



Raiders Law

October 11, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: *Andover Homeowners' Association, Inc. v. Sunoco Pipeline, L.P., Docket C-2018-3003605*

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Andover Homeowner's Association's Motion to Strike and Answer to Sunoco Objections to Interrogatories.

If you have any questions regarding this filing, please contact the undersigned.

Respectfully Submitted,

Richard A. Raiders, Esq.

Counsel for Andover Homeowner's Association

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:	
	:	
v.	:	C-2018-3003605
	:	
SUNOCO PIPELINE, L.P.	:	

ORDER

AND NOW, this _____ day of _____, 2019, upon consideration of the Motion to Strike Objections to Interrogatories and good cause appearing therefore, it is hereby ordered and decreed that said Motion is hereby granted and the Objections submitted are void and shall be stricken with prejudice.

BY THE COURT:

J.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANDOVER HOMEOWNERS’ ASSOCIATION, INC. :
 :
 v. : C-2018-3003605
 :
SUNOCO PIPELINE, L.P. :

MOTION TO STRIKE OBJECTIONS TO INTEROGATORIES

Pursuant to 52 Pa. Code § 5.342, Andover Homeowners’ Association, Inc. (“Association”) moves to request the Pennsylvania Public Utility Commission (“Commission”) to strike Sunoco Pipeline L.P.’s objections to the Association’s Request for Interrogatories, and avers in support thereof as follows:

1. Under 52 Pa. Code § 5.342(c)(4) concerning objections, objections must be signed by the attorney making them.
2. Attorney Thomas J. Sniscak, on behalf of his co-counsel, submitted the Sunoco objections without signing the objections in violation of 52 Pa. Code § 5.342(c)(4).
3. Attorney Thomas J. Sniscak did not sign the document either electronically nor using pen-and-paper.
4. Striking Sunoco’s improperly submitted objections will ensure that Attorney Thomas J. Sniscak will not disregard discovery rules and be able to follow procedures more closely.
5. Sunoco, in its objections, expresses its concern about following the Commissions’ discovery rules, but utterly disregards these rules when objecting to discovery requests.
6. As the time to properly object to discovery requests has now expired, the Commission should strike Sunoco’s Objections with prejudice.

WHEREFORE, Andover Homeowner's Association, Inc. respectfully requests that this Honorable Court enter the attached proposed Order, striking with prejudice the objections improperly submitted by Attorney Thomas J. Sniscak, and provide other appropriate relief.

Respectfully submitted,



Date: October 11, 2019

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*Attorney for Andover Homeowners' Association,
Inc.*

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:	
	:	
v.	:	C-2018-3003605
	:	
SUNOCO PIPELINE, L.P.	:	

MOTION TO COMPEL SUNOCO PIPELINE L.P. TO ANSWER ANDOVER HOMEOWNERS' ASSOCIATION, INC'S INTERROGATORIES

Pursuant to 52 Pa. Code § 5.342, Andover Homeowners' Association, Inc. ("Association") moves to request the Pennsylvania Public Utility Commission ("Commission") to compel Sunoco Pipeline L.P. ("Sunoco") to fully and completely answer the Association's Interrogatories. Sunoco overbroadly alleged that baseline discovery constitutes some sort of abuse of the discovery process in that they are unduly burdensome and overbroad and duplicative of Andover's First Set of Requests for Production of Documents. Sunoco argues in the introduction to its Objections the reasons it believes Andover's interrogatories are overbroad, even as it brings overbroad objections in bad faith in an attempt to evade all discovery in this matter. Sunoco fails to point to any authority that the Association's request for production of documents, coincident with this request for Interrogatories, may not overlap. Simply, the Association published both at the same time to provide full discovery. Specifically, if an answer to an interrogatory requires production of documents, Sunoco is on notice that it shall produce the documents covered in the interrogatory (and vice versa). Such overlap is allowed, fully expected and anticipated in applicable law. There is no authority in Pa. R.C.P. 4005 nor 52 Pa. Code 5.342 that does not allow for mirrored requests for production and interrogatories. Sunoco cites to none, and brings this objection in clear bad faith to avoid discovery.

In further bad faith, Sunoco next objects to individual instructions, claiming that the discovery of facts concerning the pipelines the Association believes constitute a danger to its members, visitors and neighbors will not likely lead to discoverable evidence. However, absent boilerplate bad faith overbroad claims, Sunoco offers no evidence that the physical configuration of its pipelines, its Mariner East II construction methods or the facts surrounding operations of the Mariner East system, which has only operated for approximately three years, will not lead to relevant evidence that Sunoco's construction and operation practices do not comply with the Commission's requirements that Sunoco operate a safe and efficient service and other requirements to protect the public. If the Association cannot discover the details of how Sunoco believes that their service complies with applicable law, then Sunoco will successfully avoid any scrutiny to which it should be subject.

Pennsylvania Rules of Civil Procedure allow for liberal discovery of non-privileged matter reasonably designed to address matters reasonably anticipated from the face of the complaint. *George v. Shirra*, 814 A.2d 202, 2014 (Pa. Super. 2002). Adjudicators should narrowly tailor discovery limitations. See e.g., *Mc Andrew v. Donegal Mutual Ins. Co.*, 56 D&C 4th 1, 7 (Pa. C.P. Lacka. Cty. 2002). Information that may become inadmissible at trial or seek opinions that relate to facts potentially usable at trial are not justifications to limit discovery. Pa. R.C.P. 4003(1)(b), (c). The objector has the burden to show why discovery should be disallowed. See e.g., *Yadouga v. Cruciana*, 66 Pa. D&C 4th 164, (Pa. C.P. Lacka. Cty. 2004) (collecting cases); *Cobenski v. Brooks*, 7 D&C 3d 253 (Pa. C.P. Phila. Cty. 1978); *Fuller v. Jackson*, 50 Pa. D&C 3rd 628, 629 (Pa. C.P. Cumb. Cty. 1987). Sunoco must prove that the discovery question could not possibly lead to discoverable evidence, not if the anticipated answer is directly admissible

evidence. *See, O'Connor v. Fellman, 39 Pa. D&C 2d 51 (Pa. C.P. Monroe Cty. 1966)*. Sunoco must also show that none of the answers could possibly “possess sufficient probative force to affect a material part of the cause of action.” *Id.* Here, Sunoco attempts to shift this burden by making overbroad generalizations that it will be required to produce thousands of records, cannot note in an Interrogatory answer that the documents provided under the RPD response answer the interrogatory, and unduly constrain the action to not matters under which Sunoco acts under the applicable 195 Manual, but to a three or four parcel stretch of two small portions of two discrete pipeline segments. Further, Sunoco fails to show that the various discovery requests made by the Association, taken as a whole, could not lead to any conclusive evidence that could be introduced at hearing as evidence that Sunoco does not provide safe, efficient and compliant service. Nowhere does Sunoco aver that the Association’s discovery requests are irrelevant to the central goals of discovery, to guide litigants towards how they should proceed. These objections are wholly without support and must be stricken.

Further, these documents were not signed, as required by the Commission at 52 Pa. Code § 5.342(c)(4), and are thus invalid and waived.

I. OBJECTIONS TO ENTIRETY OF SET 1 INTERROGATORIES

The Association understands that Sunoco complains that Complainant’s Set 1 Interrogatories are duplicative of their Set 1 RFPs, seeking identification and description of documents requested in the RFPs, or otherwise seeking details that would be readily available from such documents if they were produced. Sunoco here attempts to place on the Association the burden of knowing what evidence is available in document form or interrogatory form. This is an utterly impossible burden for the Association, which can only learn which documents

would be responsive and which information is only known or discoverable by interrogatory. This objection is utterly in bad faith and should be overturned.

II. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

The Association understands that Sunoco may, as it has in similar matters before the Commission, file a motion for a protective order to further govern discovery. It is free to do so, but not raise that issue in Objections. It also has the right to object to any request that may be seen as violating the norms of practice before the Commission, but does not raise any such objections in the Objection offered. Therefore, this objection is raised without merit. Sunoco should, instead, offer a protective order motion if it chooses.

Sunoco next objects to Definitions 5, 7, and 8 as unreasonably burdensome and requiring an unreasonable investigation because a document in Sunoco's possession and produced in discovery may answer an interrogatory. Sunoco is free to simply respond to an interrogatory that the document produced in discovery includes Sunoco's entire response and nothing further is required. No objection is required.

Sunoco objects to Definition 9 because it seeks legal opinions, which are not discoverable under the Commission's regulations. However, Sunoco is free to respond that it limits its response in compliance with attorney-client and work product privileges. No objection is necessary.

Sunoco next objects to Definitions 20 and 21, where the Association is attempting to understand the nexus between Sunoco Pipeline L.P. and its well-publicized merger with Energy Transfer Partners. The Association seeks to discover the relationship between Energy Transfer Partners and Sunoco Pipeline L.P. Specifically, the Association will need to understand which

pipelines and entities are or have been covered by any Part 195 Manual which covers Mariner East. The Association is under the impression that Sunoco Pipeline L.P. and other Energy Transfer entities may partially or wholly share parts or all of one or more sections of the 195 Manual which is at the center of this action. If that is the case, then Sunoco will have the opened the door to discovery of information about matters beyond Mariner East. Without discovery, such information cannot be discovered. Moreover, Sunoco has begun, in other dockets, to conflate Sunoco and Energy Transfer in business before the Commission concerning, *inter alia*, the Mariner East 1 pipeline accident in Morgantown, Berks County being investigated by the Commission's Bureau of Investigation and Enforcement. *See, Final Determination, Pa. Off. Open Records, Docket AP 2019-1325 (Oct. 10, 2019) (attached)*. In this Office of Open Records Final Determination, Sunoco and Energy Transfer together contested a records request made by the requestor to the Commission concerning what appears to be Sunoco actions. The agency in question in this Final Determination is the Pennsylvania Public Utility Commission, the adjudicator here. It is in bad faith that, in one part of the Commission, Sunoco tries to argue that it is not tied to Energy Transfer and, simultaneously, in a separate argument against the President of the Association, argue that Sunoco and Energy Transfer should be allowed to shield Mariner East information from the public. Energy Transfer's conduct in the Office of Open Records action shows that Energy Transfer and Sunoco are not separate in the eyes of the Commission. The Association asserts that Sunoco has waived any argument that it can shield Energy Transfer from scrutiny before the Commission because of its combined participation with Energy Transfer over Mariner East issues concerning the Commission.

Further, Sunoco's compliance with the 195 Manual and the adequacy of the 195 Manual are central to this matter and in dispute. If, upon discovery, the Association learns that Sunoco

Pipeline L.P. is using any part of any 195 Manual used by any other pipeline, then the performance of any pipeline in the Energy Transfer system becomes relevant evidence. The fact that Sunoco failed to aver that they operate the Mariner East system under a standalone 195 Manual indicates operational issues and accidents on other Energy Transfer pipelines are relevant to the instant proceedings.

III. OBJECTIONS TO INDIVIDUAL INTERROGATORIES

Next, Sunoco overbroadly objects to each individual interrogatory on the same basis as stated in the corresponding Request for Production of Documents. Again, Sunoco attempts to shift the burden of knowing what information is or is not available in document form upon a party which does not have the documents. That burden is impossible to meet. Sunoco is free to respond to any interrogatory that the documents contain all information. That is no burden whatsoever, as Sunoco is the keeper of all of this information pending discovery. Sunoco, in bad faith, objects to the following interrogatories:

1. Identify each person from whom you expect to submit fact or lay written testimony and/or who you expect to call as a fact or lay witness at hearing.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

2. For each person identified in response to paragraph 1, state the subject matter on which you expect each person to testify.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

3. For each person identified in response to paragraph 1, state the substance of the facts and opinions on which you expect the person to testify and a summary of the grounds for all such testimony.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

4. For each person identified in response to paragraph 1, identify:
- a. all documents or communications relied upon in preparing the testimony;
 - b. all persons other than counsel of record, who directly or indirectly participated in the preparation, drafting, review or approval of the testimony;
 - c. all texts, article, reports, theses, other publications, and any other witness testimony or statement offered by this person in any state or federal judicial or administrative proceeding related to pipelines.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

5. Identify each person from whom you expect to submit expert written testimony and/or call as an expert witness at hearing.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

6. For each person identified in response to paragraph 5, state the subject matter on which the expert is expected to testify.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

7. For each person identified in response to paragraph 5, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

8. For each person identified in response to paragraph 5, identify:
- a. all documents or communications relied upon in preparing that person's testimony or expert report;
 - b. all persons other than counsel of record, who directly or indirectly participated in the preparation, drafting, review or approval of the testimony or expert report;
 - c. all texts, article, reports, theses, other publications, and any other witness testimony or statement offered by that person in any state or federal judicial or administrative proceeding related to pipelines.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further,

Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available.

9. Identify and describe all actions taken by you or on your behalf to assess the condition, adequacy, efficiency, public safety risk, and reasonableness of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

Sunoco's objection is vague and its objection irrelevant. Absent knowledge of what Sunoco intends, the Association is fully unable to evaluate any relevance to any objection. Further, Sunoco is free to respond that such information is not yet available and will be provided in due course if, in fact, such information is not yet available. Further, Sunoco is fully able to provide a narrative of actions it took in response to a project which has only been operational for approximately three (3) years. The Mariner East system did not exist twenty years ago, as, to the Association's knowledge, planning only began for this system in approximately 2012. Sunoco knows what plans it made and what assessments it performed since it launched this program. Sunoco suffers no burden by providing a narrative of its actions.

10. Identify and describe all actions taken by you or on your behalf to assess the integrity of the ME1 pipe, including without limitation, the welds and seams thereon, in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #9 above in full as if reproduced here.

11. Identify and describe with specificity the materials that ME1, ME2, ME2X and Point Breeze-Montello are made of in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

12. Identify and describe the pipe wall thickness of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

13. Identify and describe the depth of cover over ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

14. Identify and describe all locations in or around Delaware and Chester Counties, Pennsylvania where the depth of cover over ME1 is less than 48 inches.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

15. Identify and describe all locations in or around Delaware and Chester Counties, Pennsylvania where the depth of cover over Point Breeze-Montello is less than 48 inches.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

16. Identify and describe the distance (or proposed distance) between each of ME1, ME2, ME2X or Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, noting with specificity all locations where the distance between any two of these pipelines is equal to or less than ten (10) feet.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

17. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello to any United States or Pennsylvania numbered highways in and around Delaware and Chester Counties, Pennsylvania, specifically where such distance is less than one (1) mile from any pipeline in or anticipated to become in NGL service.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

18. Identify and describe all locations where the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello is less than 2,000 feet from private dwellings in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

19. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each school, public or private, located in and around Delaware and Chester Counties, Pennsylvania, where such distance is less than one (1) mile from any pipeline in NGL service or anticipated to be placed into NGL service. Identify the school district in which each public school belongs, and any affiliation of each private school within the one (1) mile radius.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

20. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each daycare, hospital, senior living facility, nursing home, or rehabilitative care facility in and around Delaware or Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any Sunoco pipeline in or proposed to be placed in NGL service.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

21. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each mall or shopping center located in and around Delaware and Chester Counties, where such facilities are within one (1) mile of any Sunoco pipeline in or proposed to be placed in NGL service.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

22. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from places of public assembly, including without limitation playgrounds, recreation areas, theaters, public libraries and houses of worship in and around Delaware and Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any subject pipeline of NGL service.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

23. Identify and describe the distance (or proposed distance) of ME1, ME2 and ME2X from all public water supply wells and reservoirs in Delaware and Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any subject pipeline in NGL service.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

24. Identify and describe the types of welded seams on ME1 (e.g., oxygen-acetylene welding, electric resistance welded seams) in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

25. Identify and describe any and all inspections or testing of the welded seams on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, hydrostatic testing, pig pipeline testing, strain gauges, and radiographic inspections. Please include all testing performed within the last five (5) years from the date of service of this document.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

26. Identify and describe the findings of any and all inspections or testing of the welded seams on ME1 and Point Breeze-Montello in and around Delaware or Chester Counties, Pennsylvania in the last five (5) years.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

27. Identify and describe the investigations, tests, repairs, replacements and changes made by you or on your behalf related to the flow reversal or product change in ME1 or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

28. Identify and describe all investigations made by you or on your behalf into the leak detection and monitoring systems related to the flow reversal and product change in ME1 and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

29. Identify and describe all investigations made by you or on your behalf to determine whether the hazardous liquids proposed or presently being transported in ME1 or Point Breeze-Montello are compatible with the materials of which ME1 and Point Breeze-Montello are made.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

30. Identify and describe all in-line inspections of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties in the last five (5) years.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

31. Identify all welders who worked on ME1, ME2, ME2X, and the Point Breeze-Montello pipeline in the last five (5) years in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

32. Identify and describe all training and tests administered to welders who worked on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

33. Identify and describe all Operational Qualification certifications required pursuant to 49 CFR part 195 Subpart G held by all welders who worked on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

34. Identify and describe all work on ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania where any worker required to hold OQ qualifications did not hold such qualifications at the time such worker performed work on any part of ME2 or ME2X.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

35. Identify and describe your emergency response plans, practices and procedures in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

36. Identify and describe all relevant portions of your 49 CFR part 195 Manual that address compliance with 49 CFR § 195.440 that have been in effect for any NGL service for the last five (5) years within the United States. Please include all prior versions that have been superseded by newer versions of your 49 CFR part 195 Manual.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

37. Identify and describe all changes to any relevant portions of your 49 CFR part 195 Manual that address compliance with 49 CFR § 195.440 that have been in effect for any NGL service within the last five (5) years in effect anywhere within the United States.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here. Further, the Association is under the belief that, based on the answers provided in prior testimony by Sunoco witnesses before the Commission, that it manages its public awareness programs on a national basis in alleged compliance with 49 CFR 195.440. If in fact Sunoco does not develop a project-specific Public Awareness Program for each separate pipeline, the contents, implementation, relevance and utility of any Sunoco Public Awareness Program is wholly relevant.

38. Identify and describe how you intend to coordinate with fire, police, the Pennsylvania Emergency Management Agency, PHMSA, and other federal and state agencies in responding to a release (with or without ignition) of highly volatile liquids from ME1, ME2, ME2X or Point Breeze-Montello within and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

39. Identify and describe all geophysical studies conducted by you or on your behalf (including without limitation electrical resistivity, gravity, microgravity surveys, multi-channel analysis of surface waves and other seismic methods) at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation the dates, locations and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

40. Identify and describe all geotechnical studies conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

41. Identify and describe all geological bores undertaken by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies concerning ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #9 above in full as if reproduced here.

42. Identify and describe the results all geophysical studies, geotechnical studies and geologic bores conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #9 above in full as if reproduced here.

43. Identify and describe all hydrological studies conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 40 and 41 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

44. Identify and describe the results of all hydrological studies conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 40 and 41 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

45. Identify and describe any and all karst geology identification, testing and sampling conducted by you or on your behalf in Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 80 and 112 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

46. Identify and describe the results of all karst geology identification, testing, and sampling conducted by you or on your behalf in and around West Whiteland Township, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 80 and 112 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

47. Identify and describe any and all metamorphic or igneous geology identification, testing and sampling conducted by you or on your behalf in Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 80 and 112 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

48. Identify and describe the results of all igneous or metamorphic geology identification, testing, and sampling conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 80 and 112 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

49. Identify and describe all precautions taken by you concerning karst, igneous or metamorphic rock encountered or anticipated to be encountered during ME2 and ME2X construction in Delaware and Chester Counties, Pennsylvania during all phases of design, engineering, construction or permitting.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 80 and 112 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

50. Identify and describe all groundwater in the right-of-way for the Mariner East Project in Delaware and Chester Counties, including but not limited to flow and infiltration paths and patterns, the water table, the aquifer system(s), and soil and/or geologic characteristics.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

51. Identify and describe each and every fracture trace analysis conducted in or around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

52. Identify and describe each and every instance where you or someone on your behalf identified an anomaly, or "soft zone" from geophysical, geotechnical testing, or geologic borings in Delaware or Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

53. Identify and describe all collocated utilities in the existing Mariner East project right-of-way in Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

54. Identify and describe all areas in which you do not propose to collocate ME2 and ME2X with the existing right-of-way for ME1 in Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

55. What are the Maximum Allowable Operating Pressures (“MAOP”) for ME1, ME2, ME2X and Point Breeze-Montello? Please identify any changes in MAOP for any segment of each line in the last five (5) years, and the reason for such a change in MAOP.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

56. Identify and describe your public awareness program for ME1, ME2, ME2X and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

57. Identify and describe any differences in your NGL public awareness programs across the United States where any aspects of your public awareness program in place for ME1, ME2, ME2X and Point Breeze-Montello differs from other locations where you offer NGL transportation services in the United States.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

58. Identify and describe all portions of your 49 CFR part 195 Manual that document your public awareness program.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

59. Identify and describe all actions taken by you to warn and protect the public from danger associated with ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

60. Identify and describe all actions taken by you to reduce the hazards to employees, customers, residents and other persons related to ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

61. Identify and describe how you would contact residents within one (1) mile of ME1, ME2, ME2X and/or Point Breeze-Montello of an ongoing release of NGLs. Specifically, describe how such contact would not create a spark or other energy release that could ignite a vapor cloud.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #37 above in full as if reproduced here.

62. Identify and describe the buoyancy properties of each material potentially transported in ME1, ME2, ME2X and/or Point Breeze-Montello in a boiling liquid to vapor cloud transition likely to occur in Delaware or Chester Counties.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #37 above in full as if reproduced here.

