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March 20, 2020

**VIA ELECTRONIC FILING**

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  
v. Sunoco Pipeline L.P. Docket Number C-2018-3006534; **SUNOCO PIPELINE  
L.P.'S COMMENTS TO, OR IN THE ALTERNATIVE REQUEST FOR  
RECONSIDERATION OF, THE COMMISSION'S MARCH 10, 2020  
TENTATIVE OPINION AND ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Comments to, or in the Alternative Request for Reconsideration of, the Commission's March 10, 2020 Tentative Opinion and Order.

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

Very truly yours,

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

WES/  
Enclosure

Rosemary Chiavetta, Secretary

March 20, 2020

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cc: Kathy Sophy, Director Office of Special Assistants (via email, [ksophy@pa.gov](mailto:ksophy@pa.gov))  
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Hon. Elizabeth H. Barnes, (via email [ebarnes@pa.gov](mailto:ebarnes@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND	:	
ENFORCEMENT	:	
	:	
Complainant,	:	
	:	Docket No. C-2018-3006534
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
	:	
Respondent.	:	
	:	

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**SUNOCO PIPELINE L.P. COMMENTS TO, OR IN THE ALTERNATIVE REQUEST  
FOR RECONSIDERATION OF, THE COMMISSION’S MARCH 10, 2020 TENTATIVE  
OPINION AND ORDER**

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Sunoco Pipeline L.P. (SPLP) submits these Comments to the March 10, 2020 Tentative Opinion and Order (March 10<sup>th</sup> Order) modifying the Joint Petition for Approval of Settlement as amended on June 28, 2019 by the Addendum to the Joint Petition for Approval of Settlement<sup>1</sup> (Settlement) between SPLP and the Commission’s Bureau of Investigation and Enforcement (BI&E) (SPLP and BI&E collectively, the Joint Petitioners) to address and request clarification or modification of certain directives contained in the March 10<sup>th</sup> Order related to preparation and submission of the Remaining Life Study (RLS) and the public summary thereto including confirmation of factual data SPLP provides to the independent expert and the procedures for review, submission, and exclusion of proprietary and confidential security information. In the

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<sup>1</sup> On June 28, 2019, SPLP and BI&E filed an Addendum to the Settlement. The Addendum modifies the Settlement Agreement Condition of Settlement at Paragraph 21 in exchange for SPLP not exercising its withdrawal from the Settlement at that time due to the Commission’s not considering the Settlement directly and instead referring the matter to an Administrative Law Judge for determinations of what, if any, further process is due or appropriate.

alternative, insofar as the Commission disagrees with SPLP's comments regarding the directives of the March 10<sup>th</sup> Order and to the extent the March 10<sup>th</sup> Order is considered final, SPLP respectfully requests, pursuant to 52 Pa. Code § 5.572(c), that the Commission grant reconsideration of its March 10<sup>th</sup> Order regarding these issues. Additionally, should the Commission grant reconsideration, SPLP also requests confirmation from the Commission that the twenty (20) day period for withdrawal from the Settlement as stated in the Settlement shall be stayed for the pendency of reconsideration.

## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

### **A. Summary of Argument**

1. The Settlement contains a provision for an independent expert to conduct a RLS that will by its nature contain Confidential Security Information (CSI) and a public summary of that RLS. In its March 10<sup>th</sup> Order, the Commission modified procedures surrounding the RLS as follows:

That the expert shall deliver only the final form Study, not interim drafts, to Sunoco Pipeline, L.P. and the Commission's Bureau of Investigation and Enforcement on or before the end of the agreed upon six-month contract term."

March 10<sup>th</sup> Order, Ordering ¶ 9 (interim drafts). The Commission's modification of the Settlement creates three issues, some of which conflict with law, for which SPLP requests clarification and/or modification via these Comments or in the alternative this Request for Reconsiderations.

2. First, SPLP seeks clarification that the Commission's modification to the Settlement does not prohibit SPLP from ensuring the accuracy, completeness, and applicability of the data used and relied upon for the RLS. Completion of the RLS will require SPLP to communicate and transmit significant amounts of information and records regarding its operations to the independent expert selected to perform the RLS.

