

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	C-2018-3006116
Rosemary Fuller	:	P-2018-3006117
Michael Walsh	:	
Nancy Harkins	:	
Gerald McMullen	:	
Caroline Hughes	:	
Melissa Haines	:	
Andover Homeowners Association	:	C-2018-3003605
Melissa DiBernardino	:	C-2018-3005025
Rebecca Britton	:	C-2018-3006898
Laura Obenski	:	C-2018-3006905
	:	
v.	:	
	:	
Sunoco Pipeline L.P.	:	

INITIAL DECISION

(NON-PROPRIETARY VERSION)

Before
Elizabeth H. Barnes
Administrative Law Judge

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I. INTRODUCTION

This Initial Decision grants in part and denies in part the consolidated Complaints filed by a homeowners' association and several individuals residing in close proximity to hazardous liquids pipelines against a utility pipeline operator. The operator is directed to: 1) pay a civil penalty in the amount of \$2,000; 2) supplement the material content of its public awareness, public official, and emergency responder safety pamphlets/mailers in Delaware and Chester Counties to include information regarding potential hazards/adverse consequences associated with a release of highly volatile liquids from its pipeline facilities, including but not limited to incorporating the following terms in its materials: property damage, personal injury, burns, asphyxiation, and death (or fatality); and 3) supplement its controller's emergency contact list for the Delaware and Chester Counties such that if a telephone call/text or email notification is warranted to the Lead Emergency Responder for the Counties due to possible leak and/or rupture on its pipeline facilities in these Counties, so too will the police departments of municipalities and designees of school districts be directly notified by the operator, its controller, or other operator designee/county liaison. In Delaware County, additional emergency contact phone numbers/email addresses shall include the Principal of Glenwood Elementary. It shall be the responsibility of the municipalities, counties and school districts to provide and update their respective contact's name and phone number to the operator.

The homeowners' association's request that the communication buffer of public mailers be expanded to a minimum distance of 2,800 feet from the center line of a 20-inch diameter highly volatile liquid (HVL) pipeline is denied as moot because in 2019, the operator expanded its buffer and its parent company mailed pamphlets beyond 2,800 feet. The operator and its parent company intend to continue using the new buffer distance going forward. Additionally, a state regulatory minimum communication buffer distance more stringent than the current federal requirement is at issue in the Commission's Rulemaking Proceeding pending at Docket No. L-2019-3010267.

Pursuant to any non-disclosure agreements, the operator is directed to share the results of any geophysical test reports, inspection and evaluation reports assessing the condition of

its pipelines located in East Goshen Township or Middletown Township to Township Solicitors and any Township Supervisors' designated engineering consultants at least on an annual basis and more frequently if there are construction and subsidence events occurring along the operator's right of way in these townships. The operator is directed to give advance-notification prior to proposed excavation on the pipeline system in all municipalities of Delaware and Chester Counties to both the municipality directly affected as well as the county of the municipality and their specific emergency contact designees. It shall be the responsibility of the townships and counties to apprise the operator of their respective contact information and changes to contact information.

The operator is directed to contact the Chester County Commissioners, Delaware County Commissioners and all municipalities' supervisors therein within thirty (30) days of the date of entry of a Final Order in this consolidated proceeding to arrange for meeting(s) (either remotely or in-person or a combination thereof as mutually agreeable). The operator is directed to contact the West Chester Area School District, Twin Valley School District, Downingtown Area School District, and Rose Tree Media School District, within thirty (30) days of the date of entry of a Final Order for the purpose of scheduling public awareness/education meetings to be held in each School District.

Absent exigent circumstances, the operator is directed to appear at the scheduled meetings and discuss additional communications and training (including establishment of procedures for immediate, direct notifications to municipalities and school districts of any leak or breach of the Mariner East Pipelines and other items outlined in the ordering paragraphs below).

Within one hundred twenty (120) days of the Final Order in this proceeding, the operator shall submit to the Commission with a copy to the Bureau of Technical Utility Services for review a written plan to enhance its public awareness and emergency notification plans, including but not limited to addressing: a) direct notifications to municipalities, counties, and school districts in high consequence areas of any leak, breach or other pipeline emergency; b) supplemental program enhancements to emergency training programs; c) plan to internal or external audits to evaluate the effectiveness of its programs; and d) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits. Absent

action by the Commission within ninety (90) days of the enhanced public awareness plan's submission to the Commission, the plan will be deemed accepted and approved.

The operator shall at minimum complete or plan to complete in a timely manner an audit or review of its public awareness program and shall ultimately submit to the Commission with a copy to the Bureau of Technical Utility Services within six (6) months from the date of entry of a Final Order a baseline evaluation of its public awareness program through either an internal self-assessment using an internal working group or through third-party auditors where the evaluation is undertaken by a third-party engaged at the operator's cost.

The operator is directed to conduct a depth of cover and distance between other underground pipelines/structures survey pursuant to its Management of Depth of Cover and Evaluation Standards of Procedures No. HLI.24, (Exhibits SPLP MG-11 and MG-12) regarding ME1 and the 12-inch workaround pipelines as long as they are purposed for carrying highly volatile liquids a/k/a natural gas liquids. The operator is directed to bury its Mariner East 1 and 12-inch pipelines following its Standard Operating Procedure (SOP) HLI.08 (Lowering or Raising In-Service Pipelines) (Exhibit MG-11) such that the depth of cover is appropriate and such that spacing is in conformity with at least 12 inches separation from other underground pipes or utility structures unless the operator can show it is providing adequate corrosion control in these areas where the pipes are less than 12 inches apart. These requirements last as long as these pipelines are purposed for transporting highly volatile liquids (HVLs).

The operator is directed to file a report with the Commission and send copies to the Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement within one hundred twenty (120) days of the date of entry of a final order. The report shall certify whether Mariner East 1 and the 12-inch workaround pipeline that are transporting highly volatile liquids within Chester and Delaware Counties are buried so that they are below the level of cultivation and so the cover between top of pipe and ground level, road bed, river bottom or underwater natural bottom is in compliance with minimum regulatory requirements and the distance between pipeline exteriors and the exteriors of other underground pipelines/utility structures is at least 12-inches apart unless adequate corrosive control action can be shown. The

report shall contain a corrective action plan regarding any areas of operating pipelines (including Mariner East 1, 8-inch pipeline, and the 12-inch workaround pipelines) carrying highly volatile liquids in Delaware and Chester Counties to remedy any situations where there is lack of required cover and/or proper distance between other structures/pipelines in order to bring these pipelines up to federal minimum codified requirements. This report shall be filed annually for a period of three (3) years.

Complainants' and Aligned Intervenors' request for a Commission-directed remaining life study of Mariner East 1 is deemed withdrawn by Flynn Complainants and denied as moot because said relief has already been granted as part of an approved Settlement Agreement in *Pa. Pub. Util. Comm'n, Bureau of Investigation & Enforcement v. Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners*, Docket No. C-2018-3006534 (Opinion and Order entered August 19, 2020). Complainants' and Aligned Intervenors' request for a Commission-directed remaining life study of the 12-inch workaround pipeline is denied for redundancy reasons and a failure of Complainants and aligned Intervenors to meet their burden of proving the violation of a statute or regulation occurred, or the operator did not follow its pipeline integrity management plan regarding the 12-inch pipeline requiring such injunctive relief.

Complainant Obenski's and Aligned Intervenors' request that the Commission direct SPLP relocate a valve station currently on Dorlan Mill Road near Glenwood Elementary School is denied as the valve station is hardened against damage or tampering by fencing, locked equipment, and safety bollards or jersey barriers to separate the valve site from the roadway. Complainants' and Aligned Intervenors' requests that the Commission amend/restrict SPLP Pipeline, L.P.'s certificates of public convenience within the Counties of Delaware and Chester such that the operator's authority is restricted from providing transportation service of natural gas liquids, or any mixture thereof, in Chester and Delaware Counties is denied.

Complainants' and aligned Intervenors' requested relief for an early public audible warning alarm system for residents and places of congregation along the rights of way (ROW) of the Mariner East pipeline facilities and a directive that an odorant and/or dye be added to the HVLs of ethane, butane, and propane being transported is denied as relief that cannot be

granted through this complaint proceeding. These requests should be vetted through a rulemaking proceeding currently pending at Docket No. L-2019-3010267, *Hazardous Liquid Public Utility Safety Standards, Advance Notice of Proposed Rulemaking*, in order to not deprive the pipeline operator and other interest groups their due process rights. The request for an alarm and odorant as an accommodation under the Americans With Disabilities Act is denied for lack of jurisdiction to grant such an accommodation. Issues pertaining to public audible alarms and odorant are referred to Docket No. L-2019-3010267.

II. HISTORY OF PROCEEDINGS

A. FLYNN COMPLAINANTS' PETITION FOR INTERIM EMERGENCY RELIEF AND SECOND AMENDED COMPLAINT

On November 19, 2018, Flynn Complainants¹ filed a Petition for Interim Emergency Relief at Docket No. P-2018-3006117 concurrently with a Complaint at C-2018-3006116 against Sunoco Pipeline, L.P. (Respondent, SPLP, or Sunoco). On November 26, 2018, a Hearing Notice was issued scheduling emergency petition hearings on November 29 and 30, 2018. On November 26, 2018, Andover Homeowners' Association, Inc. ("Andover HOA") filed a petition to intervene to be aligned with Flynn Complainants. On November 27, 2018, SPLP filed an Answer Opposing the Petition for Interim Emergency Relief; Range Resources Appalachia ("Range Resources") also petitioned to intervene on the same date to be aligned with SPLP. Hearings were held on November 29 and 30, 2018, as scheduled. At the November 29, 2018 hearing, Andover HOA and Range Resources were granted intervenor status, and the Petition docket was also consolidated with the Flynn Complaint proceeding docket discussed below. N.T. 14-15.

On December 11, 2018, an Order Denying Petition for Emergency Interim Relief and Certifying Material Question to the Commission was issued. On December 20, 2018, the Commission issued an order extending the time for consideration of the material question to the

¹ The Flynn Complainants are Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines.

January 17, 2019 public meeting. On February 1, 2019, the Commission entered an Opinion and Order affirming the denial of interim injunctive relief and returning the matter for disposition of the Flynn Complaint.

On December 11, 2018, SPLP filed an Answer and New Matter as well as Preliminary Objections to the Complaint. On December 21, 2018, Flynn Complainants filed their First Amended Complaint. On January 7, 2019, SPLP filed an Answer and New Matter to Flynn Complainants' First Amended Complaint. On January 10, 2019, SPLP filed Preliminary Objections to Flynn Complainants' First Amended Complaint. On January 18, 2019, Flynn Complainants filed a Reply to New Matter and Response in Opposition to Preliminary Objections. By Order dated March 12, 2019 (Second Interim Order), SPLP's Preliminary Objections to the First Amended Complaint were granted in part and denied in part. Specifically, the Second Interim Order struck Paragraph 74 of the First Amended Complaint, which incorporated by reference the averments of the Commission's Bureau of Investigation and Enforcement (BI&E) Complaint against SPLP at Docket No. C-2018-3006534.

On March 21, 2019, Flynn Complainants filed a Motion for Reconsideration of Second Interim Order seeking to be allowed to include the allegations of the BI&E Complaint at Docket No. C-2018-3006534 in their First Amended Complaint. On April 15, 2019, SPLP filed an Answer Opposing Complainants' Motion for Reconsideration of Second Interim Order. On April 17, 2019, Flynn Complainants filed a Reply Memo in Further Support of their Motion for Reconsideration. On May 16, 2019, SPLP filed a Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure. On May 29, 2019, Flynn Complainants filed an Answer to SPLP's Motion to Strike Filings. By Order dated June 6, 2019, Flynn Complainants' Motion for Reconsideration of Second Interim Order was granted in part and denied in part. Specifically, Flynn Complainants were precluded from including the allegations of the BI&E Complaint at Docket No. C-2018-3006534 in their Complaint but were granted leave to file a Second Amended Complaint.

On June 18, 2019, Flynn Complainants filed a Second Amended Complaint that included the allegations of the BI&E Complaint at Docket No. C-2018-3006534. On July 9,

2019, SPLP filed an Answer and New Matter and Preliminary Objections to the Second Amended Complaint. On July 10, 2019, a Reply to New Matter was filed. On July 15, 2019, a Response to Preliminary Objections was filed. By Order dated July 31, 2019, SPLP's Preliminary Objections to the Second Amended Complaint were granted and paragraphs 67-93 of the Second Amended Complaint containing the allegations of the BI&E Complaint at Docket No. C-2018-3006534 were stricken.

B. DIBERNARDINO COMPLAINT

On September 28, 2018, Melissa DiBernardino filed a Complaint against SPLP at Docket No. C-2018-3005025, which was served on October 1, 2018. SPLP filed Preliminary Objections and an Answer and New Matter on December 3, 2018. On December 18, 2018, DiBernardino filed an Answer to Preliminary Objections. By Order dated December 21, 2018, SPLP's Preliminary Objections were granted in part and denied in part.

C. BRITTON COMPLAINT

On January 2, 2019, Rebecca Britton filed a Complaint against SPLP at Docket No. C-2019-3006898, which was served on January 4, 2019. SPLP filed Preliminary Objections and an Answer and New Matter on January 24, 2019. SPLP's Preliminary Objections were denied by Order dated March 15, 2019.

D. OBENSKI COMPLAINT

On January 2, 2019, Laura Obenski filed a Complaint against SPLP at Docket No. C-2019-3006905, which was served on January 4, 2019. SPLP filed Preliminary Objections and an Answer and New Matter on January 24, 2019. SPLP's Preliminary Objections were denied by Order dated March 15, 2019.

E. ANDOVER HOMEOWNERS' ASSOCIATION COMPLAINT

On July 24, 2018, Andover HOA filed a Complaint against SPLP at Docket No. C-2018-3003605, which was served on SPLP on July 26, 2018. On August 22, 2018, SPLP filed Preliminary Objections and an Answer and New Matter to the Complaint. On September 10, 2018, Andover HOA filed a Reply to Answer and New Matter and Preliminary Objections to SPLP's Answer. On September 17, 2018, Andover HOA filed an Answer to Preliminary Objections.

The Andover HOA Complaint was consolidated with Senator Dinniman's Complaint and Petition proceeding at *Pa. State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3001453 and Docket No. C-2018-3001451. (*Dinniman* Proceeding). That proceeding was stayed as directed by the Commonwealth Court of Pennsylvania at *Sunoco Pipeline L.P. v. Pa. State Senator Andrew E. Dinniman and Pub. Util. Comm'n*, Docket No. 1169 C.D. 2018 (Stay Order entered September 27, 2018). On September 9, 2019, the Commonwealth Court entered an Opinion and Order reversing the Commission's June 15, 2019 Order in the *Dinniman* proceeding and remanding the matter to the Commission with instructions to dissolve the interim emergency injunction and dismiss the *Dinniman* Complaint for lack of legislative standing to have filed the Complaint. By Secretarial Letter issued on September 19, 2019, the Commission dissolved its interim emergency injunction of June 15, 2018, dismissed the *Dinniman* Complaint and Petition at Docket Nos. C-2018-3001451 and P-2018-3001453, and bifurcated and reassigned the Andover HOA Complaint at Docket No. C-2018-3003605 to the Office of Administrative Law Judge (OALJ) for further proceedings.

By Order dated October 21, 2019, SPLP's Preliminary Objections were granted in part and denied in part and paragraphs 39(h), (i), 51-62, 65, 68, and 80 were stricken from the Andover HOA Complaint.

F. INTERVENTIONS

1. *Flynn* Complaints Second Amended Complaint Proceeding

The following parties² filed a Petition to Intervene in the Flynn action, and SPLP filed responses to the Petitions as follows:

- Downingtown Area School District – January 16, 2019
 - SPLP Answer to Petition to Intervene – February 5, 2019
 - Downingtown’s Response – February 25, 2019
 - SPLP Preliminary Objections – March 4, 2019
- Rose Tree Media School District – January 18, 2019
 - SPLP Answer to Petition to Intervene – February 7, 2019
 - Rose Tree Media School District Response – February 27, 2019
 - SPLP Preliminary Objections – March 4, 2019
- Twin Valley School District – January 22, 2019³
 - SPLP Answer to Petition to Intervene – February 7, 2019
- East Goshen Township – January 22, 2019
- West Whiteland Township – February 4, 2019
 - SPLP Answer to Petition to Intervene – February 25, 2019
- Uwchlan Township – February 13, 2019
 - SPLP’s Answer to Petition to Intervene – March 4, 2019
- Middletown Township – February 21, 2019
- Delaware County – February 25, 2019
- West Chester Area School District – March 4, 2019
- Thornbury Township – March 12, 2019
- Chester County – March 14, 2019
- Edgmont Township March 14, 2019
- Senator Thomas Killion⁴ – March 20, 2019

² Range Resources and Andover HOA were granted intervention in the Flynn Complaint proceeding by intervention in the consolidated Petition for Interim Emergency Relief proceeding.

³ On the same day, Twin Valley School District filed a Corrected Petition to Intervene.

⁴ Senator Killion requested to intervene in his capacity as a legislator for Senate District No. 9 and in his individual capacity as a resident of Middletown Township, Delaware County. He was granted intervenor status in his individual capacity only.

On March 12, 2019, the Second Interim Order granted intervenor status to Downingtown Area School District; Rose Tree Media School District; Twin Valley School District; East Goshen Township; West Whiteland Township; Uwchlan Township; Middletown Township; and County of Delaware. The June 6, 2019 Procedural Order granted Senator Killion's intervention in his personal capacity but reserved judgement on legislative standing pending disposition in the case of *Sunoco Pipeline, L.P. v. Pa. Pub, Util, Comm'n* at 1169 C.D. 2018. The June 6, 2019 Procedural Order also granted intervenor status to Thornbury Township; Chester County; Edgmont Township; and West Chester Area School District.

2. *DiBernardino* Complaint Proceeding

On December 19, 2019, Thomas Casey filed a Petition to Intervene in the *DiBernardino* action. On February 8, 2019, Virginia Marcille-Kerslake also filed a Petition to Intervene. By Order dated March 14, 2019, at Docket No. C-2018-3005025, Casey and Kerslake were granted intervenor status.

3. *Britton* Complaint Proceeding

On February 8, 2019, Josh Maxwell, filed a Petition to Intervene in the *Britton* action. Maxwell was granted intervenor status by Order dated March 15, 2019 at Docket No. C-2019-3006898. By Order dated September 25, 2020, Maxwell's intervention was rescinded and his name removed from the parties of record because of his withdrawal from the case as a newly-elected Commissioner of Chester County, which had already been granted status as an intervenor.

4. *Andover HOA* Complaint Proceeding

On September 24, 2018, the following individuals/entities filed petitions to intervene in the *Andover HOA* action: Rosemary Fuller, Clean Air Council, Melissa DiBernardino, and East Goshen Township. On October 9, 2019, SPLP filed an Answer opposing the petitions to intervene. By Order dated October 21, 2019, the Petitions to Intervene of Fuller,

DiBernardino and East Goshen Township were denied as moot due to the consolidation of complaints listed below, and the Petition to Intervene of the Clean Air Council was granted.

G. CONSOLIDATION OF COMPLAINTS

Complainant Laura Obenski at Docket No. C-2019-3006905 filed a motion to consolidate her Complaint with the Complaint filed by Flynn Complainants at Docket No. C-2018-3006116. On March 18, 2019, SPLP filed a Motion to Consolidate and Response to Obenski's Motion to Consolidate, requesting consolidation of the Flynn Complaint, Obenski Complaint, Britton Complaint, and DiBernardino Complaint. The June 6, 2019 Procedural Order granted consolidation because there were common issues of law and fact. On October 10, 2019, SPLP moved to consolidate the Andover HOA Complaint with the consolidated complaint proceeding at Docket No. C-2018-3006116. By Order dated October 21, 2019, the Andover HOA Complaint was consolidated because there were common issues of law and fact.

H. PROTECTIVE ORDERS AND JOINT STIPULATION

On November 27, 2018, SPLP moved for a Protective Order, which was granted by Order dated November 28, 2018. On April 17, 2019, SPLP moved for an Amended Protective Order, which was granted in part and denied in part by Order dated June 6, 2019. On December 30, 2019, Flynn Complainants and SPLP entered into a Joint Stipulation to the Amended Protective Order, which was admitted into the record by Order dated January 2, 2020.

I. PROCEDURAL SCHEDULE AND EVIDENTIARY HEARINGS

The June 6, 2019 Procedural Order set the following procedural schedule:

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October 2019 (same day following a TBD site visit by ALJ Barnes)
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)

Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	June 15, 2020 (30 days from Surrebuttal)
Hearings	July 15, 2020-July 29, 2020 (30 days from Rejoinder outlines)
Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

By Order dated August 2, 2019, the in-person hearing for lay witnesses was scheduled for October 23 and 24, 2019 at the West Chester Historic Court House. Lay witnesses were given the option to testify in person at these hearings or to submit pre-filed written testimony. The hearings for the lay witnesses took place as scheduled, but an additional hearing day was required. By hearing notice dated October 29, 2019, an additional hearing day was scheduled for November 20, 2019 at the Commonwealth Keystone building. The hearing took place as scheduled.

Complainants and aligned Intervenor served written direct testimony on or about January 15, 2020 consistent with the Joint Stipulation of Record. On January 29, 2020, SPLP filed an Omnibus Order for Adherence to the Commission's Regulations and Procedures, which was granted by Order dated February 11, 2020. The Order denied Flynn Complainants' January 20, 2020 email request to file supplemental direct testimony.

On March 18, 2020, SPLP filed a Partially Unopposed Motion to Stay Proceedings and Request for Expedited Response and Ruling for a 60-day stay of proceedings due to the unprecedented disruption of COVID-19, which was granted by Order dated March 26, 2020. The March 26, 2020 Order suspended the procedural schedule for 60 days and required SPLP to confer with the parties within 30 days and submit a status report that included a proposed procedural schedule. On April 28, 2020, SPLP submitted the required status report containing a proposed procedural schedule to which no party objected. By Order dated May 28, 2020, the following procedural schedule was adopted:

Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	June 15, 2020
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	July 15, 2020
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	August 14, 2020
Hearings	September 29, 2020-October 9, 2020 and October 13, 2020-October 14, 2020
Transcripts	October 28, 2020

The Parties complied with the procedural schedule as set forth in the May 28, 2020 Order and the hearings took place as scheduled.

J. MOTIONS FOR PARTIAL SUMMARY JUDGMENT, MOTIONS IN LIMINE, AND MOTION TO SUBMIT ADDITIONAL EVIDENCE

On July 28, 2020, SPLP filed a Motion for Partial Summary Judgment Regarding Integrity Management, Corrosion Control and Cathodic Protection. On July 29, 2020, SPLP filed a Motion for Partial Summary Judgment Regarding Consequence Without Probability. The Flynn Complainants, Andover HOA, and Complainants Britton, DiBernardino, and Obenski, filed Answers in response to these motions. On August 13, 2020, Flynn Complainants filed a Motion for Finding of Spoliation; however, on August 17, 2020, Flynn Complainants requested leave to withdraw that motion.

SPLP filed a Motion in Limine to Limit Testimony of Rosemary Fuller on August 14, 2020 and Exhibit E to the Motion was filed on August 17, 2020. Although Flynn Complainants served copies of their response to this motion on September 1, 2020, the response was not filed with the Commission and an electronic copy of it was not served upon the presiding officer until September 24, 2020.

SPLP filed two Motions to Consider Replies to Answers to its Motions for Partial Summary Judgment. Flynn Complainants filed responses to SPLP's Motions to Consider

Replies on August 26, 2020. On August 27, 2020, Flynn Complainants filed a Motion for Partial Summary Judgment. On September 1, 2020, Flynn Complainants filed an Amended Motion for Partial Summary Judgment. On September 16, 2020, SPLP filed an Answer to the Flynn Complainants' Amended Motion for Partial Summary Judgment. On the same date, SPLP filed a Motion in Limine to Narrow Issues. On September 22, 2020, Flynn Complainants filed a Motion to Submit Additional Evidence. On September 23, 2020, Flynn Complainants filed an Answer to SPLP's Motion in Limine. On September 24, 2020, Flynn Complainants filed a Reply to SPLP's Answer to Motion for Partial Summary Judgment.

By Order dated September 25, 2020, all motions for partial summary judgment were denied, SPLP's Motion in Limine to Limit Testimony of Rosemary Fuller was denied, Flynn Complainants' Motion for Finding of Spoliation was deemed withdrawn, and SPLP's Motion in Limine to Narrow Issues was granted in part and denied in part, holding that "the relief requested of an independent consultant conducting a remaining life study on Mariner East 1 is stricken as moot." Evidentiary hearings (observed by approximately 136 persons) were held via ZOOM video-conferencing on September 29, 2020 through October 9, 2020 and October 13-14, 2020. All of the parties appeared and many witnesses testified. SPLP filed its Answer Opposing Flynn Complainants' Motion to Submit Additional Evidence on Monday, September 28, 2020. The Motion was granted at hearing and SPLP was given until October 28, 2020 to submit responsive evidence, which ruling was set forth by Briefing Order dated October 23, 2020. Transcripts of these September – October hearings were filed by October 28, 2020. SPLP filed its responsive evidence on October 28, 2020 as SPLP Exhibit No. 53, which was admitted into the record by Order dated November 16, 2020 and the evidentiary record closed on November 16, 2020.

On December 14, 2020, Flynn Complainants, Clean Air Council, and Andover HOA filed a Joint Motion for Leave to Supplement Record. Timely answers opposing the joint motion were filed by SPLP and Intervenor Range Resources. This joint motion was denied by Order on January 12, 2021. Main Briefs were timely filed on December 16, 2020 and Reply Briefs were timely filed on January 19, 2021. This consolidated proceeding is ripe for a decision.

III. FINDINGS OF FACT

Parties and Witnesses

1. Complainant Meghan Flynn resides approximately 2200 feet from the Mariner East 1 (ME1) right-of-way and 3000 feet from the Mariner East 2 (ME2) right-of-way in Middletown Township, Delaware County.

2. Complainant Rosemary Fuller, educated in finance and business management, resides within a few hundred feet of the ME1 pipeline and/or the 12-inch workaround pipeline in Middletown Township, Delaware County. Fuller Direct at 1.

3. Complainant Gerald McMullen, a retired psychologist, resides with his spouse who is disabled, within five feet of the Mariner East 1 pipeline and within 25 feet of the Mariner East 2, Mariner East 2X and 12-inch workaround pipeline in West Whiteland Township, Chester County. N.T. 944.

4. Complainant Nancy Harkins, a retired information technology worker, resides approximately 3160 feet from a Mariner East pipeline right-of-way in West Chester, Chester County. N.T. 20.

5. Complainant Michael Walsh, a mortgage consultant, resides within a few hundred feet of the Mariner East 1 pipeline in Thornbury Township, Delaware County with his wife and three children who all attend school/pre-school in the immediate area. N.T. 202-204.

6. Complainant Caroline Hughes resides approximately 700 feet from the Mariner East 1 pipeline in East Goshen Township, Chester County with her husband and two children, ages 13 and 11. N.T. 1029.

7. Complainant Hughes is a physical therapist and works in an outpatient ambulatory care facility in Exton, Pennsylvania, in a building adjacent to the Mariner East pipelines. N.T. 1030.

8. Complainant Hughes' son attends Saints Peter and Paul School, which has a Mariner East easement on school property, and her daughter attends Fugett Middle School in West Chester Area School District, which is in the evacuation zone for Mariner East. N.T. 1037.

9. Complainant Melissa Haines resides approximately 700 feet from the Mariner East pipelines in Aston Township, Delaware County.

10. Complainant Melissa DiBernardino resides in Chester County and her four children attend Sts. Peter & Paul School, which is located 100 feet from the Mariner East Pipelines in East Goshen Township, West Chester Area School District, Chester County.

11. Complainant/Intervenor Andover Homeowners' Association is principally located at 190 Middletown Road in Thornbury Township, Delaware County, and is owner of common area of land upon which SPLP Pipeline, L.P. has an easement and at least two operating pipelines leading to a valve station behind Duffer's Tavern, Glen Mills.

12. Eric Friedman, a Federal Aviation Administration-certified pilot and Aviation Safety Inspector for the FAA, resides in the Andover subdivision of Thornbury Township, Delaware County and is President of the Andover Homeowners' Association. N.T. 741-743.

13. Intervenor Virginia Marcille-Kerslake holds a Bachelor's degree in Earth Science and a Master's degree in Soil Chemistry and she resides within 50 feet of the Mariner East pipelines with a water seeping issue at the surface or just adjacent to her property on Shoen Road, West Whiteland Township, Chester County. N.T. 1616-1618.

14. Intervenor Chester County has a population of more than 500,000 and an average density of more than 3,000 people per square mile with Mariner East pipelines/facilities traversing through the county.

15. Intervenor Delaware County has a population of more than 564,000 and an average density of more than 3,000 people per square mile with Mariner East pipelines traversing through the county. Boyce Direct at 14.

16. Intervenor Middletown Township, Delaware County, has a population of over 16,000 with Mariner East Pipelines traversing through the township.

17. Intervenor West Whiteland Township, Chester County, has a population of over 18,000 and has Mariner East Pipelines traversing through the township.

18. Intervenor Thornbury Township, Chester County, has a population of over 3,000 and Mariner East Pipelines traversing through the township.

19. Intervenor East Goshen Township, Chester County, has a population of over 18,000 and Mariner East Pipelines traversing through the township.

20. Intervenor Uwchlan Township, Chester County, has a population of over 18,000 with Mariner East Pipelines traversing through the township.

21. Intervenor West Chester Area School District (12,000 students), Twin Valley School District (3,000 students), Rose Tree Media School District (4,000 students) and Downingtown Area School District (12,000 students) are school districts in close proximity to the Mariner East pipelines in Chester or Delaware Counties.

22. Respondent SPLP is a subsidiary of Energy Transfer, a publicly traded company. N.T. 2581.

23. Sunoco Pipeline, L.P. holds certificates of public convenience (CPCs) at A-140001 and A-2014-2425633, which authorize it the right to offer, render, furnish or supply intrastate petroleum and refined petroleum products pipeline service to the public in 17 counties from western Washington County through eastern Chester and Delaware Counties.

24. Jeffrey D. Marx, P.E., is a Senior Engineer for Quest Consultants, Inc. who directs quantitative risk analysis studies involving refineries or refinery units, toxic and flammable gas/liquid pipeline systems. Exhibit Marx – 1.

25. John Zurcher is an expert in public awareness, integrity management, and regulatory compliance for pipelines, including HVL transmission pipelines. N.T. 4195.

26. Kevin Garrity is an expert in pipeline corrosion, including cathodic protection, stress-corrosion cracking, microbiologically-influenced corrosion, stray-current interference, protective coatings for pipelines, and corrosion mitigation. N.T. 3888; SPLP Ex. KG-1.

27. Gregory Noll is an expert in emergency planning, emergency response, emergency response and planning training, including as the relate to pipelines, hazardous materials, hazardous volatile liquids, and natural gas liquids. N.T. 3292-3293, SPLP St. No. 4, Noll Rebuttal Test. at 4.

28. Dr. Timothy Bechtel is an expert in geophysics, geology, and hydrogeology. N.T. 3592-3595, SPLP Ex. TB-1.

29. Dr. Samuel Ariaratnam is an expert in Horizontal Directional Drilling (HDD), engineering, HDD design, HDD best management practices, and HDD construction. N.T. 3774, SPLP St. No. 2, Ariaratnam Rebuttal Test. at 1-2; SPLP Ex. SA-1.

30. Richard King is an expert in geology, hydrogeology including the investigation and remediation of groundwater contamination and groundwater supply and water quality evaluation. N.T. 2400-2401, SPLP St. No. 9, King Rebuttal Test. at 1-3; SPLP Ex. RK-1.

