

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wilmer Baker

v.

Sunoco Pipeline, L.P.

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C-2018-3004294

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

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I. INTRODUCTION

This decision sustains in part and denies in part a Complaint filed by an individual residing within 1,000 feet of a hazardous liquids pipeline against the pipeline operator. The pipeline operator is directed to: 1) pay a civil penalty in the amount of \$1,000; 2) contact the Lower Frankford Township Supervisors and Cumberland County Commissioners; 3) schedule a public awareness/education meeting to be held in Cumberland County; and 4) absent exigent circumstances, make an appearance at the scheduled meeting. In the public interest, the pipeline operator is further directed to provide additional training to emergency officials/responders in Cumberland County as requested in a timely manner in addition to its Coordinated Response Exercise (CoRE) and Mariner Emergency Responder Outreach (MERO) training.

Additionally, the pipeline operator is directed to file within ninety (90) days of a final order, a plan to enhance its public awareness and emergency training plans and record keeping including but not limited to addressing: 1) the broadening of communication coverage areas beyond 1,320 feet; 2) shortening intervals for communications; 3) use of social media; 4) supplemental program enhancements to emergency training programs; 5) internal or external audits to evaluate the effectiveness of its programs; and 6) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits.

Complainant's requested relief for an early warning alarm system for residents residing within 1,000 feet of the Mariner East pipeline facilities and a directive that an odorant be added to the highly volatile liquids (HVLs) of ethane, butane, and propane being transported is denied as these requests should be vetted through a rulemaking proceeding currently pending at Docket No. L-2019-3010267, *Hazardous Liquid Public Utility Safety Standards, Advance Notice of Proposed Rulemaking*, in order to provide the pipeline operator and other interest groups their due process rights. The request for an alarm and odorant as an accommodation under the Americans With Disabilities Act is denied for lack of jurisdiction to grant such an accommodation. Finally, Complainant's request that the operator be directed to replace "an 80 year old pipe" with American-made steel is denied for lack of jurisdiction to direct the relief requested.

II. HISTORY OF THE PROCEEDINGS

On August 10, 2018, Wilmer Baker (Complainant or Mr. Baker) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Sunoco Pipeline, L.P. (Respondent, Sunoco or SPLP). Complainant is an adult individual residing at 430 Run Road, Carlisle, Cumberland County, Pennsylvania, approximately 1,000 feet from Sunoco's Mariner East 1 (ME1) pipeline. In his Complaint, Complainant avers that he received a safety manual five years ago about an "old iron pipeline, over 80 years old." Complainant avers Sunoco "put in bigger pipes and back-flowed the old pipe, which is now carrying highly volatile liquids under higher pressure, from 800 psi to 1400 psi." Complainant requests the pipeline operator be directed to: 1) put in an alarm system for all residents living within the 1,000 foot blast zone; 2) hold public outreach meetings; 3) train emergency personnel; and 4) replace old iron pipeline with American made steel.

The Complaint was served upon Respondent on August 27, 2018. On September 17, 2018, Sunoco filed an Answer and New Matter. Sunoco averred in its New Matter that Complainant's property was approximately 1,300 feet from the ME1 pipeline right-of-way. Sunoco admitted it sent a document entitled "Important Safety Message" to Complainant approximately five years ago. Sunoco denies the ME1 pipeline is made of iron and avers it is a steel pipe originally constructed with domestically manufactured steel. Sunoco denies ME1 is an "old iron pipeline" that was "back flowed" that "is over 80 years old." As part of continuous maintenance throughout its life, significant mileage of the pipeline has been replaced with API 5L grade X42 and X52 pipe much of which was manufactured domestically.

Sunoco avers it is in compliance with 49 CFR 195.112 (new pipe) even though the original pipe pre-dates the effective date of the regulation. Sunoco denies the maximum operating pressure (MOP) of ME1 was 800 psi and avers it used to be 1200 psi. Sunoco contends the current MOP is 1480 psi. Sunoco admits two other pipelines are being built near Complainant, Mariner East 2 (ME2) and Mariner East 2X (ME2X). Sunoco avers it is following applicable federal and state safety and construction regulations in constructing these pipelines.

Sunoco denies any requested relief should be granted as Sunoco has already trained emergency personnel in accordance with its Public Awareness Plan. Each year, Sunoco sends direct mailings to local emergency responders in the communities where Sunoco's pipelines and related facilities are located including a letter advertising free training for responding to pipeline emergencies, CoRE and MERO training. Sunoco avers that since 2014, 154 emergency responders in Cumberland County attended MERO training. Sunoco avers the Commission in its August 14, 2018 Order, has already found Sunoco's public awareness plan as submitted to the Commission in the case of *Dinniman v. Sunoco Pipeline*, Docket No. P-2018-3001453, *et al.* to be adequate.

Regarding the request for an alarm system, Sunoco avers there is no applicable law or regulation allowing for such relief. Regarding the request that Sunoco replace old iron pipe with American made steel, there is no applicable law or regulation allowing such relief.

Also, on September 17, 2018, Sunoco filed Preliminary Objections, arguing the Complaint was legally insufficient and failed to state a claim upon which relief could be granted. Sunoco did not raise as a preliminary objection lack of standing until the briefing stage in this proceeding. The Preliminary Objections were denied by Order entered on November 1, 2018.

On July 8, 2019, Carrie Gross and Margaret Quinn submitted comments in support of Mr. Baker's complaint. On or about July 9, 2018, Maxine Endy and Uwchlan Twp. Supervisor Kim Doan filed comments. On July 16, 2019, Virginia Marcille-Kerslake filed a Petition to Intervene but did not serve copies of it upon either the parties or the presiding officer. The hearing was held on July 17 and 18, 2019. Oral argument regarding the Petition to Intervene was conducted at the start of the hearing, and Ms. Marcille-Kerslake's Petition was denied for: 1) lack of good cause shown for the untimely filing of a petition to intervene one day before the hearing; 2) lack of proper service to the parties; 3) concurrent intervention in two other proceedings against Sunoco; and 4) she was attempting to expand the scope of issues to include claims of exposed pipe in Chester County and relief requested of shutting down ME1. N.T. 36-40. However, Ms. Marcille-Kerslake was given an opportunity to file an *Amicus Curiae* brief by the main brief deadline, which she did. N.T. 387-388.

Transcripts were filed on July 22 and 23, 2019, respectively. By Interim Order, the evidentiary record closed on July 25, 2019, for the filing of briefs, *Amicus Curiae* briefs, and decision writing. On August 29, 2019, Susan Britton Seyler filed a comment. On August 30, 2019, Complainant and Respondent filed their Main Briefs and Virginia Marcille Kerslake filed an *Amicus Curiae* brief. On September 18, 2019, Sunoco filed a Motion to Strike portions of the Complainant's Main Brief. Also on September 18, 2019, Respondent and Complainant filed their Reply Briefs. On September 24, 2019, Sunoco filed Attachment A to its Motion to Strike Portions of Complainant's Main Brief. On October 1, 2019, Sunoco filed a Motion to Strike Portions of Reply Brief. On October 7, 2019, Complainant filed a Reply to Sunoco's Motion to Strike Portions of Complainant's Main Brief. On October 21, 2019, Complainant filed a Reply to Sunoco's Motion to Strike Portions of Complainant's Reply Brief. This matter is ripe for a decision.

III. FINDINGS OF FACT

1. Complainant Wilmer Baker is an adult individual residing within 1,000 feet of the Mariner East 1 pipeline right-of-way at 430 Run Road, Carlisle in Lower Frankford Township, Cumberland County, Pennsylvania. N.T. 25, 42, 372.

2. Jon Baker, Complainant's son, is an adult individual also residing at 430 Run Road, Carlisle, Pennsylvania. N.T. 42, 128.

3. Respondent Sunoco Pipeline, L.P. (SPLP) is a public utility pipeline operator certificated at Docket No. A-140111 to operate the Mariner East 1 (ME1) pipeline, which currently transports hazardous volatile liquids (HVLs)¹ intrastate and interstate.

4. Wilmer Baker received a safety manual entitled, "Important Safety Message" from Respondent five years ago. N.T. 42, 356-357, 372. Complainant Exhibit 2.

¹ A highly volatile liquid is defined in pipeline safety regulations as a hazardous liquid that will form a vapor cloud when released to the atmosphere and has a vapor pressure exceeding 276 kPa (40 psia) at 37.8 degrees C (100 degrees F). 49 CFR § 195.2.

5. SPLP generally completes a mass mailing of the safety manual every two years; however, many of the mailings go to “Resident” instead of named individuals at the street addresses. SPLP 28.

6. Mr. Baker did not receive the manual every two years. N.T. 42, 369-370.

7. Joseph Perez is the Vice President of Technical Services for Operations and Engineering for Energy Transfer/Sunoco. SPLP Exhibit No. 2.

8. Joseph Perez testified in a separate proceeding that SPLP mailed public outreach brochures in September 2018 to the affected public including all residents, businesses, farms, schools, and other places of congregation within 1,000 feet of each side of the pipeline, excavators, public officials, and emergency response organizations. SPLP Exhibit No. 2 at N.T. 590-592.

9. Mr. Perez neither confirmed nor denied Mr. Baker’s claim that he received the safety manual five years ago. N.T. 341-366, 370.

10. As of the date of the hearing, Mr. Perez had not gotten Mr. Baker’s address or reviewed business record to determine whether or not a mailer was sent to Mr. Baker’s address. N.T. 370.

11. John Zurcher, Principal at Process Performance Improvement Consultants, LLC (P-PIC), Managing Director at The Blacksmith Group, and Sunoco’s expert witnesses regarding public awareness, hazard warnings, and pipeline safety, testified in a separate proceeding on May 10, 2018, that flyers were mailed to residents within a quarter of a mile of the Mariner East pipelines. *Dinniman*, Transcript dated May 10, 2018 at 419-420.

12. A quarter mile converts into 1,320 feet.

13. An eighth of a mile converts into 660 feet.

14. Mr. Zurcher testified that the operator went further than an eighth of a mile to a quarter mile. *Dinniman*, Transcript dated May 10, 2018 at 419-420.

15. Mr. Perez did not know Lower Frankford Township did not have a fire company at the hearing. N.T. 361.

16. Mr. Perez was aware Sunoco had conversations with Lower Frankford Twp. officials, but he did not know if the officials or county commissioners had said Sunoco's outreach program was inadequate. N.T. 362.

17. Mr. Perez was unaware of the letter from Robert Young, Deputy Chief Counsel of the Commission to Cumberland County, until July 17, 2019, and he had not read the letter as of July 18, 2019. N.T. 364.

18. Mr. Perez did not know whether Lower Frankford Twp. was a part of Sunoco's first response team. N.T. 361-362.

19. Township Supervisors in Lower Frankford Township did not have Sunoco's safety pamphlet until Mr. Baker provided it to them on or about July 10, 2018. N.T. 42.

20. Lower Frankford Township does not have a fire department, and it relies upon Upper Frankford Township Fire Company in Newville, Pennsylvania to service fire emergency calls. N.T. 361-364.

21. When asked whether Sunoco would start having public outreach meetings in Cumberland County, Mr. Perez replied, "What we will continue to do is utilize our public awareness program to reach out to the public, and communicate accordingly as stated in our standards, which meets the regulatory requirements." N.T. 364.

22. Sunoco cancelled its attendance at the July 10, 2018 meeting less than 24 hours before the meeting was scheduled to begin because it expected a formal complaint to be filed by a resident of Lower Frankford Township regarding Sunoco's public awareness compliance and because it anticipated the media would be present. Complainant Exhibit 11, N.T. 377.

23. At least one other meeting scheduled by Representative Greg Rothman, a state representative of Cumberland County, to be held at the Cumberland County Courthouse in Carlisle was ultimately cancelled for reasons unknown in November or December 2018. N.T. 365-366, 378-379, Complainant Exhibit No. 7 and 8.