63. Identify and describe the differences in public awareness and emergency response plans required to react to a release of ethane, propane, butane, gasoline, diesel fuel and other liquid products potentially transported by you in Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

64. Identify and describe each risk assessment performed by you in the United States and Canada in the last ten (10) years related to NGLs.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3, 68, and 90 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

65. Identify and describe any modifications to any emergency response or public awareness programs based on the buoyancy of any material transported by you via pipeline.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 49, 53, 87 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

66. Describe and identify how a first responder or the public would know what product(s) are being transported during a release from any NGL pipeline or pipeline(s) from each of ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 39-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

67. Identify and describe the differences in how the public should react to a NGL leak based on the composition of the contents of a leaking pipeline, including but not limited to differentiation between ethane response and butane response, liquid and NGL response, and other differentiations that could require the public or first responders to take different action in response to a leak on your pipelines in Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 39-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

68. Identify and describe the risks of you, a first responder, the government or the public making telephone calls to residences, travelers, occupants or the general public within one (1) mile of the site of a NGL leak.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 39-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

69. Identify and describe the risks of you, a first responder, the government or the public operating electrical devices within a vapor cloud to residences, travelers, occupants or

the general public within one (1) mile of the site of an NGL leak. Include, but not limit, your response to electric garage door openers, electric security systems, electric fences of any type, transformers, emergency generators, and other electric, electronic or mechanical spark-generating devices likely to be located within one (1) mile of ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 39-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

70. Identify and describe the minimum standards for distance of NGL valve sites from known or suspected sources of ignition, including but not limited to highways, restaurant kitchens, residences, other valve sites, other commercial or industrial operations, or other sources of ignition.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 39-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

71. Identify and describe anywhere you have installed or proposed to install any NGL valve site within 2,000 feet of any _____.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 82, 103-104, 120 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

72. Identify and describe how each municipal government within one (1) mile of ME1, ME2, ME2X or Point Breeze-Montello instructs its respective public to respond to any NGL pipeline incident, including, but not limited to contradictory instructions of any nature from instructions offered by You.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

73. Describe any and all audits, reviews or evaluations performed by any person, entity or governmental body concerning your compliance with API Recommended Practice RP1162 in the last five years. Describe and identify all results, audit findings and corrective measures taken in response to any such audits.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 64, 75-77, 125 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 above in full as if reproduced here.

74. Identify and describe any and all remote-activated early warning systems in place to alert nearby public to any NGL leak on any pipeline, terminal, transfer station or other facility you operate in the United States or Canada.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #9 and #37 above in full as if reproduced here. Further, Sunoco failed to aver that it operates the Mariner East system on a dedicated, isolated control system away from other pipelines it operates in Pennsylvania and elsewhere. Its practices in operating pipelines, as applied to Mariner East and other similarly situated pipelines, is wholly relevant to evaluate if Sunoco is operating this pipeline in compliance with applicable law. Sunoco could offer as a defense to a defect in its Mariner East system “we run all of our pipelines this way”, which would, at that point, make the operation of any and all similarly operated pipelines throughout Sunoco’s or Energy Transfer’s system relevant. The Association seeks to discover here if its allegations of inadequate service and operations are isolated to Mariner East or are endemic to additional Sunoco or Mariner East assets.

75. Identify and describe and all requests you received to install hydrocarbon detectors and early warning systems along any segment of ME1, ME2, ME2X and/or Point Breeze-Montello in the last five (5) years.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

76. Describe and identify why hydrocarbon detection and early warning systems are not installed at each valve site in any Mariner East service.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

77. Describe and identify all hydrocarbon detection and early warning systems you install at your facilities handling NGL materials anywhere in your system.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

78. Describe and identify the costs to install hydrocarbon detection and warning systems at a valve site.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

79. Describe and identify each decision you made in the last five (5) years to install or not install hydrocarbon detection and early warning systems in any NGL service, and why you made the decision to install or not install such systems.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

80. Describe and identify how your supervisory control and data acquisition (“SCADA”) system did or did not detect each leak of NGLs from any system you own, operate or control in the last five (5) years. Further identify how you learned of each release, failure, leak or other incident where any amount of NGL was released from any facility, pipeline, valve site or other operation in NGL service.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

81. Describe and identify the expected size of failure required to where your SCADA system would identify the release.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

82. Describe and identify how you would deinventory a pipeline segment in ME1, ME2, ME2X or Point Breeze-Montello in the event of a release or incident on any segment of any Mariner East pipeline in Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

83. Describe and identify the procedures to safely remove product from a pipeline segment in the event of an incident. Describe and identify the amount of product in each impacted pipeline segment in Delaware and Chester Counties, the location(s) where such product would be removed from each segment, the procedure to remove such products, the equipment required to safely remove such product, and the burden on the location hosting such operations.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

84. Describe and identify and all environmental permits that are or would be required to remove a pipeline segment full of NGLs, and designate if you hold such permits. If you do not hold such permits, describe how you would obtain authority to deinventory one or more segments of ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full. SPLP further objects to this request as seeking a legal conclusion.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here. Further, the existence of permits, or the nonexistence of permits, is relevant to Sunoco's plans to manage emergencies and is not a legal conclusion. If Sunoco holds no permits that address these situations, it should just state as much as a response to this interrogatory. If it holds such permits, it should identify them.

85. Describe and identify the differences in inventory procedures between liquid product (i.e., gasoline, diesel fuel, jet fuel, kerosene, transmix, etc.) and NGLs (i.e., ethane, propane, butane, Y-grade, etc.).

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

86. Identify and describe how your public awareness program instructs the public to determine prevailing wind direction during an NGL incident.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

87. Identify and describe how your public awareness program guides the public with regard of traveling uphill or downhill in response to an NGL incident.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

88. Describe and identify how your public awareness program guides the public in regard to determining when a safe area is reached.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

89. Describe and identify the guidance in your public awareness program that pertains to how people who are elderly, very young, or who have physical disabilities that affect their mobility should respond to a leak of NGLs.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

90. Identify and describe any requests you have received from any party, entity or governmental entity to provide remote leak detection and public warning concerning the Mariner East project. Identify any changes you made in response to any such request.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #37 above in full as if reproduced here.

91. Identify and describe each NGL leak on any pipeline asset you own, control, manage or operate since January 1, 2010, reported to PHMSA or not, of any amount of any NGL.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

92. Identify and describe each liquids leak on any pipeline asset you own, control, manage or operate since January 1, 2010, reported to PHMSA or not, of any amount of any hydrocarbon product or commodity, including but not limited to gasoline, diesel fuel, jet fuel, kerosene, crude oil, condensate, fractionated hydrocarbons or any other commodity not referenced in the above paragraph.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

93. Describe the pipe thicknesses, materials of construction of all gaskets and materials used to connect the pipe to ancillary equipment, coatings (field applied or factory applied) used to protect any pipe used in this project, steps required to protect the pipe from damage during storage, construction or field work (including but not limited to light-related degradation due to excessive storage times) and other concerns which you have considered in implementing the Mariner East project.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

94. Identify and describe each change to your 49 CFR part 195 Manual you made in response to each such incident listed above.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 3-9, 21-26, 29-37, 45, 58, 69-74, 84-86, 90, 94-96 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

95. Identify and describe all changes made to your public awareness program to accommodate the flow reversal and product change in ME1 or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

96. Identify and describe all changes made to your public awareness program to accommodate NGL service, as compared to other hazardous liquids such as gasoline, diesel, jet fuel, kerosene or other liquid hydrocarbon products transported at ambient conditions without pressurization required for liquid transportation.

OBJECTION:

SPLP incorporates herein its objection to Request for Production of Document(s) 38-39, 46-50, 83, 87-89, 97-101, 113-114 as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

97. Identify and describe all methods used by you to locate and inform the owners or occupiers of properties with private drinking water wells in and around Delaware or Chester Counties, Pennsylvania that you advised of pipeline construction activities prior to 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

98. Identify and describe all owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you informed of pipeline construction activities prior to 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

99. Identify and describe all methods used by you to locate and inform the owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you advised of pipeline construction activities in 2018 and thereafter.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

100. Identify and describe all owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you informed of pipeline construction activities in 2018 and thereafter.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

101. Identify and describe any and all testing of public or private water supplies conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

102. Identify and describe all sinkholes and depressions, including their location, observed by you or any agent acting in your behalf while constructing ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

103. Identify and describe all sinkholes and depressions, including their location, caused or contributed by activities conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

104. Identify and describe your integrity management program.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

105. Identify and describe all relevant portions of your 49 CFR § 195 Manual addressing integrity management anywhere in the United States or elsewhere regarding NGL pipeline transportation.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

106. Identify and describe the status of construction of ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

107. Identify and describe the proposed method of installing ME2 and ME2X in and around areas in Delaware and Chester Counties, Pennsylvania where construction has not been completed as of date of service of this document.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

108. Identify and describe the status of applications to DEP for permit(s) to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

109. Identify and describe the status of applications to DEP for permit(s) to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

110. Identify and describe the status of required municipal permits to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

111. Identify and describe all expired required municipal permits to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania and any required steps you must take to renew or refile any such permits.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

112. Identify and describe the causes of all sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018 related to the construction of ME2 and ME2X.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

113. Identify and describe all investigations made by you or on your behalf related to the all sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

114. Identify and describe all investigations made by the PUC, PHMSA, DEP or any other government organization related to the sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

115. Identify and describe the status of all activities undertaken or to be undertaken by you or on your behalf to remediate and/or address sinkholes and depressions in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

116. Identify and describe any and all communications with Amtrak regarding the construction of ME2 and M2X in and around Delaware and Chester Counties, Pennsylvania, including the identification of any sinkholes and depressions in the location.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

117. Identify and describe any and all grout plugs used in any drilling in and around Delaware or Chester Counties, Pennsylvania, and the reasons for using such grout plugs.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

118. Identify and describe the failure that occurred on the Revolution Pipeline in or around Center Township, Beaver County on or about September 10, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

119. Identify and describe the cause of the failure that occurred on the Revolution Pipeline in or around Center Township, Beaver County on or about September 10, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

120. Identify and describe the failure that occurred on the Point Breeze-Montello Pipeline in Delaware County and/or Philadelphia County on or about June 19, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

121. Identify and describe the cause of the failure that occurred on the Point Breeze-Montello Pipeline in Delaware County and/or Philadelphia County on or about June 19, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

122. Identify and describe the incident in which an Aqua water company contractor struck the ME2 or ME2X in or around Middletown Township, Delaware County on or about May 21, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

123. Fully explain how and why the incident occurred in which an Aqua water company contractor struck ME2 or ME2X in Middletown Township, Delaware County on or about May 21, 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

124. Identify and describe your activities, including dates and locations, to remove and replace portions of ME2 and/or ME2X in or around Delaware and Chester Counties, Pennsylvania in 2017 or 2018.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

125. Identify and describe all reasons why you removed and replaced portions of ME2 and/or ME2X in or around Delaware or Chester County after January 1, 2017.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

126. Identify and describe how you became aware of the need to replace the portions of pipe on ME2 and/or ME2X referenced in the proceeding paragraphs.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

127. Identify and describe any other areas along ME2 and ME2X that you replaced portions of the pipeline, and the reasons, dates, and locations for such replacement.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

128. Identify and describe all investigations made by you in response to any and all claims regarding falsified inspection reports related to welds along ME2 and/or ME2X.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

129. Identify and describe all investigations made by you in response to any and all claims regarding falsified inspection reports related to welds in other pipelines constructed, owned, operated or otherwise managed by you or covered under any 49 CFR part 195 Manual you use to comply with PHMSA regulations.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

130. Identify and describe all Notices of Probable Violation issued to you by PHMSA or the PUC in the last 5 years for any pipeline owned, constructed, operated or otherwise managed by you.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

131. Identify and describe all Orders or Consent Orders issued to you by PHMSA or the PUC in the last 5 years.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

132. Identify and describe all civil penalty assessments or consent assessments of civil penalties issued to you by PHMSA or the PUC in the last 5 years.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

133. Identify and describe all complaints made to you by the public (including but not limited to complaints related to noise, dust, smoke or particulates, water supply, water pressure, flooding, sinkholes or depressions) related to the construction or operation of ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

134. Identify and describe all requests made by you to the Delaware River Basin Commission to change the method of pipe construction from Horizontal Directional Drilling to some other method of construction.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

135. Identify and describe the status of all requests made by you to the Delaware River Basin Commission to change the method of pipeline construction from Horizontal Directional Drilling to some other method of construction.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

136. Identify and describe all actions taken by you or on behalf to evaluate the integrity of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

137. Identify and describe all risks or threats identified by you or on your behalf related to ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

138. Identify and describe all remedial, preventative and mitigative measures taken by you or on your behalf to address the risks or threats related to ME1. ME2, ME2X and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

139. Identify and describe all actions taken by your or on behalf to advise the public of the risks or threats associated with ME1, ME2, ME2X and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

140. Identify and describe all information provided to the public by you or on your behalf on how to respond in the event of a release or other emergency associated with ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

141. Identify and describe any proposed or anticipated changes to information provided by your or on our behalf on how to respond in the event of a release or other emergency associated with ME1. ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

142. Identify and describe all communications between you and each school district operating within Delaware or Chester Counties, Pennsylvania.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

143. Identify and describe all communications related to the Aqua public water source in or around Drill 381, including but not limited to, the establishment of the monitoring well in that location.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

144. Identify and describe any and all efforts made by you to avoid areas containing private dwellings, commercial or industrial buildings, critical infrastructure, such as highways, rail lines and airports, and places of public assembly.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

145. Identify and describe all investigations of alternative routes for the construction of ME2 and ME2X.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

146. Identify and describe any and all PUC tariffs related to ME1, ME2, ME2X or Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

147. Identify and describe all products approved for conveyance through ME1, ME2, ME2X and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

148. Identify and describe all products conveyed through ME1, ME2, ME2X and Point Breeze-Montello since 2014.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates is answer to #74 above in full as if reproduced here.

149. Identify and describe all products approved for intrastate conveyance through ME1, ME2, ME2X and Point Breeze-Montello.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

150. Identify and describe all products conveyed intrastate through ME1, ME2, ME2X and Point Breeze-Montello since 2014.

OBJECTION:

SPLP incorporates herein its objection to the corresponding Request for Production of Document(s) as if set forth in full.

151. Identify and describe all differences in your answers to any questions asked above concerning the Mariner West or Mariner South pipelines, including any segments of such pipelines in the Dominion of Canada.

OBJECTION:

SPLP incorporates herein all prior objections including objections to RFPs as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

152. Identify and describe the differences in your answers to any questions asked above concerning other NGL services offered by you or any affiliate, subsidiary or parent of you in the United States.

OBJECTION:

SPLP incorporates herein all prior objections including objections to RFPs as if set forth in full.

RESPONSE:

The Association incorporates its answer to #74 above in full as if reproduced here.

153. Identify each person involved or having knowledge of the information requested in each of the preceding interrogatories.

OBJECTION:

SPLP objects to this request as inconsistent with the Commission’s discovery regulations. To the extent SPLP is compelled to provide a written interrogatory response, it will identify who has provided such response consistent with the Commission’s regulations. Moreover, SPLP objects to this request as unduly burdensome and requiring an unreasonable investigation given the breadth of information sought and thus the corresponding persons that may have knowledge of such information.

RESPONSE:

The Association incorporates its answer to #74 above as if reproduced here in full.

154. Identify and describe all persons other than your counsel of record, who directly participated in the preparation of the answers to these interrogatories.

OBJECTION:

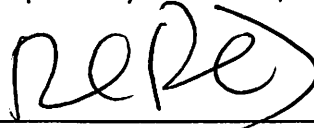
SPLP objects to this request as inconsistent with the Commission’s discovery regulations. To the extent SPLP is compelled to provide a written interrogatory response, it will identify who has provided such response consistent with the Commission’s regulations.

RESPONSE:

The Association incorporates its answer to #74 above as if reproduced here in full.

Date: October 11, 2019

Respectfully submitted,



Rich Raiders, Attorney #314857

Raiders Law PC

606 North 5th Street

Reading, PA 19601

484 509 2715

610 898 4623 fax

rich@raiderslaw.com

*Attorney for Andover Homeowners' Association,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons, listed below, in accordance with the requirements of Rule 1.54 regarding to service by a party.

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Thomas McKeon, Esq.
Whitney Snyder, Esq.
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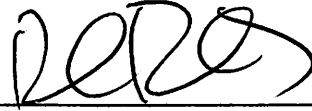
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Respectfully submitted,



Date: October 11, 2019

Rich Raiders, Attorney #314857

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484 509 2715

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*Attorney for Andover Homeowners' Association,
Inc.*

VERIFICATION

I hereby certify that the following is true, accurate and correct to the best of my knowledge, information and belief. I understand that false statements contained herein are subject to the penalties of 18 Pa. C.S. 4904 concerning unsworn falsifications to authorities.

Oct. 11, 2019
Date


Signature



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF :

ERIC FRIEDMAN, :

Requester :

v. : **Docket No: AP 2019-1325**

PENNSYLVANIA PUBLIC UTILITY :

COMMISSION, :

Respondent :

and :

ENERGY TRANSFER PARTNERS, :

Direct Interest Participant :

INTRODUCTION

Eric Friedman (“Requester”) submitted a request (“Request”) to the Pennsylvania Public Utility Commission (“Commission”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other things, transmittal letters submitted to the Commission by Sunoco Pipeline. The Commission denied the Request, arguing, among other things, that the records relate to a noncriminal investigation, contain confidential security information, and that the disclosure of the records would jeopardize public safety and building security. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the Commission is required to take further action as directed.

FACTUAL BACKGROUND

On June 10, 2019, the Request was filed, seeking:

1. Any record(s) of the [Commission] that contain the names of “authorized Commission employees” as that term is used in 52 Pa. Code Section 102.3(a)(3).
2. All transmittal letters submitted to the [Commission] by Sunoco Pipeline, or any parent or subsidiary of Sunoco Pipeline, as the term “transmittal letter” is used in 52 Pa. Code Section 102.3(b)(1).
3. All records that were submitted to the [Commission] along with the transmittal letters specified in Item 2 above that fall in the category of “Records that are public in nature and subject to the [RTKL],” in accordance with 52 Pa. Code Section 102.3(b)(1)(i).

On June 12, 2019 the Commission invoked a thirty-day extension to respond to the Request. 65 P.S. § 67.902(b). On July 16, 2019, the Commission denied the Request, arguing that no records exist that are responsive to Item 1 of the Request, that the Request is insufficiently specific, 65 P.S. § 67.703, and that release of the records would endanger the safety or physical security of a public utility, 65 P.S. § 67.708(b)(3), and that the records relate to a noncriminal investigation, 65 P.S. § 708(b)(17). The Commission also argued that, to the extent the records contain confidential security information (“CSI”) under the Public Utility Confidential Security Information Disclosure Protection Act (“Act”), 35 P.S. §§ 2141.1-2141.8, they are not subject to public disclosure.

On August 6, 2019, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the

¹ On August 13, 2019, the OOR granted Energy Transfer Partners’ (“ET”) request for an extension of time to submit a request to participate in this appeal pursuant to 65 P.S. § 67.1101(c) until August 20, 2019. On August 14, 2019, the OOR granted the Commission’s request for an extension of time to make a submission on appeal until August 20, 2019. On August 19, 2019, the OOR granted the Requester’s request for the opportunity to submit a reply to ET’s and the Commission’s submissions until August 23, 2019. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”). In addition, the Requester granted the OOR an extension of time to issue a Final Determination. *See* 65 P.S. § 67.1101(b)(1).

Commission to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 14 and 16, 2019, the Requester submitted position statements asserting that the requested records are public records subject to the RTKL and also outlining the necessity that the public should be aware of the risk of danger in the event of a pipeline rupture.

On August 20, 2019, ET, owners of the Sunoco Pipeline, L.P. (“ET/SPLP”), a jurisdictional “public utility” holding a certificate of public convenience issued by the Commission and which operates the pipeline implicated by the Request, requested to participate in this appeal pursuant to 65 P.S. § 67.1101(c). ET/SPLP asserts that it has a direct interest in this matter because it is the owner of a record containing confidential or proprietary information. In support of ET/SPLP’s request to participate, it submitted the declaration made under penalty of perjury of Todd Nardozzi, ET’s Senior Manager of Department of Transportation. Mr. Nardozzi attests that he has knowledge of the records submitted to the Commission that are implicated in the Request and that, “since 2008, ET has submitted substantial information regarding the operation, location, and vulnerabilities of ET’s pipeline, which it treats as confidential security information in accordance with the provisions of the [Act] (35 P.S. §§ 2141.1 to 2141.6).” On September 4, 2019, the Requester objected to ET/SPLP’s request to participate asserting that, based on a Protective Order issued by the Pennsylvania Commonwealth Court, attorneys for ETP/SPLP are not permitted to contact him. Based upon a review of its submission, ET/SPLP’s request to participate is granted and, as a result, the argument and evidence submitted by ET/SPLP has been made part of the record.

Also, on August 20, 2019, ET/SPLP submitted a position statement reiterating the arguments made by the Commission, as well as arguing that the responsive records contain

confidential proprietary information and/or trade secrets. 65 P.S. § 67.708(b)(11). ET/SPLP also argues that the Request implicates records that have already been determined to be exempt from disclosure in prior OOR Final Determinations involving the parties.²

On August 20, 2019, the Commission submitted a position statement reiterating its grounds for denial and also claiming that the records reflect internal, predecisional deliberations, 65 P.S. § 708(b)(10)(i)(A). The Commission also argues that the proper forum for a party to challenge the designation of the requested transmittal letters as confidential security information is before the Commission pursuant to 35 P.S. § 2141.3(c) and 52 Pa. Code § 102.4. Therefore, the Commission asserts that the OOR lacks authority to determine this issue. In support of its position, the Commission submitted the affidavits, made under penalty of perjury, of Rosemary Chiavetta, the Secretary of the Commission and Paul Metro, the Commission’s Manager of the Safety Division, Bureau of Investigation and Enforcement (“BIE”).