3. For the RLS to be worthy of any scientific or factual reliability relative to any determinations or actions regarding the operations of Mariner East 1, the RLS must be based on accurate and complete factual data. Confirmation of facts used is consistent with the Commission's audit procedures.<sup>2</sup>

4. In order to ensure the veracity, accuracy, reliability, and effectiveness of the RLS, SPLP respectfully requests that the Commission clarify that, while SPLP will not receive interim drafts of the RLS, this provision is not intended to restrict SPLP's ability to review underlying factual data to ensure the data being used is accurate, up-to-date, and applicable.

5. Second, the Commission's modification requires the independent expert to submit the RLS directly to BI&E in contravention of The Public Utility Confidential Security Information Disclosure Protection Act (CSI Act), 35 P.S. § 2141.1 to 2141.6, and Commission regulations as they relate to the submission of CSI. SPLP seeks clarification, or modification of the March 10<sup>th</sup> Order's directive, to provide that the final form RLS will be released to SPLP only (i.e., not released simultaneously to SPLP and BI&E) so that SPLP may first identify, mark, and submit the RLS to BI&E in accordance with SPLP's responsibilities under the CSI Act. To be clear, SPLP

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<sup>2</sup> In management and efficiency audits pursuant to 66 Pa. C.S. Section 516, the Bureau of Audits works cooperatively with the utility for information gathering, including conducting interviews with employees. *See, e.g., First Energy Pennsylvania Companies Management Efficiency Investigation*, Docket Nos. D-2017-2626664 *et al*, September 2018 Audit Report at p. 2 (listing approaches, including interviews with employees) (available at <http://www.puc.pa.gov/pcdocs/1588577.docx>). Utilities are also enabled to review the draft audit report prior to it becoming finalized and public. *See, e.g., First Energy Pennsylvania Companies Management Efficiency Investigation*, Docket Nos. D-2017-2626664 *et al*, October 4, 2018 Secretarial Letter (available at <http://www.puc.pa.gov/pcdocs/1588599.docx>) (noting Commission made audit report and public utility's implementation plan, which discusses implementation of audit report recommendations, public on the same day).

does **not** seek authorization to revise, opine, or otherwise modify the final form RLS; rather, SPLP merely – and importantly – seeks to ensure compliance with the provisions of the CSI Act. The CSI Act and the Commission’s regulations place responsibility for identification and submission of CSI Materials on the utility<sup>3</sup> and the March 10<sup>th</sup> Order’s settlement modification conflicts with law and regulation by shifting that from the utility to a third party that may not know certain facts or information may be CSI. In consideration of the CSI Act’s identification and marking requirements, the substantial penalties for violation of the CSI Act, and the public safety concerns resulting from an inadvertent release of SPLP’s CSI information, this clarification and modification is necessary if not imperative to ensure that SPLP’s CSI, the release of which would compromise security or endanger life, safety, and SPLP’s facilities, is properly protected from public release in accordance with the provisions of the CSI Act. It is also necessary so that the Commission does not inadvertently place itself in the position of being subject to the severe penalties and sanctions in the CSI Act by causing, by the modification, a third-party to decide what is or is not CSI and release CSI in a final report without the utility being able to review it regarding such information.

6. Third, SPLP seeks clarification that it will be entitled to review the public summary of the RLS and remove any CSI before it is publicly released. The Settlement provides that a

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<sup>3</sup> **The public utility is responsible for determining whether a record or portion thereof contains confidential security information. When a public utility identifies a record as containing confidential security information, it must clearly state in its transmittal letter, upon submission to an agency, that the record contains confidential security information and explain why the information should be treated as such.**

35 P.S. § 2141.3(a)(emphasis added).

summary of the independent expert's findings as to the RLS will be publicly available, excluding proprietary information or CSI. *See* March 10<sup>th</sup> Order, Ordering ¶ 9 (public summary).

7. Accordingly, SPLP seeks clarification that SPLP will be permitted to review and exclude CSI information from the public summary and that SPLP is responsible for submission of the public summary to the Commission in accordance with CSI Act and Commission regulations. This clarification is necessary to ensure that information, the release of which could compromise security or endanger life, safety, and SPLP's facilities, is properly protected from release in accordance with the provisions of the CSI Act.

