**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held May 21, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission C-2018-3006534

Bureau of Investigation and Enforcement

v.

Sunoco Pipeline, L.P.

**SECOND TENTATIVE OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Comments filed on March 20, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Sunoco Pipeline, L.P. (Sunoco) (collectively, Joint Petitioners or the Parties), in response to the Commission’s Tentative Opinion and Order issued on March 10, 2020 (*March 2020* *Tentative Order*), which adopted the Initial Decision of Administrative Law Judge Elizabeth H. Barnes issued on December 20, 2019, as modified. ALJ Barnes’ Initial Decision approved the Parties’ Joint Petition for Approval of Settlement (Settlement or Joint Petition or Settlement Agreement) filed on April 3, 2019, as amended on June 28, 2019, by the Addendum to the April 3, 2019 Joint Petition for Approval of Settlement (Addendum).

1. **History of the Proceeding**

On December 13, 2018, I&E filed a Formal Complaint (Complaint) with the Commission against Sunoco alleging violations of federal and state gas pipeline safety regulations stemming from an alleged incident involving a leak of highly volatile liquids (HVLs) of ethane and propane from the Mariner East 1 (ME1) pipeline in Morgantown, Pennsylvania on April 1, 2017.

On April 3, 2019, the Parties filed the Joint Petition. The Joint Petition consists of the proposed Settlement Agreement (Joint Petition at 1-10) and attached: Appendix “A” (I&E’s Statement in Support of Settlement at 1-20); Appendix “B” (Sunoco’s Statement in Support of Settlement at 1-13); Appendix “C” (I&E’s Complaint dated December 13, 2018, at 1-16); and, Appendix “D” (Sunoco’s Answer and New Matter at 1-18).

The history of the above-captioned proceeding detailed in the Commission’s Opinion and Order entered June 10, 2019 (*June 2019 Order*) is adopted and incorporated herein, by reference. In the *June 2019 Order* the Commission referred the matter to the Office of Administrative Law Judge (OALJ) for such further proceedings and hearings as deemed necessary, consistent with that Order.

On June 28, 2019, the Joint Petitioners filed the Addendum. The Addendum modifies the Settlement Agreement at Paragraph 21.

Paragraph 21 states 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 Commission modifies the Settlement Agreement, 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 entry of an Order modifying the Settlement.

Settlement at ¶ 21. According to the Addendum, the Joint Petitioners agreed to modify Paragraph 21 of the Settlement Agreement regarding a party’s right to withdraw from the Settlement, due to the Commission’s referral of this matter to OALJ. Consequently, Paragraph 21 of the Settlement was modified to read 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]](#footnote-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]](#footnote-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 [above]. A decision not to elect to withdraw from this Settlement, which contain certain public safety features which are “above and beyond” current regulatory requirements,[[3]](#footnote-3) are in the public interest and should neither be delayed nor discouraged by any further litigation-like process that works at cross-purposes with encouraging, accomplishing and promptly allowing for implementation of this Settlement.

Addendum at 1-2. Further, according to the Addendum, the Joint Petitioners believe that the process for consideration as presently modified by the Commission will add a minimum of 4-12 months before these public safety features of the Settlement can commence and that notice, Comments and Reply Comments are the best balancing of providing input and effectuating the Settlement. Finally, the Addendum notes that if the Settlement were to fall through, litigation will likely take a year or more given the scope of I&E’s complaint and Sunoco’s answer and new matter. *Id.* at 2.

On July 15, 2019, an Order Granting Petitions to Intervene was issued. Seven Petitioners were granted Intervenor status, including: (1) Thomas Casey; (2) West Goshen Township; (3) Josh Maxwell (in his individual capacity); (4) West Whiteland Township; (5) Edgmont Township; (6) Megan Flynn, Rosemary Fuller, Michael Walsh,

Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (collectively Flynn Intervenors);[[4]](#footnote-4) and (7) Upper Uwchlan Township.

Intervenors were given leave to file Comments with the Secretary’s Bureau regarding the Joint Petition for Settlement by August 16, 2019. All Parties were permitted to file Reply Comments in response to the Intervenors’ Comments by September 16, 2019.

On August 13, 2019, Flynn Intervenors filed an Objection to the Joint Petition for Settlement.

On August 15, 2019, West Whiteland Township filed Comments and on August 16, 2019, West Goshen Township filed an Objection.

On September 16, 2019, I&E and Sunoco filed Reply Comments. Also, on September 16, 2019, I&E filed a Motion to Strike Portions of the Flynn Intervenors’ Comment and a Motion to Strike Exhibits “A” and “B” of West Goshen Township’s Public Comments in Opposition to the Joint Petition for Approval (I&E’s Motion to Strike).

On September 16, 2019, Sunoco also filed a Motion to Strike West Goshen Township’s Public Comments and a Motion to Strike the Flynn Intervenors’ Comments (Sunoco’s Motion to Strike).

On September 23, 2019, Flynn Intervenors filed an Answer to I&E’s Motion to Strike and an Answer to Sunoco’s Motion to Strike.

On October 4, 2019, West Goshen Township filed an Answer to I&E’s Motion to Strike and an Answer to Sunoco’s Motion to Strike.