31. Dr. Brian Magee is an expert in the field of human health toxicology and risk assessment. N.T. 3529-3530, SPLP St. No. 9, McKelvey Rebuttal Test. at 1-4; SPLP Ex. JAM-1.

32. Dr. Peter Angelides is an expert in the economic impacts of development and infrastructure projects. N.T. 2981-2984.

33. John Field is a corrosion engineer with SPLP with 28 years of professional experience in corrosion engineering. SPLP St. No. 14, Field Rebuttal Test. at 1.

34. Joseph McGinn is the Vice President of Public & Government Affairs for Energy Transfer who from 2017-2019, was a consultant supporting government and public affairs outreach in Pennsylvania. SPLP St. No. 6, McGinn Rebuttal Test. at 1-2; SPLP Ex. JM-1.

35. Joseph Perez is Senior Vice President and was previously Vice President, Technical Services for Operations and Engineering with Energy Transfer who previously testified before the Commission regarding SPLP's Public Awareness Program. SPLP St. No. 5, Perez Rebuttal Test. at 1. SPLP St. No. 13, Gordon Rebuttal at 1-2; SPLP Exhibit MG-1.

36. Matthew Gordon is the Senior Director of Liquid Pipeline Operations at Energy Transfer, where he manages a team of directors and managers executing operations, maintenance, and compliance of liquid pipeline assets across eight states in the eastern United States. SPLP St. No. 13, Gordon Rebuttal at 1-2; SPLP Exhibit MG-1.

37. From April 2017 to April 2018, Matthew Gordon was Director of Special Projects, where he managed a team of thirteen project managers on multi-year, large capital

projects consisting of new pipelines, pump stations, meter sites, and valve stations. SPLP St. No. 13, Gordon Rebuttal at 1-2; SPLP Exhibit MG-1.

38. From October 2012 to April 2017, Matthew Gordon was principal engineer and project manager for the ME2 pipeline project for SPLP, where he oversaw the design, permitting, land acquisition and construction of ME2 in accordance with federal, state and local law and company policies and procedures. He was also project director for the Mariner East 1 pipeline project. SPLP St. No. 13, Gordon Rebuttal at 1-2; SPLP Exhibit MG-1.

39. Richard Billman is the Vice President of Business Development for Energy Transfer, where he oversees commercial and strategic growth of SPLP's assets as well as manages contracts with shippers. N.T. 2583; SPLP St. No. 10, Billman Rebuttal Test. at 1; SPLP Ex. RB-1.

40. Respondent aligned Intervenor Range Resources-Appalachia, LLC. (Range Resources), located at 3000 Town Center Blvd., Canonsburg, PA 15317, is a wholly-owned subsidiary of Range Resources Corporation (Range), located in Fort Worth, Texas, which is a transportation customer (shipper) of SPLP that ships 70,000 barrels per day (BPD) of NGLs on SPLP's ME1 and ME2, disaggregated as follows: 20,000 BPD of ethane on ME1, 30,000 BPD propane and 10,000 BPD of normal butane on ME2, and an additional 10,000 BPD of a combination of propane and normal butane on ME2. Range St. No. 1-R, Engberg Rebuttal Test. at 3-5.

41. Alan Engberg is Vice President of Liquids Marketing with Range Resources Corporation, responsible for marketing natural gas liquids and condensate. Range St. No. 1-R, Engberg Rebuttal Test. at 1.

42. Steven Hurt is a biologist and an expert in environmental issues regarding the planning and construction of pipelines. N.T. 2260-2273, Chester County St. No. 2, Test. of Steven Hurt.

Pipeline Siting, Location, Construction and Integrity Management

43. In 2013, Sunoco Pipeline, L.P. abandoned service of transporting petroleum products on a portion of its petroleum products pipeline (Mariner East 1) including from (1) Point Breeze to Eldorado, Delmont, Blawnox, and Pittsburgh; (2) Montello to Eldorado, Delmont, and Blawnox; and (3) Twin Oaks to Icedale, Malvern, Eldorado, Delmont and Pittsburgh. *Application of Sunoco Pipeline L.P. For a certificate of public convenience to Abandon a Portion of its Petroleum Products Pipeline Transportation Service In Pennsylvania; Petition for Approval Of Temporary Suspension of a Portion Of its Petroleum Products Pipeline Transportation Service in Pennsylvania*, A-2013-2371789 and P-2013-2371775 (Opinion and Orders entered on August 29, 2013 and October 17, 2013).

44. When the Commission authorized SPLP to suspend or abandon its service of transporting refined petroleum products from east to west, the Commission orders also contemplated that SPLP in the future would use those same facilities to provide service through its proposed Mariner East project under the same certificated authority. *Id.*

45. Since 2014, Sunoco Pipeline L.P. has transported natural gas liquids a/k/a hazardous volatile liquids including butane, ethane and propane or some combination thereof between Delmont, Westmoreland County, and Twin Oaks, Delaware County under its CPCs that have been deemed to apply to both Mariner East 1 and Mariner East 2 pipelines as an authorized expansion of the same intrastate service. *In re Sunoco Pipeline, L.P.*, 143 A.3d 1000 (Pa. Cmwlth. 2016), *app. den.*, 164 A.3d 485 (Pa. 2016).

46. ME1 is an eight-inch pipeline originally built in the 1930s that has been repurposed, replaced, and extended with new pipe to transport HVLs since 2014. Marx Direct at 10.

47. ME2 is a currently operational 20-inch diameter pipeline (new construction) transporting HVLs and where it is unable to be built as planned, is connected to a

twelve-inch workaround pipeline also repurposed from transporting refined product that was built in the 1930s. Marx Direct at 10.

48. ME2X is a 16-inch diameter pipeline (new construction) currently not in operations but under construction. Marx Direct at 10.

49. The 20-inch ME2 and 16-inch ME2X pipelines are currently in the final stages of construction in Chester and Delaware Counties. N.T. 2550.

50. [**BEGIN HIGHLY CONFIDENTIAL**] [REDACTED]

[REDACTED]
[REDACTED].

51. [REDACTED]

[REDACTED]
[REDACTED]. N.T. 2504-2508.

52. [REDACTED]

[REDACTED]. N.T. 2548. **[END HIGHLY CONFIDENTIAL.]**

53. Pipelines that transport natural gas and hazardous liquids are classified into three types – (1) transmission pipelines; (2) distribution pipelines; and, (3) gathering and production pipelines. SPLP St. No. 2, Zurcher Rebuttal Test. at 9.

54. A natural gas distribution company (NGDC) must install distribution pipelines in developed areas to serve its customers and an NGDC generally informs its customers and the general public through bill-inserts, e-mail notifications and online via its website on a monthly basis. 66 Pa. Code § 2205 (duties of natural gas distribution companies), SPLP St. No. 2, Zurcher Rebuttal Test. at 9, N.T. 4204.

55. An interstate transmission pipeline operator usually seeks to distance its facilities from populated areas and the landowners on whose properties it locates its pipeline facilities are not generally its customers; however, approximately one-third of all HVL pipelines nationally either traverse a high population area or could affect a high population area. SPLP St. No. 2, Zurcher Rebuttal Test. at 9, N.T. 4204.

56. Within the Commonwealth of Pennsylvania, there are approximately 10,000 miles of natural gas transmission pipelines, 2,000 miles of refined products pipelines, 1,500 miles of HVL pipelines, 48,000 miles of distribution mains, and 35,000 miles of distribution services pipelines. N.T. 4206.

57. In comparison to transportation on railroads or surface roads, transportation of HVLs through underground pipelines are generally considered to be the safest mode of transportation. SPLP St. No. 2, Zurcher Rebuttal Test. at 20. Range St. 1-R at 7.

58. Risk involves an analysis of consequences and the likelihood of occurrence of an unfortunate event (risk = likelihood x impact). N.T. 1831, 4208.

59. Likelihood, which is part of an evaluation of risk, involves an evaluation of the probability or likelihood of various events occurring. N.T. 1832.

60. The likelihood or probability of an event occurring can range anywhere from 0% to 100%. N.T. 1382.

61. Total risk exposure is the probability of an unfortunate event occurring multiplied by the potential impact or damage incurred by the event and if a dollar value is applied to the impact, then the risk can be valued. N.T. 1832-1834.

62. Flynn Complainants' expert witness Jeffrey Marx did not proffer any opinion on the likelihood or probability of a pipeline release or on the likelihood of a release from the Mariner East pipelines. N.T. 1832-1834.

63. Mr. Marx performed a consequence analysis study using proprietary CANARY software. Marx Direct at 7, ll. 9-12.

64. Consequence analysis is the evaluation of the potential hazards or impacts from, generally, hazardous chemicals or waste. Marx Direct at 2-3.

65. The models Mr. Marx uses are based upon worst-case scenarios. N.T. 1845-1850.

66. Predicted fatal impacts of accidental pipeline rupture events regarding the operating Mariner East pipelines in Delaware and Chester Counties could extend up to greater than 2,000 feet from the pipelines or their associated equipment and moderate puncture holes could create hazard zones extending up to about 1,000 feet from the pipeline. Marx Direct at 44 – 46.

67. In the event of a pipeline rupture event, persons in close vicinity of the pipeline may have difficulty escaping unharmed. Marx Direct at 44 – 46.

68. The maximum hazards following an HVL pipeline rupture may be realized before the operator can affect any meaningful measures to shut down its valves. Marx Direct at 44 – 46.

69. It is difficult to define the proper public response to a pipeline incident (*i.e.*, shelter in place or evacuate) due to the variability of the event magnitude and various possible hazards. Marx Direct at 44 – 46.

70. HVLs are different from natural gas, which once released is lighter than air and therefore dissipates quickly. Marx Direct at 16-17.

71. HVLs are liquid in the pipeline and transition to vapor upon release but they are heavier (denser) than air and tend to slump toward the ground and stay there. Marx Direct at 16-17.

72. A hazard zone is an area predicted to be affected by a defined hazard. Marx Direct at 18.

73. In his study, Mr. Marx used CANARY software and examined the potential exposure of humans to lethal hazards as well as injury impacts due to rupture of an HVL pipeline. Marx Direct at 31, ll. 16-22.

74. The maximum hazard distances calculated for the Mariner East Pipelines according to Flynn Complainants' witness Mr. Marx are as follows on Table 1:

Table 1
Maximum Hazard Distances for the Mariner East Pipelines

Pipeline	Product	Maximum Hazard Zone Distance [feet] for	
		Flammable Vapor Cloud (LFL)	Jet Fire
ME1	Ethane	900	375
	Propane	1,035	420
	Butane	1,095	375
ME2	Ethane	1,800	955
	Propane	2,135	1,055
	Butane	2,130	900
ME2X	Ethane	1,420	645
	Propane	1,640	700
	Butane	1,680	645

Marx Direct Test. at 37.

75. Complainants offered no evidence of the likelihood or probability of a release from the Mariner East pipelines. N.T. 4289.

76. Value of life, a/k/a cost of life, is a statistical term used in disciplines including insurance, worker safety, environment impact assessments, etc., and an economic

value used to quantify the benefit of avoiding a fatality that can include the quality of life, expected lifetime remaining as well as earning potential of a given person. N.T. 4208 – 4210.

77. In evaluating whether any activity is safe and reasonable, including the transportation of HVLs by pipeline in a high consequence area, it is necessary to evaluate both the potential consequences of engaging in the activity and the likelihood of those consequences occurring. N.T. 1861-1862, 4208 – 4210.

78. The Pipeline and Hazardous Material Safety Administration's (PHMSA) integrity management regulations are designed to require risk of property damage, personal injury and fatalities to remain constant across the entire pipeline because as the population near a pipeline increases, the consequences of a pipeline failure necessarily increase. SPLP St. No. 2, Zurcher Rebuttal Test. at 21.

79. In order to reduce the likelihood of a pipeline rupture in a high consequence area to make the risk the same as a pipeline rupture with no population present, additional protection in terms of construction, testing, inspection, operation and maintenance are required in a high consequence area to make the risk the same as in a non-high consequence area. SPLP St. No. 2, Zurcher Rebuttal Test. at 21.

80. Mr. Marx's worst-case assumptions in a black box proprietary model overstate predicted consequences. N.T. 1848-1851.

81. PHMSA's database does not identify a rupture of an HVL pipeline ever occurring in a high consequence area. N.T. 1815, 1853, SPLP St. No. 2, Zurcher Rebuttal Test. at 19.

82. Pipeline segment ruptures involved in a November 2007 incident near Carmichael, Mississippi, the August 1996 incident near Lively, Texas, and the December 1970 incident in Franklin County, Missouri were all located in areas that are not high consequence

areas where the integrity management program did not apply. N.T. 4310, SPLP St. No. 2, Zurcher Rebuttal Test. at 21-22.

83. SPLP's integrity management program applies to its pipelines and facilities located in Delaware and Chester Counties as these are high consequence areas. SPLP St. No. 2, Zurcher Rebuttal Test. at 22.

84. SPLP's incident history in the PHMSA database shows that since 2010, thirty-one of its incidents were on pipelines carrying refined products, and only seven of the reported releases were on HVL pipelines. N.T. 4218-4223, 4392.

85. Of the seven reported incidents, one was a leak in Morgantown, Pennsylvania, two were small leaks in pump seals in Pennsylvania, two were in Texas, and two were in Ohio. N.T. 4218-4223, 4392.

86. The release in Morgantown, Pennsylvania involved a pinhole leak in a girth weld unlikely to manifest itself into a rupture. N.T. 4225-4229.

87. The pinhole leak in Morgantown on Mariner East 1 was investigated by the Commission's Bureau of Investigation and Enforcement and remediated through a Commission-approved settlement whereby SPLP agreed pay a \$200,000 civil penalty and conduct a remaining life study on ME1, implement additional anti-corrosive measures into its pipeline integrity management and cathodic protection programs, and apply these additional measures to the management of all of its pipelines (including the 12-inch pipeline). *BI&E v. Sunoco Pipeline LP*, Docket No. C-2018-30006534 (Opinion and Order entered August 19, 2020).

88. SPLP performed risk analysis as required by 49 C.F.R. § 195.452(c), including analyses of the consequences of a rupture to determine whether the Mariner East pipelines have the potential to impact a high consequence area and as a result, the pipelines in

Delaware and Chester Counties are in the integrity management program. N.T. 4284, 4298-4306, 4323 4333, Stipulation.

89. The Energy Transfer Integrity Management Plan is effective for SPLP assets as of May 2018 and is classified as Extremely Sensitive Materials under the Amended Protective Order. SPLP Exhibit JF-1.

90. The SPLP Integrity Management Plan is effective for SPLP assets prior to May 2018 and is classified as Extremely Sensitive Materials under the Amended Protective Order. SPLP Exhibit JF-2.

91. The Energy Transfer operating and engineering procedures and standards for hazardous liquid pipelines relate to corrosion control, which is classified as Highly Confidential under the Amended Protective Order. SPLP Exhibit JF-3.

92. Operation and Maintenance Manual corrosion control procedures applicable to SPLP assets prior to May 2018 are classified as Highly Confidential under the Amended Protective Order. SPLP Exhibit JF-1RJ.

93. There is insufficient evidence to show SPLP's Integrity Management Plans, SPLP Exhibits JF-1 and JF-2, are in violation of any federal or Commission regulation, statute or order. N.T. 4230, SPLP St. No. 2, Zurcher Rebuttal Test. at 24. SPLP St. No. 1, Garrity Rebuttal Test. at 9, SPLP Exhibits JF-1, JF-2, JF-3, Flynn Complaints St. No. 1, Dr. Zamanzadeh Direct Test. at 39.

94. SPLP's current corrosion control and cathodic protection Standard Operating Procedures (SOPs) are technically sound. SPLP Exhibits JF-3 and JF-1RJ, SPLP St. No. 1, Garrity Rebuttal Test. at 9; Flynn Complainants St. No. 1-SR, Dr. Zamanzadeh Surrebuttal Test. at 4.

95. SPLP's current Integrity Management Plan and corrosion control and cathodic protection SOPs were adopted as effective for SPLP assets in May of 2018 due to the merger between Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. N.T. 4074-4075.

96. SPLP had corrosion control and cathodic protection SOPs in place prior to the Morgantown incident. SPLP Exhibit JF-1RJ; N.T. 4075.

97. SPLP is following its applicable Integrity Management Plan and corrosion control and cathodic protections SOPs. N.T. 4076; SPLP St. No 14-RJ, Field Rejoinder Outline at 1-2; SPLP St. No. 1, Garrity Rebuttal Test. at 7; N.T. 4080, 3934.

98. Dr. Zamanzadeh performed no tests or studies to determine the condition of ME1 and 12-inch pipeline or associated alleged risks. N.T. 2163.

99. There is insufficient evidence to show SPLP's ME1 and 12-inch pipelines are not being appropriately managed to ensure they are safe to operate. SPLP St. No. 2, Zurcher Rebuttal Test. at 17-19; N.T. 3934.

100. SPLP's integrity management program for the ME1 and 12-inch pipelines relies on the use of complementary tools to determine risk due to corrosion, pitting and wall loss in steel including the use of: magnetic flux leakage (MFL) in-line inspection (ILI) tools, annual cathodic protection (CP) surveys, Close-Interval CP surveys and hydrostatic testing. SPLP St. No. 1, Garrity Rebuttal Test. at 13.

101. Corrosion as it relates to a pipeline is the electrochemical degradation of the metal as a result of the reaction with its environment. N.T. 3894.

102. Corrosion on pipelines is prevented by protective coatings and cathodic protection. N.T. 3895.

103. Cathodic protection works in all soil environments as well as in concrete. N.T. 3896-3897.

104. Corrosion can be measured in a variety of ways, such as a pit gauge or in-line inspection tools. N.T. 3895-3896.

105. Most of the corrosion on the ME1 and 12-inch pipelines is inactive and cathodic protection is effective to inhibit corrosion growth. N.T. 4079.

106. There is no correlation between pitting and the manifestation of a rupture. N.T. 4228-4229.

107. In-line inspection (ILI) tools identify anomalies in the pipe wall that may be potentially injurious to the operation of the pipeline so that the operator has the opportunity to mitigate that threat before it becomes injurious. N.T. 3920.

108. SPLP uses a deformation tool to look for ovality or incidents of dents, a spiral magnetic flux leakage tool, low magnetism magnetic flux leakage tool, and an ultrascan crack detection tool. N.T. 3933.

109. Hydrostatic testing is used to manage both external corrosion threats and stress corrosion cracking in the same or similar frequency to the in-line inspection tools. N.T. 3934.

110. When anomalies above a certain threshold are found via ILI or hydrostatic test data, SPLP performs investigative digs, which means SPLP goes out into the field, digs up the pipeline and examines it and performs various tests, then documents the findings, observations, photographs, and the qualifications of the personnel completing the dig. N.T. 3918-3919.

111. The SPLP dig reports in Dr. Zamanzadeh's Exhibits MZ-2, MZ-6 and MZ-7 show pipeline anomalies where SPLP either repaired the anomaly or replaced the portion of pipe. N.T. 4093.

112. If SPLP determines that active corrosion is present, it also performs a regimen of testing procedures and samples that look for bacteria that can lead to microbiologically-influenced corrosion. N.T. 3934.

113. SPLP repairs or replaces, as necessary, any anomalies found and documents the repairs or replacements. N.T. 4093..

114. To determine when an anomaly needs to be repaired or replaced, SPLP uses a more conservative approach than the 80% wall loss threshold required by PHMSA regulations. N.T. 4084.

115. SPLP performs testing for Stress Corrosion Cracking, including hydrostatic spike tests, which are the preferred mechanism to determine the existence of potentially injurious stress-corrosion cracking. N.T. 3908, 4087.

116. SPLP implemented the practice of mag particle inspection at investigative digs to detect stress-corrosion cracking. N.T. 3908-3909.

117. Stress-corrosion cracking has never been observed or found in the histories of the ME1 and 12-inch pipelines. N.T. 3908-3909, 4087.

118. There is insufficient evidence to show that microbiologically-influenced corrosion (MIC) is an unmonitored or uncontrolled threat to the ME1 and 12-inch pipelines. N.T. 3934.

119. SPLP implemented a regimen of testing procedures and sampling when active corrosion is found to test for microbiologically-influenced corrosion (MIC). N.T. 3934.

120. In the area of the Morgantown incident, SPLP increased the cathodic protection for both the ME1 and 12-inch pipeline to a negative 0.95 instant off, as National Association of Corrosion Engineers (NACE) recommends for MIC. N.T. 4078-4079, 3925-3926.

121. Dr. Zamanzadeh's Exhibit 6, documents SPLP00008132, 8142, and 8145, consist of integrity summaries showing various details, results, and data of ILI runs and hydrostatic testing. N.T. 4076.

122. SPLP utilizes annual corrosion-control surveys, which involve measuring the efficacy of cell cathodic protection through measurements at test points along the entire route of the pipeline at no wider than one-mile intervals. N.T. 3922.

123. SPLP runs close-interval surveys where people walk the entire pipeline and use a reference electrode to measure the output of the cathodic-protection system. N.T. 3922-3923.

124. SPLP conducts close-interval-potential surveys, including in 2018, 2019 and November 2020, to determine the adequacy of cathodic protection and this data shows that the cathodic protection along the entire length of the ME1 and 12-inch pipelines has improved. N.T. 4080.

125. SPLP has upgraded and continues to upgrade its cathodic-protection system on the ME1 and 12-inch pipelines. N.T. 4082-4083.

126. SPLP's procedures for conducting close-interval-potential surveys improved and collected additional data over time. N.T. 4086-4087.

127. PHMSA issued a Notice of Proposed Violation (NOPV) containing allegations concerning the method SPLP used to measure cathodic protection and a lack of

documentation showing SPLP's analysis as to how this measurement method complied with NACE standards. N.T. 4094-4095, Flynn Complainants' Exhibit Z-3.

128. SPLP did not contest this NOPV and instead complied with PHMSA's proposed compliance order; however, SPLP does not agree to any wrongdoing. N.T. 4095-4096.

129. The issue that PHMSA raised in its proposed compliance order has been remedied. N.T. 4095-4096.

130. Cathodic-protection shielding means that something is preventing the cathodic-protection current from getting to the pipeline. N.T. 3910-3911.

131. Only certain types of pipeline coating will shield cathodic protection and then, only if the pipeline coatings are in fact disbonded. N.T. 3987-3988.

132. The majority of the coatings on the ME1 and 12-inch pipelines are coal tar enamel, which does not shield cathodic protection even when it is disbonded. N.T. 3910-3911.

133. There is insufficient evidence to show that coatings are disbonded on ME1 or the 12-inch workaround pipelines, will cause shielding, or that SPLP does not appropriately monitor for and mitigate this potential threat. N.T. 3923, 4088-4089.

134. Consistent with its procedures, SPLP routinely does stray-current-interference testing and monitors critical bonds with other foreign pipeline operators to ensure that nothing has changed that would put the cathodic-protection system in a corrosive or at-risk category. N.T. 3923, 4088-4089.

135. SPLP also participates and is actively involved in meetings with other pipeline operators to be aware of and mitigate the potential for harm to SPLP's cathodic-protection system. N.T. at 4089-4090.

136. A remaining-life study on the 12-inch pipeline is redundant of SPLP's current Integrity Management Plan and its implementation as applied to the 12-inch pipeline. N.T. 4460-4461.

137. Through the implementation of an integrity management program, pipelines are constantly evaluated and brought back to their original strength and useful life through the use of smart tools looking for cracks, dents, and corrosion, and examining soil for MIC, repairs and replacements. N.T. 4211-4214, 4460-4461.

138. The testing that Dr. Zamanzadeh recommends—External Corrosion Direct Assessment (ECDA), Internal Corrosion Direct Assessment (ICDA), Stress Corrosion Cracking Direct Assessment (SCCDA), and various types of soil sampling—are not mandated by law. N.T. 3931-3932.

139. Thomas McDonald, a pharmaceutical account manager, resides in East Goshen Township, Chester County. N.T. 994- 995.

140. The ME1 and workaround pipelines are approximately 200 feet opposite the entrance of the Wellington facility where Thomas McDonald's mother resides in an independent living facility, with assisted living and skilled nursing bordering Hershey's Mill Retirement Community. N.T. 995 - 996.

141. A valve station is located approximately 50 feet from Duffer's Tavern, Glen Mills, which has an outdoor smoking area. N.T. 2011 - 2012.

142. ME1 (eight-inch) and the twelve-inch pipelines are currently installed in a right of way (ROW) in close proximity to Mike Walsh's home at a higher elevation than the houses. N.T. 212- 214; Exhibit Walsh-1.

143. ME1 is 35 feet from the McMullen's home and SPLP's twelve-inch "workaround" pipeline is sixty feet from their home. Exhibit McMullen-3.

144. If the Mariner East Project is completed, there will be four pipelines (8", 16", 20", and 12") within a twenty-five-foot span between the McMullen home and the Chester County Library. Exhibit McMullen-4; N.T. 951 - 952.

145. Dr. McMullen is concerned for the safety of his family and community because: the NGLs transported by Mariner East have no odorant; they are odorless, colorless, and tasteless; there is no warning system along the pipeline; and NGLs are highly volatile. N.T. 953.

146. Dr. McMullen has received different information about how deep the Mariner East 1 is on his property and he described ME1 as "shallow" and that the new pipelines proposed to go in will also be shallow as they will go through wetlands and be exposed to West Valley Creek. N.T. 979.

147. Exhibit McMullen 15 depicts two exposed pipelines in a dried creek bed, one of which is Mariner East 1 labeled Twin Oaks Icedale and Twin Oaks Montello, which may have been grouted, with the product removed. N.T. 982-983.

148. Matthew Gordon recognized there were two exposed pipes in a stream: one that had been a portion of ME1 in 2013-2014 when the line was lowered, and the other an operating refined product line at the time it was discovered in an exposed state by nearby residents. N.T. 2917-2923.

149. Bibianna Dussling and her family live in Middletown Township, Delaware County, where her three children attend Glenwood Elementary in the Rose Tree Media School District. N.T. 1142 - 1143.

150. Glenwood Elementary's kindergarten playground is located within 650 feet from the pipeline route and the buildings are 800 feet from the pipelines. N.T. 1166.

151. In 1996, there was a hazardous liquids spill across from Glenwood Elementary School along Route 452. N.T. 1150, Exhibit Dussling-1.

152. Hershey's Mill (with 25 villages within the community), the Wellington facility, and Saints Peter & Paul School are within the communications buffer of SPLP's pipelines. Exhibit Marshall-1 and Exhibit Marshall-2, N.T. 1728-1732.

153. Ms. Marshall's sister uses a wheelchair and equipment including a suction machine with oxygen. N.T. 1735- 1738; Exhibit Marshall-3 and 5.

154. A fire station is immediately adjacent to the pipeline and in the event of a pipeline emergency near the intersection of Boot Road and Route 202, the Goshen Fire Company Station 56 could possibly be rendered inaccessible. N.T. 1741 - 1742; Marshall-10.

155. The Fuller property is surrounded by a deer fence with electric gates at the entry-exit point of the property, where ME2, the 16-inch ME2X pipeline, and the twelve-inch Point Breeze-to-Montello pipeline are all situated at the top of a hill. Fuller Direct at 2.

156. Saints Simon & Jude elementary school in Westtown Township, West Chester, is at the southwest corner of the intersection of Routes 3 and 352 and educates about 350 students in Pre-K through grade 8 with only one access road to the school where Mariner East crosses it. N.T. 1205 – 1206; Exhibit Harkins-1.

157. There is a 250- home townhouse community across the street from Saints Simon & Jude School and some of the townhomes are within 100 feet of the pipeline. N.T. 1205 – 1206; Exhibit Harkins-1.

158. Ms. Harkins' home is located on a steep grade approximately 1,100 feet from the Mariner East pipelines. Exhibits Harkins-2 and Harkins – 3; N.T. 1190.

159. The Higgins home and the White's residence are situated on Lenni Road, Middletown Township, Delaware County, within thirty feet of one another, and within that 30-foot space there are Mariner East pipelines, some as close as five feet from Higgins and five feet from White. N.T. 1181 – 1182; Exhibits Dussling 3 - 8.

160. ME2X is 5.1 feet, the 12-inch is 13.7 feet and ME2 is 25.2 feet from Allison Higgins' home at 237 Lenni Road, Middletown, Delaware County as of June 17, 2019. Exhibit Dussling 8.

161. On May 21, 2018, at Lenni Road, an excavator for Aqua water utility using power equipment scraped the coating off a non-operating Mariner East 2 pipeline at approximately 6 feet depth because the excavator had been informed via a Pennsylvania One Call that the depth of the pipeline was 9 feet deep where the excavator planned to dig. N.T. 1150, 2977-2978; Exhibit Dussling-1.

162. The Mariner East 1, 8-inch pipeline is surface-exposed by approximately 3-6 feet in a dry creek bed supported underneath by land, next to an apartment complex in West Whiteland Township. Exhibit McMullen-15, N.T. 965.

163. The proposed siting of the Mariner East pipelines relative to Dr. McMullen's home, his neighbors' homes, and the Chester County Library is to place four pipelines within a 25 feet distance such that Mr. McMullen's home is 5 feet from ME1, which is parallel and within 8 feet from ME2X, which is parallel 8 feet from ME2, which is parallel 9 feet from the 12-inch pipeline. Exhibits McMullen 4 and 5, N.T. 951-961.

164. The pipeline path runs close to Fairfield Place and apartments, under Route 100, and next to a senior center and nursing facility and existing pipelines may be buried less than 12 inches apart in distance by these locations. Exhibit McMullen-17; N.T. 967.

165. The Exton Little League leases a 5.2-acre park under which the Mariner East 2 pipeline is located. N.T. 568 – 569, 969, Exhibits McMullen 20 - 23.

166. ME2/2X will have 12 inches of additional cover over top of the pipelines in industrial, commercial, and residential areas, for a total depth of cover of 48 inches, rather than the 36 inches of cover that is required by 49 C.F.R. Part 195 PHMSA regulations. SPLP St. No. 13, Gordon Rebuttal Test. at 2-3, N.T. 2845-2848.

167. The pipe grade purchased for ME2/2X was a minimum of 0.38-inch thickness with a 0.6 design factor, which exceeds the PHMSA requirements of 0.316-inch thickness and 0.72 design factor. This heightened design increases resistance to damage and improves the structural integrity of the pipelines. SPLP St. No. 13, Gordon Rebuttal Test. at 3.

168. The pipe used for ME2/2X is also specified to meet the American Petroleum Institute 5L's more stringent PSL-2 standard, which has stricter requirements for metallurgy, testing frequencies, factory inspections, and record retention. SPLP St. No. 13, Gordon Rebuttal Test. at 3.

169. Inadvertent returns⁵ that may have occurred during the construction of ME2/2X do not necessarily present a safety risk regarding the construction. N.T. 1818, 4397.

170. Construction of the pipelines is by two primary methods—(1) open cut/trenched construction, where the surface is excavated down to a designated depth to create a trench in which to install the product pipeline; or (2) trenchless construction methods that utilize various types of boring machinery, including a horizontal directional drill (“HDD”). SPLP St. No. 3, Ariaratnam Rebuttal Test. at 6-7.

171. The HDD process utilizes drilling fluid that is comprised primarily of bentonite clay and fresh water that is placed under pressure within the drilling annulus and the HDD process also uses Pennsylvania Department of Environmental Protection (PADEP or DEP)

⁵ Inadvertent return (IR) is when drilling fluids, under pressure in the bore hole, escape through the annular space between the drill pipe, the bit assembly and the borehole wall, and migrate through a fracture or softer, unconsolidated soils, a fracture in the rock, to the surface. IRs are sometimes also referred to as “frac-outs” or “breakouts.”

-approved additives that are certified by NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects). SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8; *see also* N.T. 3534-3536, 3779.

172. Products (including bentonite) used in the HDD process are non-toxic to humans. N.T. 3532.

173. The drilling fluid is used in the HDD process to lubricate and cool the drill bit, carry soil and rock cuttings back to the drill pit, and to stabilize the borehole. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8.