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

² ET/SPLP cites to the following OOR Final Determinations in support of its position: *Friedman v. Pa. Pub. Util. Comm’n*, OOR Dkt. AP 2019-0502, *appeal pending*, No. 982 CD 2019; *Friedman v. Pa. Pub. Util. Comm’n*, OOR Dkt. AP 2019-0358, 2019 PA LEXIS O.O.R.D. 296; and *Friedman v. Thornbury Twp.*, OOR Dkt. AP 2017-0817, 2017 PA LEXIS O.O.R.D. 962.

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Commission is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its

nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Commission has proven that records responsive to Item 1 of the Request do not exist

The Commission argues that it does not maintain a record of employees who are authorized to review CSI held by public utilities. In support of the Commission’s position, Secretary Chiavetta attests that “following a thorough search for all responsive records ... I sent the Commission’s response to [the] Request” and “the Commission does not maintain a record or list of employees who are authorized to review ... CSI held by public utilities.” Mr. Metro also attests that the requested record does not exist. Mr. Metro further attests that “[BIE] determines which employees are authorized to review CSI on a case-by-case basis, depending on the type of utility at issues, the employees assigned to the matter, and other relevant factors.” Under the RTKL, a statement made under penalty of perjury is competent evidence to sustain an agency’s burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

The Requester has not submitted evidence to dispute the Commission’s assertion that no records responsive to Item 1 of the Request exist within its possession, custody or control. In the absence of any evidence that the Department has acted in bad faith or that the record does, in fact, exist, “the averments in [the affidavits] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based on a review of the language of Item

1, the Department has reasonably interpreted this portion of the Request, *Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513, and as the Requester has not presented competent evidence that the record does exist, the Department has met its burden of proof that it has does not possess any records responsive to Item 1.³ *Hodges*, 29 A.3d at 1192.

2. Portions of Items 2 and 3 of the Request are sufficiently specific

The Commission asserts that Items 2 and 3 of the Request are insufficiently specific in that they do not contain a defined subject matter, scope or a limiting timeframe. 65 P.S. § 67.703. More specifically, the Commission argues that the records sought by Item 2 of the Request could encompass all transmittal letters received by SPLP or any affiliated company since the enactment of 52 Pa. Code Chapter 102 in August of 2008. Regarding Item 3, the Commission asserts that the responsive records could encompass the thousands of pages that SPLP has attached to the transmittal letters submitted since 2008.

ET/SPLP also argues that Items 2 and 3 of the Request are insufficiently specific. ET/SPLP argues that Items 2 and 3 seek an overbroad, undefinable universe of documents because the Request fails to contain a defined subject matter in the form of a transaction or activity of the agency. ET/SPLP asserts that it submits a large volume of information to various Commission bureaus for a variety of purposes, including applications for operating approvals, litigation, regulatorily-required compliance filing and responses to data requests made by BIE. ET/SPLP also asserts that Items 2 and 3 implicate a boundless scope in that a “transmittal letters” as defined in 52 Pa. Code § 102.3(b)(1), and the accompanying documents, could imply a large variety of

³ Although not raised by the Requester, 52 Pa. Code § 102.4 states that “Commission employees that agree to the designation [of Authorized Commission employee] will have their names added to the Authorized Access List maintained by the Commission’s Secretary’s Bureau.” However, the OOR makes no determination as to whether these records should exist, only that the Commission does not possess the record response to this Request. *See, e.g., Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 PA O.O.R.D. LEXIS 731 (“While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] -- the OOR may only determine whether a responsive record does, in fact, exist”).

documents including, technical reports, locational drawings, and operational standards submitted to the Commission for various purposes. Further, like the Commission, ET/SPLP asserts that the Request implicates all possible records submitted to the Commission since 2008 by SPLP and affiliates.

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d 813). In determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). Specifically, the OOR examines to what extent the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep’t of Educ.*, 119 A.3d at 1124-25. Finally, “[t]he fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination.” *Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (*en banc*).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125. In *Carey*, the Commonwealth Court found a request for unspecified records (“all documents/communications”) related to a specific agency project (“the transfer of Pennsylvania inmates to Michigan”) that included a limiting timeframe to

be sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Pa. Dep’t of Educ.*, 119 A.3d at 1125. “The timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

In support of the Commissions position, Mr. Metro attests, in pertinent part, the following:

[BIE] is and has been, for more than five years, engaged in multiple noncriminal investigations of [ET/SPLP] and affiliated companies.

To the best of my knowledge, in the last two years, [BIE] has received from [ET/SPLP] hundreds of transmittal letters with thousands of pages of attached documents.¹ Every document submitted by [ET/SPLP] that contains confidential material – including CSI – must be identified through and attached to a transmittal letter. [ET/SPLP’s] transmittal letters have multiple documents attached in many cases.

To access and review all of the documents requested by [the Requester] would be unduly burdensome on the [BIE] staff.

Mr. Metro also notes, in his affidavit, that “[g]iven the number of documents and the extremely constricted timeframe for responding to a Right-to-Know Law appeal, [BIE] has not had sufficient time to confirm the exact number of documents” that comprise the transmittal letters and attached documents submitted by ET/SPLP.

In support of ET/SPLP’s position, Mr. Nardozzi attests that he has knowledge of the records submitted to the Commission and possibly implicated by the Request. Mr. Nardozzi further attests, in pertinent part, the following:

ET regularly submits information to the [Commission] through applications for operational approvals, through litigation of complaints and protests to which ET is a party, and through regulatorily-required compliance filings. These filings

encompass a broad range of information in a variety of forms, including technical reports, locational drawings, and operational standards, submitted to the agency or its bureaus in applications, petitions, other pleadings, discovery responses, briefs, testimony, exhibits, letters, etcetera.

Since 2008, ET has submitted substantial information regarding the operation, location, and vulnerabilities of ET's pipeline, which it treats as confidential security information in accordance with the provisions of the [Act]....

ET/SPLP also submitted a copy of a listing of the public dockets, obtained from a "cursory review" conducted on the Commission's website, in which ET/SPLP and/or its subsidiaries currently are or have been a party to before the Commission.

Items 2 and 3 of the Request seek respectively, transmittal letters as defined in 52 Pa. Code § 102.3(b)(1) and submitted to the Commission by ET/SPLP, and the documents submitted with the transmittal letters that are public in nature and subject to the RTKL in accordance with 52 Pa. Code § 102.3(b)(2)(i). The regulations referenced in the Request were enacted by the Commission to implement the requirements set forth in the Act, which must be followed in the event that a public utility is required to submit information to the Commission containing confidential security information. *See* 35 P.S. § 2141.3.

While the Request on its face does not state a definite timeframe, Items 2 and 3 seek records for an implied timeframe. Review of the regulations shows that Sections 102.3(b)(1) and (2)(i) were enacted in August 2008 and, thus, requiring the utilization of a transmittal letter and the designation of public and confidential material when submitting information to the Commission at that point in time. The parties acknowledge the implied timeframe in their arguments by asserting that Items 2 and 3 implicate the numerous amounts of records submitted by ET/SPLP to the Commission *since* the regulation's enactment in 2008. Given the fact that Items 2 and 3 are specifically linked to Sections 102.3(b)(1) and (2)(i), a limiting timeframe may be gleaned from the overall context of the Request and is sufficiently identifiable by the Commission. *See Barry*

v. Bensalem Twp. Police Dep't, OOR Dkt. AP 2013-1151, 2013 PA O.O.R.D. LEXIS 690 (timeframe may be implied from the context of the records requested); *Getchius v. Pa. Dep't of Corr.*, OOR Dkt. AP 2017-1115, 2017 PA O.O.R.D. LEXIS 1112 (a request seeking the implementation of an identified policy was found to be sufficiently specific because the timeframe was necessarily limited to the period of time which the agency's policies went into effect); *Rand v. Pa. Dep't of Health*, OOR Dkt. AP 2019-0915, 2019 PA O.O.R.D. LEXIS 805.

The Commission and ET/SPLP also argue that Items 2 and 3 of the Request lack a specific subject matter because they do not identify a transaction, activity or docket number for which the transmittal letters and attached documents would have been submitted. With respect to the transmittal letters, the Commission argues that, due to the multiple investigations involving ET/SPLP, it has received hundreds of transmittal letters. ET/SPLP argues that it regularly submits information to the Commission for various purposes and, as an illustration of the potential number of filings implicated by the Request, provides a partial listing of the public dockets to which it and its subsidiaries are parties or have been parties.

In *Legere*, the requester sought “[a]ll Act 223, Section 208 determination letters issued by the Department of Environmental Protection [DEP] since January 1, 2008, as well as the orders issued by [DEP] to well operators in relation to those determination letters, as described in Section 208 of the Oil and Gas Act.” 50 A.3d at 262. DEP partially granted the request and provided some responsive records, but denied the remainder of the request as insufficiently specific because it did not identify specific names, geographic locations, well or permit numbers, or complaint numbers. When reviewing the OOR’s final determination, the Commonwealth Court affirmed the OOR’s conclusion that the request was sufficiently specific, finding that, as compared to the request *Mollick v. Twp. of Worcester* for “(1) all emails between the Supervisors regarding any

Township business and/or activities for the past one and five years; and (2) all emails between the Supervisors and the Township employees regarding any Township business and/or activities for the past one and five years,” that necessitated “files to be reviewed and judgments made as to the relation of the documents to the specific request” in order for the agency to respond, in *Legere*, the request to DEP was for “a clearly-defined universe of documents.” The Court emphasized in *Legere* that “[t]here are no judgments to be made as to whether the documents are ‘related’ to the request.” *Id.* at 264-65; *see also Pa. Dep’t of Corr. v. St. Hilaire*, 128 A.3d 859, 864 (Pa. Commw. Ct. 2015).

Similar to *Legere*, by limiting the portion of Items 2 and 3 seeking records regarding the transmittal letters and attachments submitted by “Sunoco Pipeline” to the parameters defined by 52 Pa. Code §§ 102.3(b)(1) and (b)(2)(i), the Requester provides the Commission a sufficiently “defined universe of documents” to use when conducting a search. In Commission matters involving ET/SPLP, like the matters in *Legere*, submissions made by ET/SPLP either contain transmittal letters and attachments as defined under the regulations or they do not. As indicated by ET/SPLP’s attachment listing dockets found on the Commission’s website for example, the Commission would, at a minimum, be able to search its own electronic databases to determine the matters in which SPLP is involved and review the matters for transmittal letters and attachments submitted. Further, it is reasonable to infer that the Commission has a record keeping system to track the multiple ongoing investigations it has stated involve SPLP, that could also be searched for transmittal letters and attachments thereto.⁴ While the types of filings or investigative matters involving ET/SPLP may be numerous in scope, the timeframe is limited to 2008 to the present,

⁴ While not discussed by the Commission, the Act mandates that an agency “develop such protocols as may be necessary to protect public utility records or portions thereof that contain [CSI] from prohibited disclosure,” including “(5) A document tracking system ... to allow for records or copies thereof containing confidential security information to be traceable at all times to a single person.” *See* 35 P.S. § 2141.3(d)(5).

and Items 2 and 3 seek a specific record that may be found in the matters being handled by the Commission involving ET/SPLP. Additionally, “the fact that a request is burdensome does not deem it overly broad.” *Id.*; see also *Pa. State Sys. of Higher Educ. v. Ass’n of State College & Univ. Faculties*, 142 A.3d 1023, 1031 (Pa. Commw. Ct. 2016) (“Just because a request is for a large number of records does not mean that an agency is excused from its obligation to produce the requested documents”).

However, regarding the portion of Items 2 and 3 seeking the same records for “any parent or subsidiary of [ET/SPLP],” without providing the names of the other entities that may have submitted transmittal letters and attachments to the Commission, as defined by 52 Pa. Code §§ 102.3(b)(1) and (b)(2)(i), the Request does not provide a “clearly-defined universe of records” for which a search may be conducted. Accordingly, this portion of Item 2 and 3 of the Request are insufficiently specific. See 65 P.S. § 67.703; *Legere, supra*.

3. The Commission and ET/SPLP have not proven that the requested records are confidential security information

The Commission and ET/SPLP argue that because the records requested in Item 2 of the Request may contain CSI material in accordance with Sections 2141.3(c)(4) and 2141.5 of the Act, they are exempt from disclosure under the RTKL. The Commission makes the same assertion regarding the records requested in Item 3. The Act provides, in pertinent part, the following:

(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.

(b) SUBMISSION OF CONFIDENTIAL SECURITY INFORMATION.— An agency shall develop filing protocols and procedures for public utilities to follow when submitting records, including protocols and procedures for submitting records containing confidential security information. Such protocols and

procedures shall instruct public utilities who submit records to an agency to separate their information into at least two categories: (1) PUBLIC.— Records or portions thereof subject to the provisions of the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law. (2) CONFIDENTIAL.— Records or portions thereof requested to be treated as containing confidential security information and not subject to the Right-to-Know Law.

35 P. S. §§ 2141.3(a), (b).

When a public utility is directed to submit records to the Commission that contain CSI, it is required to do the following:

(1) Clearly state in its transmittal letter to the Commission that the record contains confidential security information and explain why the information should be treated as confidential. *The transmittal letter will be treated as a public record and may not contain any confidential security information.*

(2) Separate the information being filed into at least two categories:

(i) Records that are public in nature and subject to the Right-to-Know Law.

(ii) Records that are to be treated as containing confidential security information and not subject to the Right-to-Know Law.

(3) Stamp or label each page of the record containing confidential security information with the words “Confidential Security Information” and place all pages labeled as containing confidential security information in a separate envelope marked “Confidential Security Information.”

(4) Redact the portion of the record that contains confidential security information for purposes of including the redacted version of the record in the public file.

52 Pa. Code § 102.3(b) (emphasis added).

Mr. Metro attests that, “in his capacity as Manager of the Safety Division of [BIE], [he] oversee[s] Commission investigations of gas and hazardous volatile liquid pipelines.” Mr. Metro further attests the following:

Many of the numerous records submitted to [BIE] under [ET/SPLP’s] transmittal letters contain [CSI] within the meaning of the [Act].... In my professional opinion, release of the records marked as CSI would compromise security against sabotage or criminal or terrorist acts regarding pipeline facilities by illustrating the extent of

the impact zone, including casualty and damage assessments at various ranges, regarding an accident (or sabotage event) on a pipeline. These records explicitly identify how such an assessment can be made (as well as the assessments for these particular pipelines); information which could clearly be used by a terrorist to plan an attack on a pipeline (and particularly on these Sunoco pipelines, as they contain specific operating parameters of the pipelines) to cause the greatest harm possible and mass destruction to the public living near such facilities.

In support of ET/SPLP's position, Mr. Nardozzi declares that his job responsibilities include "ensur[ing] the protection and safety of ET assets, including ET and/or SPLP's records and other documents." Mr. Nardozzi declares that he has knowledge of records submitted to the Commission that may be implicated by the Request and, further:

ET regularly submits information to the [Commission] through applications for operational approvals, through litigation of complaints and protests to which ET is a party, and through regulatorily-required compliance filings. These filings encompass a broad range of information in a variety of forms, including technical reports, locational drawings, and operational standards, submitted to the agency or its bureaus in applications, petitions, other pleadings, discovery responses, briefs, testimony, exhibits, letters, etcetera.

Since 2008, ET has submitted substantial information regarding the operation, location, and vulnerabilities of ET's pipeline, which it treats as [CSI] in accordance with the [Act].

Records in possession of the [Commission] that contain ET's [CSI] are of sufficient detail that, if disclosed, could be used to facilitate damage or disruption to ET's pipelines. While certain observations concerning the characteristics of ET's pipeline facilities – such as their general path or location of the above-ground valves – can be seen at the surface level, the types of [CSI] frequently provided to the [Commission] reflects far more detailed information than anything that could be obtained through surface-level observation. The release of this information would create more than a significant risk to the security and integrity of the ME 1 and ME 2 pipelines⁵ than anything that could be obtained through surface-level observations. Specifically, public disclosure of ET's detailed [CSI] in possession of the [Commission] would give someone with malicious intent the knowledge necessary to breach, damage or destroy the pipelines, potentially resulting in the compromise of life, safety, public property, public utility facilities, and other private property.

⁵ In his declaration, Mr. Nardozzi explains that ET owns SPLP, which operates the Mariner East 1 (ME1) and Mariner East 2 (ME2) pipelines.

Here, regarding the transmittal letters requested in Item 2, the Commission and ET/SPLP argue that records are part of a filing or are marked by ET/SPLP as containing CSI. Therefore, they argue, the records are exempt from disclosure under the Act. More specifically, the Commission argues that once a record has been designated as containing CSI, the Commission is prohibited from disclosing the documents pursuant to Section 2141.5(a) of the Act and only the Commission has the authority to entertain challenges to the CSI designation. Therefore, the Commission and ET/SPLP assert that the requested transmittal letters may not be accessed under the RTKL.

For a record to be designated as non-disclosable CSI under the Act, ET/SPLP and the Commission must comply with the “[p]rocedures for submitting ... and protecting confidential security information” set forth in § 2141.3 and 52 Pa. Code § 102.3(b)(1), as a condition precedent for nondisclosure. *See Friedman v. Pa. Public Utility Comm’n*, OOR Dkt. AP 2019-0502, PA O.O.R.D LEXIS 631, appeal pending, No. 982 CD 2019 (Pa. Commw. Ct.); *see also Schmitz and The Pittsburgh Post-Gazette v. Pennsylvania Emergency Management Agency et al.*, OOR Dkt. AP 2014-1055, 2014 PA O.O.R.D. LEXIS 1094, *22-23 (finding that because the evidence did not demonstrate that PEMA developed the compliance procedures by which records could be designated as confidential security information, the Act did not apply) (citing *Schumacher v. City of Scranton*, OOR Dkt. 2009-0280, 2009 PA O.O.R.D. LEXIS 153 (holding that the City could not avail itself of the protections under the Act when the City did not prove its compliance with the necessary requirements to designate records as confidential security information)). The regulations implementing the CSI designation procedures of the Act clearly state that a transmittal letter “may not contain any confidential security information.” 52 Pa. Code § 102.3(b). In addition, the same regulation, which implements Section 2141.3(a) of the Act, provides that the

public utility “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”; most importantly, it expressly states that “*the transmittal letter will be treated as a public record.*” 52 Pa. Code § 102.3(b) (emphasis added). Further, Section 102.3(c) provides that the “public utility has the responsibility to identify records as containing CSI” and if it fails to do so, “it does not obtain the protections offered in this chapter and in Act 156.” 52 Pa. Code § 102.3(c).

Mr. Metro and Mr. Nardoizzi attest that the Request for transmittal letters implicates records that may contain CSI and have been marked as such. ET/SPLP asserts that the affirmations of those individuals regarding the CSI status of transmittal letters containing such information should be enough to trigger the protections of the Act against public disclosure. Records in an agency’s possession are presumed public unless exempt under an exception in the RTKL, a privilege, or another law. 65 P.S. §67.305(a). Also, the RTKL does not supersede the public nature of a record established by statute or regulation. Section 306 of the RTKL, 65 P.S. §67.306. The Commonwealth Court in *Pa. Dep’t of Labor & Indus. v. Heltzel* distinguished the public nature of records (Section 306 of the RTKL) from public access to records (Section 3101.1 of the RTKL), stating:

Section 306 of the RTKL provides that [state] law operates to supersede contrary provisions when that law establishes public nature. ‘Establish’ means ‘to institute (as a law) permanently by enactment or agreement.’ By its plain meaning, the ‘nature’ of a document implicates the innate or intrinsic characteristics of a record, its essence, without regard to surrounding circumstances.

Once ‘established’ by statute as ‘public,’ a record is no longer subjected to the traditional public record analysis under the RTKL. Given this significant consequence, a statute should be clear when it establishes the public nature of records.

90 A.3d 823, 831-32 (Pa. Commw. Ct. 2014). In *Heltzel*, the Court considered whether the OOR had properly interpreted language governing access to Pennsylvania’s Tier II hazardous chemicals inventory database under the federal Emergency Planning and Community Right-to-Know Act (EPCRA),⁶ which provides that certain information “shall be made available to the general public” consistent with availability provisions in EPCRA. The Court concluded that the OOR erroneously determined that the EPCRA language established the public nature of the requested records under federal law such that the OOR was precluded from applying the provisions of the RTKL to deny access. *Heltzel*, 90 A.3d at 832. In making its determination regarding the public nature of the record sought, the Court emphasized that, “[n]owhere does EPCRA state that Tier II information ‘shall be public,’ or the like. *Id.*”

The transmittal letters sought in Item 2 are the means by which a public utility provides information requested by the Commission that may contain CSI. Section 2141.3 of the Act makes clear that the Commission shall instruct public utilities that materials submitted are to be segregated in two categories – one of which is “*subject to the provisions of the [RTKL]*” and one which is not. In contrast to the Act, the protocols and procedures developed by the Commission for the submission of confidential documents, including CSI, include express language stating that “[*t*]he transmittal letter will be treated as a public record” without the limiting language ‘and subject to the RTKL.’ 52 Pa. Code § 102.3(b)(1) (emphasis added). Whereas, the subsection addressing the documents to be submitted as attachments to transmittal letters distinguishes between “[*r*]ecords that are public in *nature* and *subject to the [RTKL]*” and “records that are to be treated as containing [CSI] and *not subject to the [RTKL]*.” 52 Pa. Code §§ 102.3(b)(2)(i)-(ii) (emphasis added).

⁶ 42 U.S.C. §§11001-11050.

