision. West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Recommended Decision at 35-40 (RD entered July 16, 2018); West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Opinion and Order at 22 (Order entered Oct. 1, 2018)(adopting Recommended Decision without modification).

B. Construction Pre-Approval (II.C.8)

The Public Utility Code does not give the Commission the authority to require pre-approval of construction of pipelines and interpretation of the "safety" standard in § 1501 cannot be used to give the Commission unlimited regulatory authority. The General Assembly prohibited certain types of construction related to public utilities without prior approval of the PUC. 66 Pa. C.S. §§ 515, 518, 519, 520 (electric generating units), 2702 (railroad crossings); *see also* 66 Pa. C.S. § 2804 (transmission facilities), 52 Pa. Code § 57.71-57.77 (transmission facilities). There is no such provision of the statute applicable to pipeline utilities. The General Assembly's clear expression of requiring Commission permission for construction for some public utilities and related facilities but failure to include such a provision for pipelines means the General Assembly did not intend to require Commission preapproval or permission for construction of pipeline facilities. "[T]he inclusion of a specific matter in a statute implies the exclusion of other matters." *Popowsky v. Pennsylvania Public Utility Com'n*, 869 A.2d 1144, 1159 (Pa. Cmwlth. 2005) (overturning PUC interpretation of 66 Pa. C.S. § 1307(a) to allow wastewater utility to implement a surcharge for infrastructure improvement where General Assembly had

specifically provided for water utilities to implement such surcharge under § 1307(g) without mentioning wastewater utilities, and therefore General Assembly had excluded wastewater utilities from implementing such surcharge).

Moreover, interpreting § 1501's requirement to maintain safe service and facilities cannot be read to provide regulatory authority for construction approval as it would render the provisions above providing authority for preapproval of construction mere surplusage. "The General Assembly intends that a statute 'be construed, if possible, to give effect to all its provisions,' lest a provision be rendered *mere surplusage*." *Id. (overturning PUC interpretation of 66 Pa. C.S. § 1307(a) to allow wastewater* utility to implement a surcharge for infrastructure improvement where it would render § 1307(g) providing for water utility infrastructure improvement surcharge mere surplusage).

C. Horizontal Directional Drilling (HDD) (II.C.6 & II.C.10)

While the PUC has jurisdiction over public utilities, that does not mean the General Assembly has given the PUC *carte blanche* authority to enact regulations governing every aspect of a utility's actions. To the contrary, the General Assembly has clearly expressed in what circumstances and for which utilities it has empowered the PUC to specifically regulate installation/construction techniques, and that does not include pipelines. The Public Utility Code expressly allows the PUC to regulate installation of electric transmission lines:

> **The following interdependent standards shall govern the commission's** assessment and approval of each public utility's restructuring plan, oversight of the transition process and **regulation of the restructured electric utility industry:**
>
> **(1) The commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth, including:**
>
> (i) The maintenance of adequate reserve margins by electric suppliers in conformity with the standards required by the North American Electric Reliability Council (NERC) and the regional reliability council appropriate to each supplier, or any successors to those reliability entities, and in conformity with established industry standards and practices.
>
> **(ii) The installation** and maintenance **of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code**.
>
> 66 a. C.S. § 2804 (emphasis added).

While the General Assembly expressly granted the PUC regulatory authority over installation and construction of electric transmission facilities, there is no such specific legislative provision for pipeline utilities. Failure to include such a provision for pipelines means the General Assembly did not intend to grant the PUC regulatory authority to dictate installation/construction techniques for pipeline facilities. "[T]he inclusion of a specific matter in a statute implies the exclusion of other matters."

Popowsky v. Pennsylvania Public Utility Com'n, 869 A.2d 1144, 1159 (Pa. Cmwlth. 2005) (overturning PUC interpretation of 66 Pa. C.S. § 1307(a) to allow wastewater utility to implement a surcharge for infrastructure improvement where General Assembly had specifically provided for water utilities to implement such surcharge under § 1307(g) without mentioning wastewater utilities, and therefore General Assembly had excluded wastewater utilities from implementing such surcharge).