174. A variation on the HDD construction process is the “dual pipe” installation method, where the HDD contractor installs two or more pipelines simultaneously into a single drilled borehole, often through a casing. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 14.

175. SPLP has used the dual pipe installation method at certain locations in Chester and Delaware Counties utilizing appropriate engineering standards. SPLP. St. No. 3, Ariaratnam Rebuttal Test. at 14, N.T. 3797.

176. SPLP uses some best industry practices in the HDD installation process for the Mariner East 2/2X pipelines in Chester and Delaware Counties for HDD construction, including using proactive measures such as grouting HDD entry/exit points and using casings where appropriate that further ensure that the pipeline is installed safely. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 9.

177. HDD can be a safe and appropriate method to construct pipelines, particularly in an urban and suburban environment like portions of Chester and Delaware Counties because the HDD process reduces the risk of striking pre-existing utilities in the construction area. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10.

178. The use of HDD to install pipelines in urban areas, like Chester and Delaware Counties, is appropriate in certain areas because the depth that the pipeline is installed makes the pipeline much less susceptible to third party damage, thereby increasing the overall safety of the pipeline. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10; N.T. 3852-3854.

179. The pipelines that are being constructed for the Mariner East 2/2X project have fusion-bonded epoxy coating applied to the pipe by the manufacturing mill, with an additional layer of abrasion overcoat on top as an added protection. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 12.

180. The additional layer of abrasion overcoat is designed to withstand minor superficial scaping that might occur during the HDD pullback process, and any superficial scraping of this overcoat does not affect the integrity of the pipeline. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 12.

181. HDD process through pilot, reaming, swabbing, and pullback phases all utilize drilling fluid that ensures there is sufficient space in the HDD annulus such that any rocks or obstructions are cleared from the borehole so that when pipeline pullback is performed there is minimized chance of the pipeline being damaged during the pullback process. N.T. 3830-3836.

182. SPLP performs resistivity testing on the pipeline to ensure that the coating has been properly applied and to also determine the levels of cathodic protection that is required. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 13; N.T. 3824-3825.

183. SPLP uses a caliper tool that is run through the pipe to ensure there is no physical damage to the installed pipeline followed by a hydrostatic test on the pipeline, where water is placed into the entire length of a pipeline segment under pressure to ensure that the connections are tight and there are no leaks in the pipeline. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 13-14; N.T. 3824-3825.

184. ME2/2X is hydrostatically pressure tested for at least 8 hours to pressure equal to 125% of Maximum Operating Pressure (MOP), exceeding PHMSA requirements (testing for only 4 hours at 125% MOP and 4 hours at 110% MOP). SPLP St. No. 13, Gordon Rebuttal Test. at 3.

185. After it is fully installed, the ME2/2X right-of-way will be inspected once every seven days, not to exceed ten days (weather permitting), not to exceed three weeks between inspections including aerial flyovers of the right-of-way as well as in-person responses to PA One Calls. SPLP St. No. 13, Gordon Rebuttal Test. at 3-4, N.T. 2908.

186. From 2017-2020, the Commission's Pipeline Safety Section spent 150 days inspecting the ME2/2X construction project and continue to inspect on at least a weekly basis. SPLP St. No. 13, Gordon Rebuttal Test. at 4, N.T. 2912.

187. The ME1 pipeline and the 12-inch pipeline have been operating in Chester and Delaware Counties since the 1930s, although these pipelines transported refined petroleum products like diesel fuel and heating oil until repurposed for transporting HVLs in 2013-2014. SPLP St. No. 1, Garrity Rebuttal Test. at 4-5.

188. The ME2/2X pipelines are two parallel pipelines generally in the same right-of-way across seventeen counties in Pennsylvania, approximately 80% of which is co-located with existing utility corridors, 230 miles of which are co-located with the existing ME1 pipeline. SPLP St. No. 13, Gordon Rebuttal Test. at 2.

189. Valve stations for the ME2/2X pipeline were generally co-located at existing locations. N.T. 2976.

190. For valve stations located in Chester and Delaware Counties, SPLP has implemented various safety precautions, which include fencing around the valve site, physical locks on the equipment, safety bollards or jersey barriers to separate the valve site from the

roadway, remote monitoring, and monitoring for pressure, temperature, and wind direction. SPLP St. No. 13, Gordon Rebuttal Test. at 12.

191. SPLP evaluates potential risks to valve stations and other pipeline-related equipment and facilities and puts mitigating factors in place such as safety bollards or jersey barriers, which is a standard condition or practice that you can use to harden a facility. N.T. 2903.

192. A valve site is a component of the pipeline system that can mitigate damage or pollution from accidental releases because the valve can be used to shut down a section of the pipeline. N.T. 2899-2901.

193. SPLP installs pipeline markers at all road crossings, valve sites, pump stations, and significant water bodies and spaces its valves within PHMSA regulatory requirements in Chester and Delaware Counties. N.T. 2276-2277.

194. Geophysicist Bechtel and his team at RETTEW, an engineering consulting firm, performed geophysical surveys at thirty-one sites in Chester and Delaware Counties, which were locations with known or suspected potential for subsidence as part of the construction of the Mariner East Project and the use of HDDs. SPLP St. No. 7, Bechtel Rebuttal Test. at 4-6.

195. RETTEW investigated and tested certain sites for earth features and subsidence events including: microgravity testing, seismic refraction, multi-spectral analysis of surface waves (MASW), electrical resistivity imaging (REI), and ground penetrating radar (GPR). SPLP St. No. 7, Bechtel Rebuttal Test. at 4-6.

196. Geophysical evaluations are used to identify and evaluate subsurface geophysical conditions and any anomalies that could potentially cause inadvertent returns or subsidence during the HDD construction, or to evaluate any earth features after it developed during construction. SPLP St. No. 7, Bechtel Rebuttal Test. at 6-9.

197. As a result of the geophysical evaluations, SPLP has taken preventative and mitigative measures, where appropriate, including by installing casing and grouting for HDDs. SPLP St. No. 7, Bechtel Rebuttal Test. at 6-9.

198. SPLP is performing geophysical surveys (microgravity, seismic refraction, MASW, and ERI) immediately following pipe pull for every HDD in Chester and Delaware Counties. SPLP St. No. 7, Bechtel Rebuttal Test. at 10.

199. At the various locations in Chester and Delaware Counties where there were concerns about earth features, geophysical testing was performed and SPLP's plans mitigate the risk of subsidence at HDD sites. SPLP St. No. 7, Bechtel Rebuttal Test. at 9, 10. SPLP St. No. 8, McKelvey Rebuttal Test. at 5.

200. SPLP has conducted geological and geophysical investigations in Chester and Delaware Counties. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 16.

201. Geophysical testing and proactive work at HDD construction sites within Delaware and Chester County allow for the operation of the Mariner East pipelines in a manner that is safe and reasonable. SPLP St. No. 7, Bechtel Rebuttal Test. at 11.

202. Geophysical surveys are a good practice to mitigate the risk of a future subsidence after HDD construction has occurred and the pipe is pulled at these locations. SPLP St. No. 8, Rebuttal Test. of James A. McKelvey, III, P.E. at 6-7.

203. When any earth feature develops either as part of the ME2/2X construction or in general occurs near any of SPLP's pipelines, SPLP has procedures to investigate and respond to an earth feature by bringing in experts to review situations as they arise, and using their expertise to render and follow proper procedures in accordance with SPLP's company policies and procedures. N.T. 2878-2879, Gordon Test.

204. Grout/flowable fill can mechanically restore subsurface conditions or even make them more stable. N.T. 3661.

205. James McKelvey, III, P.E., Director, Geotechnical Design Division of Earth Engineering Incorporated, is an expert in geotechnical engineering. SPLP St. No. 8, McKelvey Rebuttal Test. at 1-4; SPLP Exhibit JMCK-1.

206. The Mariner East pipeline corridor is subject to continual maintenance; therefore, if some subsidence events were to develop exposing pipe from all sides, protocols are in place to provide SPLP with engineering ability to preclude a catastrophic-type problem and keep the pipelines safe. N.T. 3729, 3745.

207. ME2/2X pipelines in Chester and Delaware Counties are capable of spanning over 30 feet unsupported and there is insufficient evidence to show the likelihood of a 30-foot or larger void suddenly opening up underneath these pipelines through a subsidence event. N.T. 3751.

208. HDD has been remediated and geophysical analyses show ground improvement at Lisa Drive, West Whiteland Township, Chester County, such that there is no evidence of any lack of stability for the ME1 pipeline at that location anymore and future pipeline installation will be done as an open trench, not HDD. SPLP St. No. 7, Bechtel Rebuttal Test. at 8, 9. N.T. 3712.

209. Grouting at Lisa Drive was an improvement on the underlying material in the geology, which increases the overall strength of the mass. N.T. 3726.

210. SPLP installed strain gauges on the ME1 pipeline in the area of Lisa Drive that provide real-time data to show that there was no adverse impact to the existing pipeline from construction. N.T. 3770-3771.

211. Any impact to residential wells in the area of Shoen Road from SPLP's HDD construction in that area was temporary and fully addressed, and all the residences in the area are now on public water. SPLP St. No. 7, Bechtel Rebuttal Test. at 11-12; N.T. 3591.

212. The seep of water adjacent to or on Intervenor Marcille-Kerslake's property by the curb on Shoen Road is caused by a naturally shallow water table and water flowing along natural underground fractures near the HDD entry/exit on Shoen Road. SPLP St. No. 7, Bechtel Rebuttal Test. At 12, Kerslake 3.

213. HDD may have created new connections between fractures and plugging of the end of the bore may have created some version of the groundwater mound modeled by GES; thus, shifting the natural groundwater flow to the old spring to a new position at the seeps on Shoen Road. SPLP St. No. 7, Bechtel Rebuttal Test. at 12. Exhibit Kerslake 1.

214. The groundwater flowback during HDD drilling and subsequent seep on/near Intervenor Marcille-Kerslake's property in addition to the long period of noisy construction on Shoen Road is a nuisance; however, it does not create any specific safety concern regarding the operation of the existing ME1 pipeline in that area. SPLP St. No. 7, Bechtel Rebuttal Test. at 14.

215. SPLP's HDD process in Chester and Delaware Counties has resulted in inadvertent returns ("IR"), which occurs when the drilling fluid follows the path of least resistance through a fracture in the geology and where the drilling fluid then discharges onto the surface of the ground or waterbody, rather than the anticipated pathway through the HDD borehole. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10-11.

216. IRs are not uncommon and are an anticipated part of HDD construction, and therefore are planned for typically through a detailed and comprehensive plan, which SPLP has for the Mariner East 2/2X pipeline project as part of its permits with PADEP. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 11.

217. SPLP's IR plan requires the contractor to immediately address and clean up the IR, regardless of the size of the IR. N.T. 3855-56, 3858-59, Ariaratnam Test.

218. IRs do not pose any long-term impact on human health because the materials utilized by SPLP in the HDD process are non-toxic. SPLP St. No. 3, Ariaratnam Rebuttal Test. at 11; *see also* N.T. 3532.

219. Bentonite products used in HDD construction are non-toxic, and approved as a food additive by the U.S. Food and Drug Administration and the World Health Organization. Bentonite is approved for the HDD process by NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects). N.T. 3532-3536.

220. SPLP's construction using HDD near her home impacted Rosemary Fuller's private water well, introducing bentonite into the water supply. Fuller Direct Test. and Fuller Surrebuttal Test.

221. Richard King is as an expert in the fields of geology and hydrogeology, including the investigation and remediation of groundwater contamination, and groundwater supply and water quality evaluation. N.T. at 3400-3401, King Test.

222. King evaluated Ms. Fuller's claims, including evaluating all geotechnical and geophysical information near the Fuller residence and all sampling results for the Fuller property. SPLP St. No. 9, King Rebuttal Test.; SPLP Exhibits. RK-1 through RK-7, SPLP St. No. 9-RJ, King Rejoinder.

223. A small amount of bentonite was detected in the water at the Fuller residence's private well. SPLP St. No. 9, King Rebuttal Test. at 4., 6-11.

224. The total amount of bentonite observed in the well samples taken from the Fuller property on two dates – July 1 and July 19, 2019 – were both very small amounts. N.T. 3425. Based on the total amount of suspended solids in the well sample, and the x-ray diffraction

analysis of the mineral content of the sediment – the July 1, 2019 sample reflected bentonite present at only 0.5 mg/L or 0.00005% of the total water sampled; the July 19, 2019 sample was 0.86 mg/L or 0.000086% of the water sample. SPLP St. No. 9-RJ, King Rejoinder at 2; N.T. 3422, 3424, King Test.; *see also* SPLP St. No. 15-RJ, Dr. Brian Magee Rejoinder at 1; N.T. 3531.

225. The occurrence of bentonite in the well was a short-term event and decreased to undetectable levels in approximately 80 days. SPLP St. No. 9, King Rebuttal Test. at 10, N.T. 3431-3432.

226. Bentonite is not considered to be a contaminant by any state or federal regulatory standard. N.T. 3408.

227. The presence of e-coli and fecal coliform in one sample taken in July 2019 at the kitchen tap in the Fuller residence is not sufficient evidence to show these were introduced by HDD construction. SPLP St. No. 9, King Rebuttal Test. at 4-5, 17-18.

228. Dr. Brian Magee is an expert in the fields of human health toxicologist and risk assessment. N.T. 3529-30; *see also* SPLP St. No. 15-RJ, Rejoinder Testimony Outline of Brian Magee, Ph.D.

229. There were minor amounts of bentonite present in the Fuller well samples on two dates in July 2019, that would not present any harm to humans in drinking that water. N.T. 3531, 3564.

230. There are neither inhalation nor carcinogenic risks from bentonite products related to Ms. Fuller's concerns regarding alleged exposure through her well water. N.T. 3541-3545.

231. Allegations about Ms. Fuller's well have been addressed by existing permits issued by PADEP, which require SPLP to investigate all water supply complaints and address any adverse impacts that occurred. SPLP Cross Exhibit 76 at 2.

232. SPLP had made reasonable offers of accommodation to Ms. Fuller, which she had not accepted. SPLP Cross Exhibit 76 at 2.

233. Ms. Fuller did not appeal the PADEP's determination and conclusion that SPLP had made reasonable efforts to address her water supply concerns. N.T. 2457-2460.

Public Awareness

234. SPLP has a public awareness plan (PAP) and has implemented a public awareness program mostly consistent with its plan. SPLP Exhibit JP-2, HLA.17 Public Awareness Plan; SPLP Exhibit JP-3, HLA.40, Public Awareness Plan – Communication; SPLP St. No. 5, Perez Rebuttal Test. at 6; SPLP Exhibit JP-7, HLA.17 Public Awareness Plan Revised (Highly Confidential and Public Versions).

235. The PHMSA regulations also provide that the public awareness program must follow the general recommendations of API RP 1162 (Public Awareness Programs for Pipeline Operators) ("RP 1162"). 49 C.F.R. §§ 195.440(b) and (c).

236. RP 1162, SPLP Exhibit No. JP-1, contains certain baseline requirements that an operator must undertake as well as supplemental activities that an operator may undertake if it determines that those activities are warranted. SPLP St. No. 5, Perez Rebuttal Test. at 3.

237. RP 1162 includes a table identifying the baseline and supplemental activities for the affected public, emergency officials, public officials, and excavators. *Id.* at 3-6; SPLP Exhibit JP-1 at 11-12.

238. RP 1162 provides the pipeline operator with flexibility to select the optimum combination of message, delivery method and frequency that meets the needs of the intended audience. SPLP Exhibit JP-1 at 19.

239. Beginning in 2014, SPLP has sent separate public awareness mailings for the Mariner East pipelines – one to the affected public, one to excavators and public officials, and one to emergency responders. SPLP St. No. 5, Perez Rebuttal Test. at 6-8.

240. Additional mailings were sent to stakeholders in 2018, 2019, and 2020. SPLP Exhibits JP-4, JP-5, JP-6, GG-1 and GG-2.

241. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

242. [REDACTED]

[REDACTED]

243. [REDACTED]

[REDACTED]. (N.T. 3185-3186.) **[END HIGHLY CONFIDENTIAL]**

244. Death, burns, serious injuries, frostbite or asphyxiation are possible result hazards/consequences of HVLs and their ignition that SPLP public awareness flyers do not mention. Exhibits Friedman-2, Friedman-3, GG-1 and GG-2. N.T. 808- 809.

245. SPLP's public awareness program consists of boilerplate recommendations. N.T. 810- 811.

246. Both the federal government and SPLP warn not to use cellular phones to call 9-1-1 until you are in a safe location in the case of a pipeline leak because a cellular phone can be the source of ignition. N.T. 813.

247. Christine Marshall's husband who has Parkinson's Disease, a disabled sister and a legally blind father would be unable to evacuate on foot for the distance sufficient to escape any effects from Hershey Mills, West Chester, Chester County if there were a full rupture event of an HVL pipeline close to Hershey Mills. N.T. 1727- 1737.

248. Ms. Marshall, as a resident of Hershey's Mill, did not receive individual notification from SPLP regarding the pipeline construction and the nature of the products they would contain. N.T. 1729 - 1731.

249. Ms. Marcille-Kerslake's family members were not aware that HVLs were flowing through Mariner East 1 and they did not know what to do in the event of an emergency until late 2017 even though the HVLs had been flowing since late 2014. N.T. 1618.

250. In order to evacuate in the event of a pipeline leak, Ms. Harkins' plan is to walk west away from the pipeline possibly downhill and/or downwind from the source of a leak or rupture on ME1. N.T. 26-28.

251. The evacuation recommendations offered by SPLP to walk upwind, uphill, and avoid ignition sources are not feasible for the McMullens family or their elderly neighbors who would have to negotiate a fence and walk across four pipelines. N.T. 952 - 953.

252. The Saints Peter & Paul School priest's residence is seven feet from the Mariner East 1 pipeline. N.T. 1037-1038, Exhibit Hughes-2.

253. In an evacuation at Saints Peter & Paul school, 400 children would need to get through a locked gate. N.T. 1044, Exhibit Hughes-3.

254. An eight-mile stretch is between block valves at Glenwood Elementary and the Andover HOA community. Exhibit Friedman-7 (The Delaware County Risk Assessment).

255. Mr. McGinn and Mr. Perez are familiar with the regulations of the PHMSA relating to public awareness plans and programs for HVL pipelines and API RP 1162. McGinn Rebuttal at 1, Perez Rebuttal at 1.

256. A public education program must follow the guidelines provided in API RP 1162. Perez Rebuttal at 3 and N.T. 3102.

257. The public awareness flyers Mr. McGinn and Mr. Perez are familiar with do not contain information about possible burns or possible fatalities as a consequence of the unintended release of HVLs. N.T. 3107-3108, 3218.

258. Energy Transfer (a parent company) sent Sunoco Pipeline, L.P.'s public awareness flyers to 72,999 households but there was no notification of potential hazards of burns, personal injury, property damage or death. Perez Rebuttal at 7-8, N.T. 3113.

259. A pipeline company's public awareness program is designed to educate the public of a pipeline's location; to inform them how to recognize a leak; and to inform them how to respond to a leak. Zurcher Rebuttal at 10.

260. The brochures in the public awareness program advise using sight, sound, and smell to determine if a pipeline has leaked or is leaking. Zurcher Rebuttal at 12 - 13.

261. If a leak occurs, the brochures tell affected people to leave the area on foot; warn others to stay away; turn off electrical equipment; proceed to a safe distance; and call 911. Each individual must determine a "safe distance" on a case-by-case basis. Zurcher Rebuttal at 13.

262. SPLP's 2018 public awareness mailing is Exhibit Friedman-3.

263. Mr. Zurcher has purchased combustible gas meters for his own home to protect his family against possible injuries from a gas leak or even worse. N.T. 4232-4233.

264. Asphyxiation is a possible hazard of a release of natural gas liquids. N.T. 4237.

265. If there is ignition, there is a fire and consequences could include: property damage, injury to persons or animals and fatal injuries. N.T. 4257 - 4258.

266. A table in Exhibit JSZ-4, a public awareness brochure, contains a column marked "Natural Gas" and it refers to NGLs. This is the most recent version of the brochure and provides nothing in it about hazards or consequences. Exhibit JSZ-4, N.T. 4248 - 4249.

267. SPLP will not specify what the brochures mean by the term "safe distance" and maintains that it is up to each individual to decide. N.T. 4263- 4267.

268. PHMSA's website contains public awareness information about pipelines for stakeholders and information that satisfies the criteria set forth in 49 C.F.R. § 195.440(d), including: (i) how to recognize where a pipeline is; (ii) how to recognize a pipeline release; (iii) what to do in the event of a suspected or detected release; (iv) what not to do in the event that a leak were to occur; (v) what the pipeline company does in the event of a leak; and (vi) the pipeline company's communication on public awareness. SPLP Exhibit No. 26.

269. SPLP's public awareness mailers are consistent with the information in Delaware County's Emergency Planning Guide, which is sent to Delaware County residents and is on Delaware County's website. SPLP-C Exhibit 56; N.T. 1969-1970.

270. Since 2014, SPLP has developed websites dedicated to providing public awareness information about the Mariner East pipelines, including a website dedicated specifically to pipeline safety. SPLP Exhibit 45; N.T. 3204-3208.

271. SPLP further disseminates public awareness and safety information about Mariner East pipelines, with specific information about Delaware and Chester Counties, through social media, including Instagram and Facebook pages. SPLP Exhibits 46 and 47; N.T. 3209-3210.

272. To reach an even wider audience outside the buffer distances for the mailers to the affected public, SPLP has since 2016 used billboards, radio advertising, and television advertising to provide public awareness information or directions on where to obtain that information. N.T. 3211.

273. In 2020, SPLP ran fifteen-second and thirty-second radio advertising in the entire Philadelphia and Harrisburg media markets, which provided public awareness information and also directed listeners to SPLP's websites for additional information. SPLP Exhibits 43 and 44; N.T. 3212.

274. As an additional supplemental activity for the affected public, SPLP held various open houses in Chester and Delaware Counties to provide information about the construction of the Mariner East pipelines. SPLP St. No. 5, Perez Rebuttal Test. at 9-10.

275. SPLP includes excavators in annual liaison CoRE training meetings and four hundred seventy-eight excavators attended that meeting in 2019. SPLP St. No. 5, Perez Rebuttal Test. at 15.

276. SPLP engaged a consulting company that specializes in community planning and emergency preparedness and met with school districts and parochial schools in Delaware and Chester Counties. SPLP St. No. 5, Perez Rebuttal Test. at 10.

277. SPLP's public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey ("PAPERS"), a national program developed and supported by API to provide pipeline operators with insight into whether a pipeline operator's public awareness program meets the requirements of RP 1162. SPLP St. No. 5, Perez Rebuttal Test. at 16.

278. SPLP's public awareness program was one of the programs that was included as part of the 2019 PAPERS study that concluded SPLP's public awareness program was effective in achieving program objectives and was comparable to the other pipeline operators' programs. N.T. 3121-3122, 3272-73, 4351-52.

279. SPLP's witnesses, including Perez and SPLP's expert witnesses Zurcher and Noll, concluded that SPLP's public awareness program is compliant with, and in fact exceeds, the requirements of the PHMSA regulations and RP 1162. SPLP St. No. 5, Perez Rebuttal Test. at 17; SPLP St. No. 2, Zurcher Rebuttal Test. at 11-17; SPLP St. No. 4, Noll Rebuttal Test. at 26-28.

280. Mr. Zurcher has reviewed and audited hundreds of public awareness plans and programs and worked on the original version of RP 1162. N.T. 4233.

281. SPLP's public awareness program contains many requirements of the PHMSA regulations at 49 C.F.R. § 195.440(d). N.T. 1962-63, Boyce Test.; N.T. 2199-202, 2206-07 Turner Test.; SPLP-C Ex. 75 at 145-146 Hubbard Test.

282. SPLP's mailers state that a resident should "leave the area immediately, on foot, if possible" and "follow the direction of local emergency response agencies." Then, "from a safe location, call 911" SPLP Exhibits GG-1 and GG-2.

283. Residents must use sight, sound, and smell to determine a safe distance to which to evacuate. SPLP St. No. 4, Noll Rebuttal Test. at 19; N.T. 3307, 4264; SPLP Exhibits GG-1 and GG-2.

284. There is no one-size-fits-all safe distance or location to which to evacuate as it depends upon the facts and circumstances of each event and, where applicable, guidance from emergency responders. SPLP St. No. 4, Noll Rebuttal Test. at 19-20; N.T. 4264-67, 1968, 2208; SPLP-C Exhibit 75 at 125.

285. SPLP's mailers and messaging are consistent with PHMSA's messaging that cell phones should not be used until a resident is at a safe location. SPLP Exhibits GG-1 and GG-2; SPLP St. No. 4, Noll Rebuttal Test. at 26.

286. Determining wind direction can be done by the physical sensation of a breeze, looking at clouds, flags, leaves on the ground or other indicators. SPLP St. No. 4, Noll Rebuttal Test. at 22; N.T. 3309.

287. The 911 control centers in Delaware and Chester Counties chart wind direction, and some schools have weather stations. N.T. 1263-1264.

288. In the event of a pipeline release, one should move away and uphill from the pipeline and if the two directions conflict, the default is to always to move away from the pipeline. N.T. 3308-3309.

289. SPLP's Mariner Emergency Responder Outreach (MERO) training states that sheltering in place may be an alternative on a case-by-case basis to be determined by the emergency responder. SPLP St. No. 4, Noll Rebuttal Test. at 20; SPLP Ex. GN-2 at 83, 93.

290. Delaware County has an Emergency Response Plan that explains the considerations to be used in determining whether to evacuate or shelter in place. N.T. 1970.

291. The decision to evacuate or shelter in place should be made on a case-by-case basis. N.T. 1970, Boyce Test.; N.T. 2220 Turner Test.; SPLP-C Ex. 75 at 125-26, Hubbard Test.

292. Complainants and aligned Intervenor have not been provided with information addressing how individuals with physical or mental limitations should be evacuated in the event of an emergency. SPLP St. No. 4, Noll Rebuttal Test. at 21. N.T. 1242, 1983.

293. SPLP is required to notify the public in its mailers that potential hazards and consequences of a pipeline rupture/release include property damages, personal injury, asphyxiation, burns or death. N.T. 808 - 809.

294. No SPLP public awareness flyers refer to property damage, fatalities, burns, serious injuries, frostbite or asphyxiation. N.T. 808- 809. Friedman-2, App. 4 and Friedman-3, App. 6, GG-1 or GG-2.

295. SPLP's baseline message to the affected public, emergency officials, and public officials does not fully describe the awareness of hazards in the tables of its mailers/flyers. SPLP Ex. JP-1, Tables 2-1.1, 2-1.2, 2-1.3 and 2-1.4, pp. 11-12.

296. Other than the failure to mention certain hazards/consequences, SPLP's mailers generally contain information consistent with regulatory requirements of 49 CFR 195.440 and API RP 1162 1st edition. SPLP Ex. Nos. JP-4, JP-5, JP-6, GG-1 and GG-2.

297. There are technological issues in early warning systems that can result false positives. SPLP St. No. 4, Noll Rebuttal Test. at 23.

298. **[BEGIN HIGHLY CONFIDENTIAL].** [REDACTED]

[REDACTED]. **[END HIGHLY CONFIDENTIAL].**

299. SPLP does not having an early audible warning system along its right of ways in Delaware and Chester Counties. N.T. 2201.

300. Odorant is not added to any product in the Mariner East pipelines. N.T. 1964, 2201.

301. SPLP does not provide notice of a pipeline release directly to schools and municipalities.

302. It would not be counter-productive for the operator to directly notify the schools and municipalities in the event of a rupture or release event near/within these entities. SPLP St. No. 4, Noll Rebuttal Test. at 23-24.

303. It is feasible, productive and assists in emergency preparedness to require SPLP, its controller or county liaison, to not only give notice of a release through 911, but also directly to school districts and municipalities affected in Delaware and Chester Counties because the school districts are also the first responders. SPLP Ex. JP-1 at 18-19.

304. SPLP has conducted MERO training two times each in Delaware and Chester Counties in 2017 and repeated that training in 2020. SPLP St. No. 4, Noll Test. at 8-11; N.T. 3213-3214, McGinn Test.

305. The MERO training was conducted by Gregory Noll, SPLP's expert witness in emergency planning and emergency response training. SPLP St. No. 4, Noll Rebuttal Test. at 1-4; SPLP Ex. GN-1; N.T. 3298.

306. The MERO training sessions each lasted approximately two and one-half hours and consisted of a 100-page PowerPoint presentation and questions and answers. N.T. 3299-300, Noll Test.; SPLP RJ Ex. GN-2.

307. The MERO training emphasizes a risk-based approach that is a process that can be applied to any pipeline release, whether it is a puncture, a rupture or a leak. The risk-based approach is based upon analyzing the problem, assessing the hazards, estimating potential consequences, and then determining courses of action based on facts, circumstances, and science.

SPLP St. No. 4, Noll Rebuttal Test. at 10-11; SPLP Ex. GN-2 at slides 16-17; N.T. 3301-02, Noll Test.

308. The risk-based approach emphasizes that you cannot have an emergency response plan for each potential incident or each potentially affected neighborhood and that the incident commander on the emergency response team must apply the risk-based approach based on the facts specific to each incident. SPLP St. No. 4, Noll Rebuttal Test. at 11-12.

309. The MERO training provided a (i) description of the nature of materials in the pipeline, (ii) the general properties and hazards associated with HVLs, (iii) information and medical response to exposure to these HVLs, (iv) the direction of flow of the product in the Mariner East 2 pipelines, (iv) mapping resources regarding the location of the pipelines, (v) information on how to detect a release by sight, sound, and smell, and (vi) emergency response procedures to follow for an ignition release and a non-ignition release. SPLP St. No 4, Rebuttal Test. at 13-17; SPLP Exhibit GN-2.

310. Over 500 people who attended the MERO training sessions in 2017 completed an evaluation of the program and most indicated a better understanding of pipelines. N.T. 3302-03.

311. Two of the three experts proffered by Complainants and aligned Intervenor were invited to the MERO training but chose not to attend. N.T. 1976, 2344.

312. SPLP also participates annually in CoRE training for emergency responders offered by all of the pipeline operators in Chester and Delaware Counties. SPLP St. No 5, Perez Rebuttal Test. at 12.

313. Mr. Noll was retained separately by Intervenor Chester County to provide two tabletop emergency response exercises to emergency responders. SPLP St. No. 4, Noll Rebuttal Test. at 24-26.

314. SPLP has written to all municipalities and school districts in Chester and Delaware Counties and offered to have Mr. Noll perform additional tabletop exercises and to meet with emergency responders to discuss components to include in the emergency response plans required to be developed by the municipalities and school districts. SPLP Exhibits 48 and 49; N.T. 3214.

315. SPLP has provided additional emergency response training, tours, and exercises in Delaware and Chester Counties SPLP St. No. 13-RJ, Gordon Rejoinder Test. Outline; N.T. 2851-58, Gordon Test.

316. SPLP representatives meet with Delaware and Chester Counties' local emergency response committees every other month. N.T. 2856.

317. SPLP participates in bi-weekly meetings with townships across Chester and Delaware Counties and regularly participates in the Chester County Association of Township Officials' monthly meetings to provide project updates. SPLP St. No. 6, McGinn Rebuttal Test. at 4-5.

318. SPLP has made substantial equipment purchases for municipalities within Chester and Delaware Counties to enhance their emergency response capabilities including first responder grants totaling \$625,394.15, of which \$172,794.60 went to Chester County emergency services and various police and fire departments and \$452,599.55 went to similar organizations in Delaware County. SPLP St. No. 6, McGinn Rebuttal Test. at 5-6.

319. SPLP provided funding to Middletown Township for emergency response training to be conducted in Oklahoma. *Id.* at 6.