On October 11, 2019, an Interim Order Granting in Part and Denying in Part, Motions to Strike was issued striking statements regarding the 12-inch pipeline in Flynn Intervenors’ Comments and West Goshen Township’s Comments as unduly broadening the scope of the instant proceeding. The Interim Order gave the Joint Petitioners leave to file further Reply Comments within thirty days.

On November 12, 2019, I&E and Sunoco filed Additional Reply Comments.

The record closed on November 12, 2019, and the Commission issued the Initial Decision of ALJ Barnes on December 20, 2019. No exceptions were filed in response.

The Commission exercised its right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). On March 10, 2020, the Commission issued the *March 2020 Tentative Order* which adopted the ALJ’s Initial Decision, as modified. The Parties were granted ten days to file comments in response to the *March 2020 Tentative Order*.

On March 20, 2020, both I&E and Sunoco filed Comments in Reply to the *March 2020 Tentative Order*.

1. **Discussion**
2. **Legal Standards**

*Pursuant to the Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E) and 66 Pa. C.S. § 308.2(a)(11), I&E is the entity authorized to prosecute complaints against public utilities. Pursuant to Section 59.33(b) of the Commission’s Regulations, 52 Pa. Code § 59.33(b), I&E’s Safety Division has the authority 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.

Sunoco is a public utility pipeline operator certificated at Docket No.

A-140111 to operate the Mariner East 1 pipeline, which currently transports hazardous volatile liquids on intrastate facilities. 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.

In this case, the Parties submitted a Settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC v. City of Lancaster – Bureau of Water*, Docket No. R‑2010-2179103 (Opinion and Order entered July 14, 2011) *(Lancaster).* Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.,* *citing*, *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996) *(Warner); Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

The Commission has traditionally defined the public interest as including ratepayers, shareholders, and the regulated community. *Pa. PUC v. Bell Atlantic-Pennsylvania, Inc.*,Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed Settlement on these “stakeholder” entities. *Id*. The public interest is best served, however, by ensuring that the underlying transaction complies with applicable law. *See Dauphin County Indus. Dev. Auth. v. Pa. PUC*, 123 A.3d 1124 (Pa. Cmwlth. 2015) (Commonwealth Court Order reversing Commission approval of a joint settlement due to the Court’s plenary review and disapproval of the Commission’s interpretation of Section 2807(f)(5) of the Act, 66 Pa. C.S. § 2807(f)(5)).

The Commission has authority over safety issues concerning all of Pennsylvania’s intrastate facilities, including hazardous liquids and underground natural gas storage facilities. 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.

Furthermore, 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 at 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).

1. **Joint Petition for Settlement**

The Joint Petitioners agreed to resolve this matter and to seek Commission approval for the matters settled in the Settlement. The relevant terms of the Settlement are as follows - paragraph numbers and headings are listed as they appear in the original Settlement filed with the Commission on April 3, 2019, as amended on June 28, 2019 by the Joint Petitioners’ Addendum:

**III. SETTLEMENT TERMS**

17. I&E and Respondent, including to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

1. ***Civil Penalty***

Respondent will pay a civil penalty in the amount of Two Hundred Thousand Dollars ($200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

1. ***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 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)).

The Parties agree that the Remaining Life Study will include the following:

• ME1 corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;

• Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;

• Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;

• Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;

• A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;

• A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;

• A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;

• A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;

• An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;

• A summary of the leak history on ME1 including a description of the size of each leak;

• A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and

• A discussion to illustrate how managing integrity lengthens pipeline life.

For so long as ME1 remains in Highly Volatile Liquid (“HVL”) service, SPLP agrees to supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes SPLP’s continual process of evaluation and assessment to maintain the pipeline integrity of ME1. The report will also include a list of the next year’s planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. The public version of the report shall not contain information that is proprietary or contains information subject to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the Commission’s regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

***C. In-Line Inspection and Close Interval Survey Frequency of ME1:***

1. a. In-Line Inspection

SPLP’s two remaining In-Line Inspection (“ILI”) runs in 2019 on the ME1 segments identified as: (1) Middletown-Montello & Montello-Beckersville; and (2) Beckersville – Twin Oaks, are in addition to the two proposed ILI runs of ME1 that will take place at agreed-upon intervals over the next three (3) calendar years (“ILI run #1” and “ILI run #2”). Thus, the Parties agree that SPLP will conduct the two remaining ILI runs in April 2019 or within 60 days of ME1 resuming service, then conduct ILI run #1 of ME1 eighteen (18) months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 eighteen (18) months after the completion of ILI run #1.

At the conclusion of the three-year ILI period, the Parties agree that SPLP shall retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and will meet with I&E to discuss SPLP’s planned ILI inspection frequency. I&E is not required to wholly accept the interval recommendations proposed by SPLP’s independent consultant. Should the ILI interval recommendation not be wholly accepted by I&E, I&E and SPLP agree to collaborate using best efforts to arrive at a mutually acceptable ILI interval period.

1. b. Close Interval Survey

SPLP further agrees to conduct a Close Interval Survey of ME1 at the same interval and frequency, once every eighteen (18) months, to evaluate the effectiveness of SPLP’s corrosion control program for ME1 for the next three (3) calendar years.