Moreover, interpreting § 1501's requirement to maintain safe service and facilities cannot be read to provide regulatory authority for dictating construction techniques as it would render the provision above providing authority for regulating electric transmission line installation and construction mere surplusage. "The General Assembly intends that a statute 'be construed, if possible, to give effect to all its provisions,' lest a provision be rendered mere surplusage." *Id.* (overturning PUC interpretation of 66 Pa. C.S. § 1307(a) to allow wastewater utility to implement a surcharge for infrastructure improvement where it would render § 1307(g) providing for water utility infrastructure improvement surcharge mere surplusage).

VI. Adhering To Statutory Requirements To Protect Confidential Security Information (II.C.5)

The importance of protecting pipeline records and infrastructure is recognized throughout federal and state law. For example, the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6 ("CSI Act") and Pennsylvania Right-to-Know law, 65 P.S. § 67.101 *et seq.* ("RTKL") expressly protect a breadth of confidential security information regarding public utility and pipeline operations, including but not limited to locations and vulnerability assessments of public utilities, from public disclosure.

It is black letter law that agency regulations cannot override a statute. "[A]n agency is bound by the language of the statute it is charged to enforce; accordingly, the agency's regulations 'must be consistent with the statute under which they are promulgated.'" *Peake v. Dept of Human Serv's.*, 132 A.3d 506, 522 (Pa. Cmwlth. 2015) (quoting and citing *Pelton v. Dept of Public Welfare*, 514 Pa. 323, 523 A.2d 1104, 1107 (Pa. 1987)). Therefore, any regulations the PUC may implement or change must be consistent with the CSI Act and the RTKL and the policy embedded therein.

Moreover, the non-disclosure protections for a public utility's confidential security information under state law reflects the serious national security and public safety risk posed by disclosure of a pipeline utility's confidential security information. Any regulations the PUC proposes must carefully consider these concerns and should not use procedural hurdles to diminish or override the policy behind these laws.

SPLP provides below a summary of the CSI Act, relevant RTKL exemptions, and the important policy considerations for protection of this information for the Commission's consideration.

A. The CSI Act

The CSI Act was signed into law on November 29, 2006 by Governor Ed Rendell in order to safeguard confidential security information of all public utilities. *See* Pennsylvania Public Utility Commission, PUC Approves Final Rulemaking for the Public Utility Confidential Security Information Disclosure Act (May 1, 2008), available at:
http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=1963.

Through the CSI Act, the General Assembly has directed that specific types of utility information maintained by State agencies be protected from improper and unwarranted public disclosure. Confidential security information is defined by The Public Utility Confidential Security Information Disclosure Protection Act as:

> **"Confidential security information."** Information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities, including, but not limited to, all of the following:
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> (1) A vulnerability assessment which is submitted to the Environmental Protection Agency or any other Federal, State or local agency.
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> (2) Portions of emergency response plans that are submitted to the Department of Environmental Protection, the Pennsylvania Public Utility Commission or any other Federal, State or local agency dealing with response procedures or plans prepared to prevent or respond to emergency situations, except those portions intended for public disclosure, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures. Nothing in this term shall be construed to relieve a public utility from its public notification obligations under other applicable Federal and State laws.

35 P.S. § 2141.2. The CSI Act acknowledges that the public utility or owner of the facilities at issue are in the best position to identify its CSI by expressly providing the public utility/facility owner with the responsibility for determining whether a record contains CSI:

> (a) GENERAL RULE.—The public utility is responsible for determining whether a record or portion thereof contains confidential security information. When a public utility identifies a record as containing confidential security information, it must clearly state in its transmittal letter, upon submission to an agency, that the record contains confidential security information and explain why the information should be treated as such.

35 P.S. § 2141.3(a). Section 2141.3(c)(4) further provides the basis of the agency's review of a public utility's confidential information designation:

> (4) Agency review of the public utility's designation or request to examine records containing confidential security information shall be based on consistency with the definition of confidential security information

> contained in this act or when there are reasonable grounds to believe disclosure *may* result in a safety risk, including the risk of harm to any person, or mass destruction.