The regulatory language regarding the attachments, as compared to the transmittal letters, is more akin to the language examined by the Commonwealth Court in *Mission Pa., LLC v. McKelvey*, where the Medical Marijuana Act stated that permit applications “are public records and shall be subject to the [RTKL].” 212 A.3d 119, 131 (Pa. Commw. Ct. 2019); 35 P.S. §10231.302(b) (emphasis added). In *Mission Pa.*, in its application of Section 306 of the RTKL, the Commonwealth Court agreed with the OOR’s interpretation that the phrase “subject to” renders the Applications public except when any RTKL exceptions or other exemptions apply. *Id.* However, here, the regulatory language applicable to the transmittal letters is not qualified by the “subject to” language; rather, the language clearly establishes the public nature of the transmittal letters, rather than just making the transmittal letters “subject to” the RTKL, such that the regulation supersedes the provisions of the RTKL based on 65 P.S. § 67.306. *See Heltzel* at 832 (“Once ‘established’ by statute as ‘public,’ a record is no longer subjected to the traditional public record analysis under the RTKL”). Therefore, the public status of the transmittal letters is established by regulation, and the RTKL’s exemptions cannot apply.

Regarding Item 3, which seeks the records submitted to the Commission by ET/SPLP with the transmittal letters, the Commission argues that, based on the nondisclosure standards set forth in the Act, all records submitted by ET/SPLP with the transmittal letters are exempt CSI. The Act defines CSI as follows:

“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:

- (1) A vulnerability assessment which is submitted to the Environmental Protection Agency or any other Federal, State or local agency.

- (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.
- (3) A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.
- (4) A security plan, security procedure or risk assessment prepared specifically for the purpose of preventing or for protection against sabotage or criminal or terrorist acts.
- (5) (i) Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts.

(ii) Nothing in this definition shall be construed to prevent the disclosure of monetary amounts.

35 P. S. § 2141.2 (capitalization in original). As stated above, Mr. Metro and Mr. Nardozzi attest that due to the nature of the records submitted, release may compromise pipeline security and potentially result in a risk to public security and safety. However, Section 2141.3 of the Act contemplates that the records attached to a transmittal letter may include public as well as confidential information and places the onus on the Commission to instruct public utilities “who submit records to an agency to separate their information into at least two categories: (1) PUBLIC.— Records or portions thereof subject to the provisions of the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law. (2) CONFIDENTIAL.— Records or portions thereof requested to be treated as containing confidential security information and not subject to the Right-to-Know Law.” 35 P.S. § 2141.3(b). The Act also provides that “[p]ublic

utility records or portions thereof which contain confidential security information, in accordance with the provisions of this act, shall not be subject to the...[RTKL].” 35 P.S. § 2141.4.

The Requester in Item 3 expressly limits the records he is seeking to “[r]ecords that are public in nature and subject to the [RTKL].” The regulatory provisions the Requester references to limit the Request require that the public utility submitting records that contain CSI material must do the following:

(2) *[s]eparate the information being filed into at least two categories:*

(i) Records that are public in nature and subject to the Right-to-Know Law.

(ii) Records that are to be treated as containing confidential security information and not subject to the Right-to-Know Law.

(3) *Stamp or label each page of the record containing confidential security information with the words “Confidential Security Information” and place all pages labeled as containing confidential security information in a separate envelope marked “Confidential Security Information.”*

(4) *Redact the portion of the record that contains confidential security information for purposes of including the redacted version of the record in the public file.*

52 Pa. Code § 102.3(b) (emphasis added). Based on a plain reading of these requirements, the records requested would not include non-disclosable material because ET/SPLP would have had to submit the records segregated in “public” and “non-public” categories, with the confidential material marked as CSI and placed in a separate envelope. Item 3 of Request is necessarily limited, by the express language, to the records designated as public under the Act and its implementing regulations. As ET/SPLP have not identified records responsive to Item 3 of the Request for which they have complied with the statutory and regulatory “[p]rocedures for submitting ... and protecting confidential security information” set forth in § 2141.3, ET/SPLP and the Commission are, therefore, not entitled to the statutory protection of the Act. *See Schmitz, supra; Schumaker, supra.*

Both the Commission and ET/SPLP claim that because the records may contain CSI that was either inadvertently or erroneously included in a transmittal letter and under the Act, the Commission is prohibited from disclosing such information.⁷ However, again, neither party has identified responsive records or presented nonconclusory evidence that any responsive transmittal letters records or attachments contain CSI, for which an argument for redaction may possibly be made under 35 P.S. § 2141.3(e),⁸ and, further, the transmittal letters sought in Item 2 are expressly public in nature.

The Commission and ET/SPLP also argue that the OOR is without jurisdiction to determine the designation of CSI material in submissions by public utilities because the Act vests authority with the Commission to entertain any challenge to CSI designation. Review of Section 2141.3(c) of the Act reveals that challenges to a CSI designation “shall be made in writing to the agency in which the record or portions thereof were originally submitted” and, further, the Commission has promulgated regulations outlining the procedures for filing a challenge. *See* 35 P.S. § 2141.3(c); 52 Pa. Code § 102.4. However, as detailed above, the Act and the regulations specifically mandate that certain records are public and/or subject to the RTKL. Accordingly, in this adjudication, the

⁷ Relying on *Keys v. Unemployment Comp. Bd. of Rev.*, 130 A.2d 262 (Pa. Super. 1957), ET/SPLP also advances the argument that the Commission may waive its regulation that states no CSI may be included in a transmittal letter. Notably, the Commission has not raised the argument regarding the waiver of its own regulation. Nevertheless, *Keys* is distinguishable from the matter here. In *Keys*, the Superior Court concluded that when the Unemployment Compensation Appeal Board remanded an appeal for a hearing on the merits, at a point when an appeal had been filed by letter, but had not been perfected by the timely resubmission of a standard agency form, that the Board action was considered “a decision to waive the *technical* violation of its regulation.” 130 A.2d at 265. Here, however, ET/SPLP asserts that the Commission should waive the substantive requirement that CSI not be included in transmittal letters, which would transform the legal status of the transmittal letters under the Act and the RTKL. This position is wholly distinguishable from the waiver of the procedural rule addressed in *Keys*, especially if one considers that the Board was already on notice of the appeal and the reasons therefore, although the correct agency form had not used. In addition, ET/SPLP has not submitted any evidence for the proposition that an agency can decide to “waive” the public nature of a record.

⁸ If an agency determines that a record or portions thereof contain confidential security information and information that is public, the agency shall redact the portions of the record containing confidential security information before disclosure. 35 P.S. § 2141.3(e).

OOR is not determining the propriety of a CSI designation; rather, we are analyzing applicability of the RTKL to the records requested, which are subject to the RTKL.

Accordingly, the Commission and ET/SPLP have not demonstrated that the transmittal letters sought in Item 2 and the documents attached to the transmittal letters segregated as public records and subject to the RTKL sought in Item 3 are exempt CSI.

4. The Commission and ET/SPLP have not demonstrated that records attached to the transmittal letters are exempt under Sections 708(b)(2) and (3) of the RTKL

The Commission and ET/SPLP also argue that the disclosure of the records would endanger public safety and compromise the physical security of the pipelines against sabotage, criminal or terroristic acts. 65 P.S. §§ 708(b)(2), (3). Section 708(b)(2) of the RTKL provides that records “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” are exempt from disclosure. 65 P.S. § 67.708(b)(2). In order to establish this exemption, an agency must show: (1) the record at issue relates to law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013); *Adams v. Pa. State Police*, 51 A.3d 322 (Pa. Commw. Ct. 2012). “Reasonably likely” has been interpreted as the likelihood that disclosure would cause the alleged harm “requiring more than speculation.” *Carey*, 61 A.3d at 375. In order to show a reasonable likelihood of jeopardy under Section 708(b)(2) of the RTKL, “[a]n agency must offer more than speculation or conjecture.” *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). The Commonwealth Court has “defined substantial and demonstrable [risk] as actual or real and apparent.” *Borough of Pottstown*

v. Suber-Aponte, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (emphasis in original) (quoting *Carey*, 61 A.3d at 373).

Meanwhile, Section 708(b)(3) of the RTKL exempts from disclosure “[a] 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) (emphasis added); see *Crockett v. Southeastern Pa. Transp. Auth.*, OOR Dkt. AP 2011-0543, 2011 PA O.O.R.D. LEXIS 268 (holding that rail car inspection and repair records were not exempt under this exemption); *Moss v. Londonderry Twp.*, OOR Dkt. AP 2009-0995, 2009 PA O.O.R.D 724 (holding that records related to the Three Mile Island nuclear power plant were not subject to public access). 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 infrastructure. See 65 P.S. § 67.708(b)(3); see also *Pa. State Police v. ACLU of Pa.*, 189 A.3d 37 (Pa. Commw. Ct. 2018) (holding that when an affidavit is legally sufficient to prove that the disclosure of a record at issue would likely cause the alleged harm under Section 708(b)(3) of the RTKL, *in camera* review of the records is unnecessary). The Commonwealth Court has held that “[a]n agency must offer more than speculation or conjecture to establish the security-related exemptions...” *Rothey*, 185 A.3d at 468 (internal citations omitted); see also *Mission Pa., LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019).

As set forth above, Mr. Metro and Mr. Nardoizzi attest to the nature of the information that ET/SPLP has submitted to the Commission for various reasons and how any records designated as CSI, if released, contain information that would “compromise security against sabotage or criminal or terroristic acts regarding pipeline facilities...” and could be used to devise a plan of

“attack on a pipeline...to cause the greatest possible harm and mass destruction to the public living near such facilities.” However, although the Commission asserts that many of the records submitted by ET/SPLP contain CSI and other security-sensitive information, it has not identified any responsive records. In fact, Mr. Metro, in a footnote to his affidavit acknowledges that, while asserting that Sunoco has submitted hundreds of transmittal letters to the Commission with thousands of pages of attachments, “[g]iven the number of documents at issue ... [BIE] has not had sufficient time to confirm the exact number of documents.” As compared to *Friedman v. Pa. Pub. Util. Comm’n*, where the requester expressly sought “calculations or estimates of *blast radius* (Sunoco’s term) or “buffer zone” ([Commission’s] term) *regarding accidents or releases* from HVL pipelines,” a particularly described record to which the Commission’s evidence regarding risk of public safety or security of a public utility could be attributed, here, no records have been identified at all. OOR Dkt. AP 2019-0502, *appeal pending*, No. 982 CD 2019. As previously stated, while under the RTKL, an affidavit is generally competent evidence to sustain an agency’s burden of proof, *Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d 907 at 909, “a generic determination or conclusory statements are not sufficient to justify the exemption of public records.” *Scolforo*, 65 A.3d at 1103. (Pa. Commw. Ct. 2013) (*en banc*); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d at 1130; *Rothey*, 185 A.3d at 468 (“[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]”). Because the Commission has not identified the responsive transmittal letters and publicly designated documents attached to them, the conclusory and speculative statements made regarding the risk of harm in the release of all potential responsive records do not support the Commission’s and ET/SPLP’s position that the disclosure of the public portions of Item 3 would jeopardize public safety or the security of a public utility.

5. The Commission and ET/SPLP have not demonstrated that some records relate to a noncriminal investigation

The Commission and ET/SPLP also argue that the records implicated by Item 3 of the Request are related to multiple noncriminal investigations commenced by BIE involving “Sunoco Pipeline or any parent or subsidiary company.” Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation, including ... [i]nvestigative materials, notes, correspondence and reports.” 65 P.S. §§ 67.708(b)(17)(ii). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259.

The Commonwealth Court has recognized the Commission’s broad authority to conduct noncriminal investigations “to determine ... if utilities are in compliance with the Public Utility Code, ... the [United States Department of Transportation Pipeline and Hazardous Materials Safety Administration] and other applicable state and federal regulations.” *Pa. Pub. Utility Comm’n v. Gilbert*, 40 A.3d 755, 760 (Pa. Commw. Ct. 2012).

In support of the Commission’s position, Mr. Metro attests that, “[BIE] is and has been, for more than five years, engaged in multiple noncriminal investigations of Sunoco Pipeline and

affiliated companies” and “ [BIE] does not have any requested records other than records that are part of a noncriminal investigation.” Secretary Chiavetta also attests that, “[BIE] has initiated numerous noncriminal investigations against Sunoco Pipeline, L.P. a/k/a/ [ET/SPLP]” and “[t]he Commission does not have any responsive records other than those that are part of these [BIE] investigations.”

In order to demonstrate that a record is subject to the exemption, the Department must provide evidence that an investigation was conducted. *See, e.g., Brown v. Office of Inspector Gen.*, 178 A.3d 975 (Pa. Commw. Ct. 2017) (unreported opinion); *Camarota v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2019-0920, 2019 PA O.O.R.D. LEXIS 900; *cf. Friedman v. Pa. Pub. Util. Comm’n* OOR Dkt. AP 2019-0502, *appeal pending*, No. 982 CD 2019 (finding that evidence demonstrated that records identified as related to specifically docketed ongoing noncriminal investigations are exempt from disclosure under Section 708(b)(17) of the RTKL). Here, although Mr. Metro and Secretary Chiavetta attests to multiple ongoing investigations involving the Commission and ET/SPLP, which may implicate responsive records, based on a review of the Commission’s evidence, it has not identified any individual investigation by number or general description. As a result, the Commission has not shown that the requested records relate to noncriminal investigations conducted by the Department. *See* 65 P.S. § 708(a).

6. ET/SPLP has not proven that the records contain confidential, proprietary information or trade secrets

ET/SPLP asserts that “to the extent [Items 2 and 3] implicates any record ‘that constitutes or reveals a trade secret or confidential proprietary information’ such information is exempt from disclosure under Section 708(b)(11) of the RTKL....” Section 708(b)(11) of the RTKL, which exempts from disclosure “[a] record that constitutes or reveals a trade secret or confidential

proprietary information.” 65 P.S. § 67.708(b)(11). The RTKL defines these terms differently.

First, a trade secret is defined as:

Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

(1) Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other person who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. Confidential proprietary information, meanwhile, is defined as “[c]ommercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.” *Id.* An agency must establish that both elements of either these two-part tests are met in order for the exemption to apply. *See Office of the Governor v. Bari*, 20 A.3d 634 (Pa. Commw. Ct. 2011). In determining whether certain information is “confidential,” the OOR considers “the efforts the parties undertook to maintain their secrecy.” *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014), *rev’d in part*, *Pa. Dep’t of Pub. Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015). “In determining whether disclosure of confidential information will cause ‘substantial harm to the competitive position’ of the person from whom the information was obtained, an entity needs to show: (1) actual competition in the relevant market; and, (2) a likelihood of substantial competitive injury if the information were released.” *Id.*

Mr. Nardozi attests, that ET/SPLP has, since 2008, provided the Commission with numerous records “containing commercial and financial information regarding ET’s operations” within the competitive natural gas liquids pipeline industry. Mr. Nardozi attests to being required to develop “procedures and plans for construction, operation, and maintenance of its pipeline

pursuant to 49 C.F.R. Part 195,” and how ET/SPLP has invested significant time and resource to develop these “proprietary documents that have significant substantial economic value within the industry.” Mr. Nardozzi further attests to the “valuable trade secret information, such as processes, formulas and plans[,]” and “business practices and operations that derive their value from not being generally known” that has come as a result of ET’s years of experience in the pipeline industry and significant monetary investment in the development of “its proprietary processes.” Mr. Nardozzi outlines the steps taken by ET/SPLP to treat proprietary and trade secret information as confidential, including “limiting access to authorized personnel and requiring non-disclosure agreement prior to disclosing such proprietary information to third parties.”

As highlighted by ET/SPLP’s assertion that the Section 708(b)(11) may apply “*to the extent that [Items 2 and 3] implicates*” such records, no responsive records have been identified; therefore, Mr. Nardozzi’s declarations are merely conclusory and speculative and fail to demonstrate that implicated records, in fact, contain confidential proprietary or trademarked information. While Mr. Nardozzi generally attests to the types of records that, if submitted to the Commission, may be exempt confidential proprietary or trademarked information, as stated above, the Commission has not identified any responsive records for which ET/SPLP can provide factual evidence to establish the exemption and ET/SPLP cannot sustain its burden of proof by way of a conclusory declaration. *See Bagwell*, 155 A.3d at 1130.

In addition, ET/SPLP argues that to the extent the Request implicates records the OOR has already adjudicated the non-public nature of records involving the Sunoco Pipeline in prior final determinations, the Commission and ET/SPLP should not be required to “re-establish” and “re-defend” the non-public nature of the records. However, once again, the OOR is unable to consider this argument without the identification of the records at issue. Further, there are necessary

elements that an invoking party must establish to apply the doctrine of collateral estoppel, which have not been established her, namely: “(1) an issue decided in a prior action is identical to one presented in a later action, (2) the prior action resulted in a final judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to the prior action or in privity with a party to the prior action, and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.” *Pa. Dep’t of Corr. v. Maulsby*, 121 A.3d 585, 588 (citations omitted). The assertion that the requested records include records determined to be non-public under the RTKL in prior final determinations is merely speculative. *See Hous. Auth of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that statements of counsel are not competent evidence).⁹

CONCLUSION

For the foregoing reasons, the appeal is **granted in part**, and **denied in part**, and the Commission is required to provide all responsive transmittal letters and attachments designated as public records and subject to the RTKL within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹⁰ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁹ In its position statement, the Commission also asserted that some of the records reflect deliberations by BIE regarding contemplated strategies and may contain privileged information, and are therefore exempt pursuant to 65 P.S. §§ 301(a) and 67.708(b)(10)(i)(A); however, the Commission has not provided any evidence to support the asserted exemption. *See* 65 P.S. § 67.708(a)(1).

¹⁰ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: October 10, 2019

/s/ Kelly C. Isenberg

APPEALS OFFICER
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**HORIZONTAL DIRECTIONAL DRILL ANALYSIS
SLITTING MILL ROAD CROSSING
PADEP SECTION 105 PERMIT NO.: E23-524
PA-DE-0008.0000-RD
(SPLP HDD No. S3-0560)**

**SLITTING MILL ROAD CROSSING
PADEP SECTION 105 PERMIT NO. E23-524
PA-DE-0008.0000-RD
(SPLP HDD No. S3-0560)**

This reevaluation of the horizontal directional drill (HDD) installation of a 20-inch diameter pipeline under Slitting Mill Road has been completed in accordance with Condition No. 3 of the Stipulated Order issued under Environmental Hearing Board Docket No. 2017-009-L (Order). Condition No. 3 stipulates for HDDs initiated after the temporary injunction issued by the Pennsylvania Department of Environmental Protection (PADEP) Environmental Hearing Board (July 25, 2017), a reevaluation must be performed on HDDs for which an inadvertent return (IR) occurs during the installation of one pipe (20-inch or 16-inch diameter) where a second pipe will thereafter be installed in the same right-of-way (ROW).

The installation of the 16-inch diameter pipeline at HDD S3-0560 was initiated after the temporary injunction issued by the PADEP Environmental Hearing Board on July 25, 2017. The 16-inch pipeline HDD had three (3) upland inadvertent returns (IRs), and therefore, installation of the second pipeline (20-inch diameter) requires reevaluation. The IRs for the 16-inch pipeline were easily remediated, and the HDD was completed when the pipe was pulled on 12/15/17.

The 20-inch pipeline HDD is referred to herein as HDD S3-0560.

PIPE INFORMATION

20-Inch: 0.456 wall thickness; X-65

Pipe stress allowances are an integral part of the design calculations performed for each HDD. For steel pipe the "pipe stress allowance" is the amount of curvature that a piece or length of pipeline can bend without resulting in damages such as a "kink" or "crimp" in the wall of the pipe. The innate curvature ability of pipe is termed the "free stress radius". The stress allowance of the pipe is determined by the ductility of the steel, wall thickness, and the diameter of the pipe. An HDD design is limited by the horizontal distance between the points of entry and exit and the free stress radius of the pipe.

Ductility of the steel used for pipelines is determined by the percentage of carbon within the steel. Generally, steel pipe is categorized as either "low carbon" having less than 0.3% carbon content within the steel, or "high carbon" having greater than 3% carbon within the steel. As the carbon content within the steel used to make the pipe increases, the flexibility (ductility) of the pipe is decreased. The X65 20-inch pipe utilized on the Mariner project is a low carbon (high ductility) steel pipe.

The design of an HDD profile accounts for the free stress radius of the pipeline segment to be pulled into the drilled entry, through the entry radius of curvature at maximum horizontal depth, out the exit radius leaving maximum depth, and out the drilled exit; therefore, each HDD has a minimum of four (4) points of pipeline curvature to assess for pipeline stress. Additionally, a horizontally drilled profile is not a "perfect" pathway, especially when drilled through rock formations. The pilot tool cutting into the rock face has a larger cutting face than the drill stem pushing the tool forward, which results in flexibility of the tooling within the pilot hole, and as a result the pilot tool will drift in orientation as proceeding forward because the cutting tool will proceed easier into softer material while cutting due to natural variances in hardness of the materials being cut, whether they are soils or rock. Steering of the pilot tool is used to correct drifting as it occurs. As a result of this natural drifting during completion of the pilot hole, the entire length of the drilled pilot hole is assessed for stress allowances at three (3) joint intervals before reaming of the annulus is permitted. If errors during pilot drilling or reaming occur and a mid-point is identified that would breach the pipe stress allowance, then the use of an over-reamed annulus is assessed for breach of the stress allowance. In cases where an over-reamed annulus will not correct the stress problem, the HDD has to be re-drilled.

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Specifics for the original permitted 20-inch HDD plan and profile are discussed in the original permitted HDD design summary below. Specifics for the revised 20-Inch HDD plan and profile are discussed in the Redesigned Horizontal Directional Drill Design Summary at the end of this report.