24. In July 2019, Cumberland County Commissioners passed a resolution to "respectfully request that the Public Utility Commission order hazardous liquid pipeline operators to conduct public outreach meetings, at least once a year on a local or regional basis, for the purpose of outlining safety precautions and to address any individual citizen questions and concerns." Complainant Exhibit No. 26 (Resolution Urging Public Awareness Meetings by Hazardous liquids Pipeline Operators).

25. Mr. Perez was only aware of the cancellation of the July 10, 2018 meeting in Lower Frankford Twp. and not of other cancellations. N.T. 366.

26. Curtis Stambaugh is Assistant General Counsel to Energy Transfer Sunoco Pipeline, L.P. as an Energy Transfer Partnership. N.T. 373.

27. Mr. Baker is a retired hazmat worker and welder with the United Steelworkers, but he has no experience or qualifications regarding the pipelines at issue. N.T. 42, 76-77.

28. Mr. Baker attended a Lower Franklin Township public meeting on July 10, 2018, hoping to complain to Sunoco representatives about the need for an alarm system, but Sunoco did not appear at the meeting. N.T. 42, 61, Complainant Exhibits 1, 7, 8 and 9.

29. There were six Pennsylvania State Troopers present at the July 10, 2018 meeting. N.T. 42, 47.

30. Mr. Baker attended a Lower Frankford Twp. meeting on August 1, 2018. N.T. 49.

31. Sunoco was not present at the August 1, 2018 meeting in Lower Frankford Township. N.T. 49.

32. On August 13, 2019, the Cumberland County Board of Commissioners mailed a letter to Matthew Ramsey, Chairman of Sunoco L.P., requesting attendance at a county-hosted meeting to answer individual questions and concerns from their constituents about pipeline safety. N.T. 64-65, Complainant Exhibit 10.

33. On August 24, 2018, Matthew Gordon, Senior Director, Pipeline Operations of Sunoco Pipeline, sent a letter to the Cumberland County Board of Commissioners indicating he received their August 13, 2019 letter to Matthew Ramsey, and stating that in Cumberland County more than 150 responders have participated in MERO training since 2014 including 12 Cumberland County government representatives and representatives from Upper and Lower Frankford townships. Complainant Exhibit No.10.

34. Mr. Gordan invited the Cumberland County Board of Commissioners to attend a Paradigm CORE-Ex Emergency Response Training to be held at the Harrisburg Best Western at 5:30 p.m. on Wednesday, September 12, 2018. Complainant Exhibit No. 10.

35. SPLP had been informed on the eve of the meeting that landowners had invited the media to attend. N.T. 377-378.

36. SPLP did not attend the Lower Frankford Twp. meeting on July 10, 2019, because it might discuss security-sensitive information and refused to participate in a meeting open to the media. N.T. 378.

37. There have been insufficient public outreach meetings in Cumberland County. N.T. 129, 126, 132, 136-148, Complainant Exhibit Nos. 10 and 11.

38. Sunoco has an emergency response outreach and training program which provides information for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency. N.T. 236.

39. SPLP made some emergency training available to first responders in Cumberland County and intended to provide training in the future. N.T. 219-233, 354-356; SPLP Exhibit Nos. 2-3, 8-18, 20, 22, 23.

40. SPLP invites first responders and others to its training sessions. N.T. 225-226.

41. Ms. Pamela VanFleet resides at 1705 McClures Gap Road, Carlisle, Pennsylvania. N.T. 159.

42. Ms. VanFleet lives in Lower Frankford Township but she intends to move to Shermansdale, Perry County to move farther away from an exposed ME1 pipe. N.T. 159.

43. Although an SPLP safety pamphlet was mailed to “Resident” at 1705 McClures Gap Road, Carlisle in September 2018, sometime in 2016 and in October or November of 2014, the tenant at the address, Ms. VanFleet, only received one of those pamphlets. SPLP Exhibit 28, N.T. 42, 171-172, 356-357

44. Ms. VanFleet may share a mailing address with her landlord, which may account for her not receiving all of the safety pamphlets mailed to 1705 McClures Gap Road. N.T. 42, 356-357.

45. SPLP has a public awareness program that engages the community, utilizing a variety of methods, including meetings, mailings, and specialized training. SPLP Exhibit No. 2 at N.T. 589.

46. The primary goal of the plan is to raise awareness with the public and other stakeholders of SPLP's facilities and to ensure that everybody knows where the pipelines are located. SPLP Exhibit No. 2 at N.T. 590.

47. Mr. Baker has not attended any CoRE or MERO meetings hosted by Sunoco Pipeline, L.P. N.T. 109-111.

48. On September 13, 2018, the Cumberland County Board of Commissioners sent a letter to Mr. Gordon thanking him for his letter, but indicating his non-response to an invitation for a public county-hosted meeting to answer questions from individuals and businesses from Cumberland County showed a lack of interest in addressing individual citizen questions and concerns. Complainant Exhibit No. 10.

49. The September 13, 2018 letter again invited Sunoco to attend a public meeting hosted by the county for the purposes of detailing safety measures and answering questions of citizens. Complainant Exhibit Nos. 10 and 12.

50. On October 8, 2018, the Commissioners of Cumberland County sent Chairman Gladys M. Brown Dutrieuille a letter requesting the Commission "take whatever policy and/or regulatory action necessary to enhance the minimum federal 'public awareness' safety rules, promulgated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), to require Sunoco Pipeline to conduct regional and periodic public outreach meetings to address any citizen questions and concerns." Complainant Exhibit No. 10.

51. On November 8, 2018, Robert F. Young, Deputy Chief Counsel of the Commission's Law Bureau, sent the Commissioners of Cumberland County a letter thanking them for their letter and indicating that he has strongly encouraged Sunoco to engage in

discussions with the Commissioners to find a way to accommodate the request for Sunoco to participate in a county-hosted group meeting while addressing Sunoco's concerns about pending litigation. N.T. 65, Complainant Exhibit No. 11.

52. On May 30, 2019, a public hearing regarding the public safety aspects of pipeline systems was held in Media, Pennsylvania before the Pennsylvania House of Representatives Veterans Affairs and Emergency Preparedness Committee, which heard from the Director of Delaware County Department of Emergency Services and County Emergency Management regarding coordinating emergency and public training tailored to the specific needs for institutions and facilities located in the Delaware County communities. Complainant Cross Exhibit 26.

53. The Mariner East 1 (ME1) (8-inch) and Mariner East 2 (ME2) (20-inch) pipelines are currently operational and the Mariner East 2X (ME2X) (16-inch) pipeline is currently under construction. N.T. 41.

54. Portions of the ME1, ME2, and ME2X pipelines traverse Cumberland County. N.T. 41.

55. Complainant is not an engineer and has no education in fluid mechanics or alarm systems for pipelines. N.T. 74-75.

56. Complainant has never worked for a pipeline company. N.T. 76.

57. Mr. Baker is an expert in welding as he has 37 years' experience of welding at Frog and Switch using manganese steel, making castings, etc.; however, he is not an expert with regard to "pipelines such as are used in the Mariner East project." N.T. 72-80, Complainant Exhibit 13.

58. Mr. Baker was a member of the United Steelworkers of America AFL-CIO/CLC, Local Union 4442, District 7 who has received Hazardous Waste and Chemical

Emergency Response training (including 3M respiratory training) in 1991. N.T. 69-72, Complainant Exhibit C-13.

59. Mr. Baker spoke before members of the Pennsylvania General Assembly on March 19, 2019 regarding his experience as a welder and his concerns about the Mariner East Project. N.T. 81, Exhibit C-14.

60. SPLP uses some foreign steel and pipe for its ME2X pipeline. SPLP Exhibit No. 5.

61. Some American steel and pipe were used for ME2. SPLP Exhibit No. 4 (Steel cast and coils rolled at US Steel, Gary, IN. Pipe manufactured at Stupp Corporation, Baton Rouge, LA.).

62. Kinder Morgan constructed the Louisiana, Midcontinent Express and REX pipelines between mid-2008 and 2009. N.T. 82-84. "Use of Substandard Steel by the U.S. Pipeline Industry 2007 to 2009," Plains Justice, June 28, 2010, Complainant Exhibits 15 and 16.

63. The Louisiana Pipeline suffered a rupture during a hydrotest. Complainant Exhibits 15 and 16.

64. PHMSA ordered Kinder Morgan to investigate each of these pipelines to test each pipeline for excessive expansion. Complainant Exhibits 15 and 16.

65. Kinder Morgan determined that Welspun provided defective steel pipe for construction of that pipeline and 7,100 feet of pipe was removed. Complainant Exhibit 15.

66. Kinder Morgan discovered their X70² pipe was expanding and Welspun recertified an undisclosed number of pipe joints as API 5L X56, X60 and X65, meaning they

² The X classification in the API 5L standard are based upon pressure ratings. For example, minimum yield strength of an X70 pipe may be 70,000. N.T. 285, Complainant Exhibit No. 15.

were downgraded from the API 51 X70 standard to lower standards. N.T. 85, Complainant Exhibit No. 15.

67. The Article by Plains Justice does not mention anything about the Mariner East Project. N.T. 109. Complainant Exhibits 15 and 16.

68. There is no evidence to show Sunoco or its contractor purchased pipe from Welspun. N.T. 109.

69. Rolfe Blume a/k/a Ralph Blume is a 78 year-old individual residing at 43 Wildwood Road, Newville, Upper Frankford Township, Cumberland County, Pennsylvania, in a house 80 feet from an ME1 right-of-way. N.T. 136, Complainant Exhibit No. 20.

70. Mr. Blume's wife is handicapped and cannot walk ten feet without assistance. N.T. 142, 146.

71. Mr. Blume attended six township meetings in Upper and Lower Frankford Townships between July and December of 2018. N.T. 137.

72. Mr. Blume requests an odorant be placed in the HVLs transported in the pipelines and an alarm system as the ME1, ME2 and ME 2X traverse his farm. N.T. 141-142, 147.

73. Mr. Blume uses a wood stove for heat and he is concerned that if there is a leak of HVLs from the pipeline on or near his property, that it might be ignited causing fatalities. N.T. 147.

74. Mr. Blume took photographs depicting ME2 pipe found on Mr. Blume's farm in 2017 or 2018 which shows a pipe with "made in Greece" markings indicating an X65M – PSL 2 Grade. N.T. 85-87, 142-143, Complainant Exhibits 16 and 20.

75. The pipes depicted in Complainant Exhibit 16 and 20 are buried on Mr. Blume's property. N.T. 143.

76. Mr. Blume has not had drinkable water for three years from his well since Sunoco drilled on his property. N.T. 143-144.

77. For two years, the only worker who would talk to Mr. Blume was a right-of-way land agent from Percheron. N.T. 149.

78. Mr. Blume testified Sunoco is supposedly finished with construction on his property, but his yard cannot be mowed with a lawnmower because of "big gutters and ruts, weeds, slate, stone." N.T. 149-150.

79. Sunoco's land agents have spoken to Mr. Blume. N.T. 374.

80. A land agent is assigned to Mr. Blume's property. N.T. 374.

81. Sunoco has placed some compensation in the amount of \$13,000 held in escrow at the Court of Common Pleas of Cumberland County's Prothonotary's Office for Mr. Blume to petition to remove pursuant to damages claims regarding Sunoco exercising its eminent domain/condemnation rights and constructing pipelines on his property. N.T. 376, SPLP Exhibit 33.

82. Erick Robinson is an adult individual residing at 411 West North St., No. 3 in Carlisle, PA. N.T. 119.

83. Mr. Robinson attended the Lower Frankford Township meeting on July 10, 2018 and he saw police officers there but no Sunoco representatives. N.T. 120.

84. Mr. Robinson saw several pieces of Mariner East pipe in the ground together approximately 3 feet apart. N.T. 125-126.

85. Ms. VanFleet took photographs of an exposed ME1 pipeline in Lower Frankford Township and sent them to Ian Woods of PHMSA with an inquiry. Complainant Exhibits C-3 and 4. N.T. 162-165.