35 P.S. § 2141.3(c)(4). The act defines a number of key terms in these sections, which underscore the serious consequences of public release of a public utility's confidential security information:

> "Terrorist act." Any act or acts constituting a violent offense intended to:
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> (1) intimidate or coerce a civilian population;
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> (2) influence the policy of a government by intimidation or coercion; or
>
> (3) affect the conduct of a government.
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> "Violent offense." An offense under 18 Pa.C.S. Pt. II (relating to definition of specific offenses), including an attempt, conspiracy or solicitation to commit any such offense, which is punishable by imprisonment of more than one year and involves an act dangerous to human life or property.
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> "Dangerous to human life or property." A violent act or an act which is intended to or likely to cause death, serious bodily injury or mass destruction.
>
> "Mass destruction." An act which is intended to or likely to destroy or cause serious damage to facilities, public or private buildings, places of public accommodation or public works under circumstances evincing depraved indifference to human life or property.

35 P.S. § 2141.2.

The seriousness of improper public disclosure of protected public utility information is illustrated by the steep criminal penalties imposed by the CSI Act for those who violate its non-disclosure provisions:

> A public official or public employee who acquires a public utility record or portions thereof which contain confidential security information or any reproduction of a public utility record or portion thereof which contains confidential security information and who knowingly or recklessly releases, publishes or otherwise discloses a public utility record or portion thereof which contains confidential security information or any reproduction of a public utility record or portion thereof which contains confidential security information commits a misdemeanor of the second degree subject to prosecution by the Attorney General and shall, upon conviction, be sentenced to pay a fine of not more than $5,000 plus costs of prosecution or to a term of imprisonment not to exceed one year, or both, and shall be removed from office or agency employment.

35 P.S. § 2141.6.

B. The Right To Know Law

The RTKL provides for disclosure of public records in possession of commonwealth agencies. To the extent confidential security records are protected from disclosure by other federal or state law, these records are not considered "public records" under the RTKL and are therefore not subject to disclosure under the RTKL. However, to the extent federal or state laws do not apply to a pipeline utility's records, the RTKL nonetheless recognizes the confidential nature of these records. Specifically, Section 708(b)(3) exempts from disclosure any "record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, infrastructure, facility or information storage system." 65 P.S. § 67.708(b)(3).[1]

Pursuant to Section 708(b)(3)(i) and (ii), the following records related to facility and physical security are exempt from public disclosure:

> (i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
>
> (ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments;

65 P.S. § 67.708(b)(3)(i) and (ii). Most relevant to public utilities, Section 708(b)(3)(iii) of the RTKL, expressly exempts from disclosure records that create a reasonable likelihood of endangering the physical security of a public utility:

> (iii) the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include ... building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

[1] In order for this exemption to apply, "the disclosure of" the records — rather than the records themselves — must create a reasonable likelihood of endangerment to the safety or physical security of certain structures or other entities, including buildings and infrastructure. *See* 65 P.S. § 67.708(b)(3).

65 P.S. § 67.708(b)(3)(iii). Also, Section 708(b)(2) of the RTKL exempts from public disclosure emergency response plans, such as emergency preparedness plans submitted by utilities to agencies for the purposes of responding to public safety incidents involving pipelines:

> A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State *military authority*.

65 P.S. § 67.708(b)(2).

C. Policy Considerations

The non-disclosure protections for a public utility's confidential security information under state law reflects the serious national security and public safety risk posed by disclosure of a pipeline utility's confidential security information. A March 2019 U.S. Congressional Research Report summarizes the threats faced by pipelines and the importance of ensuring the security of pipeline infrastructure, explaining:

> Ongoing threats against the nation's natural gas, oil, and refined product pipelines have heightened concerns about the security risks to these pipelines, their linkage to the electric power sector, and federal programs to protect them. In a December 2018 study, the Government Accountability Office (GAO) stated that, since the terrorist attacks of September 11, 2001, "new threats to the nation's pipeline systems have evolved to include sabotage by environmental activists and cyber attack or intrusion by nations." In a 2018 Federal Register notice, the Transportation Security Administration stated that it expects pipeline companies will report approximately 32 "security incidents" annually—both physical and cyber.
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> ...
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> Congress and federal agencies have raised concerns since at least 2010 about the physical security of energy pipelines, especially cross-border oil pipelines. These security concerns were heightened in 2016 after environmentalists in the United States disrupted five pipelines transporting oil from Canada. In 2018, the Transportation Security Administration's Surface Security Plan identified improvised explosive devices as key risks to energy pipelines, which "are vulnerable to terrorist attacks largely due to their stationary nature, the volatility of transported products, and [their] dispersed nature." Among these risks, according to some analysts, are the possibility of multiple, coordinated attacks with

> explosives on the natural gas pipeline system, which potentially could "create unprecedented challenges for restoring gas flows."

Paul Parfomak, Cong. Research Serv., IN11060, *Pipeline Security: Homeland Security Issues in the 116th Congress* (2019). Further explaining pipelines vulnerability to outside attacks, the Government Accountability Office (GAO)'s December 2018 study on pipeline security found:

> According to TSA, pipelines are vulnerable to physical attacks—including the use of firearms or explosives—largely due to their stationary nature, the volatility of transported products, and the dispersed nature of pipeline networks spanning urban and outlying areas. The nature of the transported commodity and the potential effect of an attack on national security, commerce, and public health make some pipelines and their assets more attractive targets for attack. Oil and gas pipelines have been and continue to be targeted by terrorists and other malicious groups globally.[2]

At a congressional hearing regarding "how the Transportation Security Administration works with pipeline stakeholders to secure this critical infrastructure," Sonya Proctor, Surface Division Director for the U.S. Department of Homeland Security, Transportation Security Administration, Office of Security Policy and Industry Engagement further explained the substantial risk facing pipeline operations and the responsibility of pipeline owners and operators for protecting pipeline systems from these threats:

> An attack against a pipeline system could result in loss of life and significant economic effects. To ensure we remain vigilant, TSA works closely with the pipeline industry which consists of approximately 3,000 private companies who own and operate the Nation's pipelines. Pipeline system owners and operators maintain direct responsibility for securing pipeline systems.[3]

Thus, the PUC cannot override statutory protections for CSI and policy weighs heavily against such action.

Finally, the Commission should adopt a regulation making its regulations that cover CSI for public utility pipelines applicable to CSI for non-public utility pipelines that the Commission regulates for safety because the same public safety reasons for such CSI treatment exist for both types of pipelines.

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[2] U.S. Gov't Accountability Off., GAO-19-48, *Critical Infrastructure Protection Actions Needed to Address Significant Weaknesses in TSA's Pipeline Security Program Management*, pgs. 10-11 (Dec. 2018), available at https://www.gao.gov/assets/700/696123.pdf.

[3] *Pipelines: Securing the Veins of the American Economy: Hearing Before the Subcomm. on Transportation Security of the Committee on the H. Comm. on Homeland Security*, 114th Cong. 64 (2016) (statement of Sonya Proctor, Surface Division Director, Office of Security Policy and Industry Engagement, Transportation Security Administration, U.S. Department of Homeland Security), available at https://www.govinfo.gov/content/pkg/CHRG-114hhrg22757/html/CHRG-114hhrg22757.htm.

VI. Conclusion

As stated above, Sunoco Pipeline L.P. appreciates this opportunity to comments on issues raised by the ANOPR. The desire to maintain pipeline safety is shared by Sunoco Pipeline L.P. along with the Commission. The Commission should be commended for its diligence in inspecting and enforcing existing federal pipeline safety regulations which are the product of extensive rulemakings, are science-based, consider cost-benefit issues, and provide and promote performance-based pipeline safety. Any effort to expand existing regulations should be mindful of the issues set forth above.

SUNOCO PIPELINE L.P.

By: _____

Curtis N. Stambaugh
Assistant General Counsel