1. ***D. Revision of Procedures:***

The Parties agree that SPLP’s May 2018 revisions to procedures Energy Transfer SOP HLD.22 have addressed I&E’s requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

1. ***E. Implementation of Revised Procedures:***

The Parties agree that SPLP has implemented the revised procedures and has fulfilled I&E’s requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

1. ***F. Pipe Replacement as It Relates to Corrosion:***

The Parties agree that I&E is not requesting that SPLP immediately replace pipe pursuant to Paragraph 47(e) of the Complaint. Instead, I&E understands that when SPLP detects anomalies, the Company maintains the discretion to initiate and/or utilize various remedial measures to preserve the integrity of the pipe or, if ultimately deemed necessary, to physically replace segments of the pipe. The Parties agree with SPLP’s proposed approach as follows:

If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action consistent with its Corrosion Control Plans, Integrity Management Program and applicable Federal regulations.

Settlement at ¶ 17.

According to the Joint Petitioners, upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Sunoco from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Sunoco failed to comply with the obligations claimed in the Complaint for the time periods covered by I&E’s Complaint. Settlement at ¶ 18. More importantly, the Joint Petitioners stated that the Settlement is in the public interest because it effectively addresses I&E’s allegations that are the subject of the Complaint proceeding, promotes public and facility safety, and avoids the time and expense of litigation, which entails hearings, travel for Sunoco’s witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Settlement at ¶ 19.

1. **March 2020 Tentative Order**

By our *March 2020 Tentative Order,* we adopted the Initial Decision of

ALJ Barnes recommending adoption of the Joint Petition for Settlement filed on April 3, 2019, as modified by the Addendum filed on June 28, 2019, in its entirety, with modifications as set forth in the *March 2020 Tentative Order*.

By our order, we modified the terms pertaining to the Remaining Life Study (the Remaining Life Study or the Study) which the Parties have agreed should be carried out by an independent pipeline expert (Independent Expert) *per* the Settlement terms. Because of the importance of the Study, we noted that the selected expert’s independence and special expertise are critical for the objective and reliable findings of the Remaining Life Study. *March 2020 Tentative Order* at 15.

The process agreed upon in the Settlement for choosing the expert is that Sunoco will provide I&E with a list of three experts that have conducted studies for, but not limited to, the Pipeline and Hazardous Materials Safety Administration, other state commissions, the Pipeline Research Counsel International, the American Petroleum Institute, or the Interstate Natural Gas Association of America. The Settlement provides that within thirty (30) days of entry of the order approving the Settlement, Sunoco is to forward a list of the three experts to I&E. *March 2020 Tentative Order* at 15-16; *See* Settlement at ¶ 17.

By our *March 2020 Tentative Order,* we clarified that I&E shall select the Independent Expert to conduct the Remaining Life Study from the list of three experts provided by Sunoco, within thirty (30) days of I&E’s receipt of the list. *March 2020 Tentative Order* at 15.

In addition, for purposes of transparency in the selection of the Independent Expert, our *March 2020 Tentative Order* required that Sunoco disclose to I&E any projects the selected expert has worked on for Sunoco, Sunoco’s parent company, Energy Transfer Partners, or any Sunoco affiliate, in accordance with the provisions of the Settlement Agreement. *March 2020 Tentative Order* at 16.

Further, by our *March 2020 Tentative Order,* we directed certain modifications to the Settlement terms regarding the selected Independent Expert’s process for drafting the Remaining Life Study and public Summary of the Study (public Summary) to ensure transparency and objectivity. Specifically, to further ensure the independence of the Study, we directed that the Independent Expert shall deliver only the final form of the Study, not interim drafts, to Sunoco and I&E on or before the end of the agreed upon six-month contract term. With the additional provisions regarding transparency and objectivity, we concluded the Joint Petition for Settlement to be in the public interest. As such, we directed Paragraph 17(B) of the Settlement to be modified as follows:

1. ***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 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. Within thirty days (30) days of receipt of the list, 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 disclose any projects they have worked on for Sunoco, SPLP’s parent company, Energy Transfer Partners, or any SPLP affiliate. The expert shall furnish this information to I&E in accordance with the provisions of this Agreement. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. The expert shall deliver only the final form Study, not interim drafts, to SPLP and I&E on or before the end of the six-month contract term. A summary of the expert’s findings shall be made public (excluding proprietary or confidential security information (CSI)).

The Parties agree that the Remaining Life Study will include the following:

• ME1 corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;

• Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;

• Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;

• Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;

• A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;

• A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;

• A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;

• A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;

• An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;

• A summary of the leak history on ME1 including a description of the size of each leak;

• A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and

• A discussion to illustrate how managing integrity lengthens pipeline life.

For so long as ME1 remains in Highly Volatile Liquid (“HVL”) service, SPLP agrees to supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes SPLP’s continual process of evaluation and assessment to maintain the pipeline integrity of ME1. The report will also include a list of the next year’s planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. The public version of the report shall not contain information that is proprietary or contains information subject to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the Commission’s regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

Finally, as a procedural matter, our *March 2020 Tentative Order* provided the Parties a ten-day period from the date of entry of the Opinion and Order in which to file comments, and 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 the Opinion and Order. *March 2020 Tentative Order* at 18-19; 22-23.