320. The amount of training and funding for equipment provided by SPLP is greater in Delaware and Chester Counties is greater than any other NGL pipeline operator in those counties. N.T. 1977, 2233-2236, 2253.

321. Enterprise (or TEPPCO) NGL pipeline runs through Delaware and Chester Counties without an early warning system or odorant in their products. N.T. 1991-92, Boyce Test.; N.T. 2234-39, Turner Test.; SPLP Exhibits C-75 at 130-34.

322. Municipalities and school districts have the legal obligation to create their own emergency response plans under Title 35 of Pennsylvania Consolidate Statutes and SPLP does not have that obligation. N.T. 1975, Boyce Test; N.T. 2210, Turner Test.; N.T. 2352, Hubbard Test.

323. SPLP is required to provide sufficient information to allow the municipalities and schools to be able to develop those Title 35 plans. SPLP St. No. 4, Noll Rebuttal Test. at 28.

324. SPLP has provided information for municipalities and schools to develop their own plans: information on (i) the location of the pipelines; (ii) the location of the valve stations; (iii) proximity to schools; (iv) the products in pipelines and their physical properties; (v) the hazards of those products; (vi) a rule of thumb for a safe distance in the event of a significant release; (vii) the direction of flow of product in the pipelines; (viii) that in the event of a catastrophic release the product between the corresponding valve sites will be released; (ix) plume modeling; (x) SPLP's integrity management, security and PHMSA compliance programs; and (xi) SPLP's remote monitoring center for leak detection. N.T. 2228-29, Turner Test.; N.T. 1984-85, Boyce Test.; N.T. 2352-2354, Hubbard Test.

325. Emergency responders have substantial knowledge about the Mariner East pipelines. N.T. 1984, 1996-1997, Boyce Test.; N.T. 2228, Turner Test.; N.T. 2352, Hubbard Test.

326. In a letter dated December 6, 2019 from Miller to Rick Smith, the East Goshen Township Manager, Miller stated that he attended a meeting at the Chester County Department of Emergency Services at which SPLP provided information on the Mariner East pipelines. N.T. 1479.

327. Miller reviewed the emergency plan again in 2019. N.T. 1479.

328. Hubbard raised an issue as to his lack of access to plume modeling information; however, he conceded that he did not know if he had asked SPLP for that information and that plume modeling information is publicly available. N.T. 2335-2336.

Economic Impact

329. The Mariner East pipelines benefit Pennsylvania intrastate commerce by transporting propane supply to the southeastern part of Pennsylvania and at several off-loading racks for propane distribution throughout the state, through the direct supply of butane for gasoline blending, and for the supply of ethane as a source of electricity production in Cambria County, Pennsylvania. SPLP St. No. 10, Billman Rebuttal Test. at 10-11.

330. The butane, propane, and ethane transported on the Mariner East pipelines further benefit Pennsylvania because they are used in a wide range of products necessary to everyday life and many industrial processes. SPLP St. No. 10, Billman Rebuttal Test. at 13-20.

331. SPLP recently filed Tariff Supplement No. 9 for its intrastate rates for butane transportation to allow new local connections for butane distribution terminals across the Commonwealth as a blend stock for gasoline. SPLP St. No. 10, Billman Rebuttal Test. at 11.

332. The Mariner East pipelines contribute to industrial development of facilities in Marcus Hook, creating both increased industry operations and construction jobs for Pennsylvanians. SPLP St. No. 10, Billman Rebuttal Test. at 11; SPLP St. No. 11, Snell Rebuttal Test. at 2.

333. The Mariner East pipelines and the volume of product they transport cannot be fully supplemented by other transportation means, including rail or truck. N.T. 2636-2637; N.T. 2827-2829.

334. Range is a shipper on the Mariner East Pipelines. See Range St. 1-R at 5.

335. Range is a top 10 natural gas producer and a top 5 NGL producer in the country. Range St. 1-R at 3.

336. Range currently directly and indirectly transports 70,000 BPD of natural gas liquids on ME1 and ME2. Range St. 1-R at 5.

337. Range transports 20,000 barrels per day (“BPD”) of ethane on ME1. Range St. 1-R at 5.

338. Range transports 30,000 BPD of propane and 10,000 BPD of normal butane on the ME2 pipeline. Range St. 1-R at 5.

339. Range sells 10,000 BPD of a combination of propane and normal butane to a third party that transports this product on ME2.

340. Range’s shipments on the Mariner East Pipelines represents approximately 32% of its typical ethane and 100% of its current propane and normal butane production in Pennsylvania. Range St. 1-R at 5.

341. The Mariner East Pipelines provide Range with a takeaway capacity for the NGLs it produces from the NGL-rich natural gas that is produced in portions of the southwestern region of Pennsylvania. Range St. 1-R at 7.

342. The Mariner East Pipelines alleviate NGL supply congestion and oversupply in the Appalachian market. Range St. 1-R at 7.

343. Large volumes of ethane can only be transported by pipeline due to its boiling point that makes large scale bulk truck or rail transportation ineffective and uneconomic. See Range St. 1-R at 7-8.

344. In the absence of NGL pipeline capacity, a natural gas producer would be forced to limit or possibly shut-in wells and natural gas production as the downstream natural gas pipelines limit the BTU content of the natural gas, and therefore the amount of ethane that may be rejected or left in the natural gas stream that is transported by intra-or interstate pipelines. Range St. 1-R at 8.

345. A rail alternative for liquified natural gas transportation through Pennsylvania, whether someday offered by New Fortress Energy or another entity, is not applicable to the transport of ethane and therefore does not alleviate the restraints on shipping ethane by rail. N.T. 2820.

346. Propane and butane can be more easily chilled and/or compressed than ethane for transportation by rail or truck. Range St. 1-R at 8.

347. The volume of propane and butane transported by Range on the Mariner East Pipelines in any given month would necessitate 2,130 railcars or 7,600 trucks. Range St. 1-R at 8.

348. The total volumes of Appalachian-produced propane and normal butane flowing on the Mariner East Pipelines today (estimated at a maximum of 200,000 barrels/day) exceed the available railcar and truck loading capacity in Appalachia. Range St. 1-R at 8.

349. Range has previously confirmed the rail loading facilities operated by its midstream service provider did not have adequate loading capacity to accommodate the current NGL flows on the Mariner East Pipelines, i.e., 226,000 BPD of NGLs. Range St. 1-R at 9.

350. The Mariner East Pipelines are one of only two pipeline systems transporting propane from production in western Pennsylvania, Ohio and West Virginia. Range St. 1-R at 9-10.

351. The other pipeline system is Enterprise's TEPPCO pipeline, which has approximately 12.5% of ME2's capacity. Range St. 1-R at 9.

352. If western Pennsylvania production is prohibited from flowing on the Mariner East Pipelines, and the TEPPCO pipeline is already subscribed, the remainder of this Pennsylvania-based production would be forced to flow on available rail and truck loading capacity which would be quickly overwhelmed resulting in well-pad shut-ins. Range St. 1-R at 9.

353. If the Mariner East Pipelines are forced to cease operations, then Range, and possibly other producers, would be forced to shut-in natural gas production throughout Pennsylvania, resulting in significant economic harms. Range St. 1-R at 8-9.

354. If the Mariner East Pipelines are forced to cease operations, Range's ethane that normally flows on ME1 would either be sold into an alternate market or be rejected into the gas stream, but only in limited quantity, resulting in significant financial losses. Range St. 1-R at 12.

355. Assuming Range could find an alternative market for the ethane it normally flows on ME1, Range would incur approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in additional transportation costs and lost profits per year. Range St. 1-R at 13.

356. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 13.

357. Assuming railcars and railcar loading facilities were available in adequate quantities to transport the 50,000 BPD propane and normal butane production and alternate rail markets were available, Range would incur [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in increased costs (e.g., increased logistics fees and lower priced markets) per year. Range St. 1-R at 13.

358. It is more likely that Range Resources could only be able to access rail cars and railcar loading capacity for the equivalent of 19,000 BPD of propane and butane and specifically noted that truck loading is not available for Range Resource's NGL production. Range St. 1-R at 13. In this scenario, 31,000 BPD of Range Resource's propane and butane production would be without access to rail or pipe loading [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 13-14.

359. Range's estimates of harm are based off past experience with three prior shutdowns of ME1. See Range St. 1-R at 10-12.

360. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL] Tr. 2787.

361. A shutdown of ME1, which would affect Range's transportation of ethane, could [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

362. A shutdown of ME2, which would affect propane and butane transportation, where Range could only access railcars and railcar loading capacity for 38% of its

50,000 BPD of ME2 flows, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

363. A decrease in ethane, propane, butane and natural gas supply resulting from a shut-in of ME1 and ME2 would very likely increase the price of NGLs and natural gas to consumers in Pennsylvania. Range St. 1-R at 14-15.

364. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Tr. 2803.

365. Range has 457 employees in Pennsylvania and, if it were forced to shut-in production due to a cessation of ME1 and/or ME2 operations, it would likely be forced to implement lay-offs. Range St. 1-R at 15.

366. Job impacts could reverberate down the supply chain and affect people's livelihoods. N.T. 2807, Range St. 1-R at 15.

367. James Snell, the business manager of Steamfitters Local Union 420, represents union members including: welders, pipefitters and helpers installing/maintaining pipes, valves, control valves, pneumatics and other facilities on the Mariner East pipelines project. SPLP St. No. 11, Snell Rebuttal Test. at 2.

368. The Mariner East pipelines directly employ Union 420 members and have created approximately 1,000 or more jobs for members of this union and about 3,000 additional jobs for workers of other unions and trades due to downstream expansions at the Marcus Hook hub facilities as a result of the Mariner East Project. (*Id.*)

369. Many of Union 420's workers live in Delaware and Chester Counties and are actively working on the Mariner East pipelines. N.T. 2646.

370. The financial expenditures of the Mariner East Pipeline project led to a substantial amount of employment, which consists of construction and other jobs that last for the length of the construction project as well as jobs to operate and maintain the pipelines after they have been constructed. SPLP St. No. 12, Angelides Rebuttal Test. at 5.

371. The projected benefits of the Mariner East Pipeline project prior to construction were projected to be a total of \$6.14 billion expenditure as a one-time construction impact and a total of 42,630 full-time job equivalents for one year. SPLP St. No. 12, Angelides Rebuttal Test. at 6.

372. The remaining financial footprint of the construction projection's economic impact is roughly \$0.9 billion, with approximately 5,705 full-time job equivalents, and with a remaining fiscal impact within the Commonwealth projected to be \$14.1 million. N.T. 3080-3081.

373. As a result of the Mariner East Pipeline project, it is projected that the Commonwealth would receive tax revenues from construction alone of approximately \$97 million with approximately two-thirds of those tax revenues coming from personal income tax and the remainder from sales-and-use taxes and business taxes. SPLP St. No. 12, Angelides Rebuttal Test. at 7.

374. After construction is completed, the recurring annual tax revenues for the Commonwealth from the operations of the Mariner East pipelines are projected to be between \$1.4 and \$2.1 million per year with an additional \$4.8 million annual in property taxes paid as a result of Marcus Hook facility expansions. SPLP St. No. 12, Angelides Rebuttal Test. at 7.

375. The projected revenue associated with ME1 operations is approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]. [END HIGHLY CONFIDENTIAL] SPLP St. No. 10, Billman Rebuttal Test. at 2; SPLP HC Ex. No. RJB-2.

376. The projected revenue associated with SPLP contracts for ME2 is approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]. [END HIGHLY CONFIDENTIAL] Similarly, the projected incremental daily revenue, once the ME2X pipeline is available, ranges from [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL]. SPLP St. No. 10, Billman Test. at 3; SPLP HC Ex. No. RJB-2.

377. The total projected revenue loss per day if the entire Mariner East pipelines are enjoined from operating ranges between [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]. SPLP St. No. 10, Billman Test. at 5; SPLP HC Ex. No. RJB-2.

378. SPLP would not be able to recapture lost revenues due to a shutdown given the physical characteristics of pipeline capacity. SPLP St. No. 10, Billman Test. at 3.

379. SPLP will suffer other losses if it is enjoined from operating and completing construction, including mobilization and demobilization, standby charges, risk of losing contracts, equipment fees and more, which collectively amount to [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]. [END HIGHLY CONFIDENTIAL]

380. If the construction and/or operation of the Mariner East pipelines were to be enjoined, Union 420's members would be idled. SPLP St. No. 11, Snell Rebuttal Test. at 4.

381. A temporary shutdown of the Mariner East pipelines would mean that benefits of operations are lost with no opportunity to recover. SPLP St. No 12, Angelides Rebuttal Test. at 6. N.T. 3075.

382. Range Resources experienced financial harm from prior shutdowns of ME1, including [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL]

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm'n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). Consequently, as the parties seeking affirmative relief in this proceeding, the Complainants bear the burden of proving that SPLP has violated the Public Utility Code, or a Commission regulation or order, and proving that they are entitled to the relief they seek.

Although the factual burden may shift during a proceeding, the proponent of the rule or order (*i.e.*, the complainant) always maintains the overarching burden of proof. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util.*

Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order dated Oct. 9, 1980).

Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

In order to obtain any relief, a complainant must demonstrate that a utility violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (“*West Penn*”); *Township of Spring v. Pennsylvania-American Water Co.*, Docket No. C-20054919, 2007 WL 2198196 at *6 (Order entered Jul. 27, 2007); *Baker v. SPLP*, Docket No. C-2018-3004294, at 6 (Opinion and Order entered Sept. 23, 2020) (“*Baker*”) (citing 66 Pa. C.S. § 701).

B. JURISDICTION

Section 701 of the Code authorizes any person, corporation or municipal corporation to file a written complaint regarding any act by a public utility in violation of the Public Utility Code. 66 Pa. C.S. § 701. As SPLP is a certificated public utility pursuant to 66 Pa. C.S. § 102 (providing that a “public utility,” includes providing intrastate transmission services of petroleum refined products and HVLs for shipper(s) to points within the state), Complainants in the instant case are authorized to file the formal complaints regarding acts of SPLP alleged to be in violation of the Code and regulations. *See Paul v. Alliance Petroleum Corp. a/k/a Diversified Prod. LLC*, C-2020-3021361 (Initial Decision issued January 8, 2021, Final Order entered February 9, 2021).

The general powers of the Commission are set forth in 66 Pa. C.S. § 501, which provides in pertinent part:

- (a) Enforcement of provisions of part.--In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders.
- (b) Administrative authority and regulations.--The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. . . .
- (c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

66 Pa. C.S. § 501. Thus, the Commission is vested with authority to supervise and regulate SPLP and to create or amend regulations.

The Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101 *et seq.* For example, the Commission has no jurisdiction to hear arguments regarding the scope and validity of easements between municipalities or other landowners and the operator. Similarly, the Commission generally lacks jurisdiction to adjudicate claims regarding violations of Municipal law or environmental regulations that are beyond the scope of the Public Utility Code or a Commission order or regulation. *Rovin, D.D.S. v. Pa. Pub. Util. Comm'n*, 502 A.2d 785 (Pa. Cmwlth. 1986) (*Rovin*) and *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In these cases, the Commonwealth Court held the Commission lacked jurisdiction over issues involving air and water quality, which are environmental matters specifically regulated by statutes administered by state and federal agencies, not the Commission. In *Rovin*, the Court held that matters involving the quality or purity of water, rather than the quality or character of water service provided by a public utility per the meaning

of 66 Pa. C.S. § 1501, fall within the jurisdiction of the state Department of Environmental Resources (DER) and the federal Environmental Protection Agency (EPA) under state and federal safe drinking water statutes.

To the extent that SPLP may be found to have violated municipal law or environmental regulations by a court or agency that has preeminent jurisdiction to hear such claims, or the easement pertains to a utility issue such as inspection of pipeline facilities, then such a finding may be used to demonstrate that SPLP is also violating the Public Utility Code by providing unsafe or unreasonable service. The Commission, however, lacks jurisdiction to make such an initial finding as in the case of Complainant Rosemary Fuller's well water quality (generally an issue to be determined by the DEP initially before the Commission adopts another agency's finding in an analysis under 66 Pa. C.S. 1501, reasonableness and safety of service).

C. INJUNCTIVE RELIEF

A regulated entity must take actions ordered by the Commission to make a regulated activity safe within the Commission's authority. *See* 66 Pa. C.S. § 1505(a). Pursuant to Section 1501 of the Code:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. 1501. The term "service" is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

In order to obtain permanent injunctive relief, a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v. Jones*, 571 Pa. 637, 644, 813 A.2d 659, 663 (2002), *cert. denied*, 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003). Where a complainant seeks temporary injunctive relief, however, they must also demonstrate that (1) the need for relief is immediate; and (2) injury would be irreparable if relief is not granted. *See Buffalo Twp.* 813 A.2d at 663 (*citing Soja v. Factoryville Sportsmen's Club*, 361 Pa. Super. 473, 522 A.2d 1129, 1131 (Pa. Super. 1987)). In addition, the Commission's regulations contemplate a party seeking a temporary injunction must also demonstrate that the requested relief is not injurious to the public interest. 52 Pa. Code § 3.6(b); see also *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If any one of these essential pre-requisites is not proved by a complainant, the Commission will deny the relief requested. *See Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993); see also *Cnty. of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988).

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep't.*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) ("An injunction is an extraordinary remedy to be granted only with extreme caution"); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) ("Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury"); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018). *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, at p. 42 (Recommended Decision dated July 16, 2018) (Barnes, J.), adopted in full, (Order dated Oct. 1, 2018).

The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145; see also *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (*citing Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)). Pennsylvania courts have previously held that a

party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *See Allen*, 417 A.2d at 401.

D. STANDARDS FOR PIPELINE DAMAGE PREVENTION AND SAFETY

The Commission Regulations at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. The Commission Regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans. 49 CFR § 195.440 (relating to public awareness). A pipeline operator utility should use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a). Further, pursuant to 52 Pa. Code § 59.33(b):

(b) Safety code. The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto. . . .

52 Pa. Code § 59.33(b).

The General Assembly delegated to the Commission authority to enforce federal minimum safety regulations for all natural gas and hazardous liquid public utilities in this Commonwealth under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto. The General Assembly’s intent is unambiguous that as the Code of Federal Regulations,

title 49 Transportation is amended, so too will the Commission be vested with authority to enforce those amended standards.

The Commonwealth Court has consistently recognized that legislatures cannot foresee every problem incidental to an agency's effort to implement a statutory scheme. *Dep't of Env'tl. Res. v. Butler Cty. Mushroom Farm*, 454 A.2d 1 (Pa. 1982). For example, the Commonwealth Court affirmed the Office of Open Record's decision to hold an *in camera* review of documents in dispute even though that was not expressly permitted by statute. *Office of Open Records v. Cntr. Twp.*, 95 A.3d 354, 369 (Pa. Cmwlth. 2014) (*en banc*) (*Center Twp.*); *Sewer Auth. Of Scranton v. Pa. Infrastructure Inv. Auth.*, 81 A.3d 1031, 1039 (Pa. Cmwlth. 2013).

There must be necessity shown in order to relax the general rule that limits an agency's authority to only that which is expressly conferred upon it by the General Assembly. The requisite necessity must derive from the agency's express statutory duties and responsibilities and bear directly on the agency's ability to carry out those duties and responsibilities. *See Dep't of Transp. v. Beam*, 788 A.2d 357, 360 (Pa. 2002) ("[T]he rule requiring express legislative delegation is tempered by the recognition that an administrative agency is invested with the implied authority necessary to the effectuation of its express mandates.").

An agency "may not escape . . . notice and comment requirements by labeling a major substantive legal addition to a rule a mere interpretation." *Appalachian Power Co. v. Env'tl. Prot. Agency*, 208 F.3d 1015, 1024-25 (D.C. Cir. 2000). However, "incorporation by reference is used primarily to make privately developed technical standards Federally enforceable." *Code of Federal Regulations: Incorporation by Reference*, National Archives, <https://www.archives.gov/federal-register/cfr/ibr-locations.html#why>. An agency that takes affirmative steps to rely upon a document outside the Federal Register sometimes adopts the outside document as law. *Brennan Ctr. For Justice at New York U. Sch. Of Law v. U.S. Dep't. of Justice*, 697 F.3d 184, 198 (2d Cir. 2012); *citing, Nat'l. Council of La Raza v. Dep't of Justice*, 411 F.3d 350, 356 (2d Cir. 2005).

The chapter on pipeline safety in the United States Code provides that “[t]he purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.” 49 U.S.C.A. § 60102(a)(1). The Secretary of Transportation is tasked with providing “minimum safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C.A. § 60102(a)(2)(emphasis added). Part 195 of the Code of Federal Regulations (“CFR”) provides those safety standards for pipeline facilities. 49 CFR Part § 195.440. The public awareness program requirements in Section 195.440 are as follows in pertinent part:

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

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

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

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

Use of one-call notification system prior to excavation and other damage prevention activities; Possible hazards associated with the unintended releases from a hazardous liquid or carbon dioxide pipeline facility; Physical indications that such a release may have occurred; Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and Procedures to report such an event . . .

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid or carbon dioxide.

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

...

49 C.F.R. §§ 195.440 (a), (b), (c), (d), (e), (f) and (g).

The American Petroleum Institute's Recommended Practice 1162, First Edition (API RP 1162) is incorporated by reference into Part 195.440. See Part 195.3. API RP 1162 recognizes that there cannot be a "one-size-fits-all" public awareness program. "[S]ome geographic areas have a low population, low turnover in residents, and little development or excavation activity; whereas other areas have very high population, high turnover, and extensive development and excavation activity." API RP 1162 at §2.6. Hence, API RP 1162 provides that there are situations where it is appropriate to enhance or supplement the baseline public awareness program. API RP 1162 at §1.3.5.

The Commission has initiated a rulemaking proceeding at Docket No. L-2019-3010267, and is reviewing comments on whether or not to promulgate Commission regulations with more stringent and compatible requirements to the federal regulations regarding public awareness, emergency preparedness, advanced warning systems, odorant, etc. *Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267 (Order entered June 13, 2019) (*ANOPR*). In this *ANOPR*, the Commission sought comments on proposed regulations regarding: (1) utility interactions with local government officials, including but not limited to such topics as emergency planning and emergency response coordination, periodic drills with utility/municipal coordination; (2) whether there should be regulations requiring periodic public awareness meetings with municipal officials and the public; and (3) Pennsylvania specific enhancements to public utility's public awareness programs pursuant to 49 CFR § 195.440 and API Recommended Practice 1162. Comments have been received from many individuals and interest groups. Commission staff is researching and investigating the issues before drafting a proposed

rulemaking order for further comment or a recommendation to discontinue the rulemaking process. Final rulemaking orders are reviewed by the Office of Attorney General, General Assembly and the Independent Regulatory Review Commission (IRRC) before new or amended Commission regulations are made legally effective.

The Hazardous Material Emergency Planning and Response Act (“Emergency Planning Act”) provides in pertinent part:

The General Assembly hereby determines, declares and finds that exposure to hazardous materials has the potential for causing undesirable health and environmental effects and poses a threat to the health, safety and welfare of the citizens of this Commonwealth, and that the citizens of this Commonwealth and emergency service personnel who respond to emergency situations should be protected from health hazards and harmful exposures resulting from hazardous material releases at facilities and from transportation-related accidents.

35 P.S. § 6022.102.

Pennsylvania has adopted the minimum federal pipeline safety standards and participates in the pipeline safety program administered by the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA pipeline safety regulations use the concept of High Consequence Areas (HCAs) to identify specific locales and areas where a failure could have the most significant adverse consequences. Operators are required to devote additional resources to preventing and mitigating hazards to pipeline safety within HCAs – a process referred to as Integrity Management (§§ 192.935 and 195.452(i)). PHMSA requires the use of an in-line inspection (ILI) device or comparable technology to ensure hazardous liquid pipeline integrity within HCAs. While participating states must adopt the minimum federal pipeline safety standards, they may pass more stringent regulations as long as they are compatible with federal regulations. The Commission may ultimately adopt standards for operations in Pennsylvania beyond the minimum federal pipeline safety standards. Currently though, the Commission’s jurisdiction over the siting and location of public utilities, including pipelines and related equipment such as valve stations and pumping

stations is limited. *W. Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018).

The General Assembly has expressly prohibited certain types of construction related to public utilities without prior approval of the Commission. *See* 66 Pa. C.S. §§ 515, 518, 519, 520 (electric generating units), 2702 (railroad crossings); *see also* 66 Pa. C.S. § 2804 (transmission facilities), 52 Pa. Code § 57.71-57.77 (electric high voltage transmission lines/facilities). However, there is no such statutory provision applicable to petroleum pipeline utilities. The Commission's authority is statutory, not boundless and management decisions are generally vested in the corporation, not the Commission. *Pa. R.R. Co. v. Pa. Pub. Util. Comm'n*, 146 A.2d 352 (Pa. Super. 1958), *vacated*, 396 Pa. 34, 152 A.2d 422 (1959).

The Pennsylvania Department of Environmental Protection (DEP) reviews a pipeline operator's construction permits to protect waterways, and aquifers, and private wells, and DEP determinations of unsafe drinking water and accommodations for example may be considered by the Commission in evaluating reasonableness and safety of service of a utility. Clean Stream Laws P.L 1987, Act 394 of 1937, as amended (35 P.S. § 691.1 *et seq.*).

Other than the authority to review plans to build shelters/buildings covering a pipeline operator's facilities for determinations whether the Municipal Planning Code (MPC) and zoning ordinances regarding the building of shelters protecting a utilities' facilities apply, current law neither charges the Commission with the duty nor does it expressly authorize the Commission to review and approve siting applications regarding the proposed siting of HVL pipelines before they are constructed and/or being repurposed from transporting petroleum/refined product to natural gas liquids a/k/a highly volatile liquids.

The Commission has the authority to determine financial/technical fitness and need for proposed transportation of petroleum products service on a county-by-county basis prior to its issuance of a certificate of public convenience authorizing an applicant the authority to transport petroleum products and refined petroleum products intrastate pursuant to Sections 1101 and 2102 of the Public Utility Code. However, once that authority and certificate are obtained,

absent a showing of abuse, the utility generally has managerial discretion to decide where the need is for its product/service within the prescribed authority boundaries and may locate its facilities to meet that public need. 66 Pa. C.S. §§ 1101 and 2102. Pipeline utilities generally attempt to negotiate with landowners for easements/ROWs on their properties; however, the utility is ultimately empowered under Chapter 15 of the Eminent Domain Code with the ability to make declarations of taking, subject to a review process in the Courts of Common Pleas on a county-by-county basis.

The Commission has the authority to approve the tariffed rates for the intrastate transport of petroleum products (*i.e.* propane) but interstate rates and private contracts for shipping rates are not generally subject to the Commission's approval prior to execution or effectiveness. The Commission can suspend/revoke and amend a certificate of public convenience and/or assess civil penalties for violations of Commission regulations, the Public Utility Code or Commission orders. The Commission has the authority to review, vary, reform and revise agreements between public utilities and persons, municipal corporations and corporations. 66 Pa. C.S. § 508 (Power of commission to vary, reform and revise contracts).

As an example, the Commission was asked to review a settlement agreement between *West Goshen Township and Sunoco Pipeline, L.P.* in a separate proceeding whereby the township had alleged SPLP breached an agreement to place a valve on one piece of land (Janiec 1) and instead, wanted to place it across Boot Road, onto a second piece of land (Janiec 2) adjacent to the township's emergency facility. The Commission ultimately declined to direct the operator to build the valve on the originally agreed upon land (Janiec 1) due to engineering constraints there, and because the operator indicated it no longer needed or planned to build any valve in the township, the Commission ordered the pipeline operator to not build a valve on a portion of land adjacent to Goshen Fire Company Station 56 (Janiec 2) without written prior consent of West Goshen Township. That is exercising an authority to interpret and rule upon the terms of an agreement between a municipality and a pipeline operator as it pertains to the siting of the operators' facilities and imprint in the township within which it operates.

The Public Utility Code creates a uniform, statewide regulatory scheme for utilities. To avoid overlaying a statewide scheme with a “crazy quilt of local regulations” municipalities are generally preempted from regulating public utilities. *See PPL Elect. Util. Corp. v. City of Lancaster*, 214 A.3d 639 (Pa. 2019). Disputes arise between utilities and municipalities over the authority of the municipality to regulate facilities in public rights-of-way (ROWs). This is because the Pennsylvania Business Corporations Law of 1988 states that public utilities have the right to enter into and occupy ROWs but before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof. 15 Pa. C.S. § 1511(c). Recently, the Commission held that it does not have the jurisdiction to determine the reasonableness of a municipal permitting fee, which lies with a court of competent jurisdiction. *See Armstrong Telecomms. Inc. Petition for Declaratory Order*, Docket No. P-2019-3014239 (Opinion and Order entered February 21, 2021) (Commission refused to address Waterford’s application fee). Therefore, the facts of the case determine whether the Commission has jurisdictional authority to grant the relief requested.

The Commission, in addition to having authority over “public utilities” as defined in Section 102, also has limited authority over pipeline operators pursuant to the Gas and Hazardous Liquids Pipelines Act (Pipeline Act or Act 127), Act of Dec. 22, 2011, P.L. 856, No. 127.9. Act 127 delegates to the Commission the “general administrative authority to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws.” The Commission has the power to investigate, hold hearings and grant declaratory relief to terminate a controversy or remove uncertainty. 66 Pa. C.S. § 331.

The Commission is the appropriate forum for complaints related to SPLP’s location of the Mariner East Pipeline Facilities if they are alleged to be in violation of the U.S. Department of Transportation’s Title 49 of the Code of Federal Regulations or a Commission Order, regulations or the Public Utility Code. *W. Penn Power v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa. Cmwlth. 1990) (electric utility “service” is not confined to the distribution of electrical energy; it includes any and all acts related to that function, including vegetation

management/tree trimming or removal). *See also Popowsky v. Pa. Pub. Util. Comm'n*, 653 A.2d 1385 (Pa. Cmwlth. 1995) (vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner).

The Pipeline Safety Act, 49 C.F.R. Part 195, applies to the Mariner East pipelines, which carry natural gas liquids. The regulations and safety standards found in 49 CR Part 195 and the Commission's regulation at 52 Pa. Code § 59.33(b), are applicable to the ME1, ME2, 12-inch workaround pipeline, and will apply to the ME2X when completed and operable even though some of ME1 and the 12-inch workaround use old pipes originally built before 1968, the year the Pipeline Safety Act became law, codifying at Title 49, Chapter 601 of the U.S. Code. Part 195.303 addresses risk-based alternatives to pressure testing older hazardous liquid and carbon dioxide pipelines whereby risk classifications are assigned to each pipeline segment according to indicators. Part 195.303(d) states: All pre-1970 electric resistance-welded (ERW) pipe and lap welded pipe is deemed susceptible to longitudinal seam failures unless an engineering analysis shows otherwise. In conducting an engineering analysis an operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality. Also, an operator must establish the maximum operating pressure under Part 195.406(a)(5). § 195.8 (Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe).

Part 195.114 (Used Pipe) provides that any used pipe installed in a pipeline system must comply with Part 195.112(a) and (b) and the pipe must be of known specification and the seam joint factor must be determined in accordance with Part 195.106(c). If the specified minimum yield strength or the wall thickness is not known, it is determined in accordance with Part 195.106(b) or (c) as appropriate. There may not be any buckles, cracks, grooves, gouges, dents or other surface defects that exceed a maximum depth of such a defect

permitted by the manufacturer's specification or corroded areas where the remaining wall thickness is less than the minimum thickness required by the tolerances in the specification to which the pipe was manufactured. Part 195.114 (a),(b).