8. To the extent the Commission does not modify the March 10<sup>th</sup> Order consistent with SPLP's position, SPLP seeks reconsideration. The Commission modified the Settlement upon its own Motion and SPLP did not previously have the opportunity to address these issues. Nor did the Commission expressly consider these issues in its March 10<sup>th</sup> Order. The Commission's policy as expressed in its regulations at 52 Pa. Code 5.231(a) is to encourage settlements and this settlement is the product of comprehensive negotiations between BI&E and SPLP. The Commission should give weight to the expertise of both parties in what is a remarkable resolution of a highly technical matter and settlement to effectuate what our Governor requested in his February 2019 Press Release. In short, the gist of the concerns expressed in the modification were discussed and negotiated in detail and the best way to resolve those are the product of the settlement. Accordingly, these issues and SPLP's arguments are all appropriate for reconsideration. The modification as the issue importantly raises the issue of why settle with the Commission's technical pipeline safety division only to be modified, particularly when both

parties agree the settlement is beyond what is required by law?<sup>4</sup> The answer is the modification unintentionally discourages, rather than encourages settlement, and substitutes its judgment for those of the technical experts of BI&E and SPLP as to items negotiated extensively. *See Philip Duick v. Pennsylvania Gas & Water Company*, 56 Pa. PUC 553, 51 P.U.R.4th 284 (1982) (Petitions for reconsideration should contain new and novel arguments or considerations which appear to have been overlooked or not addressed by the Commission in its prior order.).

**B. Background**

9. On April 3, 2019, the Joint Petitioners filed a Joint Petition for Approval of Settlement of this matter. On June 28, 2019, the Joint Petitioners filed an Addendum to the Joint Petition for Approval of Settlement.

10. In regard to the RLS, the Settlement provides as follows:

**Remaining Life Study**

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP's Integrity Management Plan ("IMP"), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs

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<sup>4</sup> The modification also implicates due process by the Commission's issuance of proposed regulations which recommend the establishment of a Service Life Study for hazardous liquid pipelines in its Rulemaking at Docket No. L-2019-3010270 (NOPR) that is essentially an RLS. To the extent the Commission promulgates regulations that essentially grant relief or resolve issues against SPLP that have been requested or raised in proceedings currently pending before the Commission (e.g. this proceeding), the Commission would be violating due process rights to an impartial tribunal that adjudicates cases on the facts of the record of each case before it. Moreover, if employees of the Commission's Bureau of Investigation and Enforcement, who serve in a prosecutorial role, authored and/or advised the Commission on the NOPR, or participate in the regulatory process, that would be in violation of the *Lyness* separation of powers principles for administrative agencies and 66 Pa. C.S. § 308.2(b) ("A commission employee engaged in a prosecutor function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter."). Again, SPLP prefers instead of litigating this issue to have the well-crafted and data-based vetted Settlement with the Commission's Pipeline Safety division of BI&E approved and the revisions requested in these Comments and Petition for Reconsideration or Clarification.



that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

The Remaining Life Study should be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) or State Commissions, and the Pipeline Research Counsel International (“PRCI”), American Petroleum Institute (“API”), or the Interstate Natural Gas Association of America (“INGAA”). Within thirty (30) days of entry of a Commission Order approving any settlement of this matter, SPLP shall provide I&E with a list of three (3) proposed independent experts, along with contact information, a brief description of the expert’s background and a disclosure as to whether the proposed expert performed any work in relation to ME1 as well as a description of that work. I&E will select one (1) expert from the list provided by SPLP and SPLP will hire and pay the expert to complete and review the study. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. A summary of the expert’s findings shall be made public (excluding proprietary or confidential security information (CSI)).

Settlement at ¶ 17.

11. Paragraph 21 of the Settlement provides SPLP and BI&E the right to withdraw from the Settlement, as follows:

21. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the assigned Administrative Law Judge or Commission modifies the Settlement Agreement in any way, including, but not limited to, ordering any additional process [1] in this settlement matter other than the notice and Comment and Reply Comment process specified in Paragraph 26, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the party within twenty (20) days after the latter of [2] entry of any Administrative Law Judge or Commission Order or Ruling modifying the Settlement in any way, including, but not limited to, the modifying procedures, events or actions described above in footnote 1 below.

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[1] “Additional Process” as used herein shall mean a procedural process in excess of notice and Comment and Reply Comment including, but not limited to, granting interventions, discovery, hearings, briefings or other process.