1. **Comments of the Parties**
2. **I&E’s Comments**

In its Comments, I&E concurs with our *March 2020 Tentative Order*’s modifications to the Remaining Life Study term of the Settlement, provided that such modifications do not preclude the selected Independent Expert from communicating with I&E and Sunoco during the drafting of the Study to ensure the accuracy of key facts upon which the Study may rely. I&E Comments at 1.

I&E submits that it is in the public interest for the findings of the Remaining Life Study to be predicated upon accurate information. I&E suggests that the Independent Expert be permitted to simultaneously communicate with I&E and Sunoco to provide and verify information necessary to complete the Remaining Life Study. I&E Comments at 1

I&E also requests that the Commission clarify that the twenty (20) day time period during which the Joint Petitioners may withdraw from the Settlement is stayed pending the Commission’s consideration and resolution of the merits of any comments filed in response to the *March 2020 Tentative Order*. I&E Comments at 2.

1. **Sunoco’s Comments**

In its Comments, Sunoco seeks clarification that the Commission's modification to the Settlement does not prohibit Sunoco from ensuring the accuracy, completeness, and applicability of the data used and relied upon for the Study. Sunoco Comments at 2-3. Sunoco submits that communication with the Independent Expert will be required for Sunoco to provide information and records regarding its operations to enable the Independent Expert to properly perform the Remaining Life Study. *Id*. Sunoco further comments that clarification of the Commission’s modifications is required to provide that, while the Joint Petitioners will not receive interim drafts of the Remaining Life Study, the provision is not intended to preclude Sunoco from reviewing the underlying factual data to ensure the data being used is accurate, up-to-date, and applicable. Sunoco Comments at 3.

Sunoco also comments that if the Commission's *March 2020 Tentative Order* is read to establish a procedure whereby the Independent Expert releases the Remaining Life Study simultaneously to I&E and Sunoco and releases the public Summary of the Study directly to the Commission, the procedures would contravene the statutory and regulatory requirements for handling CSI under 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.

In this regard, Sunoco seeks clarification, or in the alternative, reconsideration and modification of the Commission’s *March 2020 Tentative Order*, to provide that the Independent Expert release the final form Study and public Summary directly to Sunoco in the first instance (*i.e*., not release the final form Study simultaneously to Sunoco and I&E, and not release the public Summary directly to the Commission) so that Sunoco is able to review the Remaining Life Study and public Summary prior to their release to I&E and the Commission, to prevent disclosure of CSI and other confidential information. Sunoco Comments at 10-14 (regarding the Independent Expert’s procedures for release of Remaining Life Study to I&E) and 14-16 (regarding the Independent Expert’s procedures for release of the public Summary to the Commission).

Sunoco asserts that, in accordance with the CSI Act, the proper procedure should require that the Independent Expert release both the final form Study and public Summary directly to Sunoco, to allow Sunoco the ability to identify and mark CSI. Sunoco will then submit the final form Study to I&E and submit the public Summary to the Commission. Sunoco Comments at 3-6, 9-13. Sunoco notes it is not seeking authorization to review or otherwise provide input on the Independent Expert’s findings and conclusions reached in the Remaining Life Study. Sunoco Comments at 9.

Sunoco also asserts that the clarification or modification of our *March 2020 Tentative Order* is necessary because the Order, as it stands, may subject the Commission to severe penalties and sanctions under the CSI Act, where the Order authorizes “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.” Sunoco concludes that, to the extent our *March 2020 Tentative Order* directs that the Independent Expert release the final form Study simultaneously to Sunoco and I&E, and release the public Summary directly to the Commission, the order impermissibly overrides Sunoco’s responsibilities under the CSI Act. Sunoco Comments at 10-16.

Finally, Sunoco requests confirmation from the Commission that the twenty (20) day period for withdrawal from the Settlement as stated in the Settlement shall be stayed pending disposition of the comments/reconsideration. Sunoco Comments at 2, 16‑17.

**III. Disposition**

In summary, by their comments, both I&E and Sunoco assert that our *March 2020 Tentative Order* requires clarification to state: (1) that the twenty-day period during which the Joint Petitioners may withdraw from the Settlement, pursuant to the terms of the Settlement, is stayed pending disposition of any filed comments; and (2) that it is permissible for the Independent Expert to communicate simultaneously with the Parties for certain limited reasons.

Individually, Sunoco comments that our *March 2020 Tentative Order* should be clarified/modified to establish that the Independent Expert release the final form Remaining Life Study and public Summary to Sunoco in the first instance, to provide Sunoco the opportunity to review the Study and public Summary to identify and classify CSI and any other confidential information, prior to Sunoco’s submission of the Independent Expert’s Remaining Life Study to I&E, and Sunoco’s submission of the public Summary to the Commission. We shall address each issue raised by the Comments, as set forth, *seriatim*.

1. **Stay Pending Disposition of the Comments**

Both Parties’ Comments assert that the filing and disposition of the comments in response to our *March 2020 Tentative Order* should operate to stay the twenty-day period during which the Joint Petitioners may withdraw from the Settlement, per the terms of the Settlement. I&E Comments at 1-2; Sunoco Comments at 16-17. We agree.