86. In 2017-2019, Ms. VanFleet took pictures of entrenching and laying of pipe in North Middletown Twp. and Lower Frankford Twp. Complainant Exhibit 24, N.T. 167-168.

87. The pipelines are laid in the ground approximately 3.5 feet apart from each other in Lower Frankford and North Middletown Twps. N.T. 168-169, 174-175, Complainant Exhibit C-24.

88. Ms. VanFleet is a science teacher with knowledge of biology and chemistry who is a visiting instructor at Dickinson College. N.T. 172-174.

89. Christina DiGiulio resides at 782 North Reeds Rd., Downingtown, Chester County, Pennsylvania. N.T. 176.

90. Christina DiGiulio is an expert in chemistry but she is not an expert as to Part 192 Code of Federal Regulations. N.T. 184-185, Complainant Exhibit 25.

91. There is available technology to sense the hydrocarbons that are in the ME1, ME2 and ME2 pipelines. N.T. 186-188.

92. An optical sensor could detect leaks above ground such as from a valve. N.T. 187.

93. An odorant could be added to the HVLs in the pipelines. N.T. 191.

94. Ms. DiGiulio made some calculations using information she obtained from photographed markings on the pipes and in general did not find Sunoco's pipelines to be non-compliant with Section 195.106 of the Code of Federal Regulations. N.T. 197-203.

95. Mr. Baker argues X65 pipe is substandard for Mr. Blume's farm, and the minimum strength is X70 for ME2 as it traverses a high consequence area, a class area requiring a higher class location requirement. N.T. 86-87, 97-98, Complainant Exhibit 19.

96. Complainant Exhibit 19 is irrelevant as it pertains to natural gas pipelines, rather than HVL pipelines and seeks comment to a proposed rulemaking regarding part 192 of the Code of Federal Regulations instead of the more relevant part 195. N.T. 115-116.

97. Mr. Baker argues the steel pipes for ME2 in his area of Cumberland County are made in France, then sold through a Greek company, Corinth Pipeworks, marked "made in Greece" to be "dumped onto the American market at prices cheaper than the domestic markets." Complainant Exhibit C-16, N.T. 88-90, 102-104, 110-114.

98. Mr. Baker claims the U.S. federal government cited Corinth Pipeworks, whose headquarters are in Greece, for bringing in steel that they were "dumping on the American market illegally." N.T. 88-90, 102.

99. Mr. Baker offered as evidence of "dumping" Complainant Exhibit 18, a Fact Sheet entitled: Commerce Finds Dumping and Countervailable Subsidization of Imports of Large Diameter Welded Pipe from Canada, Greece, Korea and Turkey. Complainant Exhibit 18, N.T. 96-97, 102-105.

100. Mr. Baker argues Sunoco riveted a pipe by placing a collar over both ends of the pipe and welding the pipe, thus breaking down the integrity of the pipe showing Sunoco is concerned about X70 pipe expanding at the ends. N.T. 92-95, Complainant Exhibit 17 (A PHMSA Advisory bulletin dated March 24, 2010, notifying owners and operators of recently

constructed large diameter hazardous liquid pipeline systems of the potential for girth weld failures due to welding quality issues).

101. Sunoco argues Mr. Baker is not an expert on the welding of HVL pipelines and that he is unqualified to give an opinion and incorrect that the Company riveted the pipe depicted in Complainant Exhibit 17. N.T. 92-95.

102. The pipelines are 400 feet from cell towers/transmission towers, which is an ignition source in case there is a leak. N.T. 100, Exhibit C-22.

103. Complainant requests: 1) an alarm system for residents within 1,000 feet of the Mariner east pipelines; 2) an odorant added to the HVLs transported in the pipelines; 3) better public outreach; and 4) American made steel instead of “substandard steel that they’re dumping on this country.” N.T. 104.

104. The steel and pipe used for the ME2X pipeline can support a maximum operating pressure up to 2,760 PSI and the steel and pipe used for the ME2 pipeline could support a maximum operating pressure up to 1,778 PSI. N.T. 277-279, 280-281, SPLP Exhibit Nos. 4, 5, and 31.

105. Mr. Baker never matched the PHMSA standard to the specific pipes for Mariner East 2. N.T. 106.

106. ME1 was constructed in 1931; however, there is insufficient evidence to show the pipe was iron as opposed to a steel pipe. N.T. 107-108.

107. The MOP that SPLP operates and will operate at for ME2 and ME2X is 1,480 PSI. N.T. at 349.

108. The steel and pipe used for the ME2X and ME2 pipelines is the API 5L, PSL-2 standard. N.T. 285.

109. SPLP hydrotests its Mariner East pipelines to address issues during the pressure tests that would compromise the integrity of the pipe. N.T. 289-291, SPLP Exhibit No. 32.

110. The ME1 pipeline has a small exposure near McClures Gap Road, Cumberland County in a rural area and is approximately a quarter of a mile from the nearest building. N.T. 159-164, N.T. 352-353.

111. Pipeline exposures are a common occurrence. N.T. 300.

112. SPLP and various contractors have been monitoring the exposure on McClures Gap Road since it occurred. N.T. 352-353.

113. Because the exposure is in a wetland, SPLP requires and is awaiting a permit from the Pennsylvania Department of Environmental Protection (DEP) to remediate the exposure. N.T. 350-351.

114. SPLP developed an initial remediation plan for this exposure using an Ercon mat³ and submitted that proposal to the DEP in mid-2018 at a meeting with the DEP. N.T. 350-351.

115. In October 2018, the DEP rejected SPLP's proposal. N.T. 350-351.

116. Since then, SPLP has developed a remediation measure called a rock bane, which the DEP has found acceptable as of February 2019. N.T. 350-351.

117. SPLP submitted the official permit application to the DEP in June 2019 and is awaiting its approval. N.T. 350-351.

³ An erosion control mat is typically used in construction projects to hold soil in place.

118. SPLP Exhibit 27 (page 1 of which is part of Complainant's Exhibit C-4) is a photograph of two pipeline joints welded together showing marks in the coating of the pipeline due to the line-up clamp which is used to hold the pipe in place while it is being welded. N.T. 293-294, 295, SPLP Exhibit 27.

119. There is insufficient evidence to show the pipelines were riveted or that a sleeve or collar was used. N.T. 293-295, 343-344, SPLP Exhibit 27.

120. Prior to the pipe being placed in the ground and covered, the coating is removed and replaced and inspected again. N.T. 295, 343-344.

121. As a construction practice, SPLP x-ray inspects 100% of its welds for the ME2 and ME2X pipelines. N.T. 296-297, 343-344.

IV. DISCUSSION

A. Sunoco's Motions to Strike

Pursuant to 52 Pa. Code § 5.501, and § 5.431(b), SPLP moved to strike portions of Wilmer Baker's Main Brief submission (Complainant's Brief). Specifically, Sunoco moved to strike Complainant's Brief at pages 101-102, 108-109, 261-297 and portions of pages 7 and 8 as identified in Attachment A to its Motion to Strike with red strikethroughs. After reviewing the Motion to Strike, Appendix A thereto, Mr. Baker's Reply to Motion to Strike, and the transcript and exhibits of this proceeding, I agree with Sunoco that certain portions of Mr. Baker's Main Brief contain extra exhibits not admitted at the hearings held on July 17-18, 2019. These materials at pages 101-102, 108-109, 261-297 and portions of pages 7 and 8 as identified in Attachment A with red strikethroughs attempt to improperly introduce new evidence after the close of record in violation of 52 Pa. Code §§ 5.431(b) and 5.501, denying Sunoco an opportunity to review, cross examine or object to the exhibits prior to Complainant's attempt to submit them into the record post-hearing. The additional statements of witnesses Kim Van Fleet, Rolfe Blume, Jon Baker, Eric Robinson are more akin to rebuttal testimony than *Amicus Curiae*

Briefs. On July 25, 2019, an Interim Order was entered closing the evidentiary record and ordering that briefs comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502. *Wilmer Baker v. Sunoco Pipeline L.P.*, Docket No. C-2018-3004294, Interim Order at Ordering paragraphs 5 and 6 (Order entered July 25, 2019).

Pages 261-297 and the portions of pages 7 and 8 as identified in Attachment A must be stricken as an attempt to introduce new evidence after the record has closed with no good cause and in violation of SPLP's due process rights. These pages consist of various hearsay statements from individuals (some of whom testified at trial) in the form of letters, some of which attach pictures, additional documents, links to websites, a Delaware County Resolution, emails, comments, etc. Commission regulations clearly prohibit admission or reliance on these materials: "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b). SPLP has the fundamental due process right in this proceeding to "an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014); *Davidson v. Unemployment Compensation Bd. of Review*, 151 A.2d 870 (Pa. Super. 1959); *In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946). Allowing submission of the materials after the hearing would violate these rights. It is well-established that parties cannot present new evidence at the briefing stage. *Se e.g. Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distric. Corp.*, 1993 Pa. PUC LEXIS 95, at*7-10 (Order entered July 30, 1993).

Accordingly, Complainant's Main Brief at pages 101-102, 108-109, 261-297 and portions of pages 7 and 8 as identified in Attachment A will be stricken. Additionally, Complainant's Reply Brief at pages 106-107, 136-137, 168-170 and portions of pages 4, 5, and 6 as identified in Attachment A to Sunoco's Motion to Strike Portions of Complainant's Reply Brief are stricken.

B. Legal Standards Regarding the Complaint

The Commission has jurisdictional authority over safety issues concerning all of Pennsylvania's intrastate facilities, including hazardous liquids and underground natural gas storage facilities. Pipeline transportation services are defined as public utility services under Section 102 of the Code, 66 Pa. C.S. § 102. Specifically, Commission regulations at 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199.

The statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 Pa. PUC 662 (1993).

The Commission regulations at 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. The Commission regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans. 49 CFR § 195.440 (relating to public awareness). A pipeline operator utility should use every reasonable effort to properly

warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a).

C. Issues

Mr. Baker, a *pro se* complainant, has alleged that Sunoco has violated 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, which require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199 by operating ME 1 and constructing ME 2 and ME 2X of its Mariner East pipeline project in Lower Frankford Township, Cumberland County in a manner not consistent with the Code of Federal Regulations, Public Utility Code or Commission's regulations. Mr. Baker complains he only received one pamphlet from Sunoco five years ago educating him about the pipeline and that this is insufficient. Mr. Baker requests an alarm system for all residents living within the 1,000 foot blast zone and training for emergency personnel. Also, he requests the old iron pipeline be replaced with American-made steel.

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding

of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain his or her burden of proof. See *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); see also *Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).⁴

D. Applicability of the Pipeline Safety Act to Mariner East 1

The Pipeline Safety Act, 49 C.F.R. Part 195, applies to the Mariner East pipelines, which carry natural gas liquids. Sunoco specifically argues the regulations and safety standards found in 49 CR Part 195 and the Commission's regulation at 52 Pa. Code § 59.33(b), are not applicable to the ME1 pipeline, which was built before 1968, the year the Pipeline Safety Act became law, codifying at Title 49, Chapter 601 of the U.S. Code. Thus, the design, installation or construction standards were not retroactive and do not apply to the ME1. 49 U.S.C.A. § 60104(b).

I am not persuaded to agree with this “not retroactive” or “ex post facto”⁵ legal argument as my interpretation of Part 195.1(a) and (b) leads me to conclude that there is no express exception to the application of Part 195 to any pipeline facilities in existence on the date Part 195 in general was adopted. Words to that effect would constitute a “grandfather clause.”

⁴ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

⁵ An *ex post facto* law is a law that retroactively changes the legal consequences (or status) of actions that were committed before the enactment of the law. There is a constitutional ban on *ex post facto* criminal law only. Article I, Section 10, Clause I of the U.S. Constitution.

If any pipeline installed prior to 1968 was exempt from Part 195, there would be an express exemption listed in the code, or at least there might be Enforcement Policy Directives. Sunoco's argument is unsupported by any caselaw or other authority.