ORIGINAL HORIZONTAL DIRECTIONAL DRILL DESIGN SUMMARY: 20-INCH

- Horizontal length: 1,378 foot (ft)
- Entry/Exit angle: 10 degrees
- Maximum Depth of cover: 61 ft
- Pipe design radius: 2,000 ft

The original profile design factors are below the pipeline stress allowances for all points of analysis.

ROOT CAUSE ANALYSIS FOR THE 16-INCH PIPE INSTALLATION INADVERTENT RETURNS

Three (3) IRs occurred during construction of the 16-inch line at HDD S3-0560. All three occurred within 220 feet of the southeast entry/exit where there was 40 feet or less of soil or weathered, or fractured, bedrock above the profile. IR-1 (50 gallons) occurred during the initial pilot hole drilling. IR-2 (15 gallons) occurred while an intercept pilot hole was being advanced from the southeast entry/exit before abandonment of the first pilot attempt due to an inability to complete an intercept of the pilot hole drilled from both ends. IR-3 (150 to 200 gallons) occurred during reaming. Between IR-1 on 10/13/17 and IR-3 on 12/12/17 a few small upland IRs (0.5 to 4 gallons each) occurred in the same general area as IR-1, IR-2 and IR-3.

The three upland IRs that occurred on the east side of Slitting Mill Road were the result of shallow overburden comprised of highly weathered and fractured bedrock. IRs No. 1 and No. 3, occurred as the drilling bits were approaching exit at the southeast entry/exit. IR No. 2 occurred while tools were being tripped out of the intercept pilot bore and was probably the result of drilling fluid finding a preferred flow path in the overburden and road base of Slitting Mill Road established by IR No. 1. A pathway created by abandoning the initial pilot hole and pilot intercept possibly contributed to IR-3.

GEOLOGIC ANALYSIS

Blackmer (2005) mapped the bedrock at HDD S3-0560 as the undifferentiated amphibolite facies gneiss unit of the Baltimore Gneiss and describes the unit as a heterogeneous felsic, intermediate and mafic amphibolite facies gneiss. The predominant lithology is described as intermediate plagioclase-hornblende-quartz-biotite gneiss with local orthopyroxene, clinopyroxene, potassium feldspar, and garnet. Banding is reported to poorly developed and massive.

Fracture trace analysis identified one west-east trending fracture trace intersects the northwest part of the alignment at approximately station 0+90 (proposed profile) and a second east-southeast trending fracture trace that intersects the southeast entry/exit location (proposed profile).

Seismic refraction and multichannel analysis of seismic waves (MASW) surveys were performed to identify potential fracture zones and the approximate depth of competent bedrock along the proposed profile. Data could not be collected between approximately Stations 6+70 to 7+30 because the HDD alignment crosses a driveway and a landscaped structure. Refraction data was unable to reach the elevation of the deeper portions of the proposed 20-inch HDD profile due to encountering bedrock at a higher elevation than the profile, however the MASW data extended to a depth that covered most of the proposed 20-inch profile, to

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within approximately 10 feet of the central, deepest portion of the profile. The overall conclusion of geophysical survey was that the data indicate a lack of significant fractures and faulting at HDD S3-0560. The top of relatively competent bedrock as indicated by both survey types ranged from approximately 14 to 51 ft bgs. The MASW survey identified low velocity zones indicating potential fracture or fault zones at approximately stations 6+50 and 12+87. In general, these two locations do not directly correlate with the two mapped fracture traces that cross the alignment. One of the mapped fracture traces passes through the southeast entry/exit on the proposed plan and profile, approximately 180 feet southeast from the low velocity zone located at Station 12+87. Two of the three IRs that occurred during construction of the 16-inch line were due north of the alignment at Stations 12+63 and 13+02 where the overburden was relatively shallow at 39 and 33 feet, respectively. These two IRs are in the same general location as the low velocity zone identified at Station 12+87. The geophysical survey data may not reflect reality over the entirety of the revised HDD profile depth, since as shown within the geophysics report provided within Attachment 1 of this report, data was not obtained to the profile depth, and fractures typically reduce in number and aperture as depth below ground increases.

There is no known or mapped karst geology, or sinkholes in the area of this HDD.

The soil/weathered rock overburden on the redesigned profile ranges down to a depth of 32-65 ft below ground surface (bgs). Based on the vertical geotechnical core boring data acquired in September of 2017, the HDD will proceed through soil and highly weathered/fractured bedrock rock to depths between 38 and 65 ft bgs. RQD values indicate the top of a zone of more competent, stronger, bedrock will be encountered at approximately 65 bgs, below which RQD values mostly ranged from 72 to 100 percent, except for one low RQD value for a five-foot interval in each boring. For both borings, bedrock cored at the approximate elevation of the deepest, horizontal, section of the proposed profile is within a zone of 100 percent RQD.

Attachment 1 provides a discussion on the geology and results of the geotechnical and geophysical investigation performed at this location.

HYDROGEOLOGY, GROUND WATER, AND WELL PRODUCTION ZONES

Groundwater in the metamorphic rocks of Delaware County is typically stored and moves within pore space in the saprolite comprised of highly weathered and fractured bedrock and within open discontinuities of more competent bedrock at depth. Some saturated zones within the saprolite may be under perched conditions.

A PAGWIS search of domestic wells within one mile of the HDD S3-0560 alignment produced water level measurements for 41 wells ranging from 4 to 70 ft bgs with an average of 28 ft bgs. The wells were completed between 36 and 525 ft bgs and all were drilled within the Baltimore Gneiss. The search listed well yields for 36 domestic wells ranging from 2 to 100 gallons per minute (gpm), and with an average yield of 20 gpm.

Groundwater levels were variable among the geotechnical borings advanced in the area of HDD S3-0560. One of the two shallow borings advanced by Tetra Tech encountered water at 16 ft bgs, the other one was dry. Terracon borings B6-15W and B6-15E were drilled to depths of 113 and 100 feet, respectively, but both boring logs indicated groundwater was not encountered. Estimates of water levels were reported by well owners for 3 of the 22 wells sampled in SPLP's source water sampling program. These ranged from 15 to over 100 ft bgs. The landowner estimate of depth to water for the well closest to the HDD alignment (within 29 feet) was greater than 100 ft bgs.

Attachment 1 provides a discussion on the hydrogeology at this location.

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ADJACENT FEATURES ANALYSIS

This HDD is located 1.2 miles south of the Town of Willistown in Delaware County, Pennsylvania. The pipeline alignment crosses under Slitting Mill Road, and is set within light commercial and urban residential developments for the majority of its length. The HDD profile does not cross under any Waters of the Commonwealth, and the HDD alignment follows an existing SPLP pipeline easement for the majority of its length.

SPLP identified thirty-one (31) landowners within 450 ft of the HDD alignment. SPLP sent each of these landowners a notice letter via both certified and first-class mail that included an offer to sample the landowner's private water source (well or spring) in accordance with the terms of the Order and the Water Supply Assessment, Preparedness, Prevention and Contingency Plan. The letter also requested that each landowner contact the Right-of-Way agent for the local area and provide SPLP with information regarding: (1) whether the landowner has a water source; (2) where that water source is located, and its depth and size if known; and (3) whether the landowner would like to have the water source sampled. In accordance with paragraph 10 of the Order, copies of the certified mail receipts for the letters sent to landowners have been provided to Karyn Yordy, Executive Assistant, Office of Programs at PADEP's Central Office.

To date, SPLP has received thirty-one (31) responses from individual landowners. Of these, eighteen (18) landowners have confirmed the use of one or more private water sources on their parcel, and the remaining landowner responses verified the use of public water supply or no water use on the parcel. In all, twenty-two (22) private water sources on eighteen (18) parcels have been located and were tested. Fourteen of these water sources occur within 450 ft of the HDD alignment and four are within 100 feet of the HDD alignment at approximate distances of 10, 29, 63 and 84 feet from the HDD alignment. However, no water supply complaints were received during drilling for the 16-inch HDD, and none have been received since completion of the 16-inch pipeline installation.

In accordance with the requirements of the Stipulated Order, SPLP will transmit a copy of this HDD analysis to all landowners having a property line within 450 ft of any direction of this HDD location.

ALTERNATIVES ANALYSIS

As required by the Order, the reanalysis of HDD S3-0560 includes an evaluation of construction alternatives and a re-route analysis. As part of the PADEP Chapter 105 permit process for the Mariner II East Project, SPLP developed and submitted for review a project-wide Alternatives Analysis. During the development and siting of the Project, SPLP considered several different routings, locations, and designs to determine whether there was a practicable alternative to the proposed impact. SPLP performed this determination through a sequential review of routes and design techniques, which concluded with an alternative that has the least environmental impacts, taking into consideration cost, existing technology, and logistics. The baseline route provided for the pipeline construction was to cross every wetland and stream on the project by open cut construction procedures. The Alternatives Analysis submitted to PADEP conceptually analyzed the potential feasibility of any alternative to baseline route trenched resource crossings (e.g., reroute, conventional bore, HDD). The decision-making processes for selection of the HDD instead of an open cut crossing methodology is discussed thoroughly in the submitted alternatives analysis and was an important part of the overall PADEP approval of HDD plans as currently permitted. As described below, the construction methods and re-route analyses have confirmed the conclusions reached in the previously submitted Alternatives Analysis.

Open-cut Analysis

The HDD profile passes through and under parts of three (3) light industry properties; four (4) residential properties, and three (3) buried utilities owned by other companies. An open cut/conventional auger bore

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construction plan to replace the proposed HDD is feasible. To implement an open cut/auger bore construction plan would require cooperation or condemnation of four (4) private landowners to accept a revised permanent easement, or second permanent easement. The easement revision or addition is required to account for the final pipeline location and temporary workspace needed to implement the open cut/bore construction plan to avoid structures encroaching onto and into the existing SPLP easement. This plan would require passing under the two existing SPLP pipeline three times.

Sunoco Pipeline, L.P. (SPLP) specifications require a minimum of 48-inches of cover over the installed pipelines. The Pennsylvania Department of Transportation (PADOT) cover requirements under public roadways is 60-inches of cover. The HDD as planned avoids a conventional auger bore, or open cut of Slitting Mill Road; however, with an approved Road Closure Permit from Edgmont Township, and a reorientation of the new pipeline alignment, Slitting Mill Road could be crossed by conventional auger bore or an open cut if a permitted road closure was approved by Edgmont Township.

Although technically feasible, this plan was proposed during the original assessment and permitting of the Pennsylvania Pipeline Project, and was rejected by the landowners. Comparing the direct effects of this open cut/auger bore construction to the occurrence of three upland IRs during drilling for installation of the 16-inch pipeline which were readily contained and cleaned up, to implementation of legal action to take an easement for implementation of this plan results in SPLP's opinion that an HDD crossing of this area is still the preferred methodology.

Use of Conventional Auger Bore

Planning for a conventional bore must account for the extent or width of the feature (road, stream, etc.) being bored under, as well as the length and width of the setup-entry pit for setting the boring equipment within while operating, and the receiving pit through which the product pipeline is pulled back through after the boring machinery exits.

Based on experience gained during construction of the Mariner II Pipeline project, conventional auger bores should be limited to approximately 200 linear ft at a time, or less, varying by the underlying substrate. Conventional auger bores for the 16-inch pipeline, attempted at longer distances, have at times had alignment drift and elevation deflections occur which have complicated installation.

A conventional auger bore could be used in combination with open cut construction, as discussed above, to install the 20-inch pipe under Slitting Mill Road near the southeast entry/exit as well as subset footages within the length of the permitted HDD. This would require landowner agreements as discussed above, and comparing the direct effects of this open cut/auger bore construction to the occurrence of three upland IRs which were readily contained and cleaned up, to implementation of legal action to take an easement for implementation of this plan results in SPLP's opinion that an HDD crossing of this area is still the preferred methodology.

FlexBor Analysis

SPLP contractors attempted three (3) FlexBors and partially completed two of these to replace HDDs on the Mariner Project. One FlexBor failed in the pilot phase and was replaced with a conventional bore under a highway and open cut construction. The two partially successful FlexBors completed the pilot phases, but both had difficulties completing the reaming phase. SPLP's analysis is that this technology is not perfected for larger diameter bore attempts.

Direct Pipe Bore Analysis

The direct pipe bore method is also known as "microtunneling". This method of pipeline installation is a remote-controlled, continuously supported pipe jacking method. During the direct pipe installation,

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operations are managed by an operator in an above-ground control room alongside of the installation pit. Rock and soil cutting and removal occurs by drilling fluid injection through the cutting tool during rotation at the face of the bore, and the cuttings are forced into inlet holes in the crushing cone at the tool face for circulation to a recycling plant through a closed system. The entire operating system for this method of pipeline installation, including the cutting tool drive hydraulics, fluid injection, fluid return, and operating controls are enclosed inside the outside diameter bore pipe (or casing pipe) being installed. At the launching point/entry pit, the bore pipe is attached to a "jacking block" that hammers the bore pipe while the tool is cutting through the substrate or geology. The cutting tool face is marginally larger in diameter than the pipe it is attached to. As a result, there is minimal annulus space, which minimizes the potential for drilling fluid returns or the production of groundwater returning back to the point of entry. Unlike an HDD, this technology has no steering capability. Changes in direction are made by adjusting the cutting angle of the tool face which results in a maximum of 4 degrees radius between the point of entry and exit.

SPLP's construction contractors have successfully completed one (1) Direct Pipe Bore approximately 925 ft on the Pennsylvania Pipeline Project (PPP) at the crossing of the Frankston Branch of the Juniata River in Blair County. This Direct Pipe Bore was setup within a relatively flat area immediately outside the river floodplain and bored under the floodplain, wetlands, and river, exiting at the toe of a mountain slope.

The Direct Pipe Bore method requires substantially more surface workspace than required for an HDD for the setup and operation of the entry pit due to the space requirements for the hydraulic jacking press and supporting equipment which approximates the equipment assembly for operating an HDD, plus layout room for the casing pipe string to be jacked into place.

Although feasible, implementation of one or more Direct Pipe bores in combination with open cut installation segments would require landowner agreements for the workspace for setup of the equipment and re-alignment of the pipeline installation as discussed above, and comparing the direct effects of this construction to the occurrence of three upland IRs, which were readily contained and cleaned up to legal action to take a revised easement and the workspace for implementation of this plan results in SPLP's opinion that an HDD crossing of this area is still the preferred methodology.

Re-Route Analysis

The general route of the Mariner II project in this area of Pennsylvania is from northwest to the southeast. The pipeline route as currently permitted follows an existing SPLP easement through light commercial and residential development and bypasses or directly avoids impacting three commercial buildings, Slitting Mill Road, and three (3) private driveways.

Southwest of the existing SPLP easements, there are no apparent existing utility corridors for consideration for use to co-locate the PPP project. Residential developments occupy most of the grounds outside of stream corridors; therefore no probable alternative for rerouting of the PPP exists to the southwest.

An existing pipeline corridor with two (2) existing pipeline lies approximately 1.0 miles northeast of the SPLP easement. This utility corridor never bi-sects the SPLP utility easement either northeast of, or southeast of the SPLP easement; therefore use of this existing easement requires establishment of a new greenfield to leave the SPLP route, intersect this corridor; establish a new parallel easement, plus workspace, and then leaving this alternate route to return to the route of the PPP to achieve the endpoint.

In summary, due to the settings surrounding the overall route of the Mariner II pipelines in this area, there is no alternative route that could avoid conflicts with existing developments. Since SPLP possesses no prior rights for multiple utility lines in any nearby existing corridor, nor any new corridor that could be developed, SPLP anticipates significant legal action to acquire a new easement.

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This re-route analysis conducted for the Slitting Road HDD confirms the conclusions reached in the previously submitted alternatives analysis.

HORIZONTAL DIRECTIONAL DRILL REDESIGN

SPLP has considered all geologic data and the events during installation of the 16-inch pipeline and has redesigned the 20-inch HDD profile. A summary of the redesign factors is provided below. The original and redesigned HDD plan and profile for the 20-inch pipeline are provided in Attachment 2.

Revised Horizontal Directional Drill Design Summary: 20-inch

- Horizontal length: 1,465 feet (ft)
- Entry/Exit angles: 15 - 16 degrees
- Maximum depth of cover: 98 ft
- Pipe design radius: 2,400 ft

The redesigned HDD profile increases the angle of entry and exit to reduce the potential for IRs as occurred during installation of the 16-inch pipeline. This design nearly maximizes the profile potential and leaves 124 ft of horizontal run for any required corrections before proceeding into the exit radius. The remaining design factors are below the pipeline stress allowances for all points of analysis.

CONCLUSION

Based on the original and revised profile for the 20-inch HDD, the revised HDD profile increases the depth in bedrock for a majority of the HDD profile; therefore, adjustments to the plan of construction for the 20-inch pipeline represent a reduced risk of IRs that would impact uplands over the profile. The HDD does not pass beneath any Waters of the Commonwealth. Although no water supply impacts occurred during installation of the 16-inch pipe, four (4) private water supplies are within 100 feet of the alignment, representing a heightened risk for a water supply impact. This risk will be managed by SPLP, as it does for all private water supplies within 450-feet of HDD alignments, by offering pre-drilling water quality sampling, and temporary water supplies during the time of HDD installation. Upland and punch out IRs are common on entry and exit of the drilling tool and other measures are required to minimize IR potential. In particular, upon the start of this HDD, SPLP will employ the following HDD best management practices:

- SPLP will provide the drilling crew and company inspectors the location(s) data on potential zones of higher risk for fluid loss and IRs, including the area related to previous IRs, and potential zones of fracture concentration identified by fracture trace analysis, so that monitoring can be enhanced when drilling through these locations;
- SPLP will mandate annular pressure monitoring during the drilling of the pilot hole, which assists in immediate identification of pressure changes indicative of loss of return flows or over pressurization of the annulus, managing development pressures that can induce an IR;
- SPLP inspectors will ensure that an appropriate diameter pilot tool, relative to the diameter of the drilling pipe, is used to ensure adequate “annulus spacing” around the drilling pipe exits to allow good return flows during the pilot drilling;
- SPLP will implement short-tripping of the reaming tools as indicated by monitoring of return flows, to ensure an open annulus is maintained to manage the potential inducement of IRs;

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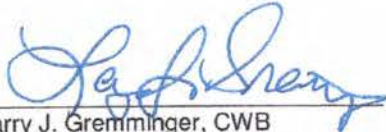
- SPLP will require monitoring of the drilling fluid viscosity, such that fissures and fractures in the subsurface are sealed during the drilling process;
- The drilling manager and SPLP drilling inspectors will monitor the tool face pressure while advancing towards exit to determine when mud pressures can be reduced to lower IR potential while completing the final footage for exiting of the pilot tool. During the reaming phase, the driller can implement both push and pull reaming to minimize IR potential at this HDDs southeast end to lower IR potential; and
- During all drilling phases, the use of Loss Control Materials (LCMs) will be implemented upon detection of a LOC or indications of a potential IR are noted or an IR is observed. The use of LCMs, however, is less effective 70 ft-bgs. Accordingly, the preferred corrective action needed to address the presence of fractures or LOC at greater depths below ground will require grouting of the HDD annulus. Two types of grouting may be utilized for corrective actions to seal fractures. These are: 1) grouting using “neat cement”; and 2) grouting using a sand/cement mix. Neat cement grout is a slurry of Portland cement and water which is highly reactive to bentonite and induces solidification. The sand/cement grout mix is a slurry of mostly sand with a small percentage of Portland cement and activators that result in a material having the competency of a friable sandstone or mortar, after setup. Both grouting actions require tripping out the drilling tool, and then tripping in with an open-ended drill stem to apply or inject the grout mixes. Either of these grouting actions may be implemented upon the first detection of an LOC, with the selection of the treatment based upon the circumstances of the LOC, being small or large in magnitude. The monitoring PGs and Drilling Specialists will assess the LOCs and make a determination as to which LOCS will require remediation and the method employed.

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FEASIBILITY DETERMINATION

Based on the information reviewed by the Geotechnical Evaluation Leader, Professional Geologists, Professional Engineers, and HDD specialists, the HDD Reevaluation Team's opinion is that the proposed HDD design and implementation of the management measures contained within this re-evaluation report will minimize the risk of IRs

Pertaining to Horizontal Directional Drilling Practices and Procedures; Conventional Construction Alternatives; and Environmental Effects

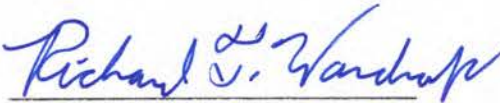


Larry J. Gremminger, CWB
Vice President – Environmental
Geotechnical Evaluation Leader
Mariner East 2 Pipeline Project

10/10/2019

Date:

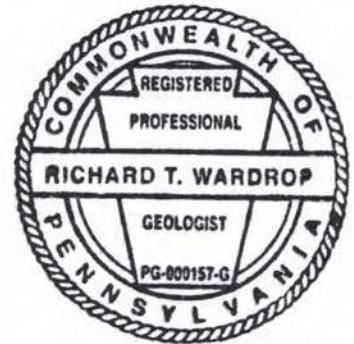
Pertaining to the practice of geology



Richard T. Wardrop, P.G.
License No. PG-000157-G
Groundwater & Environmental Services, Inc.
Lead Hydrogeologist

10/10/19

Date:



Pertaining to the pipeline stress and HDD geometry



Jeffrey A. Lowy, P.E.
License No. PE 082759
Rooney Engineering, Inc.
Civil Engineer

10/10/19

Date:



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ATTACHMENT 1

GEOLOGY AND HYDROGEOLOGICAL EVALUATION REPORT



HDD HYDROGEOLOGIC REEVALUATION REPORT

**Mariner East II
Spread 6
S3-0560
Slitting Mill Road
Edgmont and Thornbury Townships, Delaware County, Pennsylvania**

Prepared for:

Sunoco Pipeline, L.P.