ME1, originally built in 1931, is not an existing pipeline within the meaning of 49 U.S.C.A. Section 60104(b), but rather a newly repurposed pipeline system using some old pipe to now transport HVLs. The federal regulations account for repurposing of old pipe to carry HVLs, *see* 49 CFR 195.200 (Scope) which prescribes minimum requirements for constructing new pipeline systems with steel pipe and for relocating, replacing or otherwise changing existing pipeline systems that are constructed with steel pipe. See also, 49 CFR Subpart C – Design Requirements. Part 195.1(a) and (b) show no express exception to the application of Part 195 to any pipeline facilities in existence on the date Part 195 in general was adopted. Words to that effect would constitute a “grandfather clause.” If any pipeline installed prior to 1968 was exempt from Part 195, there would be an express exemption listed in the code, or at least there might be Enforcement Policy Directives. *Baker v. Sunoco Pipeline, L.P.*, C-2018-3004299 (Opinion and Order entered on September 23, 2020).

The Public Utility Code is intended to be the supreme law of the Commonwealth in the regulation and supervision of public utilities. *Newton Twp. v. Phila. Elec. Co.*, 594 A.2d 834 (Pa. Cmwlth. 1991) citing the following language in *County of Chester v. Phila. Elec. Co.*, 420 Pa. 422, 425-26, 218 A.2d 331, 333 (1966), confirming the Commission's role as sole regulator of public utilities:

The necessity for conformity in the regulation and control of public utilities is as apparent as the electric lines which one views traversing the Commonwealth. If each county were to pronounce its own regulation and control over electric wires, pipelines and oil lines, the conveyors of power and fuel could become so twisted as to affect adversely the welfare of the entire state. It is for that reason that the Legislature has vested in the [PUC] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.

Id.

In *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670 (Pa. Cmwlth. 2018) (*en banc*), *app. denied*, 192 A.3d 1106 (Pa. 2018), the Court held:

[T]he Public Utility Code’s provisions afford Plaintiffs a forum for their rights, and reasonable notice and hearing, on complaint that the location of Sunoco’s utility facilities are [sic] unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. 66 Pa. C.S. §§ 701 (entitled “Complaints”), 1505(a) (entitled “Proper service and facilities established on complaint”)

....

179 A.2d at 693-94 (citing 66 Pa. C.S. § 1505).

V. DISCUSSION

A. ISSUE 1 - Siting and Location of SPLP’s Mariner East Pipeline Facilities

The first issue is whether SPLP’s location and operation of the Mariner East pipeline facilities in high consequence areas of Chester and Delaware Counties violate 49 C.F.R. Parts 195.210, 195.248, 195.250, 195.258, 195.260; 66 Pa. C.S. §§ 1501; 1505 and/or 52 Pa. Code § 59.33; and if so, whether the Commission should direct the relocation of a valve station at Dorlan Mills Road and/or restrict the operator’s certificate of public convenience such that it cannot transport HVLs in Chester and Delaware Counties.

1. Flynn Complainants’ Position

Flynn Complainants allege that SPLP’s operation of the ME1 pipeline and the workaround pipeline do not meet its obligation under 66 Pa.C.S. §§ 1501 and 1505 to provide safe, adequate and reasonable service, as well as the obligation under 52 Pa. Code § 59.33 to “protect the public from danger.” Flynn M.B. at 5.

Flynn Complainants allege that there have been serious problems with corrosion on the ME1 and 12-inch pipelines. Additionally, in Chester and Delaware Counties, SPLP’s

HDD activities have caused subsidence on multiple occasions and have contaminated residential water supplies. SPLP's alleged shoddy integrity management practices have caused preventable leaks. Moreover, a pipeline rupture on an HVL line is more dangerous than such a rupture on a natural gas line and a safe escape from such an event is unlikely for a person within a certain radius from the leak. Flynn M.B. at 5-6. Flynn Complainants argue that the value of a lost human life is \$10 million dollars and that testimony from their expert witness, Dr. Mehrood Zamanzadeh, shows that the 8-inch ME1 pipeline and the 12-inch workaround segment are substantially the same from a physical standpoint; thus, the 12-inch line is sufficiently corroded as to warrant an investigation into that pipeline's condition and its likely future. Flynn Complainants request the Commission direct SPLP to hire a third-party independent entity to conduct a remaining life study of the 12-inch workaround pipeline and report its findings to the Commission.

As authority for its position that the Commission has full and exclusive authority over matters involving the location of public utility facilities, Flynn Complainants cite to two cases, *County of Chester v. PECO Energy Co.*, 420 Pa. 422, 425, 218 A. 2d 331 (1966) (courts will not originally adjudicate matters within the Commission's jurisdiction, including location of utility facilities) and *Flynn v. Middletown Twp.*, 942 C.D. 2017 (Pa. Cmwlth. slip opinion, March 26, 2018) (SPLP defeated Delaware County residents' challenge to company's violation of local setback ordinance based on the Commission's exclusive jurisdiction). Thus, SPLP's siting and location of its facilities are "service" over which the Commission has jurisdiction.

Flynn Complainants cite as authority for their position 49 C.F.R. § 195.210(a) that provides: "Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." This minimum federal siting standard has been incorporated into Pennsylvania law via 52 Pa. Code § 59.33, which incorporates federal pipeline safety regulations as the "minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth." The Commission has the authority to determine whether SPLP's Mariner East operations and construction have been designed to avoid such facilities "as far as practicable."

2. DiBernardino's Position

Complainant DiBernardino argues that the Webster dictionary defines “safe” as “free from harm.” She contends that the complainants and intervenors have presented substantial evidence to prove that operations and construction of the Mariner East Pipelines are inherently dangerous. She argues that it is inherently dangerous to construct and operate these types of pipelines in close proximity to populated areas when there is no adequate or reasonable emergency/evacuation plan or reliable warning to the public in the event of a pipeline failure. The use of HDD, causing ground instability in numerous cases, is enhancing the risk of such a failure. She requests that in accordance with 49 U.S. Code § 60112, the Commission take action on this hazardous pipeline facility. Section 60112(d)(1) provides that the Secretary of the Department of Transportation can issue corrective action orders ordering an operator of a pipeline facility that is or would be hazardous to take necessary corrective action including suspended or restricted use of the facility, physical inspection, testing, repair, replacement or other appropriate action.

3. Obenski's Position

Complainant Obenski requests the Commission to find the location of the valve adjacent to two facilities within the Downingtown Area School District (DASD), located at Dorlan Mills Road in Upper Uwchlan Township, as neither “safe” nor “reasonable” to the affected populations placed at risk by the Mariner East project, and order the relocation of the valve site. Ms. Obenski requests a shutdown of the ME1, ME2/2X, and “Point Breeze to Montello” line until their service can be assured “safe and reasonable” by the Commission, and in full regulatory compliance.

She argues the testimony and evidence entered into the record on behalf of the aligned complainants outweighs and refutes the testimony proffered by SPLP witnesses’ textbook application of their knowledge in the industry at large. An academic assessment of the issues without an understanding or acknowledgement of how it is being applied, perceived and

put to action in her community is incomplete if it does not take into account the feedback from those burdened, harmed, and put at risk by the actions of SPLP.

4. Britton's Position

Complainant Britton, a resident of Uwchlan Township, alleges that Sunoco Pipeline L.P. has violated Section 1501 by repurposing an 8-inch 1930s-era hazardous liquids pipeline and by cobbling together sections of new pipeline and a 1930s-era, 12-inch pipeline in order to use Mariner East 2 for the transmission of highly volatile liquids through her township. She argues that the likelihood of injury, death, and property damage is significantly greater with these pipelines than in the case of non-HVL pipelines. With both ME1 and the cobbled-together ME2 workaround pipeline, SPLP's provision of public utility service is unsafe and unreasonable, and therefore illegal.

Ms. Britton argues that she has shown deficiencies in SPLP's public awareness program, the consequences of pipeline releases, the value of lost human lives, the failure of SPLP's inadequate integrity management program and their lack of disclosure of risks to schools, townships and the county where she lives. She contends SPLP's argument that the creation of emergency plans, responsibility for paying for rescue operations and the entire rescue operation should an emergency occur be on the local emergency responders and the Commonwealth is erroneous. SPLP's disregard for the Commonwealth's laws, first responders, and the health and safety of school children and citizens is abhorrent and their case lacked any redeeming or contrary information "allegations" to prove otherwise.

Ms. Britton argues that SPLP has shown a complete absence of planning, caring, or taking the smallest of legal steps to comply with the law and be the corporate citizen that it should have been from planning onset. SPLP could have been open and honest with those tasked with ensuring the health and safety of Pennsylvanians' and our vulnerable populations. Its pipes are corroded and unsafe. It fails to follow its own safety protocols. It acts with impunity and considers fines just the cost of doing business all while not hesitating to take advantage of the perks of being classified as a public utility. SPLP has made less than admirable attempts to

comply with state and federal emergency planning requirements by simply “checking boxes or going through the motions”. These facts are unredeemable in the face of actual compliance.

5. Andover HOA’s Position

Andover HOA contends that SPLP has experienced numerous pipeline accidents across its system over the last 15 years, including incidents in Delaware and Chester Counties as SPLP self-reported to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). Exhibit Friedman- 26. These incidents have released over 1.8 million gallons of hazardous liquids and caused more than \$74 million in property damage. *Id.* The Flynn Complainants brief the issue of SPLP’s operational failures adopted by the Association here.

Andover HOA argues that given this operator’s track record as recorded by PHMSA, both across the country and with respect to the myriad problems with Mariner East, this operator is not to be trusted for any reason to provide any service that protects public safety under any circumstances. The members of Andover HOA will likely suffer dire consequences in the event of a release from this pipeline or valve site upon their lands. The Commission should use its omnibus authority under Section 1501 and permanently enjoin SPLP from transporting HVLs in the Mariner East system in Delaware and Chester Counties.

6. Intervenor Marcille-Kerslake’s Position

Intervenor Marcille-Kerslake requests that the operation of the Mariner East 1 and the cobbled together Mariner East 2 “workaround”, and construction of the Mariner East 2 and 2x be halted immediately, until credible and practical emergency plans are in place, and a thorough independent end-of-life study is performed on the 8” and the 12” lines. Based on the evidence from the hearings in this matter, it is clear that Mariner East poses a serious risk of death to those who live, work, shop, and play in the communities along the right-of-way. Kerslake M.B. 1.

7. SPLP's and Respondent aligned Intervenor's Position

SPLP argues that siting, construction and environmental issues presented by Complainants and aligned Intervenor are beyond the scope of the Commission's jurisdiction and regardless are not a violation of 66 Pa. C.S. § 1501. The Commission has no jurisdiction over the siting and location of public utilities, including pipelines and related appurtenant equipment, such as valve stations. As authority for its position, SPLP cites the Commission's decision in *W. Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 (Opinion and Order entered October 1, 2018) at 10-11, wherein the Commission recognized its lack of statutory authority to require specific location of valves in general.

SPLP contends that the location of the Mariner East pipelines in high consequence areas through Delaware and Chester Counties is expressly authorized by law and the Complainants and aligned Intervenor have failed to prove the utility has violated any Commission regulation, statute or order in locating the valves near the Duffer's Tavern/Andover HOA members' homes or at Doran Mill Road. The mere location of the Mariner East pipelines and related equipment in Chester and Delaware Counties, near areas of dense population, residences, schools, hospitals, and other places of public congregation does not make the pipelines unsafe. The placement of the Mariner East pipelines in high consequence areas was done with a quantitative risk analysis/assessment and the pipelines are under the operator's integrity management program. Consequences of a hypothetical worst-case rupture alone without a showing of the likelihood of impact is insufficient evidence to prohibit their location in Chester and Delaware Counties or render the pipelines *per se* unsafe.

HVL pipelines are expressly authorized in high consequence areas as evidenced by PHMSA regulatory requirements that govern pipelines located in high consequence areas, including heightened integrity management protocols and requirements. *See* 52 Pa. Code § 59.33(b) (incorporating 49 U.S.C.A. §§ 60101-60503 and 49 C.F.R. Part 195 regulations as safety standards for hazardous liquid public utilities); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.450 and 195.452; 49 C.F.R. § 195.450 (definition of high consequence area includes high population areas, i.e., urbanized areas, or other areas with concentrated populations); 49 C.F.R. § 195.452

(pipeline integrity management in high consequence areas); 49 C.F.R. § 195.452(i)(1) (requirements for operator “to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area”). Complainants’ argument that simply locating the Mariner East pipelines in a high consequence area is unreasonable or unsafe under Section 1501 directly conflicts with pipeline safety regulations and the authorizations contained in 49 U.S.C. § 60109 and 49 C.F.R. § 195.452, and therefore fails as a matter of law.

8. Disposition

As stated above, the Commission has authority to enforce Part 195 of the Code of Federal Regulations as incorporated in 52 Pa. Code § 59.33, and to the extent these regulations are construed as specifying siting or location requirements, the Commission has the authority to enforce these bare minimum regulatory requirements. In *Baker v. Sunoco Pipeline, L.P.*, the Commission analyzed whether the public awareness provisions of 49 CFR § 195.440 applied to ME1. The Commission held:

Upon review of the language of Part 195, we conclude that Sunoco’s proposed restrictive reading of the statutory language is incorrect. We further conclude that the ALJ’s analysis of the language was correctly applied in this case to conclude that Sunoco is obligated to meet the minimum standards required by Part 195. Accordingly, we shall deny Sunoco’s Exception No. 11, and adopt the ALJ’s conclusion that 49 CFR Part 195 is applicable to ME1 ME2 and ME2X, including the public awareness and outreach provisions.

Baker at 30.

Thus, all sections in Part 195 apply to the ME1 and 12-inch workaround pipelines even though part of those pipelines are utilizing pipe built prior to the year Part 195 became effective law. This is unless there is a specific grandfather clause expressly stated in a particular section of Part 195.

Part 195.210(a) requires a pipeline right of way (ROW) to be selected to avoid as far as practicable areas containing private dwellings, industrial buildings, and places of public

assembly. Complainants and aligned Intervenor argue SPLP is in violation of this Part because its rights of ways are not practicably avoiding areas containing private dwellings, industrial buildings, and places of public assembly. Rather, the rights of way cut through highly populated areas where thousands of people could be impacted by a rupture of a pipeline. SPLP offered no evidence to show it selected a right of way to avoid areas containing private dwellings, etc. However, the company argues it used for the majority of repurposing and new construction a pre-existing right of way and the Commission has no authority over siting of its rights of way or location of facilities.

Complainants and aligned Intervenor argue the pipelines should be located elsewhere in Chester and Delaware Counties or only in other counties. They did not argue this expressly, but it is reasonable to infer that they may be satisfied if pipelines travelled to a terminal or off-loading rack in Bucks County, then the HVLs were transported by rail or by truck through Chester and Delaware Counties to reach their destination at the Marcus Hook Facility along the Delaware River.

Even if the Commission did have authority to preapprove or reject utilities' plans for the siting and location of pipelines, which it does not, both state and federal law expressly allow pipelines, including pipelines carrying HVL, to be conditionally located in high consequence areas. *See* 52 Pa. Code § 59.33(b) (incorporating 49 U.S.C.A. §§ 60101-60503 and 49 C.F.R. Part 195 regulations as safety standards for hazardous liquid public utilities); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.450 and 195.452; 49 C.F.R. § 195.450 (definition of high consequence area includes high population areas, i.e., urbanized areas, or other areas with concentrated populations); 49 C.F.R. § 195.452 (pipeline integrity management in high consequence areas); 49 C.F.R. § 195.452(i)(1) (requirements for operator "to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area").

It is unrefuted that the operator is using a large portion of existing rights of way that its predecessor obtained in the 1930's. The initial rights of way in Delaware and Chester Counties were probably selected at a time when the area was more rural, consisting of mostly farmland; thus, the initial rights of way likely avoided close proximity to dwellings, businesses

and places of congregation. The Andover homes, malls, retirement centers, libraries, schools and other places of congregation were later built closer to the right of way.

There is little evidence offered to show alternative routes/rights of way involving alternative environmental and economic impact to the communities in these two counties. The operator could have selected the existing rights of way in order to: 1) save the expense for additional land if it was available; 2) avoid natural habitats (i.e. wetlands with endangered species such as the bog turtle); 3) streamline inspection and maintenance of the lines in close proximity to each other; and/or 4) transport from the Marcellus shale regions to the Marcus Hook Facility through an expedient route. Insufficient evidence exists to find a violation of Part 195.210(a) because there is insufficient evidence to show the operator selected its rights of ways and constructed the ME2 and 2X for the Mariner East Project in an impractical manner. There are too many factors to consider that have not been presented in evidence to make a determination as to whether this regulation has been violated.

Section 1511(b) of the Business Corporation Law can be raised in the condemnation proceeding before a trial court. Section 1511(b) restricts the powers conferred upon a public utility corporation the power of eminent domain to transport petroleum or petroleum products for the public to not condemn any dwelling house or within the limits of any street, highway, water or other public way or place and they cannot condemn for building a petroleum or petroleum products transportation through any place of public worship. However §1511(b)(1)(i) carves out an exception for petroleum or petroleum products such that the transportation lines of these products may be on condemned land within 100 meters of a “the reasonable curtilage of a dwelling house.” 15 Pa.C.S. § 1511(b)(1)(i); *In re: Appeal of Andover Homeowners’ Association, Inc. of the Sunoco Pipeline L.P. Zoning, Building and Electrical Permit Approval by the Zoning Hearing Board of Thornbury Township, Delaware County Appeal of Andover Homeowners’ Association, Inc.* 217 A.3d 906 (Pa.Cmwlth. 2019). There is no federal or state set-back requirement that a petroleum pipeline or valve be located 100 meters from a dwelling.

Part 195.210(b) expressly prohibits a pipeline carrying HVLs to be less than 50 feet of a dwelling without an additional 12 inches of cover over it than that required by Part 195.248. If the pipeline operator is operating an HVL line within 50 feet of dwellings or places of congregation without the additional cover, then that is a violation of a specific regulation and the operator could be directed to remedy the situation. Part 195.250 provides that any pipe installed underground must have at least 12 inches clearance between the outside of the pipe and the extremity of another underground structure. However, where 12 inches is impracticable the clearance may be reduced if adequate provisions are made for corrosion control. 49 C.F.R. § 195.250, Clearance between pipe and underground structures.

In the instant proceeding, SPLP's witness Matt Gordon testified there is 48 inches of cover over ME2, but he did not testify as to the depth of cover over ME1 or the 12-inch pipeline workaround that is planned to be a temporary part of ME2 until it is completed with new pipeline construction. N.T. 2848-2925. Mr. Gordon believed an 8-inch pipeline carrying refined product and the ME1 line that had been grouted were discovered in 2019. N.T. 2920. Mr. Gordon could not recall the distance between two pipelines in the same right of way that were exposed next to Whiteland West Apartments. N.T. 2918. When the exposed pipelines were noticed, he did not refute the testimony of Complainant McMullen that the ME1 pipeline was "shallow" and "5 feet" from his house. Mr. Gordon did not refute the testimony and photographic evidence that the McMullan's house, Higgins' house and White's house and the Chester County Library are within 50 feet of the ME1 pipeline or that ME1 is shallow in the ground. No one offered any measurements regarding depth of cover of a pipe within 50 feet of the library and Mr. McMullan's house. However, Exhibits McMullen 3, 4, 8, 9, 15, 16, and 20 corroborate Mr. McMullan's testimony and together they constitute *prima facie* evidence that ME1 is not always covered with requisite 48 inches when it is within 50 feet of dwellings/places of congregation and that it is not always covered with 36 inches of cover outside of 50 feet from dwellings. Because SPLP did not successfully refute the evidence regarding shallow and closely spaced pipe with measurements, or evidence of sufficient cover/distance, Complainants and aligned Intervenor successfully met their burden of showing a violation of regulations.

ME1 pipeline should be covered with the appropriate depth of cover pursuant to Parts 195.210 and 195.248 anytime it is within 50 feet of a dwelling, business, or place of congregation as it is currently transporting HVLs a/k/a natural gas liquids. I have considered the evidence that pipelines buried under Stolen Sun parking lot (Exhibit McMullen 16) and between Mr. McMullen's home and the Chester County Library (Exhibits McMullen 4 and 5) are buried approximately 8 inches apart from each other rather than the regulatory prescribed 12-inches apart. 49 CFR Part 195.250. Excavations are made to install or repair underground pipes. To do so, the operator should provide sufficient room between the trench wall and the pipe on both sides to conduct the work. This is one reason for a 12- inch minimum distance. Pipeline separation is a necessity for protection of public health and safety, property and the containment of the pipeline contents. A typical standard for water pipeline separation generally requires a minimum horizontal separation of 10 feet between parallel pipes, and 18 inches of vertical separation. Mr. Gordon testified earlier in the *Dinniman* proceeding, that ten (10) feet separation was a standard distance buffer between the ME1 and ME2 and ME2X pipelines. *Dinniman* proceeding at Docket No. P-2018-3001453, N.T. 10/10/2018 434, 551-552. During the October 23, 2019 hearing in the instant matter, Intervenor Marcille-Kerslake requested I take judicial notice of "Matt Gordon and John Zurcher's testimony previously regarding the spacing of pipes" at the May 2018 hearing in the *Dinniman* proceeding, which I did. N.T. 979-981.

Also, I find that in the 30-foot distance between Higgins' and White's residences on Lenni Road, there are at least three pipelines, some not at the minimum required distance of at least 12 inches apart. Exhibits Harkins-2 and 3; N.T. 1190. The Higgins home and the White's residence are situated on Lenni Road, Middletown Township, Delaware County, within thirty feet of one another, and within that 30-foot space there are Mariner East pipelines, some as close as five feet from Higgins and five feet from White. N.T. 1181 – 1182; Exhibits Dussling 3 - 8. ME2X is 5.1 feet, the 12-inch is 13.7 feet and ME2 is 25.2 feet from Allison Higgins' home at 237 Lenni Road, Middletown, Delaware County as of June 17, 2019. Exhibit Dussling 8 (e-mail correspondence from Matthew Gordon dated June 17, 2019). This means that between ME2X and the 12-inch pipeline there is 8.5 inches, less than the minimum requirement of 12-inches. Between ME2X and ME2, there is 20.1 inches separation, not ten feet of separation.

Further, on May 21, 2018, at Lenni Road, an excavator for Aqua water utility using power equipment scraped the coating off a non-operating Mariner East 2 pipeline at approximately 6 feet depth because the excavator had been informed via a PA One Call that the depth of the pipeline was nine feet deep where the excavator planned to dig. N.T. 1150; Exhibit Dussling-1. Thus, it is important that the operator know its depth of cover and placement of pipelines for proper markings/mappings and that it be required to meet the mandates of Part 195.210, 195.248 and 195.250 as these regulations not only protect the public residing, working and congregating near the pipelines but also excavators, employees and independent contractors of other Commission-regulated utilities such as the water/wastewater utility Aqua Pennsylvania.

I find the Mariner East 1, 8-inch pipeline and another refined product pipeline in the same dry creek bed were exposed by approximately 3-6 feet supported underneath by soil, next to an apartment complex in West Whiteland Township. Exhibit McMullen-15; N.T. 965. As there is credible evidence one or both of the exposed pipelines were operating and active at the time they were discovered in an exposed to air state, this is a violation of Part 195.228.

The proposed siting of the Mariner East pipelines relative to Dr. McMullen's home, his neighbors' homes, and the Chester County Library is to place four pipelines within a 25 feet distance such that Mr. McMullen's home is 5 feet from ME1, which is parallel and within 8 feet from ME2X, which is parallel 8 feet from ME2, which is parallel 9 feet from the 12-inch pipeline. Exhibits McMullen 4 and 5; N.T. 951-961. The pipeline path runs close to Fairfield Place and apartments, under Route 100, and next to a senior center and nursing facility and existing pipelines may be buried less than 12 inches apart in distance by these locations. Exhibit McMullen-17; N.T. at 967. The Exton Little League leases a 5.2-acre park under which the Mariner East 2 pipeline is located. N.T. 568 – 569, 969, Exhibits McMullen 20 - 23. Thus, SPLP must show adequate provisions are made for corrosion control if it intends to keep its pipelines buried closer than one foot from each other. Additionally, it must protect the ME1 and 12-inch pipelines with the appropriate 36 inches of cover and an additional 12 inches of cover when within 50 feet of dwellings, industrial buildings or places of public assembly in which persons work, congregate or assemble.

I believe the operator still views ME1 and the 12-inch pipelines as “existing pipelines” that are exempt from the regulatory requirement of Parts 195.210 and 195.248 and that the cover over ME1 and its proximity to dwellings, businesses and places of congregation is at least negligently not meeting the requirements of Parts 195.210 and 195.248, which require an additional 12 inches of cover over normal requirements when the pipeline is within 50 feet of a dwelling.

Unrefuted photographs and testimonies of Flynn Complainants’ witnesses regarding the fact that nearby residents discovered exposed active pipeline and non-active pipeline in a dried shallow creek bed (Exhibit McMullen 15) in addition to the DEP order directing Sunoco to cover 43 exposed pipelines (1 of which carried HVLs) in June 2019 support a finding of a violation. SPLP Statement No. 13 at 9, N.T. 2933. Also, the Interim Emergency Order and Certification of Material Question in *Pa. State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, P-2018-3001453 and C-2018-3001451, cites prior statements of Sunoco’s witnesses Gordon and Zurcher as follows.

Sunoco witnesses Zurcher and Gordon testified that ME1 is within 50 feet of private dwellings and industrial buildings and not covered by 4 feet of cover. N.T. 584. . . Witness Zurcher testified 49 CFR 195.210 only applies to new construction and his view is that a repurposed pipeline such as ME1 need not conform to this standard as the pipeline pre-dates the 1970’s and the effective date of Chapter 195. N.T. 584-585. Witness Zurcher testified there is no correlation between depth of cover and the possibility of a pipeline event occurring. N.T. 548.

Pa. State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P., P-2018-3001453 and C-2018-3001451, *Interim Emergency Order and Certification of Material Question* at 10.⁶ During the October 23, 2019 hearing in the instant matter, Intervenor Marcille-Kerslake requested I take

⁶ On September 9, 2019, at the conclusion of interlocutory review of the Commission’s Order entered June 15, 2018 in the *Dinniman* Proceeding, the Commonwealth Court reversed and remanded the Commission’s Order regarding the *Emergency Interim Order*. Specifically, the Commonwealth Court held that Pennsylvania State Senator Andrew Dinniman lacked personal and legislative standing to file a complaint against Sunoco because although he represented the 19th Senatorial District, which includes West Whiteland Township, Chester County, “the construction of ME2 and ME2X has had no adverse effects on his property or public water supply.” *Sunoco Pipeline, L.P. Petitioner v. Pa. State Senator Andrew Dinniman and Pa. Pub. Util. Comm’n*, 217 A.3d 1283 (Pa. Cmwlth. 2019). On remand, the Commission then dismissed Senator Dinniman’s Complaint.

judicial notice of “Matt Gordon and John Zurcher’s testimony previously regarding the spacing of pipes” at the May 2018 hearing in the *Dinniman* proceeding, which I did over SPLP’s objection. N.T. 979-981. It was the view of Mr. Zurcher in May 2018, that Mariner East 1 is pipeline pre-constructed so it is not subject to Part 195.210(b). So although SPLP, when it builds a new pipeline such as ME2 or ME2X, it buries those an additional 12 inches over the required 36 inches for a total of 48 inches deep, it is not doing the same for ME1 and the 12-inch pipelines even though they now transport HVLs such as propane, butane and ethane. By Mr. Zurcher’s admission, this is against the recommendation of the U.S. Department of Transportation. *Dinniman v. SPLP*; N.T. 586. Mr. Gordon testified in the *Dinniman* proceeding that the standard practice of a buffer of 10 feet between ME1, ME2 and ME2X of 10-20 feet was observed in his opinion “it’s safe at 10 feet.” *Dinniman v. SPLP*; N.T. 434-435.

In the instant case, Exhibit McMullen 15 shows about 3-6 feet of exposed ME1 pipe in a shallow creek bed near Whiteland West apartments. On cross-examination, Mr. McMullen testified he was not sure if both pipelines were grouted and inactive. He did not know for certain. On September 11, 2019, the DEP ordered SPLP to cover exposed pipelines at 43 locations across the state. All but one of these locations were transporting petroleum refined products. One was transporting HVLs. All but 10 of these locations involved receiving a permit from DEP to remedy.

As I find a violation of Part 195.243 more likely than not occurred with the exposed pipeline by Whiteland West Apartments, West Whiteland, Chester County and with other shallow buried ME1 and 12-inch workaround pipeline in Delaware and Chester Counties, there is a violation of 66 Pa. C.S. § 1501. SPLP is not applying its SOP Procedure No. HLI24 (management of depth of cover and evaluation to ME1 and 12-inch) and the operator should be as long as they are transporting HVLs on those two pipelines. The SOP Procedure No. HLI.24 appears to be technically sound and designed for compliance with 49 C.F.R. 195.248 and 195.401; however, there is substantial evidence to support a finding that this SOP is not being applied to the ME1 and the 12-inch pipelines, which are currently operating. Accordingly, SPLP will be directed to pay a civil penalty and to conduct a depth of cover and distance between other underground pipelines/structures survey regarding ME1 and the 12- inch workaround pipelines

and file a compliance filing certifying whether ME 1 and the 12-inch pipeline are in compliance with Part 195.210, 195.243 and 195.250 within Chester and Delaware Counties. SPLP's Pipe must be buried so that it is below the level of cultivation and so the cover between top of pipe and ground level, roadbed, river bottom or underwater natural bottom complies with the certain minimum requirements. Pipes must be at least 12 inches apart unless SPLP can show it is providing adequate corrosion control in these areas where the pipes are less than 12 inches apart. If SPLP cannot certify compliance, then an explanation should be given offering justification and a corrective action plan to mitigate shallow or exposed pipe and to provide adequate corrosion control for the bureau's approval. As long as the company is timely remediating lack of cover and distance between pipelines, it is allowed to continue to operate the 8- inch and 12-inch pipelines for the transport of HVLs.

I recommend the Commission oversee SPLP's pipeline depth monitoring program for liquids pipelines over the next three years for compliance with 49 CFR Parts 195.210, 195.248, and 195.250, the bare minimum standards for operating an HVL pipeline, because a consistent process for the regular monitoring of the depth of cover of the company's pipelines is important for its regulatory compliance. Only if the company is unwilling to mitigate, cover and maintain adequate corrosion control, should it be enjoined from transporting HVLs on the ME1 and 12-inch pipelines as the company would then be intentionally operating in noncompliance with minimum regulatory requirements in Parts 195.210, 195.248, and 195.250.

In addition to a civil penalty for these pipeline depth/separations violations, as discussed below, appropriate relief for the violations of Parts 195.210 and 195.248 is to require the operator to conduct depth of cover and distance between other underground pipelines/structures survey(s) regarding ME1 and the 12-inch workaround pipelines as long as they are purposed for carrying highly volatile liquids a/k/a natural gas liquids. The operator will be directed to bury its Mariner East 1 and 12-inch pipelines in accordance with Parts 195.210 and 195.248 as long as these pipelines are transporting HVLs such that covered the appropriate way and they are at least 12 inches apart from other underground pipes or structures unless the operator can show it is providing adequate corrosion control in these areas where the pipes are less than 12 inches apart.

SPLP will be directed to file a report with the Commission with copies served upon the Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement within one hundred twenty (120) days of the date of entry of a final order. The report shall certify whether ME1 and the 12-inch pipeline that are transporting highly volatile liquids within Chester and Delaware Counties are buried so that they are below the level of cultivation and so the cover between top of pipe and ground level, road bed, river bottom or underwater natural bottom is in compliance with minimum regulatory requirements and the distance between pipeline exteriors and the exteriors of other underground pipelines/utility structures is at least 12-inches apart unless adequate corrosive control action can be shown. The report shall contain a corrective action plan regarding any areas of operating pipelines (including Mariner East 1, 8-inch pipeline, and the 12-inch workaround pipelines) carrying highly volatile liquids in Delaware and Chester Counties to remedy any situations where there is lack of required cover and/or proper distance between other structures/pipelines in order to bring these pipelines up to federal minimum codified requirements. This report shall be filed annually for a period of three (3) years.