Even though the legacy pipeline was initially installed prior to 1968, ME1 has undergone significant repurposing and expansion of its pipeline facilities during its period of suspension and abandonment of gasoline and distillate transportation service since 2002. In 2002, Sunoco purchased and acquired the use of Sun Pipe Line Company and Atlantic Pipeline Corporation's assets, both of which were subject to Commission jurisdiction under Certificates of Public Convenience issued in 1930 and 1931 by the Commission's predecessor, the Pennsylvania Public Service Commission.

ME1 is now transporting highly volatile liquids (HVLs) through high consequence areas (HCAs) of Pennsylvania through the additions of newly constructed compressor, pumping, and valve stations. SPLP has expanded the ME1 right-of-way, and has expanded ME1 through new construction in Washington County as recently as August 21, 2014, when the Commission granted Sunoco's application and authorized the provision of intrastate petroleum and refined petroleum products pipeline transportation in Washington County. Sunoco now transports, as a public utility service, petroleum and refined petroleum products both east to west and west to east in the following Pennsylvania counties through which the Mariner East Project is located: Allegheny, Westmoreland, Indiana, Cambria, Blair, Huntingdon, Juniata, Perry, **Cumberland**, York, Dauphin, Lebanon, Lancaster, Berks, Chester, Washington, and Delaware.

Portions of ME1 have been inspected, repaired, replaced, and expanded continuously since 1931 and the design, purpose and content of ME1 changed this past decade from transporting primarily petroleum products like diesel fuel and heating oil from the Marcus Hook Facility along the Delaware River to the western portions of the State, to transporting propane and ethane under higher pressures from the western portion of the state to the Marcus Hook Facility. Considering these factors, the Pipeline Safety Act requirements should apply to ME1 as well as ME2 and ME2X. Thus, I find that when the pipeline began transporting highly

volatile liquids in 2014, Part 195 covered and applied to ME1. See 49 CFR § 195.1(a)(1). As ME1 was transporting HVLs during the period relevant to the instant Complaint proceeding and continues to transport HVLs, Part 195 may be generally applied to the facts in the instant case unless there is a specific and express grandfather clause to a specific section of Part 195.

E. Public Awareness and Emergency Response Training

The Code of Federal Regulations, Part 195.440 provides:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195.3).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

(1) Use of a one-call notification system prior to excavation and other damage prevention activities;

(2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;

(3) Physical indications that such a release may have occurred;

(4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and

(5) Procedures to report such an event.

- (e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.
- (f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid or carbon dioxide.
- (g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.
- (h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.
- (i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

49 CFR § 195.440.

The Pipeline Safety Improvement Act of 2002 (PSIA) requires each owner or operator of a gas or hazardous liquid pipeline system to implement a continuous public education program on the use of one-call notification systems and other damage prevention activities, the indications of and hazards of an unintended release of product from a pipeline, the public safety steps required after a release, and how to report pipeline product releases. Operators are strongly encouraged to document their compliance with PSIA by completing formal self-assessments of their public education program by comparing against guidelines in API RP 1162.

Mr. Baker argues Sunoco's public awareness program and emergency response training in Cumberland County is insufficient. He argues Sunoco cancelled a meeting with the public on July 10, 2018 at a Lower Frankford Township on short notice and that he and other individuals in Cumberland County were denied an opportunity to ask questions and request an alarm system along the pipelines. Complainant offers as evidence his testimony that he only received one safety pamphlet from Sunoco five years ago, when he should have received a mailing every two years. Complainant's testimony is corroborated by his son, Jon Baker, who also resides at 430 Run Road, Carlisle and who testified he lives within 1,000 feet of ME1.

Conversely, Sunoco admits that it did not attend a Township Supervisors' meeting held for the purpose of Sunoco addressing questions from the public. However, Sunoco argues it was not required by the current law to attend a Township Supervisors meeting. N.T. 303-304. Sunoco contends the Commission is considering whether or not it should promulgate regulations on this and other issues raised in the instant Complaint. *See Advance Notice of Proposed Rulemaking Order*, Docket No. L-2019-3010267, ANOPR Order at 19-20 (Order entered June 13, 2019) (requesting comments on “[r]equiring periodic public awareness meetings with municipal officials and the public”).

Sunoco argues that Complainant's argument consists of non-expert opinions and assertions (which are not competent evidence) that SPLP has not properly trained emergency responders. N.T. 58. Yet SPLP had in fact provided multiple trainings for first responders in Cumberland County. N.T. 109-110, 130-131. Thus, the standard for proof of fact is hard evidence in support, not what a complainant believes or is unaware. *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017). Given that there is no requirement that SPLP attend a Township Supervisors meeting, Complainant has failed to meet his burden of proof on this issue.

F. Disposition

1. Print Materials to the Public

Complainant Wilmer Baker is an adult individual residing within 1,000 feet of the Mariner East 1 pipeline right-of-way at 430 Run Road, Carlisle in Lower Frankford Township, Cumberland County, Pennsylvania. N.T. 25, 42, 372. Jon Baker, Complainant's son, is an adult individual also residing at 430 Run Road, Carlisle, Pennsylvania, less than 1,000 feet from the ME1 pipeline. N.T. 42, 128. Wilmer Baker received a safety manual entitled, “Important Safety Message” from Respondent five years ago. N.T. 42, 356-357, Complainant Exhibit 2. Mr. Baker did not receive the safety manual or other written publications from Sunoco every two years. N.T. 42, 369-370.

Ms. Pamela VanFleet is a tenant residing at 1705 McClures Gap Road, Carlisle, Pennsylvania. N.T. 159. Ms. VanFleet lives in Lower Frankford Township but she intends to move to Shermansdale, Perry County to move farther away from an exposed ME1 pipe. N.T. 159. Although an SPLP safety pamphlet was mailed to “Resident” at 1705 McClures Gap Road, Carlisle in September 2018, sometime in 2016 and in October or November of 2014, the tenant at the address, Ms. VanFleet, only received one of those pamphlets. SPLP Exhibit 28, N.T. 42, 171-172, 356-357. Ms. VanFleet apparently shares a mailing address with her landlord, which may account for her not receiving all of the safety pamphlets mailed to 1705 McClures Gap Road. N.T. 42, 356-357.

Joseph Perez is the Vice President of Technical Services for Operations and Engineering for Energy Transfer/Sunoco. SPLP Exhibit No. 2. Mr. Perez testified that he oversees the companies’ public awareness and emergency response teams. SPLP Exhibit No. 2 at N.T. 585, 589. SPLP contends that it mailed public outreach brochures in September 2018 to the affected public (all residents, businesses, farms, schools, and other places of congregation within 1,000 feet of each side of the pipeline), excavators, public officials, and emergency response organizations. SPLP Exhibit No. 2 at N.T. 590. These brochures were sent to:

- 40,046 members of the affected public;
- 16,338 excavators;
- 4,384 public officials; and
- 3,301 emergency response organizations.

SPLP Exhibit No. 2 at N.T. 593. SPLP claims it completes this mailing every two years consistent with PHMSA regulations, which includes American Petroleum Institute (API) Recommended Practice (RP) 1162 (incorporated by reference, 49 C.F.R. Part 195.3(b)(8)). SPLP Exhibit No. 2 at N.T. 591, 49 C.F.R. Part 195.440. SPLP avers that it goes beyond the minimum 660-foot planning area applied by API RP 1162 and PHMSA regulation 195.440(a) for public awareness mailings by using a 1,000-foot mailing zone. SPLP Exhibit No. 2 at N.T. 592. Sunoco witness Zurcher opined that SPLP’s public awareness in Cumberland County follows applicable regulations and industry standards. N.T. 303.

While I recognize the company sent out 64,069 brochures along the 350 mile pipeline and conducted MERO and CoRE training exercises, there is lack of evidence regarding return mailers, feedback surveys, evaluations or audits as to the effectiveness of the outreach programs. SPLP Exhibit No. 2 at N.T. 593. Additionally, Mr. Perez' testimony is conflicting as he testified in a separate proceeding that SPLP mailed public outreach brochures in September 2018 to the affected public including all residents, businesses, farms, schools, and other places of congregation within 1,000 feet of each side of the pipeline, excavators, public officials, and emergency response organizations. SPLP Exhibit No. 2 at N.T. 590-592.

However, in the instant proceeding, Mr. Perez neither confirmed nor denied Mr. Baker's claim that he received the safety manual five years ago. N.T. 341-366, 370. As of the date of the hearing, Mr. Perez had neither obtained Mr. Baker's address nor reviewed business records to determine whether or not a mailer was sent to Mr. Baker's address. N.T. 370. Although Mr. Perez read into evidence and adopted as his testimony a portion of the Answer and New Matter filed in the case that "Complainant's property is approximately over 1,300 feet from the Mariner East 1 pipeline route," the Answer admitted that Sunoco had sent a document entitled "Important Safety Message" to Complainant approximately five years ago. Answer and New Matter, N.T. 372.

Sunoco has cited evidence from the *Dinniman* case regarding its public awareness plan. In the *Dinniman* case John Zurcher, Principal at Process Performance Improvement Consultants, LLC (P-PIC), Managing Director at The Blacksmith Group, and Sunoco's expert witnesses regarding public awareness, hazard warnings, and pipeline safety, testified on May 10, 2018, that flyers were mailed to residents within a quarter of a mile of the Mariner East pipelines. Mr. Zurcher testified that the operator went further than an eighth of a mile to a quarter mile. *Dinniman*, Transcript dated May 10, 2018 at 419-420. A quarter mile converts into 1,320 feet. An eighth of a mile converts into 660 feet. One thousand feet falls somewhere between the two. I am taking official/judicial notice of these facts pursuant to 52 Pa. Code § 5.408.

It is possible that the mailing communication buffer is decreasing from 1,320 in May 2018 to 1,000 in July 2019. That might reconcile the conflicting testimony between Mr. Perez and Mr. Zurcher as to the parameters of the mailings. Possibly one of them is mistaken. Even if 1,000 feet surpasses a 660 foot basic minimum requirement, the inconsistency of the communications buffer is of concern. If there is a conflict of opinion, perhaps there are inconsistent mailings to individuals residing between 1,000 and 1,320 feet.

Regardless, if it is Sunoco's policy to mail safety pamphlets to those individuals residing within 1,000 or 1,320 feet of a pipeline right of way, then the fact that Mr. Baker received a pamphlet in the mail at least one time, is substantial evidence that he resides within the prescribed limit and should have been receiving the pamphlet or other written materials from Sunoco on a two-year interval as per Sunoco's public awareness plan. I find Mr. Baker has met his burden of proving his claim that Sunoco should have been but did not send him public information on a two-year interval per its public awareness plan in violation of the recommended practice of API 1162 as incorporated in 49 CFR § 195.440, as incorporated in 52 Pa. Code §59.33 and 66 Pa. C.S. § 1501.

Regarding testimony pertaining to mailings to 1705 McClures Gap Rd., while I agree SPLP generally mailed a safety pamphlet every two years from 2014 - 2018, the mailing was addressed to "Resident" instead of named individuals at the street addresses. SPLP 28. This outreach through printed materials could be improved if the company was made aware of apartments or shared mailboxes through a response card (API 1162, D.1.4) attached to its safety pamphlet. API 1162 addresses this at B.1.1 (affected public):

These databases [geo-spacial and zip-code] generally provide only the addresses and not the names of the persons occupying the addresses. Broad communications to this audience are typically addressed to "Resident." It is important to note that when contacting apartment dwellers, individual apartment addresses should be used, not just the address of the apartment building or complex.

API 1162, B.1.1.

Sunoco should conduct an internal or external audit of its public awareness plan and include if it is not already doing so response cards with its mailings, and evaluations of its plan, then enhance its plans accordingly. Sunoco will be directed to file a plan within 90 days of the date of entry of a final order, addressing: response cards, evaluations, audits, expansion of 1,000 feet communications buffer, use of social media, and corrective action regarding its printed material outreach.