As a matter within our discretion, and as a matter of due process, our designation of a ten-day comment period following issuance of our *March 2020 Tentative* *Order*, operates to stay the effective date of the order, pending our disposition of any comments filed. Therefore, we clarify that the filing of comments operates to stay the twenty-day period during which the Joint Petitioners may withdraw from the Settlement, *per* the terms of the Settlement Agreement.

Further, because we will also provide for a ten-day comment period following this Second Tentative Opinion and Order, we also note that the filing of comments during the ten-day comment period will operate as a stay of the twenty-day period during which the Joint Petitioners may withdraw from the Settlement, *per* the terms of the Settlement at Paragraph 21. Therefore, we shall provide that the twenty-day period during which either party may withdraw from the Settlement shall commence upon issuance of this Second Tentative Opinion and Order, after which, unless Comments are filed within ten days of the date of issuance of this Opinion and Order, this Second Tentative Opinion and Order will take effect without further Commission action.

**B. The Independent Expert May Communicate Simultaneously with the Joint Petitioners to Obtain and Verify the Accuracy of Information Necessary to the Remaining Life Study and Public Summary**

Both I& E and Sunoco comment that our *March 2020 Tentative Order* should be clarified to state that it is permissible and necessary for the Independent Expert to communicate with the Parties during the process of performing the Remaining Life Study to both obtain and verify the accuracy of information underlying the Study. I&E Comments at 1; Sunoco Comments at 2. We agree.

It is in the public interest to ensure that the selected Independent Expert be permitted to communicate with I&E and Sunoco to obtain and verify the accuracy of information underpinning the findings of the Remaining Life Study. While we directed the Independent Expert to release only the final form Remaining Life Study to I&E and Sunoco, this provision was not intended to restrict the Independent Expert from communication with I&E and Sunoco, as necessary, to conduct the Study.

Therefore, we clarify that the intent of our *March 2020 Tentative Order* is to permit communication between the Independent Expert, I&E and Sunoco during the Independent Expert’s performance of the Remaining Life Study for the purpose of sharing information necessary to the Study and for the purpose of verifying underlying factual data or methods of analysis to ensure accuracy in the Study. We expressly note that all communication between the Independent Expert, I&E and Sunoco should be conducted jointly, in the interest of preserving the transparency and objectivity of the Independent Expert’s final form Study and public Summary.

As discussed *infra*., because the Independent Expert is also responsible to submit the public Summary of the final form Study to the Commission, and because the public Summary is extrapolated from the underlying Study, we further clarify that communication with the Independent Expert is permissible regarding information that is the basis for the public Summary.

**C. Procedures for Submission of the Independent Expert’s Remaining Life Study and Public Summary**

Sunoco’s Comments raise concerns regarding the procedures for submission of the Independent Expert’s Remaining Life Study and public Summary. Sunoco seeks to ensure that the Independent Expert’s final form Study and public Summary do not contain information that is proprietary or constitutes CSI subject to the CSI Act and the Commission’s Regulations implementing such Act at 52 Pa. Code §§ 102.1-102.4.

Specifically, Sunoco asserts that the CSI Act requires that we adopt a procedure whereby the Independent Expert releases both the final form Study and public Summary directly to Sunoco to allow Sunoco the ability to identify and mark any CSI which may be contained in the Study and the Summary. Sunoco proposes it will then submit the final form Study to I&E and submit the public Summary to the Commission. Sunoco Comments at 3-6, 9-13. Sunoco asserts this procedure is required by the CSI Act and necessary to preclude disclosure of Sunoco’s confidential proprietary information and sensitive CSI. We disagree.

We reject Sunoco’s Comments to the extent they suggest that our *March 2020 Tentative Order* requires clarification or reconsideration to establish that the Independent Expert’s final form Study and public Summary should be first sent to Sunoco, so that Sunoco may review and revise the Independent Expert’s final form Study and public Summary to exclude any proprietary or confidential security information. We also reject Sunoco’s assertion that Sunoco should be responsible for drafting the public Summary to preclude disclosure of Sunoco’s proprietary information and sensitive CSI.

We do not agree with Sunoco’s suggestion that the only means to protect Sunoco’s CSI from public disclosure is by granting Sunoco the right to review the Independent Expert’s final form Study and the public Summary of that Study and that Sunoco should control their submission to I&E and the Commission. To do so would unnecessarily call into question the independence and objectivity of the Independent Expert’s Remaining Life Study and public Summary.

We note that Sunoco’s premise, that the Independent Expert may unwittingly include CSI in the final form Study and the public Summary, is not credible. The selection process of the Independent Expert ensures that Sunoco’s confidential information will be entrusted to a party with the technical expertise and experience to identify and protect confidential information associated with pipeline operations. We note that Sunoco itself exercises the control over the selection of the three potential experts from which I&E will select the Independent Expert that will complete the Remaining Life Study and the public Summary. The agreed upon minimum expert qualifications ensure that any of the three experts which Sunoco proposes as an Independent Expert will be well versed in the technical aspects of CSI and experienced in handling the highly technical and proprietary information associated with pipeline operations.

In addition, as discussed *supra.*, we have clarified that we agree with Sunoco and I&E’s comments that communication with the Independent Expert is necessary, not only for Sunoco and I&E to provide information, but also to verify the accuracy of any facts deemed material and relied upon for the Independent Expert’s findings. Therefore, Sunoco’s communication and verification of any facts to the Independent Expert affords Sunoco with the opportunity to communicate any associated claim of confidential proprietary and CSI information protections.