Regarding the location of valves in proximity to schools, a restaurant and homes, the Commission's regulations at 52 Pa.Code, Chapter 59, do not have a valve spacing requirement. Further, although the Federal Energy Regulatory Commission (FERC) has a project-specific review and approval process over FERC-jurisdictional natural gas pipelines, which includes siting and analysis of environmental impacts, SPLP's Mariner East Project is considered a non-FERC jurisdictional project, which could be subject to siting review and analysis if the Pennsylvania Public Utility Code delegated statutory authority to the Commission with that mandate. *See the Public Utility Code and In re Sunoco Pipeline, L.P. supra.*

SPLP's witness Mr. Gordon testified on cross-examination that he believed the Dorlan Mills Road valve was one associated with refined petroleum pipeline and not a hazardous volatile liquids pipelines; however, he was not sure without consulting a map. N.T. 2898-2903. The valve site is monitored remotely by the operator's controller for pressure, temperature, and wind direction. SPLP. St. No. 13, Gordon Rebuttal Test. at 12, N.T. 2945-2949. These measures protect the valve from a vehicle strike or vandalism. This complies with the bare

minimum regulatory requirements at Part 195.258. I am persuaded by Mr. Gordon's credible testimony that the company looked at the presence of population and made decisions to put in more valves in this high consequence area as a safety measure and that it generally used existing valve station locations on its right-of-way. N.T. 2970, 2976. Currently, the Commission's siting authority over this pipeline is limited.

49 CFR 195.260(c) applies to the facts in this case and provides as follows:

A valve must be installed at each of the following locations:

* *

(c) On each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas or for populated areas.

49 CFR Part 195.260(c).

I am persuaded to find Complainant Obenski has not met her burden of proving she is entitled to declaratory relief of the Commission ordering the relocation of a valve at Doran Mills Road. Andover HOA requested permanent injunctive relief of a shut-down of the Mariner East pipelines rather than the declaratory relief of ordering the relocation of valves adjacent to its members' homes and within 50 feet of Duffer's Tavern and Andover homes. Complainants and their aligned-Intervenors have not cited any specific authority or industry standard to show 49 CFR Part 195.260(c), Section 59.33 of the Commission's regulations or Section 1501 *et. seq.* of the Public Utility Code are violated.

Paul Metro, former Manager of Pipeline Safety for BI&E, answered some questions posed to him by Downingtown Area School District, West Chester School District, and Rose Tree Media School District in a letter dated November 1, 2018. He stated that there are 8 valve stations located in the GRE 12 Section bypass in Chester County. Exhibit Britton 10. All valves except for one under construction are protected with a permanent secured fence. The valves are locked and secured during construction and meet all federal standards. Additionally, SPLP will install rectangular concrete blocks at the Dorlan Mill Road station. Exhibit Britton

10. As of the date of the close of record, SPLP has installed jersey barriers and fencing and has locked its equipment at the Dorlan Mill Road station to harden it against an accidental vehicle strike or vandalism in compliance with regulatory requirements.

Valves being placed 8 miles apart is not a violation *per se* of the PHMSA regulations. Valves minimize damage or pollution from accidental hazardous liquid discharge. No alternate valve location was proposed by anyone, and there is no legal requirement that the operator first petition or apply to the Commission for approval to build valves or to site them on a specific path. The operator must petition the Commission for permission to be exempt from the Municipal Planning Code for the building of shelters or buildings around valves or pumping stations, but not the valve itself. That is the law currently as it stands. *See Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public*, Docket No. P-2013-2347105 (Opinion and Order entered December 19, 2013) (The Petition of UGI Penn Natural Gas, Inc. for a finding that structures to shelter pipeline facilities in the Borough of West Wyoming, Luzerne County are reasonably necessary for the convenience or welfare of the public and therefore exempt from any local zoning ordinance was granted in that the proposed four “structures” constitute “buildings” and their proposed situation in question is reasonably necessary for the convenience or welfare of the public within the meaning of Section 10619 of the Municipalities Planning Code (MPC) Act of July 31, 1968, P.L. 805, as amended, 53 P.S. § 10619). The Pennsylvania Municipalities Planning Code ("MPC") provides, in relevant part, as follows:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

Section 10619 of the Municipalities Planning Code (MPC) Act of July 31, 1968. P.L. 805, as amended, 53 P.S. § 10619.

The Commission adopted a policy statement to further the Commonwealth's goal of making agency actions consistent with sound land use planning by considering the impact of its decision upon local comprehensive plans and zoning ordinances. *See* 31 Pa. B. 951 (Feb. 17, 2001). Section 69.1101 of the Commission's Regulations provides:

[T]he Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances. This will include reviewing applications for:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) Siting a public utility "building" under section 619 of the Municipalities Planning Code (53 P.S. §10619).
- (4) Other Commission decisions.

52 Pa. Code § 69.1101.

Thus, a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986), *app. den.*, 515 Pa. 587, 527 A.2d 547 (1987). If the Commission finds that the location is reasonably necessary for the convenience or welfare of the public, the building is exempt from local zoning ordinances under the MPC. *Id.*

Whether proposed buildings sheltering a valve station are reasonably necessary for the convenience or welfare of the public does not require the utility to prove that the site it has selected is absolutely necessary or that it is the best possible site. Rather, the Commission’s finding that the site chosen is reasonably necessary will not be disturbed if supported by “substantial evidence,” which is that quantum of evidence that a reasonable mind might accept as sufficient to support that conclusion. *O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427, (Pa. Cmwlth 1990).

If SPLP were an electric transmission operator desiring to build high voltage lines across 300 miles in Pennsylvania, then it would need a certificate of public convenience with a

defined service territory before filing siting applications and applications to condemn lands for approval at the Commission before installing high voltage transmission lines and associated infrastructure such as towers and poles it wished to operate. The siting applications and condemnation applications would be published in the *Pennsylvania Bulletin* for comment/opposition and if protested, the applications would generally be assigned to the OALJ in a consolidated proceeding for the purpose of providing those in opposition with an opportunity to be heard before the siting applications would be granted or denied by the Commission. These regulations are found at 52 Pa. Code § 57.71-76 (pertaining to Commission Review of Applications for Siting and Construction of Electric Transmission Lines). Under these regulations, the Commission is charged with considering factors including need for the project, environmental and economic impact upon the Commonwealth and the landowners over whose properties the proposed pipelines would traverse, alternate routes, etc. However, there is no similar statutory or regulatory requirement for the siting of pipeline facilities in the Commonwealth.

The Commission's June 13, 2019 Advanced Notice of Proposed Rulemaking requests comments on potential new regulations to more comprehensively regulate the design, construction, operations, and maintenance of public utilities transporting petroleum products and other hazardous liquids under the commission of the Jurisdiction – a Rulemaking in which multiple parties to this proceeding have actively participated. *See Advanced Notice of Proposed Rulemaking Order Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267, Order at 4 (June 13, 2019); *see also, e.g.*, Docket No. L-2019-3010267, Senator Killion (Aug. 1, 2019); Comments of Clean Air Council (Aug. 28, 2019); Comments of Middletown Township (Sept. 11, 2019); Comments of Chester County (Sept. 11, 2019); Comments of Complainant Rebecca Britton (Sept. 11, 2019); Comments of Virginia Kerslake (Sept. 11, 2019).

Arguments that the Commission should develop a formula for evaluating siting applications for pipelines that takes into account the size of the pipeline within the municipality, miles of pipeline, pressure in the pipeline, volume of product flowing through the pipeline, population density within potential impact radii, setbacks, report of the pipeline operator on

pressure, contents and location of pipes to other pipes in the easement and determine statistical value of life equation and threshold are being referred to the rulemaking proceeding. Threshold requirements for an operator to meet prior to the construction of its facilities or before requiring it to re-route, discontinue service, or increase setbacks which may be more stringent than current federal law should be vetted through the General Assembly and/or through the Commission's regulatory process before implementation of such suggestions by Complainants can be enforced.

The Commission may have a broad safety and protection mandate to require public utilities to provide safe service; however, it currently has no authority to require advance notice and opportunity to comment from the public regarding the utilities' construction and improvements to its infrastructure except for the few exceptions already described. Complainants' proposed factors for the Commission to consider in siting a pipeline project are being referred to the Commission's rulemaking proceeding.

In 2014, West Goshen Township enacted a zoning ordinance with specific setback requirements to prevent pipeline construction in residential areas. The Delaware Riverkeeper Network and Chester County residents filed suit in the Chester County Court of Common Pleas, seeking an injunction. SPLP filed Preliminary Objections to the Complaint, raising multiple arguments. The most significant was the contention that the court lacked jurisdiction because Commission had sole jurisdiction. The basis for that contention was that, even though the Commission was not expressly given such powers, all matters involving the petroleum product pipes were within the Commission's exclusive powers. Although the Commonwealth Court found jurisdiction over the dispute was more properly before the Commission, it did not transfer the case to the Commission. *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 682 (Pa. Cmwlth. 2018).

On a parallel track, Middletown Township (Delaware County) had a Subdivision and Land Development Ordinance (SALDO) setback ordinance limiting pipeline siting so that a distance of at least 75 feet from the center of a right-of-way had to be maintained. Meghan Flynn and other local residents filed suit in Delaware County Common Pleas, seeking an injunction. SPLP filed Preliminary Objections that were virtually identical to those filed in the

Chester County case. The company argued the case could not be brought in the court of common pleas because the Commission had exclusive jurisdiction over siting matters.

SPLP counsel in the *Middletown* case emphasized the Commission’s exclusive jurisdiction repeatedly during oral argument. The parties argued whether or not local courts had jurisdiction to decide a dispute over siting. Flynn plaintiffs contended the courts did while SPLP argued that the courts did not and that the Commission had exclusive jurisdiction. In further support of its position, SPLP cited *Borough of Lansdale v. PECO*, 403 Pa. 647, 170 A.2d 565, 566-567 (1961) as follows:

Although we still possess the right of judicial scrutiny over the acts of the PUC, no principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the PUC. Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts. It has been so held involving rates, service, rules of service, extension and expansion, hazard to public safety due to use of utility facilities, installation of utility facilities, location of utility facilities, obtaining, alerting, dissolving, abandoning, selling or transferring any right, power, privilege, service, franchise or property and rights to serve particular territory.

(footnotes omitted). *Flynn v. Middletown Twp.*, 942 CD 2017 (Pa. Cmwlth. slip opinion, March 26, 2018).

While the Commission in *West Goshen Township* held that “the Commission’s authority regarding the siting of public utility facilities is limited,” (SPLP MB at 85), West Goshen Township did obtain a Commission directive enjoining SPLP from building a valve station on the Janiec 2 property adjacent to Goshen Fire Department’s facilities unless they had express compliance with the township. The Commission acknowledged its “safety jurisdiction regarding pipeline facilities.” *Id.* Opinion and Order at 5. The Commission has express authority to review a contract/agreement between a utility and a person, corporation or municipal corporation under 66 Pa. C.S. §§ 507-508. Thus, a municipality may invoke the Commission’s conferred powers to challenge the location of a valve as it is alleged the location is in breach of

an agreement with the municipality. *West Goshen Twp. v. SPLP Pipeline, L.P.*, C-2017-2589346, (Opinion and Order entered October 1, 2018).

In the *West Goshen Township* case, I considered the township's expert's argument that placement of valves beyond 7.5 miles apart would be in violation of best engineering standards at ASME B31.4, Section 434.15.2(e). ASME B31.4, Section 434.15.2(e) provides:

In order to facilitate operational control, limit the duration of an outage, and to expedite repairs, mainline block valves shall be installed at 7.5 mile (12 km) maximum spacing on piping systems transporting LPG or liquid anhydrous ammonia in industrial, commercial and residential areas.

ASME B31.4, Section 434.15.2(e).

Similar to the facts in the *West Goshen Twp.* case, there is a question as to reasonableness and safety surrounding the operator's decision to place valves at approximately 8 miles apart. This spacing does not *per se* violate any Commission regulation at 52 Pa.Code § 59.33 or any PHMSA regulation because ASME B31.4 is neither a law nor incorporated by express reference in a regulation, which the Commission can enforce. It is an engineering standard based upon the best engineering practices of the industry. The fact that it is not being adhered to can be considered by the Commission in its analysis as to whether § 59.33 of the Commission's regulations or § 1501 *et. seq.* of the Public Utility Code are violated, but there is no codification or incorporation of ASME B31.4 in Title 49 CFR Part 195, so I am not persuaded to find a violation of Section 59.33 or a federal regulation based upon the distance of .5 miles over the ASME B31.4 limit of 7.5 miles between valves alone. I am unpersuaded that the Commission should direct SPLP to relocate the valve at Dorlan Mills Road. I find in favor of SPLP on this issue.

B. ISSUE 2 - Pipeline Integrity Management

The second issue is whether SPLP violated 49 CFR 195.452 (with inadequate measures to prevent and mitigate the consequences of pipeline failure that could affect a high consequence area); 49 CFR 195.571 (with inadequate cathodic protection of ME1 and 12-inch

pipelines); or 49 CFR 195.571 (with inadequate cathodic protection) and if so, whether the Commission should direct an independent remaining-life-study of the 12-inch workaround pipeline.

1. Flynn Complainants' Position

During these proceedings, counsel for Flynn Complainants agreed that they no longer requested a shut down or remaining life study of ME1; however, they requested the Commission direct SPLP to hire and pay for an independent third-party to conduct a remaining life study on the 12-inch workaround pipeline similar to the one being conducted for the ME1 pipeline pursuant to the Commission-approved settlement in the *BI&E v. Sunoco Pipeline, L.P.* case. *BI&E v. Sunoco Pipeline, L.P.*, C-2018-3006534 (Opinion and Order entered August 19, 2020). *See Flynn Complainants' Answer to SPLP Motion for Partial Summary Judgment on Integrity Management, Corrosion Control and Cathodic Protection at ¶ 21 at 5* (filed August 13, 2020). Regarding ME1, Flynn Complainants have agreed, and the ALJ held, that the request for a remaining life study is moot. *September 25, 2020 Order at ¶ 9*. However, in its Main Brief, Flynn Complainants request a restrictive amendment to the utility's certificates of public convenience in Delaware and Chester Counties such that SPLP is restricted from transporting HVLs in any of their pipeline/pipeline facilities within these counties, presumably including ME1.

In support of their position, Flynn Complainants claim it is unclear whether Mariner East will operate at maximum 1480 psig or as high as 2100 psig. Matthew Gordan's testified that Mariner East will be operated no higher than 1480 psig, but a spokesperson for Mariner East had been quoted in the news media that the pipelines had always been planned to operate up to 2100 psig, and some Sunoco engineering showed 2100 psig. N.T. 2959-2960.

Also, in support of their position they offer the testimony of Mehrooz Zamanzadeh, Ph.D., President at Matergenics Inc. in Pittsburgh, Pennsylvania. Zamanzadeh Direct at 1. Dr. Zamanzadeh was accepted as an expert in corrosion and corrosion control as it pertains to integrity management. N.T. 2072. Dr. Zamanzadeh examined over 31,520 pages in

2,000 SPLP documents produced in discovery and Dr. Zamanzadeh found no detailed analysis of pit depths regarding ME1 pipeline. He saw some ILI results that pit depths are decreasing instead of increasing. This suggests to him there is a problem with the ILI data and SPLP needs to validate its ILI data utilizing the accepted API standard. Dr. Zamanzadeh also testified that SPLP should also be looking at stress corrosion cracking (SCC) in soil environments and they have not been doing so. Zamanzadeh Testimony, N.T. 2103 – 2107. At some point in ME1's life improper CP or no CP was present. Zamanzadeh 2109 – 2110; Andover Exhibits Zamanzadeh 1 and 2. Disbonded coatings in aging pipelines results in shielding, which means CP is gone. Zamanzadeh Testimony, N.T. 2110 – 2112.

Dr. Zamanzadeh reviewed SPLP's data on pit depths and average depths in reference to the Morgantown Accident that was the incentive for BI&E filing a complaint against SPLP at Docket No. C-2018-3006534. Several of the dig reports disclose pipes that show pitting. Zamanzadeh Testimony, N.T. 2107 – 2108. Even though the performance of failure analyses was mentioned in some of the accident reports, the technical review of documents did not identify any such failure analyses. Two of the reports in particular are noteworthy (SPLP00005725 and SPLP00005764) because they specifically identify external corrosion as the root cause of failure. Zamanzadeh Direct at 19. i. 20 -21, i. 40. Flynn Complainants argue that based upon (a) the factual allegations contained in the Commission's formal complaint dated December 13, 2018; (b) the fact that the eight-inch line and the twelve-inch line date back to the 1930s; (c) the records from SPLP reflecting coatings that interfere with CP; (d) the records showing corrosive soils; and (e) past incidents/accidents, it is more likely than not that accelerated corrosion is taking place in the 12-inch workaround pipeline that will cause serious damage to people and property in high consequence areas. Zamanzadeh Direct at 41. While the revised SPLP Integrity Management Manual, as updated, shows it to be reasonably comprehensive and detailed, SPLP's integrity management practices have not always followed good engineering standards or its own manual with respect to root cause analyses, close interval surveys, and maintenance of proper pipe-to-soil ON potential. Zamanzadeh Direct at 39– 40. Review of 22 inch-line inspection anomaly reports obtained during the 2017-2018 period reveals that many cases of external metal loss (corrosion) may have been overlooked and also that these reports do not reflect the true extent of the probable external metal loss/corrosion problem along

the ME1 pipeline. Zamanzadeh Direct at 40. Dr. Zamanzadeh's Team's review of over 2000 SPLP technical documents shows a pipeline integrity system that lacks a centralized source sufficient to document corrosion incidents, factual corrosion data, corrosion risk assessments/aspects of the aging pipeline and corrosion mitigation. Zamanzadeh Direct at 41. Corrosion failures, ruptures and explosions of aging pipelines are made more likely in corrosive soils and when there is a lack of an effective integrity management program that considers disbonded coatings, shielding, MIC, and CP. Zamanzadeh Direct at 41. Dr. Zamanzadeh's findings are evidence-based and credible. His conclusions are founded upon his findings. His opinions based on those conclusions are adopted and set forth below:

(a) SPLP may be operating an inadequate integrity management program for the eight-inch pipeline and the twelve-inch pipeline considering the leak incidents and the age of pipeline and coatings that, if disbonded, shield CP.

(b) Important information relative to corrosion data, corrosion risk and corrosion mitigation is lacking.

(c) SPLP's operation of the eight-inch pipeline and the twelve-inch pipeline should be reviewed for corrosion risk both externally and internally.

(d) SPLP's operation of the subject eight-inch pipeline and the twelve-inch pipeline should be reviewed for safety considerations from a corrosion risk point of view.

Dr. Zamanzadeh opined that the question of whether SPLP should be permitted to continue operating the 12-inch pipeline could not properly be decided without a thorough investigation by an independent expert. Zamanzadeh Direct at 42. He further opined that an independent expert must be selected to perform the investigation on the basis of its technical expertise, and years of experience in pipeline corrosion risk assessment, as well as its existing practice as an independent corrosion engineering consulting business.

2. SPLP's Position

SPLP contends it complies with the regulatory requirements for integrity management, cathodic protection, or corrosion control for the ME1 and 12-inch pipelines. SPLP argued that Dr. Zamanzadeh offered no testimony on integrity management other than agreeing that SPLP's current integrity management plans and related procedures contain good engineering practices. Dr. Zamanzadeh's testimony is equivocal, speculative, and inconclusive on the issues he addressed, which is not substantial evidence as it is based upon conjecture. His testimony is neither credible nor competent evidence required to meet Complainants' and aligned Intervenor's burden of proof. Dr. Zamanzadeh testified that he could not form an opinion as to the condition of the ME1 or 12-inch pipeline or whether they should remain operational without an independent expert investigation a/k/a Remaining Life Study; therefore, he neither concluded that either of these pipelines are unsafe nor opined with any reasonable degree of scientific certainty that there was a violation of any law, regulation, or order.

Additionally, SPLP claims the MOP of the pipeline system is 1480 psig. The pipelines may be able to withstand greater pressure for hydrostatic testing, but the company plans to operate its system at MOP 1480 psig.

3. Disposition

I am persuaded by the credible testimony of Mr. Gordon to find that he intends for Mariner East 1, 2 and 2X to be operated at a MOP no higher than 1480 psig. N.T. 2953-2954. From a design standpoint, the steel pipeline can handle higher pressure and it is common to test to a higher pressure than 1480 (i.e. hydrostatic testing) but the MOP will be 1480 psig. N.T. 2954-2959. There is insufficient evidence to show the operation of the pipelines at a MOP of 1480 psig would be a violation of any regulation. **[BEGIN HIGHLY CONFIDENTIAL]**

[REDACTED]

[REDACTED]

[REDACTED]. **[END HIGHLY CONFIDENTIAL]**

Dr. Zamanzadeh did no tests, analyses, or studies of the 12-inch pipeline, but instead inferred that evidence of a pinhole leak, formerly insufficient cathodic protection on the ME 1, and the possible contribution of microbiological corrosion on ME1 meant the 12-inch line, which was originally built in the mid-1930s, also had the same properties. However, Dr. Zamanzadeh admitted his opinion on this point was conjecture. Specifically, he testified, “I would conjecture that the 12-inch pipeline is probably in worse condition than the 8-inch pipeline.” Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 16.

Dr. Zamanzadeh’s opinion based upon conjecture is speculative and insufficient to grant the relief requested, a Commission-directed independent remaining life study of the 12-inch pipeline. Further, the Commission-approved settlement that resolved a BI&E complaint against SPLP was an agreement that several ILI runs occur according to an agreed upon timeline between the parties, and then SPLP would retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and would then meet with BI&E to discuss SPLP’s planned ILI inspection frequency. Additionally, SPLP agreed to conduct a close interval survey of ME1 to consider ILI inspection intervals more frequent than the federally mandated interval of every 5 years. 49 CFR 195.452(j) and 195.573(a)(2). BI&E and SPLP agreed that SPLP’s May 2018 revisions to procedures Energy Transfer SOP HLD.22 have addressed BI&E’s requested relief. SPLP has implemented the revised procedures and intends to replace pipe when it detects anomalies. If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action pursuant to its Corrosion Control Plans, IMP and the federal regulations. These changes to the integrity management program affect the integrity management of the 12-inch pipeline as well. Thus, much of the relief requested in the form of a remaining life study for the 12-inch pipeline is redundant as revised procedures will be applied to the 12-inch pipeline as well.

Additionally, I am persuaded by the credible testimonies of SPLP’s expert witnesses John Zurcher, Kevin Garrity and John Field, which refuted some of Dr. Zamanzadeh’s testimony. N.T. 4366-4367, 4487. Accordingly, I find Complainants and aligned Intervenors have failed to sustain their burden of proving SPLP is violating 49 CFR 195.452 (with inadequate measures to prevent and mitigate the consequences of pipeline failure that could

affect a high consequence area); 49 CFR 195.571 (with inadequate cathodic protection of ME1 and 12-inch pipelines); or 49 CFR 195.571 (with inadequate cathodic protection) and as a result, their requested injunctive relief of the Commission directing SPLP to hire a third party investigator to conduct an independent remaining-life-study of the 12-inch workaround pipeline will be denied.

There is insufficient evidence to show SPLP does not follow its integrity management plan and SOPs. Flynn Complainants' allegation that SPLP failed to perform risk assessments as part of its integrity management plan was withdrawn at the hearing after evidence was shown by SPLP's counsel showing risk assessments were performed for Delaware and Chester Counties as required by the PHMSA regulations.

Dr. Zamanzadeh further affirmed at hearing that he has not formed an opinion as to the condition of either the ME1 or 12-inch pipeline, consistent with his Direct and Rebuttal Testimony. N.T. 2173. Dr. Zamanzadeh's opinion is that he needs more data to render an opinion. Dr. Zamanzadeh also admits that he performed no tests or studies to determine the condition of these pipelines or associated alleged risks. N.T. 2163-2163.

SPLP's integrity management program for the ME1 and 12-inch pipelines relies on the use of complementary tools to determine risk due to corrosion including the use of MFL ILI inspection tools, Annual CP surveys, Close-Interval CP surveys and Hydrostatic testing. SPLP St. No. 1, Garrity Rebuttal Test. at 13. In Garrity's expert opinion: "the totality of what [SPLP is] doing exceeds the regulatory expectations and places [SPLP] in a best-in-class position from the standpoint of integrity management." N.T. 3934. Just because corrosion exists, does not mean that a regulatory violation has occurred or that a perforation will occur. N.T. 3924. It merely requires further investigation and potential remediation. As Zurcher explained, there is no correlation between pitting and the manifestation of a rupture. N.T. 4228-4229.

ILI tools identify anomalies in the pipe wall that may be potentially injurious to the safe operation of the pipeline so that the operator has the opportunity to go in and mitigate that threat. N.T. 3920. SPLP uses multiple different ILI tools, including a deformation tool to

look for ovality or incidents of dents, a spiral magnetic flux leakage tool, low magnetism magnetic flux leakage tool, and an ultra-scan crack detection tool. N.T. 3933. In addition, SPLP uses hydrostatic testing to manage both external corrosion threats and stress-corrosion cracking. N.T. 3922. SPLP employs the hydrostatic testing in the same or similar frequency to the in-line inspection tools. N.T. 3934.

When anomalies above a certain threshold are found via ILI or hydrostatic test data, SPLP performs investigative digs, which means that SPLP literally goes out into the field, digs up the pipeline, and examines it and performs various tests, then documents the findings, observations, photographs, and the qualifications of the personnel completing the dig. N.T. 3918-3919. If SPLP determines that active corrosion is present, it also performs mag particle testing, which looks for stress corrosion cracking, and performs a regimen of testing procedures and samples that look for bacteria that can lead to microbiologically-influenced corrosion. N.T. 3934. SPLP also repairs or replaces as necessary any anomalies found and documents the repairs or replacements. N.T. 4093. These are known as dig reports, which Dr. Zamanzadeh included in Exhibits MZ-2, MZ-6 and MZ-7. Regarding each of these specific dig reports, the anomalies were either repaired or the pipe was replaced. N.T. 4093. To determine when an anomaly needs to be repaired or replaced, SPLP uses a more conservative approach than the 80% wall loss threshold required by PHMSA regulations. N.T. 4084.

Dr. Zamanzadeh's assertions about a lack of testing for Stress Corrosion Cracking (SCC), Microbiologically Influenced Corrosion (MIC) and lack of data regarding these issues is refuted by the testimonies of Field and Garrity. Although I agree with Dr. Zamanzadeh that an ILI run may not detect SCC or MIC, SPLP performs additional tests in concert with ILI runs including hydrotests and spike tests, which are the "preferred mechanism for determining the existence of potentially injurious stress corrosion cracking." N.T. 3908, 4087. SPLP has implemented the practice of mag particle inspection at investigative digs to detect stress-corrosion cracking. N.T. 3908-3909. Additionally, no evidence was offered to show stress-corrosion cracking of the ME1 and 12-inch pipelines. N.T. 3908, 4087. In Mr. Garrity's opinion, SPLP is "doing a very good job of assessing whether or not SCC is a threat. And so far, they haven't found any." N.T. 3909.

With respect to MIC, Dr. Zamanzadeh speculates that because MIC might have been involved in the Morgantown incident, it must be present elsewhere on the ME1 pipeline and may also be present on the 12-inch pipeline. There is no conclusive evidence of that in this case. SPLP has procedures for performing a regimen of testing product and sampling that look for bacteria that can lead to microbiologically-influenced corrosion, whenever SPLP determines that active corrosion is present. N.T. 3934. SPLP in the area of the Morgantown incident increased the cathodic protection for both the ME1 and 12-inch pipeline to a negative 0.95 instant off, as NACE recommends. N.T. 4078-4079, 3925-3926. Thus, the evidence suggests that the 12-inch pipeline is at a regulatory-compliant level of cathodic protection.

SPLP performs annual corrosion control surveys measuring the efficacy of cathodic protection through measurements at test points along the entire route of the 12-inch pipeline at no wider than one-mile intervals. N.T. 3922. SPLP also runs close interval surveys where people walk the entire pipeline and use a reference electrode to measure the output of the cathodic protection system. N.T. 3922-3923. There is insufficient evidence to show SPLP tests to ensure proper cathodic protection is flowing to the pipelines is consistent with its procedures. SPLP has and continues to upgrade its cathodic protection system on these lines. N.T. 4082-4083. SPLP complied and PHMSA agreed that SPLP is in compliance regarding its cathodic protection on ME1. Any alleged violation that may have existed has been addressed through SPLP's voluntary compliance with PHMSA. There is no relief that can be granted based on this Notice of Probable Violation.

Dr. Zamanzadeh also alleged that the majority of the older coatings on the ME1 and 12-inch pipelines will shield cathodic protection if they become disbonded. Shielding means something is preventing the cathodic protection current from getting to the pipeline. N.T. 3910-3911. Only certain types of coating will shield cathodic protection and only if they are in fact disbonded. N.T. 3987-3988. The majority of the coatings on the ME1 and 12-inch pipelines are coal tar enamel, which does not cause shielding even when disbonded. N.T. 3910-3911. There is insufficient evidence to show any coatings on the 12-inch pipeline are disbonded, causing shielding, or that SPLP does not appropriately monitor for and mitigate this potential threat.

Regarding stray current, SPLP routinely does stray-current interference testing and monitors critical bonds with other pipeline operators to assure that nothing has changed that would put SPLP's cathodic protection system in a corrosive or "at risk" category. N.T. 3923, 4088-4089. SPLP also participates and is actively involved in meetings with other operators to be aware of and mitigate the potential for harm to SPLP's cathodic protection system. N.T. 4089-4090. SPLP is already doing cathodic protection surveys and hydrostatic testing. N.T. 3931-3932. To a great extent, the requested remaining-life study for the 12-inch pipeline as proposed here is redundant of SPLP's Integrity Management Plan.

A copy of this decision will be provided to the Law Bureau and BI&E for their review. Investigations may be done by the Law Bureau in the promulgation of regulations and if it is determined a rule should be promulgated requiring remaining life studies or if a new informal investigation or complaint proceeding should be initiated by BI&E, then it is within those bureaus' discretion to take those actions as they see fit. However, the evidence presented by Flynn Complainants in the instant proceeding is insufficient to warrant the injunctive relief of a remaining-life-study on the 12-inch pipeline and other studies by an independent expert/auditor. *BI&E v. SPLP*, Docket No. C-2018-3006534 (Opinion and Order entered Aug. 19, 2020).

SPLP's risk assessments were performed as part of its integrity management program and all segments of the Mariner East pipelines located in Chester and Delaware Counties are treated as if they are located in a high consequence area and are subject to SPLP's integrity management program. The integrity management program requires constant testing, maintenance, and repair of the pipelines to keep them in compliance with regulatory requirements, serving the functional equivalent to an ongoing remaining-life study. Accordingly, for these aforesaid reasons, I find in favor of SPLP on this issue.

C. ISSUE 3 – PUBLIC AWARENESS AND EMERGENCY RESPONDER TRAINING

The third issue is whether SPLP violated 49 CFR 195.403, 195.440, 52 Pa. Code § 59.33 and/or 66 Pa. C.S. § 1501.

1. Flynn Complainants' Position

Flynn Complainants argue SPLP is in violation of 49 CFR § 195.440 because the public awareness safety brochures that the utility mails to the public within the communication buffer do not contain sufficient information about adverse consequences of unintended HVL releases. They contend that the consequences of hazards should be disclosed in the pamphlet pursuant to API RP 1162⁷, § 4.2, entitled “Hazard and Prevention Measures,” which states in pertinent part: “Operators should provide a very broad overview of potential hazards, their potential consequences...” N.T. 4239. SPLP’s safety pamphlet makes no mention of the potential consequence of the hazard of ignition of vaporized HVLs, which includes property damage, personal injuries or death even though SPLP expert witness John Zurcher testified that if there is ignition of a vapor cloud, the consequences could include: property damage, personal injury, and fatalities. N.T. 4257– 4258. Therefore, SPLP’s public awareness program is not in compliance with Section 195.440 and API RP 1162 § 4.2.