2. Public Awareness/Education Meetings

Mr. Baker is a retired hazmat worker and welder with the United Steelworkers, who attended a Lower Franklin Township public meeting on July 10, 2018, hoping to complain to Sunoco representatives about the need for an alarm system, but Sunoco did not appear at the meeting. N.T. 42, 61, Complainant Exhibits 1, 7, 8 and 9. There were six Pennsylvania State Troopers present at the July 10, 2018 meeting. N.T. 42, 47. Mr. Baker then attended a Lower Frankford Twp. meeting on August 1, 2018. N.T. 49. Sunoco was not present at the August 1, 2018 meeting in Lower Frankford Township. N.T. 49.

Sunoco cancelled its attendance at the July 10, 2018 meeting less than 24 hours before the meeting was scheduled to begin because it expected a formal complaint to be filed by a resident of Lower Frankford Township regarding Sunoco's public awareness compliance and because it anticipated the media would be present. Complainant Exhibit 11, N.T. 377-378.

On August 13, 2018, the Cumberland County Board of Commissioners mailed a letter to Matthew Ramsey, Chairman of Sunoco L.P., requesting attendance at a county-hosted meeting to answer individual questions and concerns from their constituents about pipeline safety. N.T. 64-65, Complainant Exhibit 10.

On August 24, 2018, Matthew Gordon sent a letter to the Cumberland County Board of Commissioners indicating he received their August 13, 2018 letter to Matthew Ramsey, and stating that in Cumberland County more than 150 responders have participated in MERO training since 2014 including 12 Cumberland County government representatives and

representatives from Upper and Lower Frankford townships. Complainant Exhibit No.10. Mr. Gordon invited the Commissioners to attend a Paradigm CoRE-Ex Emergency Response Training to be held at the Harrisburg Best Western at 5:30 p.m. on Wednesday, September 12, 2018. Complainant Exhibit No. 10. SPLP had been informed on the eve of the meeting that landowners had invited the media to attend. N.T. 377-378.

On September 13, 2018, the Cumberland County Board of Commissioners sent a letter to Mr. Gordon thanking him for his letter, but indicating his non-response to an invitation for a public county-hosted meeting to answer questions from individuals and businesses from Cumberland County showed a lack of interest in addressing individual citizen questions and concerns. Complainant Exhibit No. 10. The September 13, 2018 letter again invited Sunoco to attend a public meeting hosted by the County for the purposes of detailing safety measures and answering questions of citizens. Complainant Exhibit Nos. 10 and 12.

On October 8, 2018, the Commissioners of Cumberland County sent Chairman Gladys M. Brown Dutrieuille a letter requesting the Commission “take whatever policy and/or regulatory action necessary to enhance the minimum federal ‘public awareness’ safety rules, promulgated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), to require Sunoco Pipeline to conduct regional and periodic public outreach meetings to address any citizen questions and concerns.” Complainant Exhibit No. 10. On November 8, 2018, Robert F. Young, Deputy Chief Counsel of the Commission’s Law Bureau, sent the Commissioners of Cumberland County a letter thanking them for their letter and indicating that he has strongly encouraged Sunoco to engage in discussions with the Commissioners to find a way to accommodate the request for Sunoco to participate in a county-hosted group meeting while addressing Sunoco’s concerns about pending litigation. N.T. 65, Complainant Exhibit No. 11.

At least one other meeting scheduled by Representative Greg Rothman, a state representative of Cumberland County to be held at the Cumberland County Courthouse in Carlisle, was ultimately cancelled for reasons unknown in November or December 2018. N.T. 365-366, 378-379, Complainant Exhibit No. 7 and 8.

On May 30, 2019, a public hearing regarding the public safety aspects of pipeline systems was held in Media, Pennsylvania before the Pa. House of Representatives Veterans Affairs and Emergency Preparedness Committee, which heard from the Director of Delaware County Department of Emergency Services and County Emergency Management regarding coordinating emergency and public training tailored to the specific needs for institutions and facilities located in the Delaware County communities. Complainant Cross Exhibit 26. The Mariner East 1 (ME1) (8-inch) and Mariner East 2 (ME2) (20-inch) pipelines are currently operational and the Mariner East 2X (ME2X) (16-inch) pipeline is currently under construction. N.T. 41.

Mr. Perez was only aware of the cancellation of the July 10, 2018 meeting in Lower Frankford Twp. and not of other cancellations. N.T. 366. Although Mr. Perez was aware Sunoco had conversations with Lower Frankford Twp. officials, he did not know if the officials or county commissioners had said Sunoco's outreach program was inadequate and he did not know Lower Frankford Twp. did not have a fire company. N.T. 362. Mr. Perez was unaware of the letter from Robert Young, Deputy Chief Counsel of the Commission's Law Bureau, to Cumberland County Commissioners until July 17, 2019, and he had not read the letter as of July 18, 2019. N.T. 364. Mr. Perez did not know whether Lower Frankford Twp. was a part of Sunoco's first response team. N.T. 361-362. Township Supervisors in Lower Frankford Township did not have Sunoco's safety pamphlet until Mr. Baker provided it to them on or about July 10, 2018. N.T. 42. Lower Frankford Township does not have a fire department, and it relies upon Upper Frankford Township Fire Company in Newville, Pennsylvania to service fire emergency calls. N.T. 361-364. When asked whether Sunoco would start having public outreach meetings in Cumberland County, Mr. Perez replied, "What we will continue to do is utilize our public awareness program to reach out to the public, and communicate accordingly as stated in our standards, which meets the regulatory requirements." N.T. 364. I find this to be a generic response and not very specific about addressing the immediate concerns expressed by Cumberland County's officials and residents, of which Mr. Perez did not have detailed knowledge.

On or about July 15, 2019, a few days before the hearing, Cumberland County Commissioners passed a resolution to “respectfully request that the Public Utility Commission order hazardous liquid pipeline operators to conduct public outreach meetings, at least once a year on a local or regional basis, for the purpose of outlining safety precautions and to address any individual citizen questions and concerns.” Complainant Exhibit No. 26 (Resolution Urging Public Awareness Meetings by Hazardous liquids Pipeline Operators).

Although Sunoco’s witnesses have testified that they have a public awareness program that engages the community, utilizing a variety of methods, including meetings, mailings, and specialized training (SPLP Exhibit No. 2 at N.T. 589-590), the evidence in this case is substantial to show there have been insufficient public outreach meetings in Cumberland County. N.T. 129, 126, 132, 136-148, Complainant Exhibit Nos. 10 and 11. Sunoco is avoiding media presence and potential litigation and has cancelled at least one public meeting at Lower Frankford Township and another meeting in the Borough of Carlisle was cancelled for unknown reasons. Sunoco’s excuses do not constitute good cause for cancellation, especially on short notice within 24 hours of a scheduled public meeting.

A public utility should want to meet with the public and use the media to get its message out to the public. The utility is a private company benefitting from easements upon and the condemnation and construction activities on some private citizens’ land in Cumberland County and its customers and stakeholders are the public. See *In Re: Condemnation by Sunoco Pipeline, L.P. of Permanent and Temporary Rights of Way for the Transportation of Ethane, Propane, Liquid Petroleum Gas and other Petroleum Products in the Township of North Middleton, Cumberland County, Pennsylvania over the lands of R. Scott Martin and Pamela S. Martin, Douglas M. Fitzgerald and Lyndsey M. Fitzgerald, Harvey A. Nickey and Anna M. Nickey*, 143 A.3d 1000 (Pa. Cmwlth 2016) (*en banc*), *appeal denied*, 164 A.3d 485 (Pa. 2016).

Communication benefits not only the public, but also the utility as a well-informed public understands pipeline markers and is less likely to accidentally damage a pipeline or its appurtenances. The utility benefits from a well-informed public that knows the phone numbers or websites to contact to notify the operator of witnessed leaks, exposed pipe,

subsidence events, damaged equipment, etc. along its pipeline right-of way. An informed public and well-trained emergency officials reduce the likelihood of injury or damage to everyone and all property involved. For example, parents need to be educated on what actions they should take if there is a leak between the parent and his/her child(ren) at school. School districts need to know whether they should shelter in place, shut down air handlers,⁶ or whether they should evacuate and in what direction in the event of leaks near their schools. Hence, the utility owes a duty to inform and educate those members of the public residing, working, and congregating near HVL pipelines owned by the utility within the meaning of API 1162 as incorporated by 49 CFR 195 as well as 52 Pa. Code § 59.33(b).

Complainant, through his testimony and the testimonies of Mr. Blume, Jon Baker, Mr. Robinson, Ms. Van Fleet, as well as the letters and Cumberland County Resolution made a *prima facie* showing that SPLP's public awareness outreach in Cumberland County is not meeting regulatory requirements. The township scheduled an in-person meeting with SPLP for the purpose of general public education/awareness on July 10, 2018, and the last minute cancellation with no evidence of a subsequent meeting being held thereafter is inconsistent with industry standards and PHMSA regulations. N.T. 236. If Sunoco were intent upon attending meetings as it claims, it could have produced some evidence at the July 17-18 hearing, held one year after the Complaint was filed, showing public education meetings had been held somewhere in Cumberland County. As there was no evidence of a rescheduled meeting occurring, I make the adverse inference none was held in Cumberland County. The failure to produce evidence raises a permissible inference, not a mandatory inference or a presumption. 1 Packel & Poulin on Pennsylvania Evidence § 427 (4th ed. 2014).

There is a conflict between Mr. Baker, Mr. Blume, Ms. VanFleet, Jon Baker, Mr. Robinson, Lower Franklin Twp. and Cumberland County Commissioners' interests in Sunoco attending scheduled public education/awareness meetings versus Sunoco Pipeline, L.P.'s interests in avoiding media coverage of such meetings and in avoiding speaking to individuals it believes will file or have filed complaints against the utility.

⁶ An air handler, or air handling unit, is a device used to regulate and circulate air as part of a heating, ventilating and air-conditioning system.

As a matter of public policy, it is socially desirable for Sunoco to be compelled to communicate with the Cumberland County Commissioners and attend a public awareness/education program as scheduled by Lower Frankford Twp., the Cumberland County Commissioners, or State Representative Rothman for the benefit of educating the public. The Code of Regulations (CFR) 195.440 must be adapted to specific conditions evidenced here. Each utility industry has a unique history and confronts a number of specific problems. There may be national energy policy codified in the code of federal regulations, but the Pennsylvania Public Utility Commission as an independent regulatory commission is in a position to address these more localized problems such as those complained of in Cumberland County. It is the duty of regulation to harmonize the privilege of a private utility with the public interest. In applying regulation Part 195.440, I am attempting to create harmony where there is conflict of interest.

Although Sunoco defends its actions comply with the minimum current federal regulations, the public in Cumberland County is demanding more. For regulation to be current, public policy changes as well. Public utilities should meet with the public and emergency responders upon request in addition to planned meeting or training exercises as the utility has a duty to educate. Sunoco should tailor its communications coverage area to fit its particular pipelines, of which ME1, ME2 currently operate in Cumberland County, and ME2X is under construction in Cumberland County. This specific circumstance suggests that the potential impact and consequences in a high consequence area (HCA)⁷ of Cumberland County means a wider coverage area than that distance required in API 1162 baseline distance of 660 feet. Although API 1162 recommends pipeline operators communicate within a minimum coverage area distance of 660 feet on each side of the pipeline, or as much as 1,000 feet in some cases, API 1162, B.1.1 also provides:

The transmission pipeline operator should tailor its communications coverage area (buffer) to fit its particular pipeline, location and potential impact consequences. At a minimum, operators should consider areas of

⁷ A high consequence area is a location that is specifically defined in pipeline safety regulations as an area where pipeline releases could have greater consequences to health and safety or the environment.

consequence as defined in federal regulations. Where specific circumstances suggest a wider coverage area for a certain pipeline location, the operator should expand the coverage area accordingly.

API 1162, B.1.1.