As a practical legal matter, counsel routinely label the communication of confidential information to preserve the designation of “proprietary” and “CSI” information. Both I&E and Sunoco are represented by legal counsel. Therefore, in the present circumstances, both I&E and Sunoco, through their respective counsel, will retain the ability to control the designation of any confidential information. I&E will have the opportunity to preserve protections for sensitive investigative information or other confidential information. Likewise, Sunoco may assert information as either “proprietary” or “CSI” at the same time the information is conveyed to or verified for the Independent Expert.

The joint exchange of sensitive confidential information between Sunoco, I&E and the Independent Expert should be conducted in a careful manner to preserve the applicable confidentiality of the information conveyed, including as confidential investigative information, CSI and confidential proprietary information. I&E, Sunoco, and the selected Independent Expert are cautioned to preserve the confidentiality of such sensitive information at every step.

We acknowledge Sunoco’s legitimate interest in protecting both proprietary information and CSI. We want to reassure the Parties that the Commission is mindful of our paramount duty to protect the safety of the citizens of our Commonwealth in precluding disclosure of CSI, pursuant to both the CSI Act and the Commission’s Regulations implementing such Act. 52 Pa. Code §§ 102.1-102.4. In addition, the Commission respects and endeavors to protect the legitimate and important business interests of our regulated utilities which may be harmed by the disclosure of confidential proprietary information, as recognized by the Commission’s Regulations and the provisions of Pennsylvania’s Right-to-Know Law, providing for confidentiality of proprietary information, and from which the disclosure of CSI is expressly excluded. 65 P.S. §§ 67.101, *et seq*.

However, we find Sunoco’s reliance on Section 2141.3(a) of the CSI Act, for the proposition that the CSI Act requires Sunoco’s proposed procedure, to be misplaced. Section 2141.3(a) of the CSI Act provides:

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.

*Id*. As Sunoco correctly notes, the CSI Act requires that, where a utility is submitting information to an agency which contains CSI, it is the utility’s duty to submit a transmittal letter to identify, designate and assert the basis for claiming the information is to be afforded CSI protections. This provision is a practical requirement, to ensure that where a utility directly submits CSI to an agency it should, of course, clearly identify it as such.

However, this provision does not, as Sunoco argues, establish an *exclusive means* by which a utility’s information containing CSI may be conveyed to an agency or by which an agency will determine a record requires CSI protections. Further, in the present case, in recognition of the sensitive information required to perform the Remaining Life Study, the Independent Expert’s final form Study is to be treated as confidential, while only the Expert’s public Summary is to be designated as a public document. Therefore, existing Commission protocols for protecting confidential information are in place to preclude disclosure of the final form Study. Finally, the CSI Act, as a whole, establishes the agency’s duty to preclude disclosure of CSI whether the record has been designated by the utility as such or not.

In the present case, the Independent Expert’s final form Remaining Life Study will be conveyed to both Sunoco and the Commission’s prosecutory staff at I&E under the terms of the Settlement Agreement. The Joint Petitioners agree that the Independent Expert’s final form Study will be provided to I&E on a confidential basis, and that the Independent Expert’s public Summary of the final form Study will be provided to the public. Therefore, there is no risk that the Independent Expert’s final form Study will be disclosed.

If, upon review, Sunoco determines that the Independent Expert’s final form Study contains CSI which has not been properly designated, Sunoco may immediately submit a letter to the Secretary of the Commission identifying any portion of the final form Study which Sunoco determines contains CSI and requesting that the information and/or records be afforded CSI protections. Therefore, the final form Study, which is already treated as confidential upon receipt by the Commission, may immediately be afforded CSI protections, as per any additional designation submitted by Sunoco.

Even if Sunoco did not immediately request that any relevant portions of the Independent Expert’s final form Study be treated as CSI, the CSI Act provides that the agency is required to withhold CSI from disclosure, regardless of whether the utility has asserted the designation. *See* CSI Act at Section 2141.3(c). Section 2141.3(c) expressly pertains to challenges to *either* a utility’s CSI designation *or* requests under the Right-To-Know Law to examine agency records containing CSI. Notably, the Pennsylvania legislature did not restrict an agency’s duty to protect CSI from disclosure to instances in which the utility had made a designation. *See* Section 2141.3(c) (requiring agencies to develop protocols and procedures to address requests for disclosure of records containing CSI).

Under existing Commission protocols, and as mandated by Section 2141.3(c) of the CSI Act, if the Commission were to receive a request for disclosure of the Independent Expert’s confidential final form Study which was determined to contain CSI, the Secretary of the Commission, as the agency’s Right-To-Know Officer, would provide written notification of the request for disclosure to Sunoco. Sunoco would then, again, be provided the opportunity to claim CSI protection from disclosure. Pending appeal, the agency is required to honor the utility’s request for CSI designation. *See* CSI Act § 2141.3(c)(3).