Prepared by:

**Groundwater & Environmental Services, Inc.
440 Creamery Way, Suite 500
Exton, Pennsylvania 19341**

October 2019



HDD HYDROGEOLOGIC REEVALUTION REPORT

**Mariner East II
Spread 6
S3-0560
Slitting Mill Road
Edgmont and Thornbury Townships, Delaware County, Pennsylvania**

October 2019

Prepared for:

**Sunoco Pipeline, L.P.
535 Fritztown Road
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Prepared by:

A handwritten signature in blue ink, appearing to read 'Samuel H. Baughman II'.

Samuel H. Baughman II, P.G.
Principal Hydrogeologist

Reviewed by:

A handwritten signature in blue ink, appearing to read 'Richard T. Wardrop'.

Richard T. Wardrop, P.G.
Lead Hydrogeologist

Groundwater & Environmental Services, Inc.
440 Creamery Way, Suite 500
Exton, Pennsylvania 19341
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By affixing my seal to this document, I am certifying that the geologic and hydrogeologic information is true and correct. I further certify I am licensed to practice geology in the Commonwealth of Pennsylvania and that it is within my professional expertise to verify the correctness of the information.



10/10/2019

Richard T. Wardrop, P. G.
License No. PG000157G

date

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FIGURES

Figure 1. Site Location Map

Figure 2. Site Geology Map

Figure 3. Fracture Trace Map

Figure 4. Recovery and RQD with Depth for Borings B6-15W and B6-15E

Figure 5. 450-foot Water Supply Survey

ATTACHMENTS

Attachment A. Permitted and Proposed Plan and Profile

Attachment B. Geotechnical Boring Reports

Attachment C. Geophysical Survey Report

1.0 INTRODUCTION

Sunoco Pipeline, L.P., (SPLP) retained Groundwater & Environmental Services, Inc. (GES) to prepare HDD Hydrogeologic Reevaluation Reports (HRRs) for horizontal directional drills (HDDs) that meet Exhibit 3 criteria as per the Stipulated Order EHB Docket No. 2017-009-L signed August 10, 2017. These include pending second pipe HDD installations for which one or more inadvertent returns (IRs) occurred during installation of the first pipe. This report represents the HRR for the 20-inch line at HDD S3-0560. The 16-inch line was completed in December 2017 and experienced three upland IRs. The alignment for HDD S3-0560 is located between Middletown Road (State Route 0352) and Slitting Mill Road in Edgmont and Thornbury Townships, Delaware County, Pennsylvania. The discussion presented in this report is based on plan and profiles (P&Ps) developed by Tetra Tech/Rooney, revised on 9/30/2016 (permitted profile) and a proposed profile revised on 3/14/2019 (both provided in **Attachment A**). The proposed profile was developed to increase the depth of the borehole by slightly extending the east and west entry/exit points (total of approximately 87 feet), increasing the entrance angles and increasing the radii of curvature at the ends of the profile. The purpose for deepening the profile is to minimize the risk of IRs by advancing the pipes deeper into more competent bedrock. For the purpose of this assessment, GES utilized the permitted and proposed P&Ps, and the as-built profile for the 16-inch line to evaluate the hydrogeologic conditions at HDD S3-0560.

A map depicting the location of the HDD with topographic information for the surrounding area is presented as **Figure 1**.



Figure 1. Site Location Map (mod. from PaGEODE).



This report presents the following information:

- Geologic and hydrogeologic characteristics in the area of HDD S3-0560;
- Summaries of studies performed pertinent to reevaluation, including fracture trace analysis, geotechnical borings, and a geophysical survey;
- A site conceptual model; and
- A reevaluation summary with conclusions.

The content of this report was developed from interpretation of published information, field observations, IR reports and related field studies. Site geotechnical boring programs were conducted by Tetra Tech in July 2015 and by Terracon Consultants, Inc. (Terracon) in September 2017. Please note that GES did not oversee or direct either geotechnical drilling program, including, but not limited to, the selection of number and location of borings, determination of surface elevations, target depths, observations of rock cores during drilling operations, or preparation of boring logs; nor was GES involved in the planning and conducting of the geophysical surveys. GES relied on the reports of these studies and incorporated their data into the general geologic and hydrogeologic framework for this hydrogeologic reevaluation report.

As described in the Stipulated Order (pages 3 and 4), the HRRs will provide information to eliminate, reduce, or control the release or IR of HDD drilling fluids to the surface of the ground or impact to water supplies at the location during HDD operations. The HRRs are not intended to evaluate potential adverse effects of nearby man-made structures from HDD operations.

2.0 HDD GEOLOGY / HYDROGEOLOGY

2.1 Physiography

HDD S3-0560 is located within the Piedmont Upland Section of the Piedmont Physiographic Province of southeastern Pennsylvania, which consists of broad rounded to flat-topped hills and shallow valleys.

2.1.1 Topography

As shown on **Figure 1**, HDD S3-0560 is located on the southwest edge of a relatively flat hilltop that trends west to east. The surrounding area is comprised of residential and light industrial property uses.

The permitted profile for the 20-inch line is a concave bore on the northwestern and southeastern ends with a straight run along the lowest, central portion of the profile. The surface elevation at the northwest entry/exit is 433 feet above mean sea level (ft. amsl) and there is a very gradual decline in surface elevation to the southeastern entry/exit, which is at 422 ft. amsl. The overall horizontal distance covered for the permitted 20-inch profile is 1,378 feet.

The proposed profile for HDD S3-0560 is similar to the permitted profile. The northwestern entry/exit is located approximately 33 feet northwest of that position on the permitted profile and the southeastern entry/exit is located approximately 54 feet southeast of that position on the permitted profile; therefore, the proposed profile is 87 feet longer in horizontal distance. By increasing the entry/exit angles from 10 degrees to 15 and 16 degrees, and by increasing the radii of curvature on the two end segments from 2,000 feet to 2,400 feet, the lowest, middle, section of the drill is approximately 39 feet deeper than the permitted profile and 30 feet deeper than the as-built profile for the installed 16-inch line (see **Attachment A**).

2.1.2 Hydrology

HDD S3-0560 is located in the headwaters of Chester Creek. The nearest surface water body to HDD S3-0560 is an unnamed tributary to Chester Creek to the west. The unnamed tributary begins approximately 2,000 feet west of the northwest entry/exit and enters Chester Creek approximately 1.1 miles southwest of the alignment.

2.2 Geology

2.2.1 Soils

Based on information obtained from the National Resource Conservation Service Web Soil Survey database (NRCS WSS), soils along the path of HDD S3-0560 can range from 4 to 8.5 feet thick. Most of the alignment (approximately 80 percent) falls within the Glenelg channery loam on 3 to 8 percent slopes (GeB). GeB soils grade from loam and channery loam to a very channery loam for the 22 inches of soil above weathered gneissic bedrock and are well drained. Sections of the northwest end of the alignment (20 percent) fall within the Glenelg channery silt loam on 8 to 15 percent slopes (GeC). Similarly, GeC soils grade from channery silt loam to very channery loam with depth and are well drained.

2.2.2 Bedrock Lithology

Figure 2 is a map depicting bedrock geology for the area surrounding HDD S3-0560 (PaGEODE). All bedrock underlying the area of HDD S3-0560 is mapped as the pre-Cambrian age felsic and intermediate facies of the Baltimore Gneiss. The felsic and intermediate gneiss is described as light buff to light pink and fine to medium grained; with most mineral grains about 1 mm in diameter. The primary minerals are

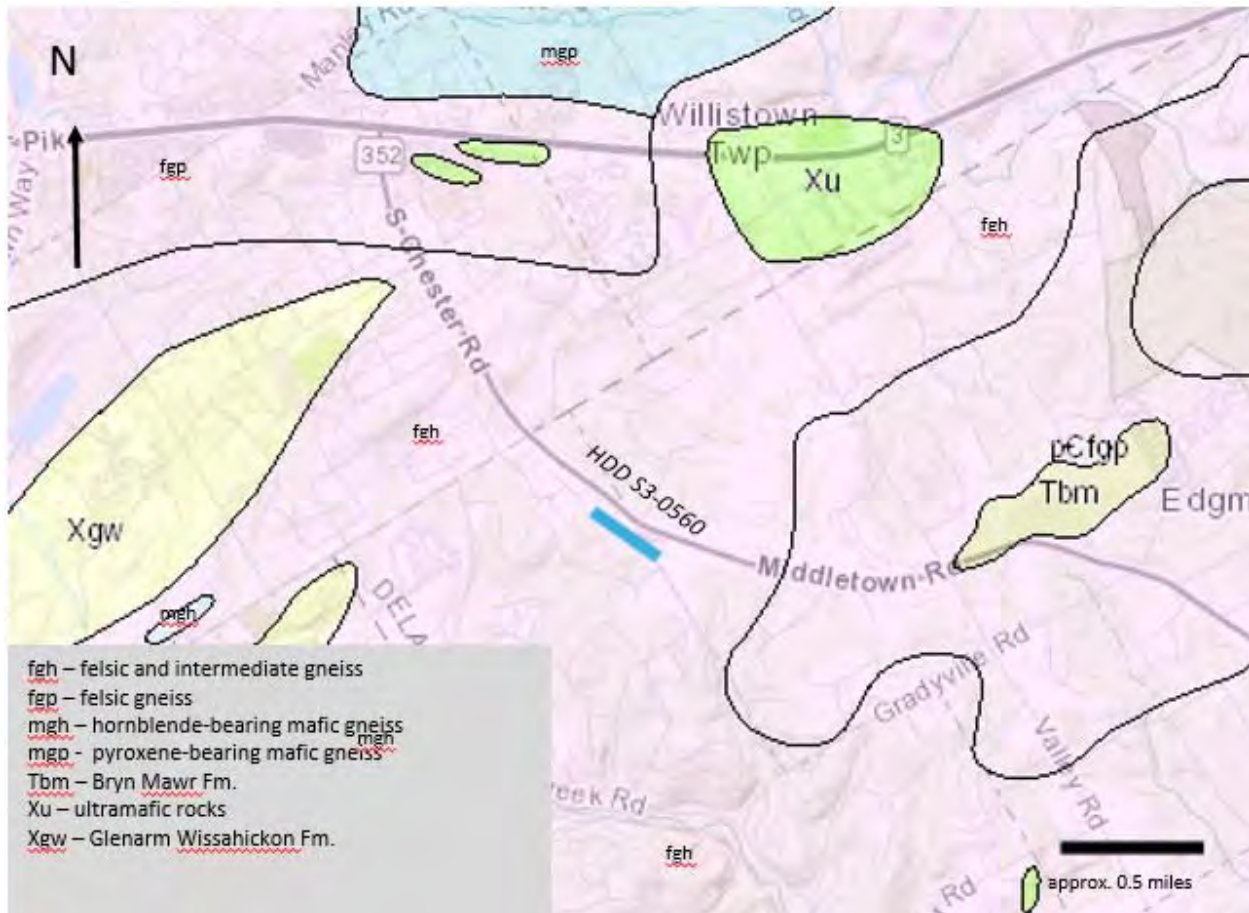


Figure 2. Site Geology Map (mod. from PaGEODE).

quartz, microcline, hornblende, and some biotite; and banding is poorly developed and massive.

Blackmer (2005) mapped the bedrock at HDD S3-0560 as the undifferentiated amphibolite facies gneiss unit of the Baltimore Gneiss and described the unit as a heterogeneous felsic, intermediate and mafic amphibolite facies gneiss. The predominant lithology is described as intermediate plagioclase-hornblende-quartz-biotite gneiss with local orthopyroxene, clinopyroxene, potassium feldspar, and garnet.

2.2.3 Structure

Structurally, the HDD S3-0560 drill path is located between the West Chester Massif to the north and the Avondale Anticline to the south. The Street Road Fault, a thrust fault, trends northeast through the region, dips south, and is located approximately 0.4 miles northwest of the northwest entry/exit (Blackmer, 2005).

Discontinuities in the form of joints and faults are imprinted in the broadly folded bedrock in the region. These forms of fracturing can act as conduits for groundwater movement and can represent areas of weakness in the rock.

2.2.4 Fracture Trace Analysis

Fracture trace analysis using high altitude aerial photography was performed for the area of interest to identify potential zones of bedrock weakness along drill paths. Fracture traces (one mile in length or less) and lineaments (greater than one mile in length) can be the surficial expressions on natural landscapes of vertical to near vertical zones of bedrock fracture concentration. Fracture trace analysis is partly subjective;

therefore, every mapped fracture trace does not necessarily represent a zone of bedrock fracture concentration.

The fracture trace map shown on **Figure 3** was prepared for this HRR. Traces intersecting the S3-0560 alignment are shown on the proposed P&P in **Attachment A**, as well. This mapping was performed using aerial stereographic pairs flown in the September 1937. At that time, much of the land surface appears undeveloped and therefore fracture traces are more easily seen. One west-east trending fracture trace intersects the northwest part of the alignment and a second east-southeast trending fracture trace runs proximal to the southeast entry/exit location.

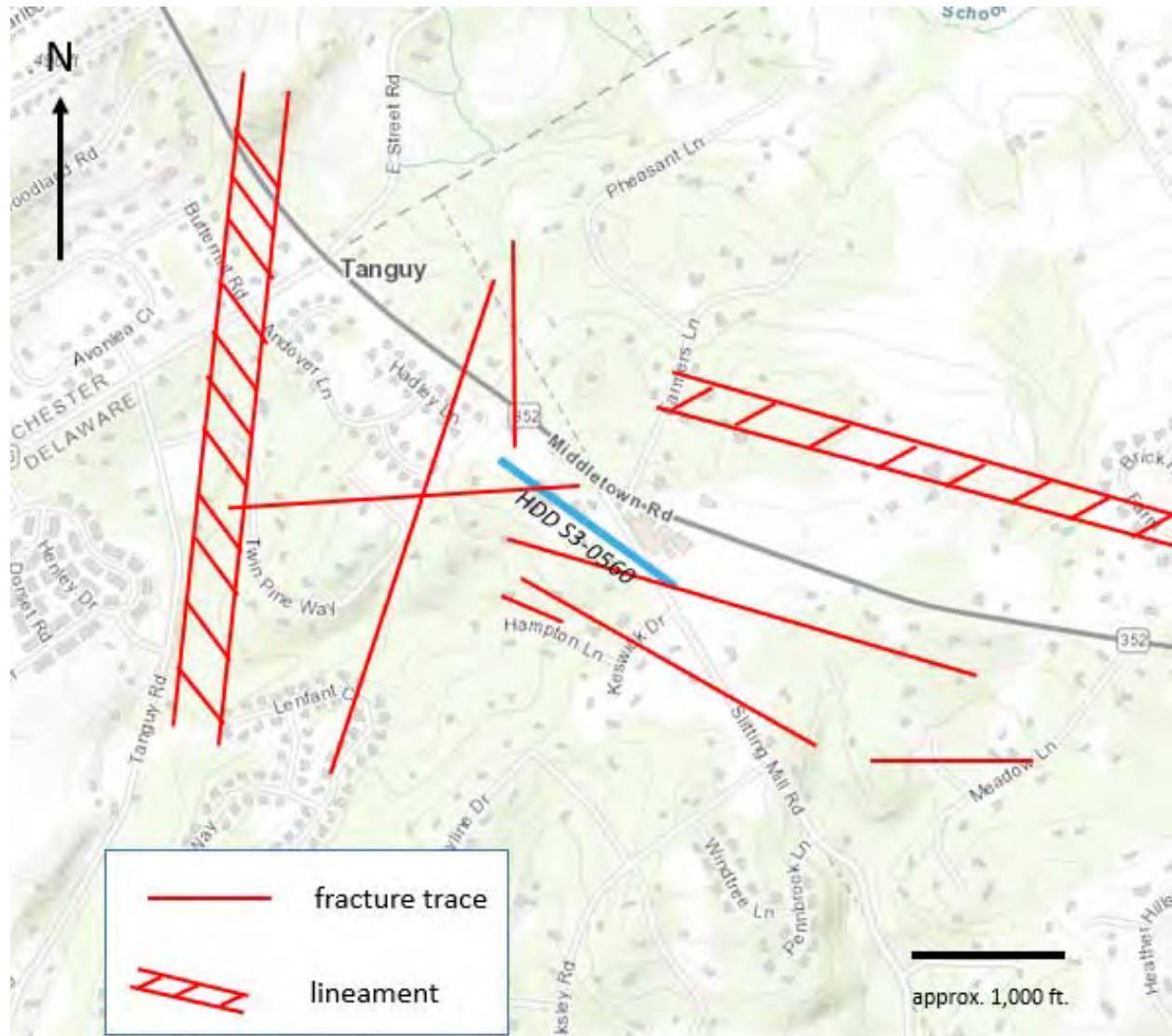


Figure 3. Fracture Trace Map (mod. from PaGEODE).

2.2.5 Karst

Based on published geologic data, no carbonate rock or karst features are anticipated in the area of HDD S3-0560.

2.2.6 Mining

Based on published geologic data, no mining has been completed within the area of HDD S3-0560. One of the largest quarries in the region is located due east of the town of Glen Mill, approximately two miles south-southeast of the HDD site. This crushed and broken aggregate quarry began operations in 1884 and is currently operated by Hanson Aggregates Pa, LLC. The quarry is 300 feet deep, well below the bed of nearby Chester Creek; however, seepage into the mine is minimal (Mindat.org).

2.2.7 Rock Engineering Properties

Geyer and Wilshusen (1982) refer to the felsic and intermediate gneiss as the undifferentiated amphibolite and granulite gneiss facies Baltimore Gneiss and describe the bedrocks engineering properties, as follow:

- Banding is poorly developed and massive.
- Generally, joints have an irregular pattern, moderately to poorly formed, moderately abundant, widely to moderately spaced, irregular and steeply dipping to vertical, open.
- Joints provide very low secondary porosity with low permeability.
- Median groundwater yield 20 gallons per minute (gpm) to >35 gpm.
- Highly resistant to weathering.
- Slow drilling rate.

2.2.8 Results of Geotechnical Borings

Two geotechnical borings, SB-01 and SB-02, were installed by Tetra Tech in July 2015 in support of the permitted HDD design. These borings were advanced to a depth of 30.0 ft bgs. Two additional, deeper, geotechnical borings, B6-15W and B6-15E, were installed by Terracon in September 2017 and were advanced to depths of 113 and 100 feet, respectively. The boring locations are shown on the P&Ps in **Attachment A** and the boring logs are provided in **Attachment B**.

Tetra Tech Borings

Boring SB-01 was located near the northwest entry/exit, 31 feet northeast of Station 0+37 on the permitted P&P with a surface elevation of approximately 431 ft amsl. Boring SB-02 was located near the southeast entry/exit, 58 feet northeast of Station 14+36 with a surface elevation of approximately 421 ft amsl.

Unconsolidated materials logged in SB-01 were comprised of 0.1 feet of topsoil underlain by 29 feet of fine micaceous sand with varying percentages of secondary silt. The materials logged in SB-02 included 0.3 feet of topsoil, underlain by up to approximately 7.5 feet of micaceous clay, turning to micaceous fine sand and silt to total depth. The unconsolidated materials in both borings were derived from highly weathered gneissic bedrock.

Groundwater was not detected in SB-01, but was measured at a level of 16.0 ft bgs in SB-02.

Terracon Borings

B6-15W

Boring B6-15W was advanced adjacent to the northwest entry/exit point. The surface elevation is listed on the log as approximately 434 ft amsl and the boring was installed to a depth of 113 feet or approximate elevation 321 ft. amsl. The lowest elevation for the proposed profile is 332 ft amsl. Unconsolidated overburden observed at B6-15W was comprised of weathered rock with gravel and clay (decreasing in gravel content with depth) before roller bit refusal occurred at 23 ft bgs and bedrock coring started at 25 ft

bgs. Bedrock cores for B6-15W contained gneiss characteristic of the Baltimore Gneiss. Core recovery percentage was generally high with a value of 100 percent from 33 to 108 ft bgs (see **Figure 4**). Lower core recoveries were recorded for the second core run (67 percent from 28 to 33 ft bgs) and for the deepest 5-foot run (53 percent from 108 to 113 ft bgs). Regarding Rock Quality Determinations (RQDs), values ranged from 6 to 100 percent. Higher RQD values occurred from 63 to 103 ft bgs, ranging from 86 to 100 percent, except for the run from 78 to 83 ft bgs at 72 percent. RQD for the last, deepest, 5-foot run was 53 percent. The approximate elevation of the deepest, horizontal part of the proposed profile occurs at the bottom of the high strength zone in the run from 98 to 103 ft bgs where RQD was 100 percent. The boring log for B6-15W indicated that groundwater was not encountered.

Geotechnical Core Log Summary HDD S3-0560 Slitting Mill Road



Figure 4. Recovery and RQD with Depth for Borings B6-15W and B6-15E

B6-15E

Boring B6-15E was advanced adjacent to the southeast entry/exit point. The surface elevation is listed on the log as approximately 421 ft amsl and the boring was installed to a depth of 100 feet or approximate elevation 321 ft. amsl. Unconsolidated overburden observed at B6-15E was comprised of silty clay and clay to 15 ft bgs and silty sand with gravel to a depth of 32 ft bgs before split spoon refusal and the start of coring. The initial ten feet of coring showed very low recoveries and no RQD in highly weathered gneissic material and the driller returned to split spoon sampling from 42 to 50 ft bgs. Bedrock coring began again at 50 ft bgs and continued to the total depth of 100 feet.