[2] For instance, if the ALJ made a ruling that modified the Settlement, the Parties may elect to withdraw then or elect to withdraw within 20 days of the Commission’s final ruling upon review of the ALJ’s proposed modifications.

Settlement at ¶ 21.

12. On December 20, 2019, Administrative Law Judge (ALJ) Elizabeth H. Barnes issued an Initial Decision approving the settlement (Initial Decision). No exceptions or other opposition pleadings to the Initial Decision were filed.

13. On February 27, 2019, the Commission held a public meeting at which time the Joint Settlement was approved as modified by the Motion of Chairman Gladys Brown Dutrieuille.

14. The Commission issued the March 10<sup>th</sup> Order modifying the Initial Decision to provide that, *inter alia*:

9. That the expert shall deliver only the final form Study, not interim drafts, to Sunoco Pipeline, L.P. and the Commission’s Bureau of Investigation and Enforcement on or before the end of the agreed upon six-month contract term.

9. That a summary of the expert’s findings in its report shall be made public (excluding proprietary or confidential security information).

March 10<sup>th</sup> Order, Ordering ¶¶ 9 (interim drafts), 9 (public summary).<sup>5</sup> The March 10<sup>th</sup> Order further provides that “... pursuant to the terms of the Settlement, the Joint Petitioners may

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<sup>5</sup> The March 10<sup>th</sup> Order contains two separate ordering paragraphs numbered “9.” For the sake of clarify, SPLP references these paragraphs as 9 (interim drafts) and 9 (public summary) according to the subject matter addressed therein.

withdraw from the Settlement Agreement within twenty (20) days from the date of entry of this Tentative Opinion and Order.” *Id.*, Ordering ¶ 17.

## **II. COMMENTS, OR, IN THE ALTERNATIVE, REQUEST FOR RECONSIDERATION**

### **A. Clarification regarding the Confirmation of Accuracy of Factual Data forming Basis of Remaining Life Study**

15. The March 10<sup>th</sup> Order provides: “That the expert shall deliver only the final form RLS, not interim drafts, to Sunoco Pipeline, L.P. and the Commission’s Bureau of Investigation and Enforcement on or before the end of the agreed upon six-month contract term.” March 10<sup>th</sup> Order, Ordering ¶ 9 (interim drafts).

16. As the Commission and BI&E are aware, completion of the RLS will require SPLP to communicate and transmit significant amounts of factual information and records regarding its operations to the independent expert selected to perform the RLS.

17. In order to ensure the veracity, accuracy, reliability, and effectiveness of the RLS, SPLP respectfully requests that the Commission clarify that, while SPLP will not receive interim drafts of the RLS, this provision is not intended to restrict SPLP’s ability to review underlying factual data or methods of analysis to ensure it is accurate, up-to-date, and applicable.

18. SPLP appreciates the Commission’s concerns regarding independence of the RLS. To be clear, SPLP is not seeking authorization to review or otherwise provide input as to the conclusions reached. Rather, SPLP merely seeks to ensure that the conclusions reached are based on accurate, up-to-date, and applicable information. For the RLS to be valuable for any determinations or actions regarding the operations of Mariner East 1, it must be based on accurate

and complete factual data. Such review for accuracy is consistent with the Commission's audit procedures.<sup>6</sup> Otherwise, the entire study could be compromised and a waste of time and resources.

19. In the alternative, insofar as the March 10<sup>th</sup> Order prohibits SPLP from confirming the accuracy of facts or data underlying the report, reconsideration is appropriate for two reasons. *See Philip Duick v. Pennsylvania Gas & Water Company*, 56 Pa. PUC 553, 51 P.U.R.4th 284 (1982) (Petitions for reconsideration should contain new and novel arguments or considerations which appear to have been overlooked or not addressed by the Commission in its prior order.). First, the Commission raised and decided its modification *sua sponte* by Motion that was turned into a tentative order. So, it is unquestionably new. It is unclear what information the Commission considered in making its decision as SPLP has had no opportunity prior to this point in this proceeding to address confirmation of factual information relied upon in conducting the RLS, in violation of its due process rights and statutory rights under the Public Utility Code. Second, as detailed above, prohibiting SPLP from confirmation of the facts underlying the report is against the public interest in ensuring the RLS is accurate, effective, and useful. The Commission did not consider this issue in its March 10<sup>th</sup> Order.