However, with respect to the Independent Expert’s public Summary, we acknowledge that, because the Summary is intended to be public, it will *not* be protected by the Commission’s existing protocols for treatment of confidential information. We agree with Sunoco’s Comments to the extent they assert that the intended publication of the Independent Expert’s public Summary requires that the Parties be afforded the opportunity to raise claims of confidentiality prior to public disclosure. Therefore, we conclude that there should be an interim procedural step, prior to the publication of the Expert’s public Summary, to provide Sunoco and I&E the opportunity to raise any claim of confidentiality or otherwise seek a protective order before the Commission.

Accordingly, as a procedural matter, we shall direct that the Independent Expert issue both the final form Study and the public Summary simultaneously to both I&E and Sunoco. The Parties will be granted ten days thereafter to raise any claim for confidentiality or otherwise seek a protective order before the Commission, prior to the public Summary being made available to the public by publication on the Commission’s website at [www.puc.pa.gov](http://www.puc.pa.gov).[[5]](#footnote-5) As such, Paragraph 17(B) of the Settlement is modified, in pertinent part, as follows:

The expert shall deliver only the final form Study and public Summary (excluding proprietary or confidential security information (CSI)) , not interim drafts, to SPLP and I&E on or before the end of the six-month contract term. [A] The expert’s Summary of the [expert’s] findings shall be made public (excluding proprietary or confidential security information (CSI)), unless, within ten (10) days of the expert’s issuance of the Summary, an objection to disclosure or petition for protective order is filed with the Commission. If an objection to disclosure or petition for protective order is filed, replies thereto may be filed within seven (7) days. The filing of an objection or petition shall operate to stay public disclosure of the expert’s Summary.

We reaffirm that the Independent Expert should release the final form Remaining Life Study simultaneously to I&E and Sunoco. With respect to the public Summary, we confirm that the Independent Expert, as the party responsible for preparing the final form Remaining Life Study, is in the best position to draft a comprehensive public Summary of the Study for purposes of public disclosure. However, we agree with Sunoco’s Comments to the extent that we conclude that our *March 2020 Tentative* *Order* requires the above clarification and modification of the procedures whereby the Independent Expert will release the public Summary.

We conclude that the procedures adopted by our *March 2020 Tentative* *Order* for the Independent Expert’s release of the final form Study and relating to the public Summary, as modified, consistent with this Second Tentative Opinion and Order, are in accord with the provision the CSI Act and Commission Regulations.

**Conclusion**

Based on the foregoing, we clarify and shall modify our *March 2020 Tentative Order* which adopts the ALJ’s Initial Decision to approve the Settlement, as set forth in this Second Tentative Opinion and Order.

Any active parties and interested parties shall have ten (10) days from the date of entry of this Second Tentative Opinion and Order to file comments. The filing of comments shall operate as a stay of the effective date of this order for purposes of calculating the twenty (20) day period during which the Joint Petitioners may withdraw from the Settlement.

Provided no comments are filed, pursuant to the terms of the Settlement, the Joint Petitioners will have twenty (20) days from the date of this Second Tentative Opinion and Order to withdraw from the Settlement. If no adverse comments are received and if no party withdraws from the Settlement Agreement, our *March 2020* *Tentative Order*, as modified by this Second Tentative Opinion and Order, shall become final without further Commission action; **THEREFORE,**

**IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on December 20, 2019, as it pertains to the Joint Petition for Approval of Settlement filed on April 3, 2019, at Docket Number C-2018-3006534, by the Commission’s Bureau of Investigation and Enforcement and Sunoco Pipeline, L.P., as amended on June 28, 2019 by the Addendum to the April 3, 2019 Joint Petition for Approval of Settlement, is adopted, as modified by the Tentative Opinion and Order of the Commission entered on March 10, 2020, and by this Second Tentative Opinion and Order.
2. That Sunoco Pipeline, L.P. will pay a civil penalty in the amount of Two Hundred Thousand Dollars ($200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission’s final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C‑2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f).

1. That Sunoco Pipeline, L.P. shall retain an Independent Expert, unaffiliated with Sunoco Pipeline, L.P. or its affiliates, as selected by the Commission’s Bureau of Investigation and Enforcement to conduct a Remaining Life Study that will consist of a summary of Sunoco Pipeline, L.P.’s Integrity Management Plan (IMP), a remaining life evaluation of Mariner East 1, calculations that are described in the Settlement Agreement, and will be forward-looking in manner, and intended to assess the longevity of Mariner East 1.
2. That the Remaining Life Study shall 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).

5. That within thirty (30) days of entry of a final Commission Order approving any settlement of this matter, Sunoco Pipeline, L.P. shall provide the Commission’s Bureau of Investigation and Enforcement with a list of three (3) proposed Independent Experts, along with contact information, a brief description of each expert’s background and a disclosure as to whether each proposed expert performed any work in relation to Mariner East 1, and a description of that work, if applicable.

1. That within thirty (30) days of receipt of the list, the Commission’s Bureau of Investigation and Enforcement shall select one (1) independent expert from the list provided by Sunoco Pipeline, L.P., which will hire and pay the expert to complete and review the study.
2. That the selected Independent Expert shall disclose any projects they have worked on for Sunoco Pipeline, L.P., Sunoco Pipeline L.P.’s parent company, Energy Transfer Partners, or any Sunoco affiliate. Such information shall be furnished to the Commission’s Bureau of Investigation and Enforcement in accordance with the provisions of this Settlement Agreement.
3. That a term of the agreement between Sunoco Pipeline, L.P. and the Independent Expert shall be that the Remaining Life Study shall be completed and delivered pursuant to Ordering Paragraph No. 9 below within six (6) months from the date that Sunoco Pipeline, L.P., and the Independent Expert enter into a signed contract.
4. That the Independent Expert shall deliver only the final form Remaining Life Study (not interim drafts) and a public Summary of the final form Study (excluding all proprietary or confidential security information) 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.