Accordingly, I find specific circumstances warranting an Enhanced Public Awareness Program⁸ taking into consideration the probable distance from the ME1, ME2, and ME2X within which one might sustain a first or second degree burn as a result of a rupture and ignition of HVLs on one of the pipelines. Sunoco should expand its safety pamphlet coverage beyond 1,000 feet from the pipeline, and consider not only notifying schools within the buffer zone, but also to work with school districts to notify parents of students attending those schools as to what to do in the event of an emergency. Many school districts in Pennsylvania have an alert system to which parents subscribe, which automatically sends out alerts via text messaging, e-mails and phone calls to parents and other interested members in their districts. Quick access to such social media distribution lists could be beneficial to all involved.

Through its “Public Awareness Plan” (PAP) as submitted to the Commission, Sunoco acknowledges under 7.4.1 (Communication Actions for the Affected Public) that community meetings, open houses (supplemental as needed) are a part of its internal operating plan. It would assist the Commission if evaluations of its PAP were made available for review. Therefore, I find in favor of Complainant on this issue.

G. Emergency Training

Sunoco has an emergency response outreach and training program which provides information for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency. N.T. 236. SPLP made some emergency training available to first responders in Cumberland County and intended to provide training in the future. N.T. 219-233, 354-356; SPLP Exhibit Nos. 2-3, 8-18, 20, 22, 23. SPLP invites first responders and others

⁸ The concept developed in RP 1162 for assessing particular situations in which it is appropriate to enhance or supplement the baseline public awareness program. API 1162, 1.3.5.

to its training sessions. N.T. 225-226. Mr. Baker has not attended any CoRE or MERO meetings hosted by Sunoco Pipeline, L.P. N.T. 109-111.

SPLP's emergency management expert, Mr. Noll, testified that SPLP's emergency response outreach and training program is adequate and provides all information that is necessary for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency, Lower Frankford Township does not have a fire company. Mr. Noll and Mr. Perez presented evidence of trainings SPLP made available to first responders in Cumberland County over the past six years. N.T. 219-233, 354-356, SPLP Exhibit Nos. 2-3, 8-18, 22, 23. SPLP invites first responders, but Lower Frankford Twp. has no fire department. N.T. 225-226.

It is difficult for me to evaluate the effectiveness of the MERO or CoRE training exercises as there is lack of evidence of evaluations and no emergency officials testified that they require more training. However, to the extent emergency responders and officials are requesting additional training beyond the scheduled CoRE and MERO exercises, Sunoco should accommodate these requests.

H. Early Warning Alarm System and Odorant

Mr. Baker requested an alarm system to warn individuals residing within 1,000 feet of a Mariner East pipeline and an odorant to be added to the HVL's in the pipeline. Testimony on these issues consisted of whether odorant or alarm systems might be a good idea and/or could be done. N.T. 104, 141, 147, 186-188.

Conversely, Sunoco argues that none of the testimony is relevant, persuasive or competent evidence to require SPLP to do either of these things. The regulations applicable to SPLP's Mariner East pipelines do not require odorant or public alarm systems. N.T. 310, 322 (Zurcher), 343-344 (Perez). Further evidence of the non-requirement of odorant and alarm systems is that the Commission is considering whether there is any need or reason to promulgate regulations on these issues. *See Advance Notice of Proposed Rulemaking Order*, Docket No.

L-2019-3010267, ANOPR Order at 19-20 (Order entered Jun. 13, 2019) (requesting comments on “notification criteria” and “odorant utilization”).

Sunoco argues that the Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory change must take place through the notice and comment procedures with accompanying governmental review, not administrative adjudications. Thus, what witnesses may think the law or regulations should require in terms of safety is not and cannot be the standard for adjudicating this Complaint.

Disposition

Mr. Baker’s requests for an early warning alarm system for residents residing within 1,000 feet of the pipeline and an odorant are worthy of consideration; however, further notice and opportunity to be heard ought to be provided to interest groups and stakeholders to ensure due process rights are not violated before there are such requirements. There are no current federal regulations nor any state regulations specific to Pennsylvania requiring Sunoco to either place an early warning system at specific distance intervals across its pipelines, nor to place an odorant in the HVLs being transported. The Commission’s Bureau of Investigation and Enforcement has submitted a comment requesting odorization or in the alternative enhance leak detection to identify small leaks. *See Bureau of Investigation and Enforcement (I&E) Safety Division’s Comments to Advance Notice of Proposed Rulemaking Order*, Docket No. L-2019-3010267, ANOPR Order at 19-20 (comments submitted August 28, 2019) (requesting “odorant utilization” on page 9).

Mr. Blume testified that his wife is handicapped and it will take considerable time to escape from an HVL pipeline-related emergency. He requests an odorant and alarm system for these reasons. N.T. 142. However, the Commission’s regulatory standards must be sufficiently definite to permit decisions to be fairly predictable and the reasons for them to be understood. Additionally, the Commission is not a federal court, which is designed to make such

determinations regarding violations of the Americans With Disabilities Act.⁹ *See also, Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30 (entered May 19, 1999) (*MAPSA*), and *Mid-Atlantic Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa.Cmwlth. 2000), wherein the Commonwealth Court affirmed that the Commission did not have jurisdiction to find a violation of the federal Unfair Trade Practices Act. Accordingly, the Commission has no jurisdiction to find Mrs. Blume to be disabled within the meaning of the ADA or to direct Sunoco to provide her with an ADA accommodation for her walking disability, such as an alarm or odorant as requested by Mr. Blume.

While I agree with Mr. Blume and Mr. Baker that a Sulphur odorant (similar to one added to natural gas distribution service lines) might notify Mr. and Mrs. Blume and Mr. Baker of a small leak in the pipeline through the olfactory sense of smell, this alone is insufficient to support a finding that the operator has violated a statute, regulation or Commission order requiring same.

Their testimony is refuted by Mr. Zurcher, an odorant expert in the industry who testified that the PHMSA and the National Transportation Safety Board (NTSB) concluded that the addition of odorant to transmission pipelines in the United States is of lesser value than performing inline inspection and other integrity management program requirements to find any defects in the pipe before it leaks. N.T. 304. Additionally, he testified that “they” have no record of any incident that could have been prevented or was in any way related to odorization or lack of odorization on a transmission pipeline. N.T. 305. Further, Dr. Zurcher testified odorant is Sulphur based and corrosive to the internal surface of the pipe, which may cause more problems than solving as a warning system. N.T. 305.

⁹ The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The current text of the ADA includes changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA is published in the United States Code. The Federal Communications Commission is the federal agency regulating telephone relay services.

Dr. Zurcher also testified that farmers are not happy with alarm pole structures on their fields and that the methane gas from cow manure sets off an alarm's detector. N.T. 306-307. Swamps and wetlands produce gas that will set off a detector. N.T. 307.

Given these conflicting interests between the operator and resident-stakeholders near the Mariner East pipelines, I find there are sub-issues to be considered and interest groups should have an opportunity to be heard through a rulemaking procedure at Docket No. L-2019-3010267 before requiring Sunoco to install alarm systems and place odorant in its pipelines.

On June 13, 2019, the Commission initiated a regulatory rulemaking proceeding through the issuance of an Advance Notice of Proposed Rulemaking Order. *Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. code Chapter 59*, Docket No. L-2019-3010267 (Order entered June 13, 2019). The Commission is currently reviewing comments submitted by stakeholders and interest groups regarding numerous issues, including those pertaining to operators' interactions with local government officials regarding emergency response planning, requirements of periodic public awareness meetings with municipal officials and the public, and Pennsylvania specific enhancements to public awareness programs. *Id.* at 19.

Through a rulemaking process, Commission staff will mediate and manage negotiations between interest groups and conduct factual research that may reach consensus opinions on proposed rules. *Id.* If consensus is reached, and in the absence of good reasons not to do so, relevant regulations can be published in proposed rulemaking orders and as a consequence, all interested parties will be familiar with the details of the rules and their development. Even if there is not a consensus on every regulation, there is at least formalized due process before requirements of an odorant and/or alarm systems are placed upon the operator. Therefore, I find in favor of Sunoco on this issue.

I. Imported Pipe

Complainant referred to “steel dumping” for his claim that foreign manufacturers of steel pipe are selling “illegal pipe” at below-cost prices on the American market. N.T. 96. Complainant also asserts that SPLP should acquire its pipes from local manufacturers in Steelton, Pennsylvania. N.T. 112-113. Complainant presented Complainant Exhibit No. 18 to support his contentions. N.T. 112-113.

Conversely, Sunoco argues that Complainant’s “steel dumping” claims are incorrect and irrelevant because this is not an issue over which the Commission has jurisdiction. Investigations into trade and imports that Complainant raises and references in Complainant Exhibit No. 18 are carried out pursuant to the Tariff Act of 1930, 19 U.S. Code Chapter 4. They are explicitly within the federal jurisdiction of the U.S. Department of Commerce and the U.S. International Trade Commission pursuant to 19 U.S.C.A. § 1330 *et seq.*

Disposition

Complainant fails to cite to any convincing authority under which the Commission has jurisdiction to require SPLP purchase its pipes or steel from only American companies. N.T. 276, 343-344. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm’n.*, 43 A.2d 348 (Pa. Super. 1945) (*Pittsburgh*). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967) (*Roberts*). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) (*Hughes*). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101 *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (*Feingold*).

I find Sunoco used some but not all American-made steel and pipe in repurposing ME1 and in constructing ME2. SPLP Exhibit No. 4 (“Steel cast and coils rolled at US Steel, Gary, IN; pipe manufactured at Stupp Corporation, Baton Rouge, LA.”). However, the Commission has no authority to direct Sunoco replace any foreign made steel pipes or fittings with American-made steel. Additionally, the Commission has no authority to create import tariffs on steel, quotas or other restrictions on foreign market competition regarding the steel industry. Accordingly, I find in favor of Sunoco on this issue.

J. Pipeline Design Standards

Complainant testified that he believes SPLP uses substandard steel based on an article which Complainant failed to show had a relationship to SPLP’s pipelines or the steel of which they are constructed. N.T. 82-8, Complainant Exhibit 15, a paper authored by an advocacy group, Plains Justice, regarding steel pipeline operators used (not SPLP or Energy Transfer) in 2007-2009. Complainant alleged that steel graded “X65 is below minimum standard for this type of operation by the federal government, but they allow it” calling this a “loophole.” N.T. 85. Complainant testified that SPLP is using pipes marked X65 in the construction of its ME2 pipeline and opined that these are below standard and X70 is the minimum standard SPLP should use. N.T. 86, 97-98, Complainant Exhibit No. 19. There was no evidence offered to show Sunoco used pipes made from Welspun, the company at issue in the article.

Complainant’s expert witness in Chemistry, Ms. DiGiulio, testified that she did not conclude that SPLP was in violation of any regulation regarding the strength/integrity of ME2 or ME2X pipes. N.T. 197-202. I agree with Sunoco that Complainant failed to present a *prima facie* case on this issue.

Even if I were to find Mr. Baker had made a *prima facie* case, this was successfully refuted by the testimonies of Sunoco’s witness Mr. Zurcher and Mr. Perez, who I find to be credible. Mr. Zurcher testified that SPLP’s pipes are not substandard and based solely on these design standards these pipelines could be operated well above the maximum operating pressure SPLP uses and will use. As Mr. Zurcher testified:

This is not substandard at all. There are different values for the yield strength and there are different values for wall thickness and different values for the diameter, but we're required by regulation to go through this formula, and then you are limited to your operating pressure based on that upper limit of the formula. There's no substandard part to this at all, this is all good pipe.

N.T. 284. Mr. Perez testified that the maximum operating pressure (MOP) that SPLP operates and will operate at for ME2 and ME2X is 1,480 PSI. N.T. at 349. Mr. Zurcher's calculations showed based solely on the design factor issue Complainant raised that the pipes depicted in the photographs presented by Complainant could be operated at higher pressures. Mr. Zurcher also explained that while the specified minimum yield strength of this pipe may be 70,000, SPLP Exhibit No. 5 shows:

[t]he actual yield strength of that pipe is between 77,000 and 82,000. . . So it's actually . . . ten percent stronger than that specified minimum yield strength, so we're buying really tough materials here; this is really tough stuff intended to safely transport gas or hazardous liquids.