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<sup>6</sup> In management and efficiency audits pursuant to 66 Pa. C.S. Section 516, the Bureau of Audits works cooperatively with the utility for information gathering, including conducting interviews with employees. *See, e.g., First Energy Pennsylvania Companies Management Efficiency Investigation*, Docket Nos. D-2017-2626664 *et al*, September 2018 Audit Report at p. 2 (listing approaches, including interviews with employees) (available at <http://www.puc.pa.gov/pcdocs/1588577.docx>). Utilities are also enabled to review the audit report prior to it becoming public. *See, e.g., First Energy Pennsylvania Companies Management Efficiency Investigation*, Docket Nos. D-2017-2626664 *et al*, October 4, 2018 Secretarial Letter (available at <http://www.puc.pa.gov/pcdocs/1588599.docx>) (noting Commission made audit report and public utility's implementation plan, which discusses implementation of audit report recommendations, public on the same day).

**B. Clarification or Modification Regarding Procedures for Submission of the Remaining Life Study**

20. The March 10<sup>th</sup> Order provides: “That the expert shall deliver only the final form Study, not interim drafts, to Sunoco Pipeline, L.P. and the Commission’s Bureau of Investigation and Enforcement on or before the end of the agreed upon six-month contract term.” March 10<sup>th</sup> Order, Ordering ¶ 9 (interim drafts).

21. SPLP seeks clarification and modification of the procedures for submission of the RLS to BI&E in accordance with The Public Utility Confidential Security Information Disclosure Protection Act (CSI Act), 35 P.S. § 2141.1 to 2141.6, and Commission regulations as they relate to the submission of CSI. Specifically, SPLP seeks clarification, or modification of the March 10<sup>th</sup> Order’s directive, to provide that the final form RLS will be released to SPLP only (i.e., not released simultaneously to SPLP and BI&E) so that SPLP may identify, mark, and submit the RLS to BI&E in accordance with SPLP’s responsibilities under the CSI Act. To be clear, SPLP does **not** seek authorization to revise, opine, or otherwise modify the final form RLS; rather, SPLP merely seeks to ensure compliance with the provisions of the CSI Act. The CSI Act and the Commission’s regulations place responsibility for identification and submission of CSI Materials on the utility.<sup>7</sup> In consideration of the CSI Act’s identification and marking requirements, the

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<sup>7</sup> **The public utility is responsible for determining whether a record or portion thereof contains confidential security information. When a public utility identifies a record as containing confidential security information, it must clearly state in its transmittal letter, upon submission to an agency, that the record contains confidential security information and explain why the information should be treated as such.**

35 P.S. § 2141.3(a)(emphasis added); *see* 52 Pa. Code § 102.3(b)(procedures for marking and submission of CSI).

substantial penalties for violation of the CSI Act, and the public safety concerns resulting from an inadvertent release of SPLP's CSI information, this clarification and modification is necessary to ensure that SPLP's CSI, the release of which would compromise security or endanger life, safety, and SPLP's facilities, is properly protected from public release in accordance with the provisions of the CSI Act.

22. It is undisputed that the final form RLS will necessarily contain CSI information regarding SPLP's pipelines. *See e.g.*, Statement of Andrew G. Place (Feb. 27, 2020) ("I would have preferred that all of the expert's findings be made public, in a redacted version **with the same caveat that no proprietary or confidential security information remain in the document...**") (emphasis added). While certain observations concerning the characteristics of SPLP's HVL pipelines – such as their general path or the location of the above-ground valves – can be seen at the surface level, the RLS will contain far more specific CSI regarding the pipelines. The release of this CSI would create a significant risk to the security and integrity of the SPLP's pipelines. Specifically, providing an individual or group of individuals with the detailed calculations and information contained in the RLS would give someone with malicious intent knowledge necessary to breach, damage or destroy the pipelines, putting the public at risk.