10. That, unless Sunoco Pipeline, L.P., or the Commission’s Bureau of Investigation and Enforcement file an objection to disclosure or otherwise petition for protective order of confidential information contained in the public Summary of the final form Study within ten (10) days of receipt of the Independent Expert’s final form Remaining Life Study Report and public Summary, the public Summary of the final form Remaining Life Study Report shall be made available to the public (excluding proprietary or confidential security information) by publication on the Commission’s web page at [www.puc.pa.gov](http://www.puc.pa.gov) .

11. That for so long as Mariner East 1 remains in Highly Volatile Liquid (HVL) service, Sunoco Pipeline, L.P. shall supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes Sunoco Pipeline, L.P.’s continual process of evaluation and assessment to maintain the pipeline integrity of Mariner East 1 as well as the next year’s planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on Mariner East 1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements.

12. That the public version of the Independent Expert’s public Summary of the final form Remaining Life Study and Sunoco Pipeline, L.P.’s supplemental summary annual reports shall not contain information that is proprietary or subject to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the Public Utility Commission’s Regulations implementing such Act at 52 Pa. Code §§ 102.1-102.4.

13. That at the conclusion of the three-year In-Line Inspection period, Sunoco Pipeline, L.P. shall retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and will meet with the Commission’s Bureau of Investigation and Enforcement to discuss planned In-Line Inspection frequency.

14. That Sunoco Pipeline, L.P. shall conduct a Close Interval Survey of Mariner East 1 at the same interval and frequency, once every eighteen (18) months, to evaluate the effectiveness of Sunoco Pipeline, L.P.’s corrosion control program for Mariner East 1 for the next three (3) calendar years.

15. That the Secretary’s Bureau shall mark the matter at Docket No. C‑2018-3006534 closed upon payment of the civil penalty in Ordering Paragraph No. 2, above and upon compliance filings consistent with Ordering Paragraphs Nos. 3-14.

16. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with Ordering Paragraphs Nos. 1-14 and per the Initial Decision as modified by our Tentative Opinion and Order issued on March 10, 2020, and this Opinion Order.

17. That beginning one year after the date of entry of the Final Order in this proceeding and for the two years thereafter, Sunoco Pipeline, L.P., shall file an annual progress report on its compliance with the directives in Ordering Paragraph Nos. 3-14, and that a copy of the progress report be served upon the Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

18. That Sunoco Pipeline, L.P., the Commission’s Bureau of Investigation and Enforcement, or any other active parties and interested parties shall have ten (10) days from the date of entry of this Second Tentative Opinion and Order to file comments.

19. That the filing of comments shall operate to stay the effective date of the entry of this order for purposes of calculating the twenty (20) days from the date of the entry of this Second Tentative Opinion and Order, under Ordering Paragraph No. 20.

20. That, pursuant to the terms of the Settlement, Sunoco Pipeline, L.P., and the Commission’s Bureau of Investigation and Enforcement may withdraw from the Settlement Agreement within twenty (20) days from the date of entry of this Second Tentative Opinion and Order.

21. That, if Sunoco Pipeline, L.P., the Commission’s Bureau of Investigation and Enforcement, or any other active and interested parties do not file any timely adverse comments, and if no party withdraws from the Settlement Agreement, the Tentative Opinion and Order of the Commission entered on March 10, 2020, as modified by this Second Tentative Opinion and Order, shall become final without further Commission action.

22. That a copy of this Second Tentative Opinion and Order be served upon all the parties of record in the instant proceeding.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 21, 2020

ORDER ENTERED: May 21, 2020

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. These include undertaking on an expedited basis a Remaining Life Study for ME1, which was suggested by Governor Wolf in a statement he released on February 8, 2019. The Study will assess the longevity of ME1, including risks to the pipeline and SPLP [Sunoco] procedures. This study will be conducted by an independent expert and submitted to BIE [I&E] with ongoing annual summary reports. The Settlement also provides for ILI [In-Line Inspection] tool runs at intervals that are accelerated and other testing and reporting that are above and beyond what existing state and federal regulations or law require. Finally, the Settlement includes Close Interval Surveys of ME1 pipeline at accelerated intervals above and beyond any federal or state regulation or law. [↑](#footnote-ref-3)
4. Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines are Complainants in a separate proceeding involving Sunoco (*See* *Flynn v. Sunoco Pipeline*, L.P., Docket No. C‑2018‑3006116). They are not Complainants but are Intervenors in the instant proceeding. [↑](#footnote-ref-4)
5. We note that this procedural step will provide Sunoco with the opportunity to assert that information contained not only in the public Summary, but also in the final form Remaining Life Study, should be treated as CSI or otherwise designated as confidential proprietary information. [↑](#footnote-ref-5)