N.T. 285.

Moreover, the pipe in question is actually the PSL-2 standard, a higher standard than what the regulations require.

PHMSA requires pipeline operators to buy pipe that meets the API-5L standard, but they only require you to meet the minimum requirements of that standard. There is a much more rigorous portion of that standard and it's designated PSL-2. This is a much more rigorous part of the standard. There is additional testing that's done, there's additional certification tests done and so forth and so on. So all this pipe, if you'll notice on these mill test certificates, met the PSL-2 requirements, and that includes the chemistry and the strength of the pipe.

N.T. 285.

Mr. Zurcher refuted Complainant's argument that the issues present in the Plains Justice Article (Complainant Exhibit No. C-15) could be present here. He testified in pertinent part:

[I] did write the pressure test standard for API-1102. These companies that we're talking about did not follow that standard. Sunoco follows the standard. But what I want to explain to you is that during the pressure test, you can actually monitor the pipeline to see if it's expanding, and if it does expand, you're going to shut down the pressure test and go back and try to figure out what the issues were and correct it or lower the pressure in the pipeline.

N.T. 289-291, SPLP Exhibit Nos. 32 and 31.

Mr. Perez concurred with the facts Mr. Zurcher presented and relied upon and concurred with Mr. Zurcher's conclusions. N.T. 343-344. Accordingly, Mr. Baker's testimony is successfully refuted. I find in favor of Sunoco on this issue.

K. Pipeline Exposure

Transportation federal regulations at 49 CFR Part 195.401(b) provide that an operator must make repairs on its pipeline system according certain requirements regarding integrity and non-integrity management guidelines. 49 CFR Part 195.210(b) (pipeline location) provides that no pipeline may be located within 50 feet of any private dwelling or any industrial building or place of public assembly in which persons work, congregate or assemble unless it is provided with at least 12 inches of cover in addition to that prescribed in § 195.248. Part 195.248 (cover over buried pipeline) provides that all pipe must be buried so that it is below the level of cultivation. "Except as provided in paragraph (b) of this section, the pipe must be installed so that the cover between the top of the pipe and the ground level, roadbed, river bottom or underwater natural bottom . . . as applicable complies with the following table: . . . drainage ditches . . .36 (inches) for normal excavation." 49 CFR Part 195.248.

Complainant presented evidence that the ME1 pipeline has a small exposure near McClures Gap Road, Cumberland County in a rural area and is approximately a quarter of a mile

from the nearest building. Complainant's witness Ms. Van Fleet, who lives in Lower Frankford Township, Cumberland County, N.T. 159, testified that she sent an email to Ian Woods at PHMSA in October 2016 regarding an exposed pipeline on the property where she lives. N.T. 162, Complainant Exhibit No. 3. This shows that Ian Woods responded that SPLP had informed PHMSA that they had engaged an engineering firm to study the pipeline exposure and that after the study was done, SPLP would apply to DEP for permits to remediate the exposure. N.T. 162-163, Complainant Exhibit No. 3. Ms. Van Fleet also stated she took the pictures of the exposure in Complainant Exhibit No. 24. N.T. 163. Ms. Van Fleet stated the pipeline is still exposed. N.T. 163-164. Ms. Van Fleet's testimony is credible and SPLP does not dispute this.

Mr. Perez testified that there is a three-foot long section of exposure where the top quarter of the pipe is exposed. N.T. 301, 329. Mr. Zurcher explained that pipeline exposures are a common occurrence, that mere exposure is not a violation of pipeline safety law or regulation, and that when an exposure occurs, the operator must evaluate it and remediate it if and when necessary. N.T. 300-301. Mr. Zurcher testified that the exposure is not hazardous and does not create a potential for damage to the pipeline:

The one I looked at is not a hazardous situation, it's not in a stream where there are logs coming down a river or big boulders being forced down a river or something that would damage the pipeline. The potential for damage doesn't exist in this particular location, in my opinion.

N.T. 301, 329.

Mr. Perez explained the steps SPLP has taken and will take to remediate this exposure and that because this exposure is in a wetland "drainage ditch," SPLP requires and is awaiting approval of a permit from the DEP to remediate this exposure. N.T. 350-351. Mr. Perez does not expect any debris to be flowing that would impact the pipeline coating. Sunoco is inspecting this exposed pipe on a regular assessment schedule and is employing a "rock bane solution" as approved by the DEP. N.T. 352-353.

The fact there is a three-foot exposure of ME1 pipe on McClures Gap Road is insufficient evidence for the injunctive relief of a directive to replace ME1 with American-made

steel pipe. Sunoco has identified mitigative measures to protect the high consequence area surrounding the exposed pipe on McClures Gap Road and is seeking permits from the DEP to remedy the exposure. Sunoco has established an inspection/assessment schedule for this section of pipe until it receives the required permits before construction begins. This appears to be in compliance with 49 C.F.R. Parts 195.401(b)(general repair requirements), 195.412 (inspection of rights-of-way and crossings under navigable waters), 195.422 (pipeline repairs), and 195.452(e)(pipeline integrity management in high consequence areas). There is no evidence the ground under the pipe has given way to subsidence events or that the pipe is unsupported from beneath. There is no evidence to suggest the exposed pipe is within 50 feet of a private dwelling or any industrial building or place of public assembly. As the Commission's Bureau of Investigation may wish to investigate this exposed pipeline further, a copy of this decision will be served upon the Bureau of Investigation and Enforcement for further review.

L. Welding Requirements

Complainant testified regarding a PHMSA Advisory Bulletin regarding girth welds from nine years ago as evidence that SPLP's pipes for ME2 and ME2X are substandard with end points that expand too much, and that SPLP is trying to bolster the integrity of the substandard pipes by welding the ends of pipe segments together and riveting sleeves to cover its welds. N.T. 90-92; Complainant Exhibit No. 17. He opined based on a picture, SPLP Exhibit No. 27 at page 1, that SPLP was putting a sleeve or collar over the ends of its pipes over the weld and then riveting the sleeve over the pipe for extra strength. N.T. 92-95. Complainant did not see SPLP's pipes in person and he relied upon a picture, which he did not take. N.T. 95.

Conversely, Sunoco argues that although Mr. Baker has 37 years' experience in welding, he has no experience or qualifications in pipeline welding. N.T. 76-77. Complainant is not an engineer and does not have a college degree. N.T. 74. He has no education in fluid mechanics, alarm systems for pipelines, or any other degrees. N.T. 74-75. Complainant has never worked for a pipeline company. N.T. 76. Complainant admitted that he had not read the American Society of Mechanical Engineers (ASME) guidelines and had not heard of the National Association of Corrosion Engineers. N.T. 77-78. His opinion that sleeves or collars

were riveted over the pipe ends carries little weight and has been successfully refuted by the opinions of Mr. Zurcher and Mr. Perez.

Disposition

I agree that Complainant failed to present a *prima facie* case on this issue. Even if I were to find he established a *prima facie* case on this issue, SPLP has successfully refuted these claims of welding practices in violation of 49 CFR Part 195.214.

As Mr. Zurcher explained with respect to the photograph at issue (SPLP Exhibit No. 27):

This is two joints of pipe that have been welded together. Down the middle you can see a very impressive weld, the girth weld. What looks to be a little bit of red or so forth on either side is actually the bare steel, and then to the right of that is actually the coating system, the external coating system, that was put on the pipe during the manufacturing process.

I will point out that there are actually two different coating systems on this particular piece of pipe. What you see in blue is actually a fusion bonded epoxy coating that is put on there for corrosion control purposes. What looks to be that light tan or maybe white on the copy that you have is a second coating system, it's an abrasion resistance overlay, so that's a second coating system.

Now, what you see, what Mr. Baker identified as what looked to him like rivets in the pipeline, those are not rivets at all. If you will look closely, you can actually see the blue, which is the FBE coating, under there, so the pipe was not penetrated. It's against the regulations to rivet a pipeline.

...

They're just scrapes of the coating, is all they are, Your Honor. There is no detrimental aspect to that at all.

N.T. 293-94.

Mr. Zurcher explained page 2 of SPLP Exhibit No. 27 demonstrated what left the marks in the coating that Complainant alleged were rivets:

That is what caused those marks in the pipeline coating. You will see that this is what's called a line-up clamp. This is used on the pipeline projects, so as I 'm about to weld two pieces of pipe together, I put this clamp around it to hold it in place, and you can see the chain on that clamp, and that chain is what left those marks in the coating. Now, that coating will be completely removed and replaced with new coating before the pipeline is put in the ground; and the coating quality will be checked again before that pipeline is put in the ground. So this is not an issue at all. This has nothing to do with pipe integrity or manufacture. It's a mark on a coating from a line-up clamp that would be or was the coating was replaced.

BY MS. SNYDER:

Q. Is there any kind of sleeve used on this pipeline?

A. No, there is not, none of these pipelines. No sleeve at all.

N.T. 295. Mr. Zurcher also explained that this marking on the coating from clamping to perform welding was repaired and inspected before the pipeline was placed in the ground and that this is typical industry practice – “how it’s done.” N.T. 316-317; 318.

Moreover, there is credible evidence to find SPLP x-rays 100% of its welds on ME2 and ME2X to the point of complete construction:

Again, every single weld that's done is then, in the Sunoco case, it's actually x-rayed to make sure that those welds are, in fact, satisfactory, near perfect. Similar to the x-ray you get on a tooth, it looks for cavities and cracks. The same type of things with this, we're looking for cavities and cracks in the weld. If it passes, that's good. All of those procedures and processes for x -ray and non-destructive testing again are enforced with rigorous standards that the industry, in conjunction with PHMSA and other stakeholders, has developed, and then all the technicians that do the x - rays are actually qualified as well to do that. PHMSA regulations have a lot on qualifications of the welders and the procedures and so forth and so on. A very rigorous, very specialized process.

Q. I think you mentioned Sunoco x -rays every single one of its welds. How many welds, or what percentage, is Sunoco required to x-ray?

A. For the pipelines going across the countryside, they're only required to x -ray 10 percent of the welds, so, again, Sunoco is x -raying 100 percent of the welds. If any defect is found in the weld, they'll repair it in accordance with the industry standards, x -ray it again, and confirm again that it's good, so this process goes on over and over again for every weld.

JUDGE BARNES: Are you specifically referring to the Mariner East 2 and 2X?

THE WITNESS: Yes. The 2X to the point of what the construction has been so far and what the intent is in the future.

N.T. 296-297. Mr. Perez concurred with the facts Mr. Zurcher presented and relied upon and concurred with Mr. Zurcher's conclusions. N.T. 343-344. Accordingly, I find in favor of Sunoco on this issue.

M. Civil Penalty/Injunctive Relief

I find a violation of the recommended practice of API 1162 as incorporated in 49 CFR § 195.440, as incorporated in 52 Pa. Code §59.33 and 66 Pa. C.S. § 1501. Accordingly, as there is a violation, a civil penalty analysis is undertaken.

Section 3301(c) (Civil Penalties for Violations) provides in pertinent part.

(c) Gas pipeline safety violations.--Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

66 Pa. C.S. § 3301(c).

Section 3301(c) mirrors the guideline of 49 U.S.C.A. § 60122(a)(1), which provides:

(a) General Penalties.—

(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$200,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is \$2,000,000.

49 U.S.C.A. § 60122(a)(1).

Section 60118(a) provides:

(a) General Requirements.—A person owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title;

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a)–(d) of this title; and

(4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c).

49 U.S.C.A. § 60118(a).

Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that “these factors and standards will be utilized

by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-0092409 (Final Order entered February 10, 2000).