The bedrock cores contained gneiss characteristic of the Baltimore Gneiss. Recoveries from 50 to 100 ft bgs (total depth) ranged from 90 to 100 percent with most at 100 percent (see **Figure 4**). Regarding RQD values, very poor to poor RQD was logged from 32 to 75 ft bgs. RQD was good to excellent from 75 to 100 ft bgs except for the five foot run from 90 to 95 ft bgs for which the recorded RQD value was slightly lower at 72 percent. The elevation of the lowest, horizontal, section of the proposed profile occurs in the run between 85 and 90 ft bgs in the approximate middle of the higher RQD zone. The boring log for B6-15E also indicated that groundwater was not encountered.

2.3 Hydrogeology

In general, groundwater flow proximal to HDD S3-0560 moves along gradients established by a water table surface that is a subdued reflection of the local topography. The alignment of S3-0560 HDD passes northwest to southeast along the southwest edge of a relatively flat hilltop trending west to east. The headwaters of an unnamed tributary to Chester Creek originate southwest and downslope of the alignment (see **Figure 1**). In this setting it is anticipated that the area of HDD S3-0560 is a local groundwater recharge zone and the groundwater flow gradient is southwest toward the unnamed tributary of Chester Creek.

2.3.1 Occurrence of Groundwater

Groundwater in the metamorphic rocks of Delaware County is typically stored and moves within pore space in the saprolite comprised of highly weathered and fractured bedrock and a within open discontinuities of more competent bedrock at depth. This secondary porosity is created by fractures, bedding plane partings, and faults. Note groundwater was only detected in one of the four geotechnical borings (SB-02) near the southeast entry/exit, at a depth of approximately 16 feet, in unconsolidated materials. Given this is a groundwater recharge zone, the water table is expected to be deeper and the water level depth recorded for SB-02 was probably perched groundwater. One of the residential wells shown on **Figure 5** is located approximately 29 feet from the alignment and had a reported depth to water of greater than 100 ft bgs. No groundwater discharge was noted in any of the daily PG logs for the 16-inch installation at HDD S3-0560.

2.3.2 Water Level

A query of the Pennsylvania Groundwater Information System (PaGWIS) of domestic wells within one mile of the HDD S3-0560 alignment produced water level measurements for 41 wells ranging from 4 to 70 ft bgs with an average of 28 ft bgs. The wells were completed between 36 and 525 ft bgs and all were drilled within the Baltimore Gneiss.

Local water level measurements of private wells adjacent to the HDD S3-0560 bore path were recorded during ME II water source sampling events performed by GES. Of 19 private wells sampled, measurements could be taken in three wells and these ranged from 15 to greater than 100 ft bgs. Two of the wells were located over 250 feet from the alignment, off the topographic high to the south, and had water levels ranging from 15 to 40 ft bgs. The one well located close to the alignment (29 feet) had the reported depth to water of greater than 100 feet.

2.3.3 Ground Elevation between HDD entry/exits

The surface elevation at the southeast entry/exit on the permitted profile for the 20-inch line is 422 ft amsl and the elevation of the northwest exit/entry is 433 ft amsl. The permitted profile has a bottom elevation of approximately 371 ft amsl. The geometry of the proposed profile is similar except the bottom elevation is 332 ft amsl. Given the geometry of each profile and the information concerning groundwater levels, there is a very small risk of a groundwater discharge from completing the pilot bore.

2.3.4 Well Yields

Water supply well yields published in Geyer and Wilshusen (1982) is variable for the Baltimore Gneiss. The median yield is listed at 20 gpm; however, yields of more than 35 gpm may be obtained in properly sited and constructed wells. The aforementioned PaGWIS database search provided well yield information that was similar. The PaGWIS search produced well yields for 36 domestic wells, drilled into the Baltimore Gneiss and within a mile of HDD S3-0560, ranging from 2 to 100 gpm, and with an average yield of 20 gpm.

2.3.5 Local Water Supply Wells

SPLP has identified all landowners with property located within 450 ft of the HDD alignment. There are 31 individual landowners with properties located within 450 ft of the HDD alignment. SPLP sent each of these landowners a notice letter via both certified and first-class mail on October 30, 2017. To date, SPLP has received responses from all 31 individual landowners. Of these, 18 have confirmed the use of a private water source and the remaining landowner responses verified the use of public water supply, or that the parcel did not contain a water source. Twenty-two private water sources were identified on the 18 parcels with multiple water sources on a few parcels. All 22 of the private water sources (21 wells and 1 spring) have been located and tested (see **Figure 5**). Note 14 of the private water sources (13 wells and 1 spring) are located inside the 450-foot line and four of these locations are within 100 feet of the HDD alignment at approximate distances of 10, 29, 63 and 84 feet from the HDD alignment.

2.4 Summary of Geophysical Study

Tetra Tech performed a geophysical survey for the HDD S3-0560 alignment in January 2019. A detailed description of the work appears in **Attachment C**. Both seismic refraction and multichannel analysis of seismic waves (MASW) surveys were performed along six spreads coincident to the alignment. Data could not be collected between approximately Stations 6+70 to 7+30 (proposed P&P) because the HDD alignment crosses a driveway and a landscaped structure. Refraction data was unable to reach the elevation of the deeper portions of the proposed 20-inch HDD profile due to encountering bedrock at a higher elevation than the profile, but the mappable segments were included in the images. The MASW data extended to a depth that covered most of the proposed 20-inch profile, to within approximately 10 feet of the central, deepest portion of the profile. Due to the limits of geophysical survey methods, data could not be obtained to maximum profile depth; however, data was collected at depths associated with the descent of the profile to maximum depth after entry and at depths associated with ascent of the profile prior to exit. As such, the geophysical data is very useful for assessing variations in bedrock conditions along those sections of the profile where the IRs occurred during installation of the 16-inch line and where IRs would most likely occur along the proposed 20-inch profile.

Tetra Tech interpreted the survey data to identify “low velocity zones” and zones where the depth to bedrock was relatively deep. The overall conclusion of Tetra Tech’s report is that the geophysical survey data indicate a lack of significant fractures and faulting at HDD S3-0560. Top of relatively competent bedrock as indicated by both survey types ranged from approximately 14 to 51 ft bgs. The MASW survey

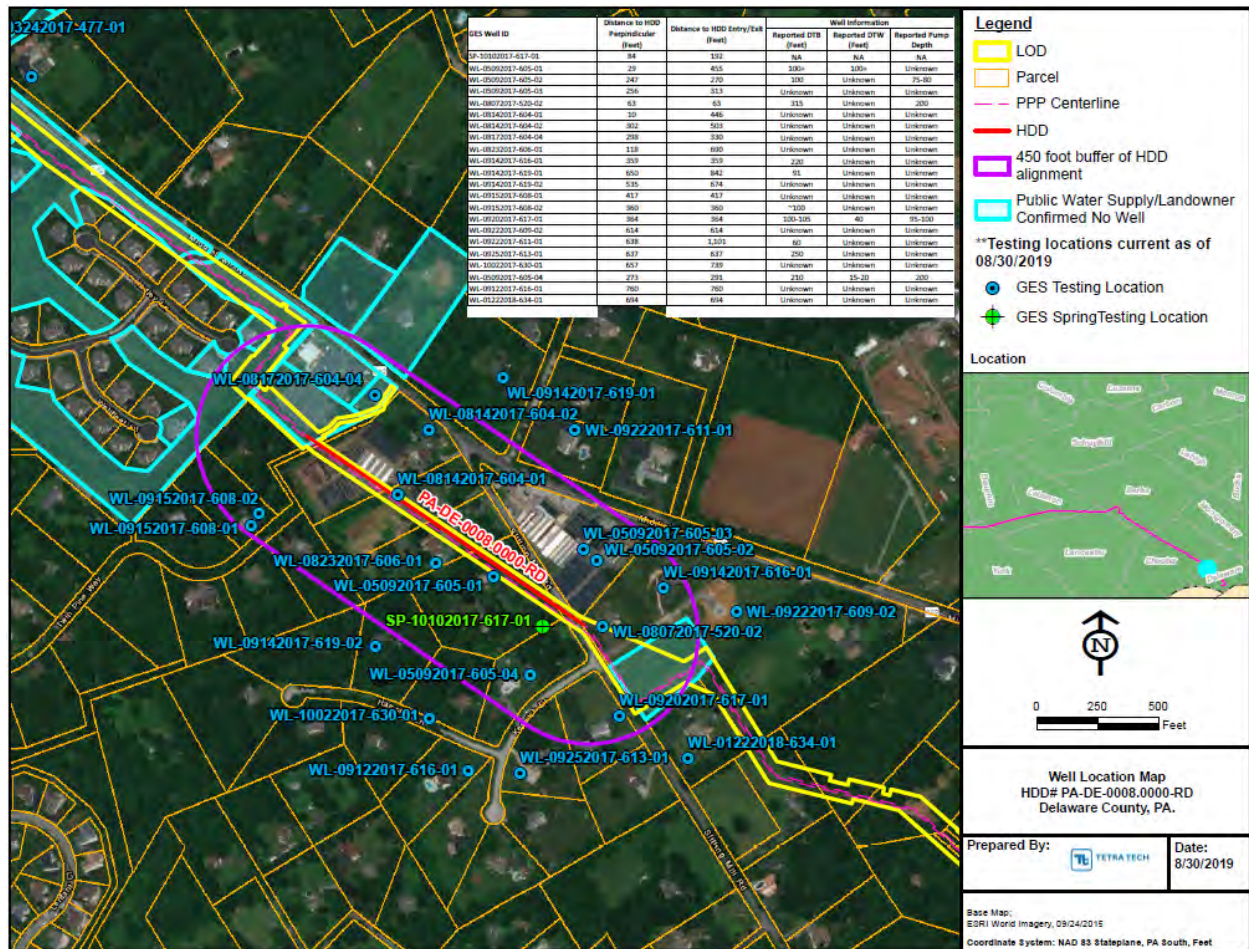


Figure 5. 450-foot Water Supply Survey Map.

identified low velocity zones indicating potential fracture or fault zones at approximately Stations 6+50 and 12+87. In general, these two locations do not directly correlate with the two mapped fracture traces that cross the alignment. One of the mapped fracture traces passes through the southeast entry/exit on the proposed P&P, approximately 180 feet southeast from the low velocity zone located at Station 12+87. Two of the three IRs that occurred during construction of the 16-inch line were due north of the alignment at Stations 12+63 and 13+02 where the overburden was relatively shallow at 39 and 33 feet, respectively. These two IRs are in the same general location as the low velocity zone identified at Station 12+87.

3.0 OBSERVATIONS TO DATE

3.1 On This HDD Alignment

The pilot bore for HDD S3-0560 20-inch line spudded in on 10/2/2017. Drilling proceeded from the northwest entry/exit point to the southeast on a 1,475-foot HDD (horizontal distance). A loss of circulation (LOC) of approximately 500 gallons of drilling fluid occurred on 10/9/2017 when the drill bit was at station 9+53 with approximately 70 feet of overburden (see proposed P&P in **Attachment A**); however, no associated IR occurred. Drilling proceeded until 10/13/17 when a 50-gallon upland IR (IR No. 1) was found approximately 25 feet east of Slitting Mill Road near Station 12+63 where there was approximately 39 feet of overburden. At this point, the pilot bore was approximately 86 percent complete. After the IR and cleanup, drilling was suspended and a second rig was placed at the southeast entry/exit to drill an intercept pilot bore from southeast to northwest, a horizontal distance of approximately 215 feet to connect to the initial pilot bore.

The intercept spudded in on 10/17/17. By 10/25/17, the intercept bore had overlapped the primary pilot bore approximately 30 feet without connecting and a 15-gallon upland IR (IR No. 2) occurred while the drilling contractor was tripping tooling out of the bore. At that time, the intercept bore had been drilled approximately 245 feet northwest from the southeast entry/exit point. This IR also occurred on the east side of Slitting Mill Road near Station 13+02, approximately 39 feet southeast of the first IR. At this location, the overburden over the as-built profile for the 16-inch line (see proposed P&P in **Attachment A**) was 33 feet thick. After the second IR was cleaned up, drilling continued until 11/7/17 when hydraulic communication was established between the original pilot and the intercept bore. At that point, the intercept bore had been advanced to approximately Station 11+13 or 360 feet (horizontal distance) from entry.

The original pilot drill was advanced an approximate horizontal distance of 1,258 feet from northwest to southeast. Subsequently, the intercept bore was advanced approximately 360 feet from southeast to northwest. Due to alignment issues, both bores were abandoned and beginning on 11/7/17, a new continuous and complete pilot was drilled the full length of the planned HDD. By this time, SPLP had decided to complete the 16-inch line through the far southeast end of the project and the S3-0560 20-inch install was converted to a 16-inch install. On 11/20/17, the pilot exited at the southeast entry/exit and reaming was initiated (northwest to southeast). Reaming proceeded without incident until 12/12/17 when, during a 24-inch ream pass, a 150 to 200 gallon punch-out, upland IR (IR No. 3) occurred east of Slitting Mill Road between Slitting Mill Road and the southeast entry/exit pit near Station 14+35. This punch out IR was cleaned up and the last approximate 50 feet of reaming was completed by pushing and rotating the tooling to the southeast entry/exit without pumping drilling fluid. On 12/15/17, the 16-inch pipe was pulled into place.

Between IR-1 on 10/13/17 and IR-3 on 12/12/17 a few small upland IRs (0.5 to 4 gallons each) occurred in the same general area as IR-1, IR-2 and IR-3.

The three upland IRs that occurred on the east side of Slitting Mill Road were the result of shallow overburden comprised of highly weathered and fractured bedrock. IRs No. 1 and No. 3 occurred as the drilling bits were approaching exit at the southeast entry/exit. IR No. 2 occurred while tools were being tripped out of the intercept pilot bore and was probably the result of drilling fluid finding a preferred flow path in the overburden and road base of Slitting Mill Road established by IR No. 1. A pathway created by abandoning the initial pilot hole and pilot intercept may have contributed to IR-3.



3.2 On Other HDD Alignments in Similar Hydrogeologic Settings.

IRs have occurred during the drilling of other ME II HDDs in the metamorphic rocks of Chester and Delaware County. Factors that contributed to the cause of these IRs include an overburden comprised of thick, highly weathered and fractured, saprolite capping more competent bedrock, thinning of the overburden as the pilot drill rose along the profile towards exit, and an increase in annular pressure towards the end of pilot bores to maintain drilling fluid circulation back to the entry. In some cases, IRs occur into water resources where overburden thickness is reduced as the profile passes under a resource occupying a section of the alignment with the lowest surface elevation along the profile. Additionally, fracture traces and fracturing identified by geophysical surveys sometime correlate with the occurrence of IRs.

4.0 SUMMARY AND CONCLUSIONS

4.1 HDD Site Conceptual Model

HDD S3-0560 is located within the Piedmont Upland Section of the Piedmont Physiographic Province of southeastern Pennsylvania, which consists of broad rounded to flat top hills and shallow valleys. HDD S3-0560 is located in the headwaters of Chester Creek. The nearest surface water body to HDD S3-0560 is an unnamed tributary to Chester Creek that originates approximately 2,000 feet west of the northwest entry/exit and enters Chester Creek approximately 1.1 miles southwest of the alignment. The surrounding area characterized by residential and light industrial land use (see **Figure 1**).

The area surrounding HDD S3-0560 is relatively flat, in an upland, and represents a groundwater recharge zone where the water table is expected to be relatively deep compared to surrounding lowlands. Given local water level information and the geometry of the proposed profiles, there is a very low risk of a groundwater discharge created by completion of the pilot drill. The profile does not cross beneath any streams or wetland complexes.

The profile for HDD S3-0560 occurs within the felsic and intermediate gneiss unit of the Baltimore Gneiss. Geotechnical boring logs indicate highly weathered and fractured bedrock occurs to a depth of approximately 58 to 65 feet before more competent, fractured bedrock occurs at depth. The central, deepest portion of the proposed profile run at elevation 332 ft amsl and is generally within a zone of good to excellent RQD bedrock as indicated on the logs for two geotechnical borings drilled near each of the entry/exit locations.

Fracture traces cross the proposed profile at approximately Stations 0+90 and at the southeast entry/exit, which may contribute to the fracturing and weathering of rock that occurs there. A geophysical survey of the HDD S3-0560 alignment (see **Attachment C**) concluded that top of relatively competent bedrock ranged from approximately 14 to 51 ft bgs across the profile. Low velocity zones indicating a potential fracture zone or fault were identified at approximately Stations 6+50 and 12+87. In general, these two locations do not correlate with the two fracture traces that cross the alignment. The three IRs that occurred during construction of the 16-inch line were due north of the alignment from Stations 12+63 and 13+02, in the same general location of the low velocity zone identified at Station 12+87.

The central deepest portion of the proposed profile for the 20-inch line is 39 feet deeper than the permitted profile and 30 feet deeper than the as-built 16-inch line profile. Using a deeper profile at this location reduces the risk LOCs and IRs by placing the profile into more competent bedrock and increasing the overburden thickness. However, upland IRs that occurred during installation of the 16-inch line occurred at the southeast end of the profile as the profile rose to meet land surface, where overburden ranged from 8 to 39 ft bgs. The three upland IRs that occurred during the installation of the 16-inch line were the result of shallow overburden comprised of highly weathered and fractured bedrock. IRs No. 1 and No. 3 occurred at the end of an initial pilot hole and during a 24-inch ream. Respectively, as weak overburden was thinning during ascent of the drill bit to the land surface, and annular pressures may have been increasing to maintain circulation back to the northwest entry/exit. IR No. 2 occurred during advance of an intercept bore from the southeast entry/exit to the northwest, and was probably the result of drilling fluid finding a preferred flow path that was established in the overburden and coarse road base of Slitting Mill Road, when IR No. 1 occurred. Assuming the proposed profile and a depth of highly weathered and fractured bedrock of 65 ft bgs, the first approximate 270 feet (horizontal distance) at the northwest end of the profile and the first approximate 285 feet at the southeast end of the profile will be within weaker overburden materials, similar to conditions associated with the IRs that occurred during installation of the 16-inch pipe.

The original pilot drill was advanced an approximate horizontal distance of 1,258 feet from northwest to southeast. Subsequently, an intercept drill was advanced approximately 360 feet from southeast to northwest. Although there was evidence of hydraulic connection, both bores were abandoned due to inability to intercept and a new continuous and complete pilot drill was eventually completed the full distance from northwest to southeast, which was reamed and used for installation of the 16-inch pipe. Although some borehole collapse is anticipated where overburden is 65 feet thick or less, sections of the abandoned pilot holes could remain open and become pathways for drilling fluid migration during installation of the 20-inch line. Where the proposed profile is within more competent bedrock (between stations 2+60 and 12+40, assuming 65 feet of weaker overburden) the separation between the abandoned pilot holes and the deepest part of the proposed profile should range from approximately 12 to 30 feet, decreasing the chances of an LOC. An LOC into a section of abandoned pilot hole within competent bedrock would be apparent to site workers and quickly addressed, reducing the risk of an IR. Therefore, the greatest risk of LOCs and IRs from the abandoned pilot holes would be those sections of proposed profile near entry and exit where overburden is weaker and thinner, but where subsurface materials have not collapsed to the extent of sealing the hole.

SPLP's 450-foot water supply survey identified 21 wells and 1 spring on properties within 450-feet of the HDD alignment and four of the water sources were within 100 feet of the alignment. Given regional and local water level data and the depth of the proposed profile it is likely that HDD S3-0560 will transect water-producing zones that supply these wells. Note however, no claims of a water supply impact were filed with DEP during installation of the 16-inch pipe.

4.2 Conclusions and Recommendations

As with many HDDs, the greatest risk of LOCs and IRs for the 20-inch installation at HDD S3-0560 will be at the ends of the drill where the profile rises to meet the surface and the overburden is thinning. The thickness of highly weathered and fractured bedrock at this site has been measured at approximately 65 feet, and could be deeper, based on information collected at other HDD sites in the metamorphic rocks of Chester and Delaware Counties. At this location, the risk at the ends of the drill is increased by potential communication between the 20-inch pilot hole and abandoned sections of 16-inch pilot hole. Separation of the bore holes and collapse of weaker materials into the abandoned pilot hole serves to reduce this risk. The risk of LOCs and IRs is increased at the exit end of the pilot hole when annular pressure is increasing in order to maintain circulation back to the drill rig and mud plant. Pre-drill planning between the drilling contractor and SPLP should address these conditions for HDD S3-560. Due to space requirements for pullback of the pipeline into the prepared hole, this HDD will be drilled from northwest to southeast. One means of controlling the factors contributing to IR risk would be to monitor the annular pressure, tool face pressure and rate of advancement. When the face pressure reduces and rate of advancement indicates leaving competent rock, the driller can reduce fluid pressures and flows while advancing the pilot tool to the exit point.

The HDD S3-0560 alignment does not cross any surface water resources and the IRs that occurred during installation of the 16-inch line were all upland IRS; therefore, there is a low risk of a water resource impact from implementation of the proposed P&P.

Although no water supply impacts occurred during installation of the 16-inch pipe, a few private water supplies are within 100 feet of the alignment and these supplies could be at risk during drilling for the 20-inch line. This risk should be managed by SPLP, as it has at other ME II HDD sites, by offering pre-, during, and post-installation water quality sampling, and temporary water supplies for owners of private supplies within 450 feet of the HDD S3-0560 alignment.



Based on information provided by, and the expertise of, the HDD team, as well as our experience with the relevant hydrogeology and geology, GES believes that implementation of the profile on the proposed P&P for the 20-inch line at S3-0560 and best management practices inherent to the ME II construction project, including station specific references to areas of concern identified in this HRR, will minimize the risk of IRs and LOCs, and minimize the likelihood of an impact to the environment. Furthermore, based on such information, expertise and experience, GES believes that implementation of the profile on the proposed P&P for S3-0560 (20-inch line), in conjunction with the SPLP's temporary water supply offer to private well owners within 450 feet of the HDD alignment, will minimize the risk of any impact to an active private water supply. In the event of an impact to a private water supply, SPLP will implement the procedures of the IR PPC Plan.