23. The General Assembly has recognized the importance of protection of confidential security information via passage of the CSI Act, which prohibits disclosure of information that could compromise security or endanger life, safety, or public utility facilities. Pursuant to 35 P.S. § 2141.5(a), Government agencies are prohibited from releasing, publishing or disclosing a public utility record that contains CSI, and any public official or employee who knowingly or recklessly releases such information faces stiff civil and criminal penalties. 35 P.S. § 2141.6. At stake here is the public and SPLP's right to be protected from an agency's inadvertent disclosure of confidential

security information and the attendant consequences. The necessity for protection of such information is based on substantial national security concerns. As explained in a recent GAO report:

According to TSA, pipelines are vulnerable to physical attacks—including the use of firearms or explosives—largely due to their stationary nature, the volatility of transported products, and the dispersed nature of pipeline networks spanning urban and outlying areas. The nature of the transported commodity and the potential effect of an attack on national security, commerce, and public health make some pipelines and their assets more attractive targets for attack. Oil and gas pipelines have been and continue to be targeted by terrorists and other malicious groups globally.<sup>8</sup>

24. The General Assembly has likewise recognized the utility is in the best position to determine the CSI status of its own information by expressly placing the responsibility for identification and marking of CSI with the utility, not the receiving agency, providing that:

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

35 P.S. § 2141.3(a)(emphasis added). As ALJ Barnes further explained:

... under the current law, applying the “plain language” doctrine of statutory interpretation, **the general rule is that the public utility is responsible for determining whether a record or portion thereof contains CSI** and the agency treats it as such until there is written notification to the utility by the agency of a request to examine records containing CSI or a challenge of its designation and an opportunity for agency review of the designation.

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<sup>8</sup> U.S. Gov’t Accountability Off., GAO-19-48, Critical Infrastructure Protection Actions Needed to Address Significant Weaknesses in TSA’s Pipeline Security Program Management, pgs. 10-11 (Dec. 2018), available at <https://www.gao.gov/assets/700/696123.pdf>.

Initial Decision at 28 (emphasis added). Should the Commission prohibit SPLP from satisfying its responsibility under the CSI Act prior to release of its CSI information to the Commission, SPLP runs the risk of the inadvertent release of its sensitive operational and locational information.

25. While SPLP acknowledges the Commission's concerns regarding transparency, these concerns should not negate the CSI Act's protection of confidential security information. In light of the legislative purposes and requirements of the CSI Act, *see, e.g.*, 35 P.S. § 2141.5(a) (“[a]n agency shall not release, publish, or otherwise disclose a public utility record or portion thereof which contains confidential security information...”); 35 P.S. § 2141.6 (subjecting a public official who “knowingly or recklessly... discloses...confidential security information” to discharge and criminal penalties), the statutory scheme is clear – submission of the RLS to the Commission without regard for SPLP's identification, marking, and submission responsibilities under the CSI Act is contrary to law and public policy and would pose a significant risk to SPLP's infrastructure, employees, and the public at large.

26. In the alternative, to the extent the Commission's March 10<sup>th</sup> Order provides for the submission of SPLP's confidential security information in contravention of the provisions of the CSI Act, reconsideration is warranted. *See Duick supra*. Specifically, the Commission erred as matter of law by ordering the submission of SPLP's CSI information to the Commission in contravention of the CSI Act's requirement that the public utility is responsible for the identification, marking, and submission of CSI. For the reasons detailed above, submission of the RLS outside of the requirements of the CSI Act is against public policy, and would harm the public interest insofar as it threatens public release of CSI in contravention of legislation that expressly seeks to protect CSI for public safety reasons. Thus, for the reasons stated above, to the extent the March 10<sup>th</sup> Order robs SPLP of its ability to identify, mark, and submit the RLS as required by



the CSI Act, the Commission should grant reconsideration to consider the public's interest in, and the proper procedures for, effectuating the protection of SPLP's CSI information.

C. Clarification regarding Procedures to Ensure the Exclusion of CSI Information from the Public Summary of the Remaining Life Study

27. The Settlement provides that a summary of the independent expert's findings as to the RLS will be publicly available, excluding proprietary information or Confidential Security Information (CSI). *See* March 10<sup>th</sup> Order, Ordering ¶ 9 (public summary).

28. SPLP seeks clarification that SPLP will be permitted to review and exclude CSI information from the public summary and that SPLP is responsible for submission of the public summary to the Commission in accordance with CSI Act and Commission regulations. This clarification is necessary to ensure that information, the release of which could compromise security or endanger life, safety, and SPLP's facilities, is properly protected from release in accordance with the provisions of the CSI Act.