In the instant case, the fact that Mr. Baker did not receive safety pamphlets every two years as he should and Ms. Van Fleet also did not receive safety pamphlets every two years appears to be more akin to administrative error than to fraud or misrepresentation. The civil penalty should not be more than \$200,000. 66 Pa. C.S. § 3301(c). The fact that Sunoco cancelled a scheduled public awareness meeting was an intentional act. However, there is no evidence of personal injury directly caused by the cancelling of the meeting. There was no Commission-investigation, so the seventh factor will not be applied to the facts of this case.

There is evidence of heightened public sensitivity to pipeline emergencies and significant right-of-way encroachments including new construction occurring in Upper and Lower Frankford Townships, Cumberland County; however, there is lack of evidence to show that the Company is modifying internal operating procedures to improve its public education and emergency training in Cumberland County to meet the public's greater demand and this conduct is at least negligent if not intentional. The Vice President of Technical Services for Operations and Engineering testified he was unaware of Cumberland County Commissioners' letter request for further public awareness meetings within the County and when asked if he intended to schedule a public awareness meeting in the County, he offered a very generic response. This shows a "one size fits all" approach to public awareness rather than an enhanced public outreach program and perhaps a lack of proper record-keeping or internal controls designed to meet regulatory compliance within the Company. It is unknown the number of customers or stakeholders affected by the conduct. I am unaware of any past Commission decisions in similar situations. A civil penalty of \$1,000 to deter future violations is within the statutory guideline of

66 Pa. C.S. §3001(c) and is appropriate given the injunctive relief ordered consistent with this Initial Decision.

V. CONCLUSION

Mr. Baker's Complaint will be granted in part and denied in part. The Commission has the authority to order relief and require action where Respondent has violated the law or regulations. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984); *Township of Spring et al. v. Pennsylvania-American Water Company*, Docket Nos. C-20054919 et al, 2007 WL 2198196 at *6 (Order entered July 27, 2007). I find the pipeline operator has acted outside the guidelines of API Recommended Practice 1162 as incorporated in 49 CFR Part 195.440 without good cause, thus violating the Public Utility Code at 66 Pa. C.S. § 1501, and Commission Regulation at 52 Pa.Code § 59.33.

As there have been no personal injuries or property damage as a result of the violation and the number of individuals affected small, a civil penalty in the amount of \$1,000 is appropriate given an additional directive designed to enhance and improve the pipeline operator's public awareness and emergency training.

As there is heightened public sensitivity to pipeline emergencies and significant right-of-way encroachments including new construction occurring in Upper and Lower Frankford Townships, Cumberland County, pursuant to API Recommended Practice 1162 as incorporated in 49 CFR Part 195.440, 66 Pa. C.S. §1501, and 52 Pa.Code § 59.33, the pipeline operator is directed: 1) to contact the Lower Frankford Township Supervisors and Cumberland County Commissioners; 2) to schedule a public awareness/education meeting to be held in Cumberland County; and 3) absent exigent circumstances, to make an appearance at the scheduled meeting. The pipeline operator is further directed, in the public interest, to provide additional training to emergency officials/responders in Cumberland County as requested in a timely manner in addition to its CoRE and MERO training.

Additionally, Sunoco is directed to file within 90 days of a final order a plan to enhance its public awareness and emergency training plans and record keeping including but not limited to addressing: 1) the broadening of communication coverage areas beyond 1,000 feet; 2) shortening intervals for communications; 3) use of response cards and social media; 4) supplemental program enhancements to emergency training programs; 5) internal or external audits to evaluate the effectiveness of its programs; and 6) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits.

Complainant's requested relief for an early warning alarm system for residents residing within 1,000 feet of the Mariner East pipeline facilities and a directive that an odorant be added to the highly volatile liquids of ethane, butane and propane being transported is denied as these requests should be vetted through a rulemaking proceeding at docket number L-2019-3010267 in order to not deprive the pipeline operator and other interest groups a right to due process. The request for an alarm and odorant as an accommodation under the Americans With Disabilities Act is denied for lack of jurisdiction to grant such accommodation relief.

Complainant's request that the operator be directed to replace "an 80 year old pipe," which I infer means Mariner East 1 pipeline facilities, with American-made steel is denied for lack of jurisdiction to direct the relief requested.

VI. CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has jurisdiction to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101- 60503 and as implemented at 49 CFR Parts 191-193, 195 and 199.

2. A public utility transporting hazardous liquids may be subject to the civil penalties provided under Federal pipeline safety laws at 49 U.S.C.A. §§ 60122(a)(1) and 60118(a), as adjusted annually for inflation.

3. Complainant must prove SPLP violated a law or regulation to obtain any relief. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

4. In order for the Commission to sustain a complaint brought under 66 Pa. C.S. § 1501, the utility must be in violation of its duty under this section. Without such a violation by the utility, the Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *Township of Spring et al. v. Pennsylvania-American Water Company*, Docket Nos. C-20054919 et al, 2007 WL 2198196 at *6 (Order entered Jul. 27, 2007).

5. Complainant has the burden of proof. 66 Pa. C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

6. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a).

7. To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

8. A showing to satisfy the burden of proof must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, than that presented by the Respondent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

9. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

10. Upon the presentation by the Complainant of evidence sufficient to initially establish a *prima facie* case, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now must provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

11. While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

12. To find a safety violation regarding pipelines, there must be a violation of the applicable regulatory standards (here 49 C.F.R. Part 195, N.T. 292). *See, e.g., Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, No. C-2014-2421019, 2014 WL 6807073 (Pa. PUC Oct. 24, 2014).

13. The applicable public awareness and emergency responder regulations, 49 C.F.R. Part 195.403, 49 C.F.R. Part 195.3(b)(8) (incorporating American Petroleum Institute (API) Recommended Practice (RP) 1162), 49 C.F.R. Part 195.440, do expressly require an enhancement of a baseline public awareness program if there is heightened inquiry and construction in high consequence areas.

14. American Petroleum Institute (API) Recommended Practice (RP) 1162 provides that a transmission line operator should tailor its communications coverage area (buffer) to fit its particular pipeline, location and potential impact consequences and where circumstances suggest, should expand its coverage area accordingly. API RP 1162 at 6.1(considerations for supplemental enhancements for the baseline program).

15. The API RP 1162 at 6.1 recommends a “one-size-fits-all” public awareness program across all pipeline systems is not the most effective approach and recommends: 1) increased frequency to stakeholder audiences on a more frequent basis (shorter interval); 2) enhanced message content and delivery/media efforts to reach intended audience; 3) broadened coverage areas along the pipeline route; and 4) consideration of other relevant factors including high consequence areas, environmental consideration, farming activity, results from previous public awareness program evaluations, etc. API RP 1162 at 6.1 – 6.3.

16. API RP 1162 at 8.3 provides that the operator should complete an annual audit or review of whether its public awareness plan has been developed and implemented according to the guidelines.

17. Complainant has met his burden of proof to show that SPLP’s violated its public awareness program by not sending him public awareness printed materials on a 2-year interval within the past 5 years even though Complainant resides within 1,000 feet of the ME1 right of way.

18. The Commission lacks jurisdiction over trade and import laws, which are within the federal jurisdiction of the U.S. Department of Commerce and the U.S. International Trade Commission. *See* 19 U.S.C.A. § 1330 *et seq.*

19. There is no Commission regulatory requirement that SPLP obtain its steel or pipe from U.S. manufacturers.

20. 49 CFR Part 195 contains relevant and applicable standards regarding steel, pipe, and pipeline design, including incorporating the API 5L standard. *See, e.g.,* 49 CFR Part 195.106.

21. Complainant failed to prove that SPLP’s ME2 and ME2X pipelines do not meet applicable standards for steel, pipe, and pipeline design.

22. Pursuant to 49 CFR Part 195, a pipeline exposure is not *per se* a violation of law or regulation; however, mitigation efforts and assessments are required. 49 C.F.R. Parts 195.401(b), 195.412, 195.422.

23. Complainant failed to prove SPLP violated the law or regulation regarding a small exposure of ME1 pipe in a drainage ditch located at McClures Gap Road.

24. Complainant failed to prove SPLP violated the law or regulation regarding its welding practices. 49 C.F.R. Part 195.214, 195.230, 195.243.

25. Current safety laws and regulations do not require odorant or a public alarm system regarding SPLP's Mariner East pipelines. *See generally* 49 C.F.R. Part 195 compared to 49 C.F.R. Part 192.625 (which requires odorization of certain natural gas pipelines). *See also, Advance Notice of Proposed Rulemaking Order*, Docket No. L-2019-3010267, ANOPR Order at 19-20 (Order entered Jun. 13, 2019) (requesting comments on "notification criteria" and "odorant utilization").

VII. ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.'s Motion to Strike portions of Complainant Wilmer Baker's Main Brief is granted.

2. That Complainant Wilmer Baker's Main Brief at pages 101-102, 108-109, 261-297 and portions of pages 7 and 8 as identified in Attachment A with red strikethroughs to Sunoco's Motion to Strike shall be stricken from the record.

3. That Sunoco Pipeline, L.P.'s Motion to Strike Portions of Complainant Wilmer Baker's Reply Brief is granted.

4. That Complainant Wilmer Baker's Reply Brief at pages 106-107, 136-137, 168-170 and portions of pages 4, 5, and 6 as identified in Attachment A to Sunoco's Motion to Strike Portions of Complainant's Reply Brief are stricken from the record.

5. That the Complaint of Wilmer Baker against Sunoco Pipeline, L.P. at C-2018-3004294 is granted in part and denied in part.

6. That within thirty (30) days of the date of entry of a Final Order, Sunoco Pipeline, L.P. shall pay a civil penalty in the amount of \$1,000 by certified check or money order made payable to "Commonwealth of Pennsylvania" and sent addressed as follows:

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

7. That Sunoco Pipeline, L.P. is directed to contact the Lower Frankford Township Supervisors and Cumberland County Commissioners within thirty (30) days of the date of entry of a final order for the purpose of scheduling a public awareness/education meeting(s) to be held in Cumberland County.

8. That absent exigent circumstances, Sunoco Pipeline, L.P. is directed to appear at the scheduled meeting referenced in Ordering Paragraph No. 7

9. That Sunoco Pipeline, L.P. is directed meet with the Cumberland County Department of Public Safety and Cumberland County Board of Commissioners with thirty (30) days of the entry of the Final Order in this proceeding to discuss additional communications and training and that Sunoco is directed to provide such training as requested by those parties.

10. That within ninety (90) days of the Final Order in this proceeding, Sunoco Pipeline, L.P. shall submit to the Commission for review a written plan to enhance its public awareness and emergency training plans and record keeping including but not limited to addressing: 1) the broadening of communication coverage areas beyond 1,320 feet; 2) shortening intervals for communications; 3) use of response cards and social media; 4) supplemental program enhancements to emergency training programs; 5) internal or external audits to evaluate the effectiveness of its programs; and 6) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits.

11. That included as part of its plan referenced in Ordering Paragraph No. 10, Sunoco Pipeline, L.P. shall at minimum complete or plan to complete in a timely manner an audit or review of its public awareness program and shall ultimately submit to the Commission within six (6) months from the date of entry of a final order a baseline evaluation of its public awareness program through either an internal self-assessment using an internal working group or through third-party auditors where the evaluation is undertaken by a third-party engaged at Sunoco Pipeline, L.P.'s cost.

12. That the plan referenced in Ordering Paragraph No. 10 shall also be served upon the Commission's Bureau of Technical Utility Services, which shall review the plan and issue a staff determination Secretarial Letter within ninety (90) days of the filing of the plan indicating if the plan is in compliance with the directives in Ordering Paragraph Nos. 10 and 11.

13. That within one hundred twenty (120) days of the entry of a Final Order in this proceeding, Sunoco Pipeline, L.P. shall file a report with the Commission's Bureau of Technical Utility Services providing evidence of Sunoco Pipeline, L.P.'s compliance with Ordering Paragraph Nos. 7, 8, and 9.

14. That Wilmer Baker's request for a directive that Sunoco Pipeline, L.P. replace its Mariner East 1 pipeline facilities with "American-made steel" is denied.