5.0 REFERENCES

Geyer, A. R. and J. P. Wilshusen, (rev. 1982) *Engineering Characteristics of the Rocks of Pennsylvania*. PaDER, ORM, Pa Geol. Surv., 4th ser., EGR-1.

Blackmer, G. C., (2005) Preliminary Bedrock Geologic Map of a Portion of the Wilmington 30- by 60-Minute Quadrangle, Southeastern Pennsylvania, Open-File Report OFBM-05-01.0, Pa. Geol. Surv., 4th Ser.

PaGEODE, Pennsylvania Department of Conservation and Natural Resources,
<http://www.gis.dcnr.state.pa.us/geology/> .

PAGWIS, Pennsylvania Groundwater Information System,
<https://www.dcnr.pa.gov/Conservation/Water/Groundwater/PAGroundwaterInformationSystem/Pages/default.aspx> .

NRCS-WSS, United States Department of Agriculture, Natural Resources Conservation Service – Web Soil Survey, <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> .

mindat.org, Primary outreach project of the Hudson Institute of Mineralogy, “world’s leading authority on minerals and their localities, deposits, and mines”, <https://www.mindat.org/loc-105649.html> .



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October 10, 2019

BY ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton; Docket No. C-2019-3006898 (consolidated)
Laura Obenski; Docket No. C-2019-3006905 (consolidated)
v.
Sunoco Pipeline L.P.

Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P.; Docket No. C-2018-3003605

SUNOCO PIPELINE L.P.'S MOTION TO CONSOLIDATE

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Motion to Consolidate in the above-referenced proceedings. Because this motion does not contain any new averments of fact, no verification is included.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,
Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Hon. Elizabeth H. Barnes (Electronic ebarnes@pa.gov and first class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		
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ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:		
	:	Docket No.	C-2018-3003605
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

NOTICE TO PLEAD

- TO:
- Rich Raiders, Esquire for Andover Homeowner's Association, Inc.
 - Michael S. Bomstein, Esquire for Flynn Complainants
 - Anthony D. Kanagy, Esquire for Range Resources-Appalachia LLC
 - Erin McDowell, Esquire for Range Resources-Appalachia LLC
 - Vincent M. Pompo, Esquire for West Whiteland Township, Downingtown Area School District, Rose Tree Media School District
 - Leah Rotenberg, Esquire for Twin Valley School District
 - Margaret A. Morris, Esquire for East Goshen Township and County of Chester
 - Mark L. Freed, Esquire for Uwchlan Township
 - James C. Dalton, Esquire for West Chester Area School District
 - James R. Flandreau, Esquire for Middletown Township
 - Patricia Sons Biswanger, Esquire for County of Delaware
 - James J. Byrne, Esquire for Thornbury Township
 - Michael P. Pierce, Esquire for Edgmont Township
 - Josh Maxwell, Mayor of Downingtown
 - Thomas Casey
 - Melissa DiBernardino
 - Virginia Marcille-Kerslake
 - Rebecca Britton
 - Laura Obenski
 - Joseph Otis Minott, Esquire for Clean Air Council

PLEASE TAKE NOTICE THAT YOU HAVE TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THE ATTACHED MOTION WITHIN WHICH TO FILE AN ANSWER

OR OTHER RESPONSE TO THE MOTION. FAILURE TO FILE A RESPONSIVE PLEADING WITHIN THE TIME ALLOWED MAY RESULT IN A RULING ON THE MOTION ADVERSE TO YOUR INTERESTS.

Thomas J. Sniscak

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Dated: October 10, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
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v.	:		
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SUNOCO PIPELINE L.P.	:		
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ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:		
	:	Docket No.	C-2018-3003605
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SUNOCO PIPELINE L.P.	:		

SUNOCO PIPELINE L.P.'S MOTION TO CONSOLIDATE

In accordance with 52 Pa Code §§ 5.81 and 5.103(b), Sunoco Pipeline L.P. (“SPLP”) moves for the consolidation of the *Andover HOA* complaint¹ (Docket No. C-2018-3003605) with the complaints concerning the Mariner East pipelines that have already been consolidated² (*Flynn et al.* complaint (Docket Nos. C-2018-3006116 and P-2018-3006117), *DiBernardino* complaint (Docket No. C-2018-3005025), *Britton* complaint (Docket No. C-2019-3006898), and *Obenski* complaint (Docket No. C-2019-3006905) (collectively, “Mariner East Complaint Proceeding”).

¹ On September 27, 2018 the Commonwealth Court stayed proceedings in this matter. After the Commonwealth Court ordered the Commission to dismiss State Senator Dinniman’s Complaint, which was consolidated with Andover’s Complaint, the Commission entered an order on September 19, 2019 that dismissed the Dinniman complaint and bifurcated the consolidated docket.

² *Flynn et al v. SPLP*, Docket Nos. C-2018-3006116 *et al*, June 6, 2019 Procedural Order at P 1 (June 6, 2019 Mariner East Complaint Proceeding Procedural Order). *See* Attachment A.

I. INTRODUCTION

1. Consolidation here will conserve the Commission's, Your Honor's, Andover HOA's (who is already an intervenor in the Mariner East Complaint Proceeding), SPLP's, and other parties' time and resources and eliminate the risk of inconsistent rulings. There can be no doubt that all of these proceedings involve the same questions of both fact and law as evidenced, if not admitted, by the many cross-interventions between and among the proceedings. Moreover, Andover HOA is already an Intervenor in the Mariner East Complaint Proceeding. Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Andover HOA had the opportunity to be heard concerning scheduling in the Mariner East Complaint Proceeding (which as discussed below, is more advantageous to Andover HOA than the prior schedule set in its own complaint proceeding). Andover HOA's Complaint can proceed on the litigation schedule already developed in the Mariner East Complaint Proceeding. The circumstances here clearly meet the standard for consolidation in 52 Pa. Code § 5.81(a).

The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

Id.

2. As Andover HOA argued in support of consolidating its Complaint with State Senator Dinniman's Complaint:

The reason we ask for this consolidation is because so many of these issues merge because it's the same project. It's the same pipe. It would be the same emergency response. Their ability to operate this pipeline safely in West Whiteland Township would be part and parcel of their ability to operate the pipeline safely in Thornberry Township, Delco.

There are specific issues associated with difficult geology in West Whiteland Township just like there are issues with difficult but different geology a mile from West Whiteland, but I don't think that that's an insurmountable issue in that the ultimate nexus of these cases is their ability to properly and safely operate the pipeline in the public interest.

...

The case law also says that the Commission has significant discretion about consolidation, and I appreciate Your Honor's understanding that that discretion is available to you.

State Senator Dinniman v. SPLP, August 28, 2018 Transcript, N.T. 18:16-19:4, 23:18-21 (Attorney Raiders). Those same arguments apply equally here.

3. Moreover, no party is prejudiced from consolidation. Andover HOA was granted intervenor status in the Mariner East Complaint Proceeding. Andover HOA raised the same issues in its Petition to Intervene there as it raised in its complaint here, identified the same witnesses to present at hearing, and was heard on the Mariner East Complaint Proceeding scheduling. From the date of this Motion there are still 98 days until written Complainant and Complainant-aligned Intervenors direct testimony must be filed. *See Attachment A*. When Your Honor issued the litigation schedule in the Andover HOA proceeding on September 5, 2018 prior to the stay, there were only 93 days between the litigation schedule order issuance until Andover HOA's direct testimony would have been due in that proceeding³. *See Attachment B*. The timing here is more advantageous to Andover HOA than the prior litigation schedule in its own case. This timing comparison (98 days until testimony is due here versus the 93 days until testimony was due in Andover HOA's proceeding) also shows that the outstanding preliminary objections and discovery issues⁴ in the Andover HOA proceeding are of no moment – if that case had not been stayed,

³ *Andover HOA v. SPLP*, Docket Nos. C-2018-3003605, September 5, 2018 Procedural Order at P 2.

⁴ SPLP filed timely objections to Andover's discovery after the Commission bifurcated the Andover case from the Dinniman Complaint.

Andover HOA would be in the same position then as it would be if the proceedings here are consolidated.

4. Likewise, the date of the Lay Witness Hearing is not prejudicial to Andover HOA. First, Andover HOA is already presenting the only lay witness it identified in both proceedings at that hearing – Eric Friedman⁵ (Flynn Complainants’ also listed Mr. Friedman as a witness, further demonstrating the common issues of fact between the cases). *See Attachment C*. Second, the schedule in the Andover HOA proceeding prior to the Commonwealth Court’s stay did not allow for any such hearing and there is no right to any such hearing, so there can be no prejudice from the existence and timing of the Lay Witness Hearing.

5. Your Honor has significant discretion to consolidate these proceedings, all factors weigh heavily in favor of consolidation, and the proceedings should be consolidated.

II. ARGUMENT

6. On July 24, 2018, Andover HOA, which consists of residents of Delaware County, filed a formal complaint with the Commission that alleges concerns regarding the safety and integrity of the Mariner East pipelines, including Mariner East 1 (“ME1”), Mariner East 2 (“ME2”), Mariner East 2X (“ME2X”), and a 12-inch diameter pipeline that is being utilized in the Mariner East system (the “12-inch pipeline”). Andover HOA alleges that SPLP lacks an adequate public awareness program, that SPLP’s emergency response procedures and training for the Mariner East pipeline system are inadequate, that SPLP has failed to comply with integrity management requirements, and argue that the location of the pipelines near residential properties and schools is unsafe. Andover HOA seeks an order from the Commission that, inter alia, would

⁵ Compare *Andover HOA v. SPLP*, Docket Nos. C-2018-3003605, August 24, 2018 Andover HOA Pre-Hearing Memo at P 4; with *Flynn et al v. SPLP*, Docket Nos. C-2018-3006116 et al, April 19, 2019 Andover HOA Pre-Hearing Memo at P 4. *See Attachment C*.

suspend service on the Mariner East pipelines, require “risk assessment” as well as any other appropriate relief. *See Attachment D* (Andover HOA’s Complaint).

7. On November 19, 2018, the Flynn complainants, who are residents of Chester and Delaware Counties, filed a formal complaint⁶ with the Commission that alleges concerns regarding the safety and integrity of the Mariner East pipelines, including Mariner East 1 (“ME1”), Mariner East 2 (“ME2”), Mariner East 2X (“ME2X”), and a 12-inch diameter pipeline that is being utilized in the Mariner East system (the “12-inch pipeline”). The Flynn complainants allege that SPLP lacks an adequate public awareness program, that SPLP’s emergency response procedures and training for the Mariner East pipeline system are inadequate, that SPLP has failed to comply with integrity management requirements, and argue that the location of the pipelines near residential properties and schools is unsafe. The Flynn complainants seek an order from the Commission that, *inter alia*, would suspend service on ME1, ME2, ME2X, and the 12-inch pipeline, require an independent “remaining life study” of ME1 and the 12-inch pipeline, and for the Commission to evaluate SPLP’s integrity management program.

8. On October 1, 2018, Melissa DiBernardino, a Chester County resident, filed a *pro se* formal complaint with the Commission that also alleges concerns regarding the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline. Like the Flynn complainants, DiBernardino alleges that SPLP’s public awareness program and emergency response procedures and training are inadequate, and that the location of the pipelines is unsafe. DiBernardino also alleges that using horizontal directional drilling to construct ME2 and ME2X is unsafe. Similar to the Flynn complainants, DiBernardino seeks an order from the Commission that, *inter alia*, would

⁶ The Complaint has been amended twice since its initial filing. The amended versions of the complaint contain the same issues.

suspend service on ME1, suspend further construction of ME2 and ME2X, and prohibit SPLP from using the 12-inch pipeline as part of the Mariner East pipeline system.

9. On December 27, 2018, Rebecca Britton, a Chester County resident, filed a *pro se* formal complaint with the Commission alleging that the locations of ME1, ME2, ME2X and the 12-inch pipelines are unsafe. Like the Flynn complainants and DiBernardino, Britton also alleges that SPLP's public awareness program and emergency response procedures and training are inadequate, and alleges concerns regarding SPLP's integrity management program, including alleged inadequate leak detection protocols. Britton also alleges that the locations of valve stations are unsafe and that the use of horizontal directional drilling to construct ME2 and ME2X has the potential to impact natural resources. Britton seeks the Commission to determine: whether SPLP's public awareness program and emergency response procedures and training are adequate; if the locations of the pipelines and related equipment (i.e. valve stations) are safe; if the pipelines are safe without the use of odorants in the products transported in the pipelines; whether alternative water supplies should be provided to local residents; whether the use of horizontal directional drilling is safe; and whether SPLP must further assess and address potential environmental impacts from the pipelines.

10. Lastly, on January 2, 2019, Laura Obenski, a resident of Chester County, filed a *pro se* formal complaint with the Commission that also alleges concerns regarding the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline. Like the Flynn complainants, DiBernardino, and Britton, Obenski also alleges that SPLP's public awareness program and emergency response procedures and training are inadequate. Obenski also alleges that schools in the Downingtown Area School District are at an increased risk due to their proximity to the pipelines, and argues that the locations of certain valve stations are unsafe. Obenski seeks an order

from the Commission that, *inter alia*, would suspend service on ME1, ME2, ME2X, and the 12-inch pipeline, suspend further construction of ME2 and ME2X, find that SPLP's public awareness program and emergency response procedures and training are inadequate, and find that locating valve stations near schools is unsafe.

11. Recognizing the commonality of fact and law and lack of prejudice to any party, these four (Flynn, DiBernardino, Britton and Obenski) proceedings were consolidated. *See* June 6, 2019 Mariner East Complaint Proceeding Procedural Order, **Attachment A**.

12. While SPLP disputes the allegations in each of the five complaints, the complaints involve common questions of law and fact such that consolidation of the matters is appropriate.

13. Since the filing of the Complaints, various other litigation events have also taken place showing the commonality of these proceedings. For example, Andover HOA intervened in the Mariner East Complaint Proceedings. Andover HOA's Petition to Intervene raises the same issues as Andover HOA's Complaint. *Compare Attachment D* (Andover HOA's Complaint) *with Attachment E* (Andover's Petition to Intervene)⁷. Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Moreover, Andover HOA filed prehearing memoranda in each proceeding where it was required to identify witnesses. It identified the same witnesses in each: Eric Friedman and Jeff D. Marx. *See Attachment C* (Andover HOA Prehearing Memoranda). Andover HOA has no legal right to litigate essentially the same complaint twice despite the weak arguments of its counsel for a second at bat and the

⁷ Indeed, Andover admitted substantial overlap regarding the issues raised by *Flynn et al* and Andover HOA, "that their interests in this matter substantially overlap" regarding intervention and the *Flynn et al* emergency hearings. *See* Andover's Petition to Intervene, Paragraph 47. (Attachment E).

practical result of causing duplicative legal time and expense not to mention the same for all parties, Your Honor, and the Commission. Indeed, Andover HOA cross intervention into *Flynn* refutes its very arguments against not consolidating.

14. Section 5.81(a) of the Commission's Rules of Practice and Procedure provides for consolidation of proceedings that involve common questions of law or fact:

The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa. Code § 5.81(a).

15. Consolidation is appropriate when there are sufficient common legal and factual issues between the cases, and where a party opposing consolidation will not suffer prejudice from the consolidation. *See e.g., Hartman v. PECO*, Dkt. Nos. C-2015-2471129 and C-2015-2469877, 2015 WL 1780140 (Order entered Apr. 15, 2015) (consolidating payment complaints because second complaint “requires no more factual or legal development than the first, consolidation is justified as it furthers judicial efficiency and is not at all prejudicial to the parties.”); *In re PECO Energy Company and Enron Energy Serv's Power, Inc.*, Dkt. Nos. R-00973953 and P-00971265, 87 Pa. P.U.C. 718 (Order entered Oct. 9, 1997) (granting motion to consolidate where the same “factual, legal, and policy considerations” were presented in both actions, and where “it would be extraordinarily difficult for this Commission to make an informed decision concerning one petition without contemporaneous consideration of the other.”); *Poole v. Columbia Gas of Pa., Inc.*, Dkt. No. Z-00109922, 1995 WL 945815 (Order entered June 19, 1995) (affirming consolidation where an additional legal issue in second case was necessarily included in the consideration of a broader legal issues in primary case).

16. The Commission has consolidated interrelated cases when doing so will reduce costs and create efficiencies for the Commission and the parties, particularly where the issues in one proceeding are also central to another proceeding. *See e.g., Middletown Taxi Co.*, Dkt. Nos. 99339 and 99378, 1976 WL 41682, (Order entered Sept. 8, 1976) (consolidation appropriate where common issues exist, individual issues will not “cloud” the proceedings, and when costs would be reduced and efficiencies gained by consolidation).

17. In addition to evaluating whether the matters involve common questions of law or fact, the Commission will also balance eight factors to determine whether the cases are interrelated and whether efficiencies can be gained through consolidation:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
3. Do issues in one proceeding go to the heart of an issue in the other proceeding?
4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
5. Will different statutory and legal issues be involved?
6. Does the party with the burden of proof differ in the proceedings?
7. Will consolidation unduly delay the resolution of one of the proceedings?
8. Will supporting data in both proceedings be repetitive?

PUC v. City of Lancaster Sewer Fund, Dkt. No. R-2012-2310366, at 3-4 (Order entered Nov. 26, 2012).

18. Consolidation is appropriate because the *Andover HOA*, *Flynn*, *DiBernardino*, *Britton*, and *Obenski* complaints involve common questions of law and fact, and each of the eight factors established by the Commission in *City of Lancaster Sewer Fund* is met.

19. All five complaints assert six central issues: (1) the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline; (2) the safety of the locations of the pipelines and related

equipment (i.e. valve stations); (3) the adequacy of SPLP's public awareness program; (4) the adequacy of SPLP's emergency response procedures and training; (5) SPLP's integrity management protocols; and (6) the safety of the construction of ME2 and ME2X. And all five complaints seek similar (if not identical) relief to address the complainants' concerns with the Mariner East pipelines in Chester and Delaware Counties.

20. These six issues are at the heart of all both cases (the Andover HOA Complaint and the Mariner East Complaint Proceeding) and addressing them jointly will allow the Commission to determine the issues once, rather than in a serial and repetitive manner for each individual proceeding. Separate adjudications in each of the two proceedings is inefficient both for the Commission and the parties, particularly since each party's advocacy and witnesses will be largely duplicative in both proceedings.

21. Furthermore, consolidation of these proceedings is in the public interest, because it will conserve the Commission's and the parties' respective resources, eliminate the risk of any inconsistent rulings, and avoid unnecessary additional costs and delays if each matter proceeded individually.

22. While each of the complaints may raise certain additional individual issues, those issues are subordinate to the six common issues shared by all complaints, such that any individual issues will not "cloud" the determination of the primary issues in all the cases.

23. Moreover, in the context of granting certain petitions to intervene in the *Flynn* matter, Your Honor has already recognized that judicial efficiency can be gained by joining matters that "raise issues essentially overlapping issues previously raised by [the Flynn] Complainants concerning safety and emergency preparedness in Chester and Delaware County areas." See Second Interim Order, Dkt. No. C-2018-3006116 at 17 (Mar. 12, 2019).

24. Various other litigation events in both proceedings also demonstrate the commonality of these proceedings. For example, Andover HOA intervened in the Mariner East Complaint Proceedings. Andover HOA's Petition to Intervene raises the same issues as Andover HOA's Complaint. *Compare Attachment D* (Andover HOA's Complaint) *with Attachment E* (Andover's Petition to Intervene). Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Moreover, Andover HOA filed a prehearing memo in each proceeding where it was required to identify witnesses. It identified the same witnesses in each: Eric Friedman and Jeff D. Marx. *See Attachment C* (Andover HOA Prehearing Memoranda).

25. Finally, consolidation will not prejudice any party. Andover HOA was granted intervenor status in the Mariner East Complaint Proceeding. Andover HOA raised the same issues in its Petition to Intervene there as it raised in its complaint here, identified the same witnesses to present at hearing, and was heard on the Mariner East Complaint Proceeding scheduling. From the date of this Motion there are still 98 days until written Complainant and Complainant-aligned Intervenors direct testimony must be filed. When Your Honor issued the litigation schedule in the Andover HOA proceeding prior to the stay, there were only 93 days between the litigation schedule order issuance until Andover HOA's direct testimony would have been due. This timing comparison (98 days until testimony is due here versus the 93 days until testimony was due in Andover HOA's proceeding) also shows that the outstanding preliminary objections and discovery issues⁸ in the Andover HOA proceeding are of no moment – if that case had not been stayed,

⁸ SPLP filed timely objections to Andover's discovery after the Commission bifurcated the Andover case from the Dinniman Complaint.

Andover HOA would be in the same position then as it would be if the proceedings here are consolidated.

26. Likewise, the date of the Lay Witness Hearing is not prejudicial to Andover HOA. First, Andover HOA is already presenting the only lay witness it identified in both proceedings at that hearing – Eric Friedman (Flynn Complainants’ also listed Mr. Friedman as a witness, further demonstrating the common issues of fact between the cases). Second, the schedule in the Andover HOA proceeding prior to the Commonwealth Court’s stay did not allow for any such hearing and there is no right to any such hearing, so there can be no prejudice from the existence and timing of the Lay Witness Hearing.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Commission consolidate Docket No. C-2018-3003605 with consolidated Docket Nos. C-2018-3006116, P-2018-3006117, Docket No. C-2018-3005025, Docket No. C-2019-3006898, and Docket No. C-2019-3006905.

Respectfully submitted,

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Dated: October 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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