Next, the Flynn Complainants and Andover HOA argue even if consequences of hazards are disclosed and the buffer area widened beyond 2,800 feet, the public awareness plan for the public is still inherently in violation of the regulations because the information regarding what to do in the event of a hazard release is implausible.

In support of this claim, they offer the testimony of Thomas McDonald who lives in East Goshen Township, Chester County. He is familiar with the Wellington facility where his 88-year-old mother resides. The ME1 and Work-Around pipelines are approximately 200 feet opposite the entrance to the facility. N.T. 995-996. Mr. McDonald’s mother is unable to walk on her own and uses a walker or a wheelchair. If an incident occurred at night, she would need help to get out bed. N.T. 1003. She would not be capable of evacuating on her own. There are 35 residents on her floor, and only four staff members, and it would take approximately 25 minutes for her to be evacuated assuming she was in the middle of the line of elderly being evacuated from her floor. N.T. 1002-1006. Further, the only way for first responders to get access to the

⁷ American Petroleum Institute Recommended Practice 1162, First Edition, December 2003, *Pipeline Awareness Programs for Pipeline Operators*.

Wellington facility would be to cross the pipeline. There is no other access road. N.T. 1004. The only way for the residents to evacuate uphill would also be to move toward the pipeline. N.T. 1004-1005. The elevators are electrical and some of the residents have motorized wheelchairs. N.T. 1005. The fire station is approximately a half mile away, but the first responders would have to cross the pipeline to leave the fire house and cross it again to reach the Wellington facility. N.T. 1007.

Despite the SPLP public awareness program and their familiarity with it, Chester County residents Dr. Gerald McMullen, Nancy Harkins, Caroline Hughes, Virginia Marcille-Kerslake, and Thomas McDonald, among others, testified that they remain unsure of what to do in the event of a pipeline leak. The McMullens have resided in their home in Meadowbrook Manor in West Whiteland Township, Chester County, for 44 years. SPLP pipelines are in their backyard. N.T. 944. ME1 is 35 feet and the Work-Around Pipeline is 60 feet from the McMullen home. N.T. 945-946.

According to Complainants, the evacuation recommendations from SPLP, to walk upwind, uphill and avoid ignition sources, are entirely unfeasible. They do not know what is meant by a “safe distance” before using a cell phone or automobile. Following the SPLP guidelines would require the McMullens to negotiate a fence, walk across four pipelines, walk down a sloped driveway and arrive at the Exton Mall. The McMullens believe the SPLP evacuation recommendations to be equally impossible for many of their neighbors. The 200 block of Hillside Drive has several elderly widows who are hemmed in by a cyclone fence. A handicapped neighbor several homes away from the McMullens has spina bifida with associated mobility problems. She would be unable to evacuate on foot. N.T. 952-953.

Nancy Harkins, who lives with her husband in West Chester, Chester County, in a home approximately 1,100 feet from the pipelines, is familiar with the brochure that SPLP has distributed as part of its safety program, and yet she still does not know what to do in the event of an emergency. N.T. 20-22. The SPLP flyer states, “From a safe location, call 911 or your local emergency response number and call the 24-hour emergency number for the pipeline operator.” Ms. Harkins does not know what is meant by a “safe location.” N.T. 21-22. Ms. Harkins husband

had open-heart surgery and for weeks afterward could not even walk up the driveway. N.T. 28. Her neighbor uses a motorized scooter and oxygen. He could not evacuate away from the pipeline both because there is rough ground behind his house and his scooter operates with an electrical switch. N.T. 29.

Caroline Hughes resides with her husband and two young children in East Goshen Township, Chester County, 700 feet from the Mariner East pipeline. Her son attends Saints Peter & Paul School which has a Mariner easement on its property, and her daughter attends Fugett Middle School in the West Chester Area School District which is in the evacuation zone for Mariner East. N.T. 1037. The Mariner East pipeline affects Ms. Hughes home, work and commute to work. N.T. 1029-1032.

Ms. Hughes has found that SPLP's information regarding emergency planning and detection of leaks is sorely lacking. N.T. 1062-1063. SPLP's formal recommendation that in the event of a leak from a Mariner East pipeline one must evacuate on foot, uphill, upwind, at least one-half mile while avoiding ignition sources presents a logistical burden on larger, vulnerable communities like schools, nursing homes, senior facilities, health care centers, and those with limited mobility. N.T. 1032.

Ms. Hughes testified that on August 5, 2019, she was driving home from work and was approximately 500 feet from the SPLP Boot Road Pumping Station when she heard a loud explosion noise. She noted that her family, and many residents in the area, reported that their house shook one mile away. This accident was initially reported by SPLP as "routine maintenance." Ms. Hughes believes this incident highlights the challenges residents face when trying to obtain clear, factual information in an expedient way to determine what to do in the case of an emergency. N.T. 1046-1047.

2. Delaware County's Position

Delaware County joins and adopts the positions of Flynn Complainants. Delaware County Letter dated December 16, 2020.

3. Intervenor Marcille-Kerslake's Position

Intervenor Marcille-Kerslake resides on Shoen Road in West Whiteland Township, Chester County and she argues there is a lack of public awareness and emergency preparedness in her community with regards to Mariner East and that it is impossible to evacuate high consequence areas, particularly the most vulnerable members of her community – children, elders and those with special needs. Marcille-Kerslake M.B. at 2. She requests the operation of ME1 and M2 be halted immediately until credible emergency plans are in place and a thorough independent end-of-life-study is performed on the 8-inch and 12-inch pipelines currently transporting HVLs through her community. Virginia Marcille-Kerslake has extensive community interactions and testified that many people were unaware of what to do in the event of a Mariner East leak. N.T.1640. Ms. Marcille-Kerslake is also concerned that there are residents in the blast zone of West Whiteland Township who do not have the ability to evacuate a half mile on foot, as instructed, in the event of a leak on Mariner East. These include, but are by no means limited to, residents of Sunrise Living and other aged or physically challenged individuals known to Ms. Kerslake. N.T. 1939-1640.

4. DiBernardino's Position

Complainant DiBernardino adopted the post-hearing briefs of Chester County, Flynn Complainants, Andover HOA, Laura Obenski, Rebecca Britton and Downingtown Area School District. Ms. DiBernardino's four children attend Sts. Peter & Paul School, which is located 100 feet from the Mariner East Pipelines in East Goshen Township, West Chester Area School District, Chester County. She seeks the relief of a Commission directive that SPLP suspend operations of its ME1 and ME2, including the 12-inch Point Breeze to Montello line and the construction of Mariner East 2X due to safety concerns regarding the integrity and compatibility of both the repurposed 8-inch and 12-inch pipelines, the method of installation being used (horizontal directional drilling), and the absence of a credible preparedness/evacuation/emergency plan being potentially hazardous to life, property and/or the environment. DiBernardino Amended Complaint at 1.

Ms. DiBernardino requests a mass warning system be placed near the pipelines and that odorant be placed into the pipelines. She requests that SPLP train emergency personnel and improve their public awareness program. She contends the actions of SPLP have forced the state and local government out of compliance with Title 35. 35 Pa. C.S. § 7101 *et seq.* This automatically puts SPLP in violation of section 1501 as the project is not safe, adequate or reasonable. While it may not be the responsibility of the Commission to see that they become compliant with Title 35, the Commission has the authority and responsibility to take action and stop the construction and operations until SPLP is able to provide safe, adequate and reasonable service.

She argues that regardless of whether the risk of a pipeline explosion is low or high, her community is not prepared for such an emergency.

5. Britton's Position

Complainant Britton argues that the Commission has full authority to remedy SPLP's lawlessness that endangers the public under 49 U.S. Code § 60112. She requests SPLP be directed to disclose all known hazards threatening the communities including an impact analysis addressing at-risk populations, critical facilities, economic and environmental impacts and other issues pertaining to the Mariner East pipelines to emergency responders in her county so that they in turn may prepare to respond to potential disasters involving SPLP's infrastructure. She requests: 1) a mitigation plan that includes a hazard analysis and vulnerability impacts; 2) a current emergency operations plan (EOP); 3) a viable communication system; 4) a warning system; 5) evacuation plans; 6) designated and viable mass care shelters; 7) education program for citizens; 8) trained response personnel; 9) an exercise/drill schedule; 10) an up-to-date resource manual; and 11) intrinsically safe equipment for response personnel.

Ms. Britton admits pipeline law authorizes the location of hazardous volatile liquid pipelines in high consequence areas but contends there are no Title 35 compliant emergency plans specific for Mariner East 1. She argues SPLP has not made any attempt to comply with Title 35. Britton M.B. 11-12.

6. Obenski's Position

Complainant Obenski argues SPLP violated 49 CFR § 195.440 and API RP 1162, Section 4.3.2 because it failed to advise community stakeholders on how to recognize a pipeline leak and how to take action if a leak is suspected. Obenski M.B. at 3. She contends SPLP has violated API RP 1162, Section 6.1-6.2, because SPLP refuses to supplement its baseline public awareness programs even though the public's confidence in safety is undermined by a large number of violations of law and delays in construction incurred during recent incidents that have been publicized in the news media. She contends SPLP has had negative publicity because it has evaded positive relationships with community stakeholders and has self-inflicted harm by reckless construction and operation attitudes in communities they operate. She supports the use of early detection measures and an improved emergency response planning with local government and school districts. Finally, she requests the Commission deem the location of valve MC6GC on Dorlan Mills Road in Upper Uwchlan Township next to the Shamona Creek Elementary School to be unreasonable and in violation of 49 CFR §§ 195.258(a) and 195.260(c) because it is located within 1000 feet of an elementary school and is not hardened against tampering, vehicle strike, vandalism or trespass. It is not adequately protected from damage and is not located where it will minimize damage if there is an accidental release from the valve. She requests relocation of the valve.

7. Middletown Township's Position

Intervenor, Middletown Township ("Middletown") is a township in Delaware County, Pennsylvania, approximately 13.47 square miles in area with an approximate population of 16,000 seeking relief for its residents. SPLP's pipelines cross or are proposed to cross the entire length of Middletown Township. Specifically, the pipelines run the length of Middletown Township from Edgmont Township at the North boundary to Aston Township at the South boundary. Additionally, there are four Horizontal Directional Drills ("HDD") located in the Township: the 591 at Sleighton/Valley Road; the 610 at Baltimore Pike/State Police; the 620 at Riddlewood/Tunbridge now converted to a direct pipe, conventional bore and open cut by virtue of a major permit modification issued by the Department of Environmental Protection; and the

631 at Gun Club/Chester Creek in Aston. SPLP chose to locate its pipeline facilities using existing and acquired easements that traverse densely populated areas in Middletown including residential areas, senior life care centers, businesses, and public parks. The pipeline is located approximately 600 feet from the western boundary of the Glenwood Elementary School and 900 feet from the Glenwood Elementary School building. Additionally, there is a valve station located immediately behind Glenwood Elementary School. Middletown intervened in these proceedings to address the health and wellbeing of its residents and to demand greater efforts on the part of SPLP to enhance communications and education in Middletown.

In support of its requests, Middletown offered the testimony of Mike Kirchgasser who testified that there have been numerous incidents in Middletown. On May 21, 2018, a recently installed and inactive section of ME2 (as defined below) was struck by a backhoe operated by a subcontractor of Aqua America because of a failure to ascertain the correct depth of the ME2 pipeline. Middletown was never directly contacted by SPLP about the incident. There was a sinkhole (subsidence) that occurred on Baltimore Pike on April 24, 2019. Three sinkholes (subsidences) occurred at Sleighton Park on the following dates: September 13, 2019; October 17, 2019; and October 28, 2019. On November 11, 2019, there was a leak in a valve that was part of a refined products line adjunct to the Mariner lines at the Glen Riddle Pump Station located behind the Tunbridge Apartments. The leak caused a misting of petroleum product in the area. On November 18, 2019, a void (underground cavity) was discovered under West Forge Road. There were many inadvertent returns on the 620 HDD resulting in multiple shutdowns by the Department of Environmental Protection. Ultimately, the 620 HDD failed and required an application for a major modification to the permit to convert the 620 from an HDD to direct pipe, conventional bore and open cut.

With respect to several of the incidents set forth above, Middletown argues that it did not receive any direct notice from SPLP/Energy Transfer Partners, but, rather learned of the incidents after private concerned citizens called 911 or contacted the Township. With respect to the incident at the Tunbridge Apartments on November 11, 2019, SPLP/Energy Transfer Partners did not notify the County Emergency Dispatch Center, nor did it notify the Township at

the time of the event, even though the hydrocarbon sensor attached to the valve station at the Tunbridge location was triggered by the event.

Middletown requests the following relief: 1) establishment of geophysical testing, inspection, and evaluation to assess the condition of the pipelines and the reporting of such geophysical testing results and findings to Middletown and Delaware County officials; 2) requirement of a mass early warning notification system for immediate notice of a leak or potential explosion or other failure in the pipeline system to vulnerable public institutions within close proximity to the pipeline and specifically advance notification to the principal of Glenwood Elementary School in the event of any leak, potential explosion, or other failure of the pipeline system in the vicinity of Glenwood Elementary School; 3) advance notification to Middletown and Delaware County prior to proposed excavation on the pipeline system; 4) disclosure to Middletown and Delaware County of any damage or potential damage to Middletown facilities or property resulting from the operation of the pipelines; 5) assistance with the establishment of an emergency plan for first responders in the event of a leak, release, explosion, or other failure of the pipeline system and the communication of all information required under state and federal law to enable Middletown and Delaware County to prepare such emergency plan; and 6) development of a specific comprehensive public education and awareness plan designed to inform and educate the public and Middletown and Delaware County officials and staff on proper and effective disaster prevention and disaster response, including participation in “tabletop” activities as referenced by SPLP in its letter dated August 13, 2020 and admitted as exhibit SPLP-50.

8. Andover HOA’S Position

Andover HOA is both a Complainant and an Intervenor in this consolidated proceeding, which argues that the instructions for the public in the Safety Pamphlet are patently not credible, implausible, and cannot be carried out by most or all of the public within harm’s way. Therefore, SPLP should be prohibited from operating Mariner East and transporting hazardous, HVL including ethane, propane, butane and mixtures of these materials in Delaware and Chester Counties, Pennsylvania.

Andover HOA argues SPLP's public awareness program is not compliant with regulations at 49 C.F.R. § 195.440 and 52 Pa. Code § 59.33. The Association requests a halt to SPLP's current and proposed transport of HVLs in recklessly unsafe proximity to Andover residences and other places where Association members work, shop, recreate, and send their children to school.

Additionally, Andover HOA argues that the buffer area for distribution of safety pamphlets should be expanded from 1,000 feet to at least 2,800 feet as per the impact radius of several publicly published impact radii studies, including one from SPLP's Canadian affiliate, which dictated an impact radius of over 2,800 feet. Andover HOA then argues that even if the buffer is expanded to 2,800 feet of the Mariner East system in Delaware and Chester Counties and it tells the effected public that they die and that local residents are their own first responders, that this is still not compliant with 49 C.F.R. § 195.440. SPLP will not publicly admit that Andover HOA members would suffer mortal harm in the event of a rupture release. Risk of death after a rupture is too much for Andover HOA to accept, and it requests the Commission cancel the Certificate of Public Convenience in Delaware and Chester Counties.

Andover HOA argues that SPLP failed to meet its obligations to alert the public to "the steps to be taken for the public safety in the event of a pipeline release" in violation of 49 U.S.C. § 60116(a). SPLP is required to "educate the public" about "steps that should be taken for the public safety in the event of a hazardous liquid . . . pipeline release". 49 C.F.R. § 195.440(d)(4). SPLP cannot meet this obligation by telling the public that it should, if it "suspects a leak," "leave the area on foot immediately," as this is absurd and impracticable. Most or all of the population in harm's way is incapable of carrying out this instruction especially at night or during inclement weather.

Like the Flynn Complainants, Andover HOA also argues that SPLP failed to address hazards and consequences of potential Mariner East releases in its materials mailed to the public. Facebook and other social media used by SPLP in addition to their mailers to extend the reach of its public awareness program did not result in the public evacuating after an ignition

of vapors in a flame stack occurred during maintenance at the Boot Road facility, making a large “backfire” sound.

Andover HOA requests that the Commission find that SPLP’s inadequate public awareness program offered by the operator violates 49 C.F.R. § 195.440, 52 Pa. Code § 59.33(a), 66 Pa. C.S. § 1501, and 49 U.S.C. § 60116(a). Andover HOA requests either the Commission a) direct SPLP to provide a plausible, credible, non-illusory public awareness program, or b) direct SPLP to immediately halt hazardous, highly volatile liquids operations on the Delaware and Chester County portions of the Mariner East system.

9. Chester County’s Position

Intervenor Chester County is a Pennsylvania county of the Third Class with Mariner East pipelines running through it, sited in close proximity to homes, a County-owned library in Exton, schools, ballfields, playgrounds, a nursing home, busy highways, stores, and offices. The County intervened seeking additional public safety and awareness information and tools from SPLP in order to perform emergency preparedness and response roles under its police powers and under the Hazardous Material Emergency Planning and Response Act (“Emergency Planning Act”).

Places where the public congregates or resides in close proximity to the Mariner East pipelines in Chester County include but are not limited to: 1) the Wellington at Hershey’s Mill, a senior living center in West Chester where the multi-story buildings are all between 80 and 500 feet from the SPLP Pipeline route; and 2) Chester County’s library, which is within 20 feet from the SPLP Pipeline route and which receives over 400,000 visitors each year. Marx Direct Testimony, St. 1, 49. Chester County argues its emergency response personnel lack the information and tools from SPLP necessary to respond appropriately to an HVL incident and to protect the residents of and visitors to Chester County. Chester County requests SPLP be directed to do the following:

(1) enhance public warning by installing monitoring devices that integrate with public warning devices (such as feed into a siren) to improve notification to the community (i.e. similar to a siren at a nuclear plant);

(2) integrate direct connection from pipeline control centers with the County's 911 communications center to provide faster notification for emergency response and public warning in an emergency;

(3) develop standard notification templates for public warning systems to be used during a pipeline emergency and develop emergency classification levels which are specifically designed to make the public aware of the situation;

(4) add an odorant and dye to all odorless and/or colorless liquids and gasses to allow for quick identification of a release or spill to enhance detection and notification to the public;

(5) install intrinsically safe (i.e. certified not to create a spark) warning devices, along the pipeline right of way which would notify the public of a leak, emergency, or potential danger along the pipeline;

(6) provide detailed information regarding its infrastructure to the County;

(7) assist in the development of an evacuation plan for use by municipalities with concept of how evacuation would occur;

(8) create a public outreach and public education program; and

(9) fund more training for first responders.

Chester MB at 5, 19-20 citing Turner Direct Testimony, St. 1.

In Chester County, volunteer firefighters are typically first on the scene of an incident, arriving in personal vehicles. N.T. 96, 1135. Volunteers are tasked with rushing to the scene of a pipeline leak, putting themselves in danger to rescue others, all without appropriate information and equipment from SPLP that would enable them to properly plan, prepare for and execute a safe evacuation plan. SPLP has been proprietary, slow to release information, and all-around difficult to deal with contrary to its obligations under the law putting first responders and the communities they serve at risk.

In support of its position, Chester County offered the testimony of Mr. Ronald Gravina, a former fire chief of the Edgmont Volunteer Fire Company No. 1 and current Edgmont Township Supervisor, who testified that the Mariner pipeline was in operation for weeks before he was even made aware it. N.T. 1131-1132. Chester County also offered the testimony of Mr. William H. Turner, who is employed by Chester County Department of Emergency Services (“DES”) as the Deputy Director for Emergency Management. He is primarily responsible to ensure that the County has an emergency management program that addresses planning, preparedness, prevention, mitigation, response and recovery along with training for emergency-management coordinators and staff and community outreach. Turner, St. 1, 2. Mr. Turner was accepted as an expert in emergency management and emergency preparedness. N.T. 2197. Chester County also offered the testimony of Mr. Timothy Hubbard, the fire Marshall/emergency management officer in Charlestown Township, Chester County. N.T. 68. He has primary responsibility to provide emergency oversight of emergencies that occur within the municipality. N.T. 69. He is certified in emergency management by PEMA and is partly responsible for developing and maintaining emergency policies and procedures. N.T. 71.

With regard to the County having timely, specific detailed information regarding the pipeline activities so a consistent and clear message can be provided to the public, Chester County recommends the following:

- SPLP be directed to provide detailed information and assistance with the creation of specific annexes or plans so that state, county, and local emergency services

organizations can be better prepared for the specific hazards of pipeline emergencies in their communities.

- SPLP be directed to provide local emergency planning assistance to local emergency management partners that could consist of dedicated employee(s) and or funding to support additional employees.

- SPLP be directed to notify not only the County but all municipalities in Chester County of anticipated, scheduled or commenced work done in Chester County.

- SPLP be directed to notify County officials, in advance, of any pipeline activity, such as simulations, testing, routine maintenance, repairs etc.

- The notification process used by the nuclear power stations at Limerick and Peach Bottom be replicated for Hazardous Liquid utilities. Turner, St. 1, 9-10.

- SPLP be directed to develop, in cooperation with state, county, and local emergency services and municipalities evacuation and shelter in place plans or annexes to the EOP for each county, municipality, neighborhood, high-occupancy structure, high-hazard area, school, hospital, church, public gathering place, or any other area or parcel that may need assistance or direction evacuating during a pipeline emergency.

- SPLP have regular and ongoing training, exercises, and community outreach / public education to anyone who may be impacted (directly or indirectly) by an evacuation or shelter in place order.

- SPLP be required to share with Chester County's Department of Emergency Services maps of all transmission lines listing material moved, pipeline diameter, mainline valve locations and maximum operating pressures (MOP), and maximum allowable operating pressure (MAOP) and information about the location of any anomalies that merit pressure reduction in the pipeline and the presence of "immediate," "60-day" or "180-day" repair

conditions for liquid pipelines or "immediate" or "one- year" repair conditions for gas pipelines. Turner, St. 1, 10-11.

Any public outreach and education must be specific to the neighborhoods, streets, and houses potentially affected in Chester County. The public outreach and/or education program should not be a generic "one size fits all" approach. Chester County requests SPLP should:

- Create a more robust public outreach and public education program to inform the public about what to expect during training or routine maintenance as well as what to do in a pipeline emergency.
- Work with the local communities to educate the public of the options to shelter in place or evacuate providing clear and consistent message. This will permit all residents to discuss and create responsible an individual plan for their family regarding sheltering in place and evacuation.
- Enhance planning funding/resources for pipeline emergencies.

10. Uwchlan Township's Position

Intervenor Uwchlan Township joins in the same arguments of Chester County. Uwchlan Twp. Letters dated December 16, 2020 and January 19, 2021.

11. West Whiteland Township's Position

Intervenor West Whiteland Township joins in the same arguments as Flynn Complainants and additionally requests the relief of a mass early warning system and a directive that SPLP provide the township specific public education or emergency response plan designed to inform and educate the public, township officials and staff on proper and effective disaster prevention response.

12. West Chester Area School District, Twin Valley School District and Rose Tree's Position

Intervenors West Chester Area School District (WCASD) and Twin Valley School District (TVSD) operate elementary, middle and high school facilities in close proximity to the Mariner East Pipelines and join in the Flynn Complainants' request for relief. They also request that the Commission direct SPLP to develop an enhanced notification system sufficient to provide direct, immediate notification to the School Districts in the event of a leak or breach of the Mariner East Pipeline in proximity to any of the school facilities, and, that SPLP work directly with the School Districts to develop a public awareness program that addresses the schools' unique concerns.

In support of their position, they offer the testimony of Dr. James Scanlon, Superintendent of WCASD, and Kevin Campbell, Director of Facilities and Operation for WCASD and the school safety and security officer. TVSD presented the testimony of William Clements, the principal of Twin Valley High School, and a member of the TVSD's safety committee. The School Districts request that SPLP be required to develop and install a mass early warning notification system to provide direct, immediate notification of any breach or leak in the pipelines to all potentially affected TVSD and WCASD school facilities. In addition, the School Districts request that SPLP be required to develop public awareness and education plans tailored to the concerns of the School Districts.

Intervenors, West Chester Area School District and Twin Valley School District, request the relief requested in their respective Petitions to Intervene, and enter an Order directing, in addition to the relief separately requested by the Flynn Complainants in their Post-Hearing Brief, the following:

1. That SPLP Pipeline, L.P. is directed to contact the West Chester Area School District and Twin Valley School Districts within thirty (30) days of the date of entry of a final order for the purpose of scheduling a public awareness/education meeting(s) to be held in each School District;

2. That absent exigent circumstances, SPLP Pipeline, L.P. is directed to appear at the scheduled meeting referenced in Ordering Paragraph No. 1, and discuss additional communications and training (including establishment of procedures for immediate, direct notifications to school districts of any leak or breach of the Mariner East Pipelines) and that SPLP is directed to provide such training as requested by those parties and institute such emergency notification procedures;
3. That within ninety (90) days of the Final Order in this proceeding, SPLP Pipeline, L.P. shall submit to the Commission for review a written plan to enhance its public awareness and emergency notification plans, including but not limited to addressing: 1) direct notifications to School Districts in high consequence areas of any leak, breach or other pipeline emergency; 2) supplemental program enhancements to emergency training programs; 3) internal or external audits to evaluate the effectiveness of its programs; and 4) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits;
4. That included as part of its plan referenced in Ordering Paragraph No. 3, SPLP Pipeline, L.P. shall at minimum complete or plan to complete in a timely manner an audit or review of its public awareness program and shall ultimately submit to the Commission within six (6) months from the date of entry of a final order a baseline evaluation of its public awareness program through either an internal self-assessment using an internal working group or through third-party auditors where the evaluation is undertaken by a third-party engaged at SPLP Pipeline, L.P.'s cost;
5. That the plan referenced in Ordering Paragraph No. 3 shall also be served upon the Commission's Bureau of Technical Utility Services, which shall review the plan and issue a staff determination Secretarial Letter within ninety (90) days of the filing of the plan indicating if the plan is in compliance with the directives in Ordering Paragraph Nos. 3 and 4;

6. That within one hundred twenty (120) days of the entry of a Final Order in this proceeding, SPLP Pipeline, L.P. shall file a report with the Commission's Bureau of Technical Utility Services providing evidence of SPLP Pipeline, L.P.'s compliance with Ordering Paragraph Nos. 3, 4, and 5;
7. That a copy of this decision shall be served upon the Commission's Bureau of Investigation and Enforcement, Law Bureau, and Bureau of Technical Utility Services; and
8. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with Ordering Paragraphs Nos. 3,4 and 5.

13. Downingtown Area School District, Rose Tree Media School District, East Goshen Township and Senator Thomas H. Killion's Position

Intervenors, the Downingtown Area School District, the Rose Tree Media School District, East Goshen Township, and Senator Thomas H. Killion, are three municipal entities and one elected official (intervening in his personal capacity) requesting the following relief: 1) timely reporting on line inspection and geophysical testing; 2) a mass early warning notification system within close proximity of vulnerable public institutions and immediately notice of a leak, potential explosion or other failure in the pipeline system; 3) specific public education and emergency response plans designed to inform and educate the relevant population on proper and effective disaster prevention and response (including the engagement of an independent expert to produce studies relating to the impact of the pipeline in Chester and Delaware Counties, including, but not limited to, a remaining life study of ME1 and the 12 inch workaround pipeline), and; 4) cessation of operations in the event these achievable goals remain unmet. The Intervenors respectfully request that these, and the other relief set out in their Petitions to Intervene, be granted and included in any final Order entered in this matter.

14. SPLP'S Position

SPLP argues Complainants and Intervenor have failed to prove the operator's public awareness plan is in violation of 49 C.F.R. § 195.440. SPLP's public awareness program exceeds the requirements of Section 195.440 and provides more training, information, and equipment than the public awareness programs for the many other pipelines located in Chester and Delaware Counties. All of Complainants' or aligned Intervenor's expert witnesses on the topic of public awareness testified that they did not offer any opinion that SPLP failed to comply with Section 195.440 or RP 1162. (N.T. 1962, 1975, Boyce Test.; N.T. 2199, 2209, Turner Test.; N.T. 2338-39, 2341-42, Hubbard Test.) In support of its position SPLP offers the testimonies of Witnesses Noll, Perez and Zurcher.

15. Disposition

Public awareness of pipeline locations and safety concerns is important to the continued safe operation of pipelines and collaborative public awareness efforts. Pipeline operator public awareness programs are the key to communicating with affected stakeholders, ensuring public safety, reducing pipeline incidents, and protecting pipeline assets. Effective public awareness programs can enhance public safety, improve pipeline safety and environmental performance, build trust and better relationships with stakeholders along the pipeline route, and foster greater understanding of the need for pipeline maintenance and right-of-way activities, as well as preservation of pipeline rights-of-way to enhance maintenance and emergency response capabilities.

There is little consensus between the parties regarding what the operator owes the public, school officials, public officials, emergency responders and excavators regarding its public awareness plans and emergency responder training. Although the parties generally agree 49 CFR § 195.440 applies to this case, it is disputed whether API RP 1162 is mandatory or discretionary. It is also disputed whether SPLP's current Standard Operation Program for public awareness and emergency response, the content material in the mailers, buffer and other public outreach efforts are in compliance with federal and state law.

a. Communications with the Public

1. Print Material Content

Complainants and aligned Intervenor allege that SPLP is required to notify the public in its mailers that one consequence of a pipeline hazard is potential burns or death. SPLP argues that such notice is neither necessary nor required. It is not disputed that the potential exists of a fatality or burns if an explosion or fire occurs from a pipeline release is common knowledge. N.T. 1964, 2002, 2200, 3309. It is also undisputed that there is no such mention of terms such as property damage, personal injury, burns, death, or fatality anywhere in the print materials for the public within the buffer. *See* SPLP Exhibits GG-1 and GG-2. Both the public safety pamphlet and emergency responder pamphlets that SPLP mailed in 2019 and 2020 are on the Energy Transfer website.

My review of both the public pamphlet and the emergency responder pamphlet shows they state: “NGL is flammable and can ignite when it comes into contact with an ignition source. Exposure can cause moderate irritation including headaches and dizziness. NGL may contain hydrogen sulfide H₂S.” Exhibits GG-1 and GG-2. The brochures are in English and Spanish. SPLP argues it is common knowledge that fatality or burns can occur if a pipeline rupture and subsequent explosion or fire occurs from an NGL pipeline release; therefore, no additional content is needed to achieve public awareness and that the PHMSA regulations do not require information on consequences as part of a public awareness program. The PHMSA regulations speak only about potential “hazards.” 49 C.F.R. § 195.440(d). SPLP offered the testimony of Witness Zurcher, who opined that if a conflict exists between the PHMSA public awareness regulations at 40 C.F.R. § 195.440 and RP-1162, the regulations preempt the general recommendations in RP 1162. N.T. 4240. However, I disagree. Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3) and the operator’s program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator’s pipeline and facilities. The operator must follow the general program

recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety. 49 CFR § 195.440. The use of the word “must” three times in this regulation indicates a mandatory minimum requirement and not a discretionary one as if the words “may” or “should” were used instead. The word “should” as used in an API RP standard denotes a recommendation or that which is advised but not required in order to conform to the specification. The word “shall” in an API standard denotes the minimum requirement in order to conform to the specification. API publications are published to facilitate the broad availability of proven engineering and operating practices. The plain meaning of API RP 1162, Section 4.2 expressly states: “Operators should provide a very broad overview of potential hazards, their potential consequences and the measures undertaken by the operator to prevent or mitigate the risks from pipelines.” Thus, the law recommends the consequences of potential hazards be disclosed to the public. That an NGL can be ignited and that it is an irritant is a hazard but I believe it is insufficient to inform the public, public officials and emergency responders about the potential consequences of ignition, especially of a rupture event.