29. It is undisputed that CSI will need to be excluded from the public summary of the RLS required by the Settlement. *See* Statement of Andrew G. Place (Feb. 27, 2020) ("The Agreement also directs that a summary of the expert's findings shall be made public, **excluding, of course, proprietary or confidential security information.**")(emphasis added).

30. Pursuant to the CSI Act and Commission regulations, the public utility is responsible for identification, marking, and submission of CSI to a state agency. 35 P.S. § 2141.3(a); *see also* Initial Decision at 28. The CSI Act's identification, marking, and submission procedures recognize that the public utility, not the receiving agency, is in the best position to ensure proper identification and marking of its CSI. Moreover, as detailed in Section II.B. above, the public safety concerns and criminal penalties associated with inadvertent agency release of a

public utility's CSI information underscores the importance of ensuring that CSI is properly identified, marked, and submitted in accordance with the directives of the CSI Act.

31. In the alternative, to the extent the Commission's March 10<sup>th</sup> Order provides for the simultaneous submission of the summary to SPLP and the Commission in contravention of the provisions of the CSI Act, reconsideration is warranted. *See Duick supra*. Specifically, the Commission erred as matter of law by providing for release of the RLS summary to the Commission without first allowing SPLP to review and remove CSI information from the public summary and thus impermissibly overriding SPLP's responsibilities under the CSI Act. Such a release is against public policy, and would harm the public interest insofar as it threatens to destroy the CSI Act's protection of SPLP's sensitive operational and locational information. Thus, for the reasons stated above and as further detailed in Section II.B., to the extent the March 10<sup>th</sup> Order robs SPLP of its ability to identify remove CSI from the public summary of the RLS, the Commission should grant reconsideration to consider the public's interest in, and the proper procedures for, effectuating the protection of SPLP's CSI information.

**D. Request for Stay of Withdrawal Period pending Reconsideration on the Merits**

32. The Settlement is expressly conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification and provides that:

If the assigned Administrative Law Judge or Commission modifies the Settlement Agreement in any way, including, but not limited to, ordering any additional process [1] in this settlement matter other than the notice and Comment and Reply Comment process specified in Paragraph 26, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the party within twenty (20) days after the latter of [2] entry of any Administrative Law Judge or Commission Order or Ruling modifying the Settlement in any way,

including, but not limited to, the modifying procedures, events or actions described above in footnote 1 below.

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[1] “Additional Process” as used herein shall mean a procedural process in excess of notice and Comment and Reply Comment including, but not limited to, granting interventions, discovery, hearings, briefings or other process.

[2] For instance, if the ALJ made a ruling that modified the Settlement, the Parties may elect to withdraw then or elect to withdraw within 20 days of the Commission’s final ruling upon review of the ALJ’s proposed modifications.

Settlement at ¶ 21.

33. The March 10<sup>th</sup> Order provides that “pursuant to the terms of the Settlement, the Joint Petitioners may withdraw from the Settlement Agreement within twenty (20) days from the date of entry of this Tentative Opinion and Order.” March 10<sup>th</sup> Order, ¶ 17.

34. Should the Commission grant reconsideration, in whole or in part, as requested above, SPLP requests the Commission grant a stay of the twenty (20) day period for withdrawal set forth in Paragraph 21 the Settlement pending reconsideration.

**WHEREFORE**, SPLP respectfully requests the Commission issue an order (1) clarifying SPLP’s ability to confirm factual data forming the basis of the Remaining Life Study and (2) clarifying and/or modifying the procedures for identification, marking and submission of the Remaining Life Study and public summary in accordance with the CSI Act, as discussed above. In the alternative, SPLP requests the Commission grant reconsideration of its March 10<sup>th</sup> Order as to these issues and grant a stay of the twenty (20) day period for withdrawal from the Settlement pending resolution of SPLP’s request for reconsideration.

Respectfully submitted,

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Dated: March 20, 2020

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons, listed below, in accordance with the requirements of § 1.54 (relating to service by a party) to the extent possible. Due to COVID-19-related government restrictions, undersigned counsel is unable to serve physical copies via first class mail but has served all parties to this proceeding via email as indicated below. This document has been filed electronically on the Commission's electronic filing system.

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Dated: March 20, 2020