API RP 1162 is incorporated by reference via a regulation and must be adhered to as no justification was offered by the operator other than “the consequences are commonly known.” Further, SPLP’s SOP HLI.40-Public Awareness Plan, under the heading “awareness of hazards and prevention measures undertaken” appears in the message type to all stakeholders and as such the public, public officials and emergency responders pamphlets should be amended to reflect the same or similar messages regarding consequence that are in the CoRE emergency pamphlets as a reasonable interpretation of the phrase “awareness of hazards” implies that the operator also means the “consequences of hazards.” Even if they are commonly known consequences, which I am not sure they are, that is no justification for not including terms like “personal injury” “property damages” or “personal injuries resulting in death” or “fatality” to warn the public. Some or all of these words should be in the safety pamphlets under the “Hazards” heading. The public, its officials and emergency responders will more likely be cautious around the pipelines and act accordingly (i.e. call 811 before digging) if they understand the potential consequences for farming, excavating or even digging into the ground on the

operator's rights of way using hand tools even in situations with well-marked pipeline (i.e. flags, pins, signs, paint markings on the ground).

SPLP decided to place ME2 and ME2X within an existing right of way but also in newly expanded rights of way through communities close to residences, schools, places of congregation in Delaware and Chester Counties and it has a duty to inform the public of consequences of hazards. SPLP's Emergency Responder pamphlet at Exhibit GG-2 merely states the same as Exhibit GG-1 when it comes to hazards of NGLs. There is no mention of personal injury, property damage or death. However, the company's pamphlet that is part of CoRE materials distributed to emergency responders warns under the heading High Consequence Area Identification:

Releases from pipelines can adversely affect human health and safety, cause environmental degradation, and damage personal or commercial property. Consequences of inadvertent releases from pipelines can vary greatly, depending on where the release occurs, and the commodity involved in the release.

This description is better than what is provided in GG-1 or GG-2. In the *Dinniman* case, the Commission merely required the filing of a public awareness program and examined it including this CoRE pamphlet on its surface for compliance with a June 15, 2018 order, but did not rule on whether the plan was being implemented satisfactorily.

In that case, the Commission held:

However, the alleged lack of transparency and whether Sunoco and its employees, agents, and contractors have, in fact, implemented the policies outlined in the June 22 Submittal are beyond the scope of this compliance proceeding. Under the narrow focus of this proceeding, we conclude that Sunoco filings comply with the requirements of Ordering Paragraph No. 6 of the June 15 Order.

Dinniman (Opinion and Order entered August 2, 2018) at 25.

Applying Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921(a), to ascertain and give effect to the intent of the General Assembly, as there is no explicit exception for public mailers in API RP 1162, Section 4.2, I infer from the plain meaning of “potential consequences” that terms similar to those disclosed above in the CoRE materials to emergency responders should also be mentioned in the public mailer and public official mailers messages.

SPLP is not implementing its policies in its public awareness plan at Standard Operating Procedure Plan SOP HLI.40-Public Awareness Plan, which it submitted as SPLP Exhibit Nos. 11 in the instant proceeding and Exhibits 33 and 64 at the Emergency Petition Hearing in the *Dinniman* Proceeding. SOP HLI.40 at section 6 defines the baseline messages as “the minimum standard program recommendations set forth in RP 1162.” Thus, the baseline includes RP 1162 requirements, and it does not conflict with or preempt RP 1162 requirements. SOP HLI.40 has the same content message requirement of “awareness of hazards and prevention measures undertaken” and “leak recognition and response” in the content of message to affected public as it does with content of message to emergency response, public officials and excavators. See Sections 7.3.1-7.4.

If different requirements exist for public, excavator and emergency responder mailers, then the sections in the table would state as such. However, as it is a broad “message content” requirement, I infer it is meant to apply to all messages. Mr. Zurcher testified that pursuant to PHMSA requirements, SPLP’s public mailers contain information on the hazards of the pipeline products but not the consequences. SPLP Exhibits JP-4, JP-5, JP-6, GG-1 and GG-2. There is no convincing justification not to include the same warnings/information in the public mailer. “It is common knowledge” is not a convincing justification. Gasoline vapors are commonly known to explode when ignited, but there are still written warnings at a typical gas station pump not to smoke or use a cell phone while pumping gas. Other common warnings include that gasoline is extremely flammable; vapors may explode; and that it is harmful or fatal if swallowed. The public in the instant cases should be made aware of consequence just as an excavator or emergency responder is informed.

The Pipeline Association for Public Awareness in 2018 states the hazards of a release of natural gas includes: 1) highly flammable and easily ignited by heat or sparks; 2) will displace oxygen and can cause asphyxiation; 3) vapors are heavier than air and will collect in low areas; 4) contact with skin may cause burns, injury or frostbite; 5) fire may produce irritating and/or toxic gases; and 6) vapors may form an explosive mixture with air. *Pipeline Emergency Response Guidelines*, 2018 Edition, Pipeline Association for Public Awareness at page 8. I am persuaded to agree with the Intervenor School Districts that they are akin to the emergency responders for their schools because the firefighters are volunteers. The information the school districts receive should be similar to that information given to an emergency responder. I also find the photographs of examples of dead vegetation, air bubbles in water, vapor cloud, markers, etc. that is in the emergency responder pamphlets to be informative, and encourage the operator to include similar photos in the public's mailer as examples of identifying potential leaks or markers of pipelines. This will help the public identify and notify the operator of potential visible issues on the operator's system. A sufficient public awareness program is a damage prevention measure just as routine inspection and maintenance, corrosion protection, and integrity management. In the unlikely event of an incident near or involving the Mariner East pipelines it is critical the school districts, municipalities and counties know how to respond and are prepared to work with the pipeline operator's representatives. The evidence is substantial that these entities are not comfortable with their knowledge how to respond and do not perceive the operator to be willing to work with their representatives. This unwillingness to work with school representatives is unreasonable service in violation of 66 Pa. C.S. § 1501. SPLP will be directed to meet with them to assist in decision making about how best to protect these first responders and the surrounding public during a pipeline incident.

SPLP argues there is no deficiency in their instructions to operate a cell phone only from a safe distance without quantifying what "safe" means. The operator argues it is the job of the emergency responder to decide what a safe location is. SPLP's mailers state that a resident should "leave the area immediately, on foot, if possible" and "follow the direction of local emergency response agencies." Then, "from a safe location, call 911 . . .". SPLP Exhibits GG-1 and GG-2. SPLP has stated that residents must use sight, sound and smell to determine what is a safe location distance, SPLP St. No. 4, Noll Rebuttal Test. at 19; N.T. 3307, Noll Test.;

N.T. 4264, Zurcher Test.; SPLP Exhibits GG-1 and GG-2, and that there is no one size fits all safe distance or location; it is dependent on each event and guidance from emergency responders. SPLP St. No. 4, Noll Rebuttal Test. at 19-20; N.T. 4264-67.

Complainants' and aligned Intervenor's experts agree there is no one-size-fits-all "safe distance" and that the ultimate guidance on that issue comes from emergency responders. N.T. 1968, Boyce Test.; N.T. 2208, Turner Test.; SPLPC Exhibit 75 at 125. Mr. Noll testified: "Keep moving until you feel safe." N.T. 3391, 3308. Mr. Zurcher echoed that principle: "Keep going until you don't see it anymore and go a little farther." N.T. 4264. Complainants' and aligned Intervenor's experts and lay witnesses also testified that there is sufficient information in the public domain, obtained by signing an NDA, or obtained in plume modeling workshops presented by SPLP, to determine a rule of thumb of one-half mile for a safe distance to evacuate to in the event of a significant release. N.T. 1225-26, 1478, 1973, 1981, 2359, 1311.

Complainants/Intervenor's have failed to prove SPLP is not complying with the regulations or its SOP regarding public awareness with these directions, to follow the advice of emergency responders, walk on foot away from a release and use a phone to dial 911 from a safe distance. Cell phones should not be used until a resident is at a safe location. I find in favor of SPLP on this issue.

The operator is complying with PHMSA regulations regarding the warning about cell phones. Whether the school districts and complainants believe it is infeasible to evacuate without the use of a cell phone is a subjective standard not imposed upon the operator at this time. This issue may be considered in a working group setting or in the regulatory review process. Where school districts are confused as to when to evacuate up wind or shelter in place, it would be beneficial if SPLP would meet with the first responders to discuss this directive, maybe after having one of its representatives walk around the schools and other places of congregation along the rights of way in Delaware and Chester Counties to see the direction of the pipeline facilities in relation to places of large congregation and road access.

School Districts should be informed not to attempt to operate any pipeline block valves themselves lest they inadvertently route more product to the leak or cause secondary incident. They should not attempt to extinguish a petroleum product or natural gas fire as even when extinguished, petroleum products gas and vapor could collect and explode if reignited by secondary fire or ignition source.

Establishing a command center requires working with pipeline representatives and conveying information such as size, characteristics and behavior of the incident and whether there are any primary or secondary fires, injuries or deaths, proximity to structures buildings, etc. and any environmental concerns such as bodies of water, grassland, animals, etc. Delaware and Chester Counties are designated High Consequence Areas and as such, SPLP is required to devote additional focus, effort and analysis to ensure the integrity of its pipelines. SPLP should also tailor its PAP to the unique situation in Chester and Delaware Counties where clearly there are thousands of people in a worst-case scenario impact zone area along the pipeline routes, and if the school districts and municipalities and counties want more information and emergency responder training, then it is unreasonable service for the operator to not oblige this request. Thus, I find a violation of 66 Pa. C.S. § 1501 and will issue a directive granting the narrowly tailored injunctive relief requested by the school districts, municipalities and counties. Additionally, as discussed below, the operator will be assessed a civil penalty of \$1,000 for violation of 66 Pa. C.S. § 1501.

Regarding the other requests for content in the mailers regarding what a safe distance is before using a cellular phone, wind direction and other means of transporting persons other than walking away and upwind from a release, I am not aware of any legal requirement that the public mailer contain such additional information. Emergency responders (including the operator's personnel if they are available) will dictate the safe zone around any hypothetical incident. Additional meetings directed should train and educate responders and school districts better. Other material content issues are being referred to the Commission's rulemaking proceeding.

2. Communications Buffer Zone

Andover HOA requests an increase in the buffer communication area from 1,000 to at least 2,800 feet from the middle of the pipelines, as per the impact radius of several publicly published impact radii studies. SPLP argues neither the regulations nor API RP 1162 mandate a specific distance for extending coverage in high populated areas along an HVL pipeline, instead instructing operators to consider a number of factors.

API RP 1162 instructs operators to: (1) “consider” tailoring the coverage area based on a pipeline location and release consequences; (2) “consider” integrity management areas of consequence; (3) expand coverage “as appropriate” where a wider coverage may be suggested under the circumstances; and (4) “consider” extending the 660-foot area under certain circumstances, such as HVL pipelines located in high population areas. *Id.*³⁴

I note that there have been changes in SPLP’s buffer distance referenced in ET Standard Operating Procedure HLA.17, which may be confusing stakeholders receiving inconsistent mailings. Beginning in 2014, SPLP sent two separate public awareness mailings for the Mariner East pipelines, one to the affected public, excavators and public officials, and one to emergency responders. SPLP St. No. 5, Perez Rebuttal Test. at 6-8. In 2016 – 2018, SPLP was utilizing a mailing buffer of 1,320 feet (a quarter mile) on either side of the ME1 pipeline. In April 2018, after a merger occurred between SPLP’s affiliates (Energy Transfer Partners L.P. (ETP) and Energy Transfer Equity (ETE), now known as Energy Transfer L.P.), SPLP transitioned to Energy Transfer L.P.’s public awareness program, which included a mailing buffer of 660 feet (an eighth of a mile) on either side of the same pipeline. The April 2018 public awareness program mailing buffer procedure was included as Exhibit 33 at pp. 217-224 in the *Dinniman* proceeding. A May 2019 PHMSA letter notified SPLP it was still using a 660-foot radius for public awareness, which was seemingly based on ME1’s prior non-HVL service. SPLP was directed to and agreed to expand the radius to 1,000 feet. Boyce Direct at 10. SPLP expanded the mailing buffer of its public awareness program to 1,000 feet on either side of the pipeline. Later, in 2019, SPLP implemented a supplemental mailing to residents residing beyond

the 1,000-foot mailing buffer, even beyond 2,800 feet as Andover HOA requests to a distance the operator claims is confidential.

Before expanding the 1,000 ft. buffer, SPLP communicated in a letter to the Commission and PHMSA, “SPLP [has] agreed to undertake further review of its public awareness program and will be voluntarily supplementing it to include additional buffer distances along the routes of active HVL Lines in Pennsylvania.” Thereafter, at CPF No. 1-2019-5006, on June 26, 2020, PHMSA ordered SPLP to modify its Public Awareness Plan (PAP) applicable to the new ME2 pipeline, including any temporary reversal and repurposed portions of the existing 12-inch PTBR to MNTL pipeline and any components of the new 16-inch ME2X pipeline which will be utilized to facilitate transportation of HVLs. SPLP was ordered to expand its communication coverage area for Stakeholder Audience Identification, as defined by API RP 1162, consistent with areas of potential impact for their pipeline facilities. PHMSA directed SPLP to also update its PAP to reflect communication buffer area(s) and information on how buffer(s) were determined and/or rational for selection. PAP modifications and/or justifications were to be submitted to the PHMSA Director of the Eastern Region for evaluation and approval.

I find that in 2019 SPLP increased its public communication buffer from 1000 feet to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL INFORMATION]. N.T. 3185-3186, SPLP St. No. 5, Perez Rebuttal Test., Confidential Version, at 7-8. On January 21, 2021, PHMSA acknowledged SPLP has complied with the terms of the June 26, 2020 Final Order. Thus, Andover HOA’s request for a State mandated increased buffer to a minimum of 2,800 feet is moot. SPLP has recognized and altered its PAP to follow best practices, and has mailed mailers beyond the requested 2,800 feet. The requested relief will be denied as moot.

This decision by PHMSA's Eastern Director provides some guidance to the instant case. PHMSA currently holds the PAP buffer to be in compliance and PHMSA inspects SPLP's public awareness plan periodically. Additionally, the BI&E can review the public awareness plan periodically and evaluate compliance. BI&E has the authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa.Code §§ 1.8 and 5.72 to file complaints against the utility for noncompliance. 49 CFR § 195.440(i) states "the operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies." A copy of this decision will be provided to BI&E for review. As BI&E is an independent prosecutorial arm of the Commission, the Pipeline Safety Division of BI&E may wish to review this decision and conduct its own investigation.

The buffer of public communication is extended significantly wider around the pipelines and seems more reasonable given the diameter of the pipes currently operating and the products they carry. Also, the Facebook page and other social media presence that SPLP supports assists in the communications to the public in and outside the buffer. Since 2014, SPLP has developed websites dedicated to providing public awareness information about the Mariner East pipelines, including a website dedicated specifically to pipeline safety. (SPLP Ex. No. 45; N.T. 3204, McGinn Test.) The websites contain information and links to specific information about Delaware and Chester Counties. (N.T. 3206-3208, McGinn Test.) SPLP further disseminates public awareness and safety information about Mariner East pipelines, with specific information about Delaware and Chester Counties, through social media, including Instagram and Facebook pages. (SPLP Exhibits. 46 and 47; N.T. 3209-3210, McGinn Test.)

The baseline requirements of RP 1162 for excavators are for SPLP to send them mailers and SPLP does that. SPLP invites excavators to annual liaison CoRE training meetings. SPLP St. No. 5, Perez Rebuttal Test. at 15. Four hundred seventy-eight excavators attended that meeting in 2019. *Id.* I think it would be helpful if SPLP provided materials to those excavators who do not attend the meeting also. In addition, SPLP is a sponsor of the annual Pennsylvania One Call System Safety Day conference for over 2,000 excavators and the Common Ground Alliance, which is committed to preventing damage to underground infrastructure. *Id.* at 15.

Complainants and Intervenor offered no evidence or testimony from excavators that SPLP's public awareness program provided insufficient information.

SPLP has since 2016 used billboards, radio and television advertising to provide public awareness information or directions on where to obtain that information. N.T. 3211, McGinn Test. In 2020, SPLP ran fifteen-second and thirty-second radio advertising in the entire Philadelphia and Harrisburg media markets, which provided public awareness information and directed listeners to SPLP's websites for additional information. SPLP Exhibits. 43, 44; N.T. 3212, McGinn Test.

As an additional supplemental activity for the affected public, SPLP held various open houses in Chester and Delaware Counties about construction of the Mariner East pipelines. SPLP St. No. 5, Perez Rebuttal Test. at 9. At each open house, 20-30 company personnel attended and were available to answer questions. *Id.* at 9-10.

SPLP's public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey ("PAPERS"). PAPERS is a national program developed and supported by API to provide operators with meaningful, comparative, consistent insight into whether a pipeline operator's public awareness program meets RP 1162. SPLP St. No. 5, Perez Rebuttal Test. at 16.

SPLP's public awareness program was part of the 2019 PAPERS audit. SPLP's program was evaluated individually and compared to eighteen other pipeline operator programs. The PAPERS study concluded that SPLP's program was effective in achieving program objectives and comparable to the other operators' programs. *Id.*; N.T. 3121-3122, Perez Test.; N.T. 3272-73, McGinn Test.; N.T. 4351-52, Zurcher Test. PHMSA is aware of the PAPERS study protocol and SPLP's participation in the study and PHMSA has provided no adverse comments on the PAPERS study as a means of independently evaluating the effectiveness of SPLP's public awareness program. N.T. 3272-73.

Complainants and aligned Intervenor allege that SPLP's insistence on execution of a non-disclosure agreement to obtain access to SPLP's emergency response plans limits the effectiveness of SPLP's public awareness program. However, I agree with SPLP that newly enacted Act 130, House Bill 2293 signed by Governor Wolf on November 30, 2020 is consistent with SPLP's prior practice and is controlling on this issue. House Bill 2293 adds 66 Pa. C.S. § 1512, requiring pipeline operators in high consequence areas to make available, upon written request, the pipeline operator's emergency response plan to the emergency response coordinator of each county. If the plan contains confidential security information, the recipient must comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act, Act of November 29, 2006, P.L. 1435, No. 156, and "enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements. . . ." 66 Pa. C.S. § 1512. This is the procedure SPLP has followed to date with public officials and schools. It provides the information in a manner that emergency responders may use to develop an emergency response plan.

b. Communications with Schools, Excavators and Public Officials

I agree with Chester County that no evidence has been offered by the utility to show that as part of its public awareness program, any assigned liaison from the company with the county has ever walked around the areas of concern these complainants and intervenors have. There is no evidence to show that SPLP has evaluated the feasibility of going uphill or downhill at various locations along the pipeline in Chester and Delaware Counties, or evaluated the ease or difficulty of people evacuating on foot from places near valve sites, or the impact on restaurants, apartment complexes, schools and other places where people would gather near SPLP's valve sites. N.T. 3126-3127.

The mailers, by design, are not mailed to people who regularly work in the impacted zone or regularly come to shop in the impacted zone or for any other reason come to visit on a regular basis such as to the businesses, restaurants, and library. N.T. 3138. There is no signage at the Exton Mall or Chester County Library telling visitors to walk in a direction away from the pipeline in the event of a release incident. The mailings to individual stakeholders are

generic and are addressed to “resident.” N.T. 3182. SPLP does not use radio, television or emails to notify the public that the mailing is coming, that it is important and that stakeholders should be on the lookout for it or for how to request it if they don’t receive it in the mail. N.T. 3181. SPLP does not email the mailer to an email distribution list. N.T. 3181-3182. There are no responder cards or surveys with these mailings. These additional efforts would enhance the operator’s public awareness program and I recommend they evaluate performing such additional measures. However, I agree that they are not required.

I am persuaded by the credible testimony of Mr. Gravina, who has experienced multiple pipeline incidents including a SPLP refined products pipeline leak, wherein SPLP had difficulty finding the source of a leak. N.T. 1125-1126. He is unsure how he would begin to figure out where the potential cloud of gas is located. N.T. 1127. Mr. Gravina stated that fire companies have requested meters for detecting leaks, but have not received them yet. N.T. 1127. The meters on the fire vehicles do not detect the product in the Mariner pipeline. N.T. 1127. Mr. Gravina does not believe he has been provided with sufficient information to respond to a pipeline incident in Edgmont Township for products in the Mariner pipelines. N.T. 1127-1128. Although the operator is not required to provide emergency equipment or monies to the municipalities, as it is a corporate neighbor enjoying the privilege of operating within the county, I encourage SPLP to at least meet with the emergency responders to make recommendations regarding equipment, etc.

I am also persuaded by the credible testimony of Mr. Turner, who holds a Professional Level Certification from PEMA for Emergency Management. This is the highest certification of the three levels. He also holds a certification for Business Continuity Professional from the Disaster Recovery Institute International which requires continued education courses annually. Finally, he is certified in continuity planning (*i.e.*, how to keep governmental and emergency service on in an emergency situation). Turner, St. 1, 3.

Mr. Turner has attended the MERO training, CoRE meetings, a tour of the Eagle Point pump station on June 21, 2019, a plume modeling review on November 30, 2017, a meeting on July 30, 2019 that discussed plume modeling, integrity management, environmental

compliance, and security programs, an emergency planning session for school with the Downingtown Area School District on December 11, 2018, and a training session on January 24, 2019 for schools of the Archdiocese of Philadelphia. N.T. 2212-2217. Despite this, Mr. Turner does not have the information needed to develop a proper emergency response plan in the event of a pipeline incident. Unfortunately, it has been very difficult for him to get information from SPLP. N.T. 2244.

SPLP should be a part of the planning process with regard to emergency plans. N.T. 2210. Pipeline operators should be involved in the stakeholder planning teams that create a school's emergency response plan. N.T. 2242. Mr. Turner has sought out the information needed to develop a proper emergency plan but dealing with SPLP has been difficult. Mr. Turner described his attempts at getting information from SPLP to be like hitting a "brick wall." N.T. 2363. This is the opposite experience that Mr. Turner has had with TEPPCO/Enterprise. The TEPPCO/Enterprise representative is very easy to deal with, is readily available, and provides Chester County with what it needs. N.T. 2243. Compared to TEPPCO/Enterprise, it has been very difficult to get information from SPLP. N.T. 2244.

Mr. Turner stated that the CoRE meetings were not actual "trainings," but simply a "buy dinner and provide awareness of pipelines in your jurisdiction." N.T. 2212. The MERO training was an hour and half Power Point presentation by Mr. Noll. N.T. 2243. SPLP does not allow its emergency response plan to be viewed or referenced in the MERO class. N.T. 3383. Mr. Noll, the person conducting the MERO training, has not seen the SPLP emergency response plan himself. N.T. 3382. Any first responder who wants to view the SPLP emergency response plan has been required to sign a nondisclosure agreement. N.T. 3382. Mr. Turner signed a nondisclosure agreement so that he could review a copy of SPLP's facility response plan, but he was not permitted to retain a copy of the plan. N.T. 2229-2230.

The tabletop exercises involve sitting around a table and having a discussion more so than they are any practice in emergency responding. N.T. 2244-2245. In contrast, TEPPCO/Enterprise is funding a full-scale functional exercise that is a "boots on the ground"

exercise out in the field in the public simulating a real life pipeline emergency and responders are moving equipment and simulating a real response. N.T. 2252.

Mr. Turner wants to know the type of product, maximum operating pressures, hazards of the product, location of valve stations, and flow direction of materials in the pipelines. These are all important facts necessary for creating an emergency response plan for natural gas liquid pipelines. N.T. 2233-2234.

I am also persuaded by the credible testimony of Mr. Hubbard that he has encountered difficulties in obtaining information from SPLP that has caused him concern. N.T. 80. He has found it to be very difficult to have “consistent contact that would be able to provide information that would be useful from an emergency management perspective, what product is flowing at any given time, when it’s flowing, when products are changing and the nature of the products.” N.T. 80. Mr. Hubbard stated that there was a lack of any real, true and credible assistance from SPLP, such as “advice, expert advice from the perspective of a pipeline operator or resources in the event that an emergency were to occur.” N.T. 80-81.

Some of the information Mr. Hubbard has been looking for is information that relates directly to the pipelines in question and the volume of product that they have to be considering to deal with should a catastrophic leak occur (*i.e.*, what is the duration that that product is going to be released for?). Mr. Hubbard testified that he does not know how much product is going to be flowing potentially in and around our buildings until the shut-off valves are activated. Also, SPLP has industry experts that would be useful to have involved in his planning process. N.T. 2318-2320.

If the pipeline valve near the Downingtown Area School District had an emergency, Mr. Turner estimated that it would take 10 minutes from the time dispatch receives a call for someone to arrive on scene with a gas meter. N.T. 2240. The valve station alarms on the pipeline only notify the operator, not the public. N.T. 2241. Pipeline operators should be involved in the stakeholder planning team that creates a school’s emergency response plan. N.T. 2242. Mr. Turner believes that SPLP can and should be required to enhance public warning,

provide detailed information regarding its infrastructure to the County, assist in development of an evacuation plan for use by municipalities with concepts on how evacuation would occur, create a public outreach and public education program, and fund more training for first responders. N.T. 2245-2246. SPLP's public outreach and public education program should be enhanced. N.T. 2246; Turner Direct Testimony, St. 1, 7-8.

With regard to the RP 1162 supplemental activities to enhance the public awareness system such as frequency of communication, enhanced message content and delivery/media methods, and broadening or widening the stakeholder audience, SPLP argues that those supplemental activities are optional. Perez, St. 5, 3-4. However, I find as the supplemental activities are mentioned in the company's SOP, they are not optional, but should be implemented as the geology/earth features and population densities close to the pipelines in Chester and Delaware Counties are unique.

SPLP states that its public awareness brochures are all similar across the state and typically all contain the same baseline information. This is done for, among other reasons, "consistency to avoid stakeholder confusion." Perez, St. 5, N.T. 372-373. The evidence in this case shows stakeholder confusion has not been avoided.

SPLP claims that it has gone above and beyond the baseline. It has placed its public awareness brochures on its website which is not a requirement. Perez, St. 5, 9. It provides a non-emergency phone number on its brochures where members of the public can call even though this is not required by RP 1162. Perez, St. 5, 9. It has attended open houses to meet with the affected public even though this was not required. Perez, St. 5, 9. SPLP argues that its only obligation to schools is to mail a brochure every two years and that it has no obligation to counties and municipalities to develop emergency response plans, only to provide necessary information to assist with the effort. Perez, St. 5, 10-11, 19-20, 25-28.

However, stakeholders such as emergency planning agencies, first responders, residents, school districts and municipalities are confused and concerned and are seeking information necessary to protect themselves and their communities. With the right to do

business in Pennsylvania comes responsibility. N.T. 3228. SPLP is a private company that is benefitting from easements on private property. *Baker*, p. 34. Further, “[a] public utility should want to meet with the public and use the media to get its message out to the public.” *Id.*

As Mr. Turner testified, SPLP’s CoRE meetings and MERO trainings should be enhanced as they have failed to provide the information needed by those trying to formulate a proper emergency plan. Mr. Noll conducted a tabletop exercise for Chester County on May 18, 2018 and surveyed the participants afterward. N.T. 3359. One of the questions asked respondents to list three areas of improvement based upon what they had observed in the day’s exercise. The following responses were given: educating the public; more information from pipeline operators; interaction with pipeline operators. N.T. 3360. Another question in that survey asked, based on what you learned today, what recommendations do you have to improve your organization’s ability to plan, react, respond to a transmission pipeline incident? N.T. 3360. The responses included the following: continued need for additional pipeline training, development of pipeline props, pipeline training, additional training for LE personnel who will likely be first on scene; continual improvement of communications between stakeholders, clarify lines of communication, and process to get up-to-date, accurate information. N.T. 3360-3361.

After Mr. Noll’s tabletop exercise in Chester County in December 2018, seven of the participants who filled out the questionnaire after the event said, in response to a request to list three areas for improvement based on the day’s exercise, that there should be more pipeline operator information and involvement. N.T. 3362. This was the most received comment based on the December 13, 2018 tabletop exercise. N.T. 3362.

The Commission agreed with SPLP that the applicable federal regulations do not require SPLP’s attendance at any public outreach meeting *per se*; however, Section 1501 of the Public Utility Code does require that the Company act in a reasonable manner in the performance of its public outreach duties. In the *Baker* case, the Company’s refusal to meet with the public in Lower Frankford Township, Cumberland County was substantial evidence to show there have been insufficient public outreach meetings in Cumberland County. On that basis, the Commission concluded SPLP’s failure to attend the scheduled public outreach meeting in

Cumberland County was unreasonable. The Commission then concluded it was reasonable to require SPLP's attendance at one public outreach meeting in Cumberland County and directed that, absent exigent circumstances, SPLP schedule and attend, at a minimum, one such public outreach meeting. The Commission provided that the public outreach/education meeting could be conducted in accordance with applicable guidelines from the Commonwealth of Pennsylvania and the Center for Disease Control, allowing for virtual participation, provided the meeting remains open to public participation and viewing.

Following this caselaw precedent, I find that SPLP's refusal to meet with public officials and emergency responders outside the CoRE exercises and MERO training to assist municipalities' emergency planning regarding accidents involving its pipeline facilities, and the refusal to directly contact the townships and counties' emergency lead persons prior to excavation activities and during a release or rupture event affecting businesses and the public within Delaware and Chester Counties, to be unreasonable service in violation of 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33. Accordingly, a Commission-directive will be issued as it is also in the public interest.

Under the current system, SPLP does not contact School Districts directly with news related to pipeline emergencies. District officials have no means to anticipate a pipeline emergency, and no direct notice when a pipeline emergency has occurred. Instead, School Districts receive information from first responders, after significant delay. As a result, School Districts lose valuable response time during an emergency.

School officials are not certain about evacuations in order to keep students safe. It is unknown whether officials corralling thousands of children can safely communicate by cellphone. Although SPLP is specifically required to reach out to "appropriate government organizations" with "steps that should be taken" in the event of an emergency, it has failed to provide adequate guidance to the leaders of schools located within a few hundred feet of Mariner East. 49 CFR § 195.440(d)(4).

In support of their position, School Districts offer the testimony of Flynn Complainants' expert witness Jeff Marx, process safety engineer with a bachelor's and a master's degree in mechanical engineering, who supports the need for more immediate notification to facilities where large-scale evacuation is a possible response to a breach or leak. Mr. Marx opined, *inter alia*, that: 1) the worst hazard zones are realized in the first few minutes of an HVL pipeline accident due to loss of inventory and pressure decay; 2) predicted fatal impacts of accidental pipeline rupture events were found to extend up to greater than 2,000 feet from the pipelines or their associated equipment; 3) in the event of a pipeline release, persons in the vicinity of the pipeline may have difficulty escaping unharmed; 4) the maximum hazards following an HVL pipeline rupture will be realized before the operator can affect any meaningful measures to shut down the release; 5) it is extremely unlikely that emergency response activities will be activated before the maximum hazards of an HVL pipeline rupture are realized; and 6) it is difficult to define the proper public response to a pipeline incident (*i.e.*, shelter in place or evacuate) due to the variability of the event magnitude and various possible hazards. Marx Direct at 44 – 46.

In its petition to intervene, Twin Valley requested a public education plan tailored to its needs. SPLP's obligation to provide a plan is well-established, as it has a duty to reach "appropriate government organizations" with a public awareness plan under Section 195.440(d)(4). In communities like those served by Twin Valley, where emergency responders are volunteers and not government officials, SPLP must meet its statutory public awareness obligations by preparing school leaders to respond to emergency events. N.T. 1313.

The insufficiency of SPLP's current public awareness program, particularly as it applies to schools, is apparent and unreasonable in violation of 66 Pa. C.S. § 1501. Witnesses from multiple school districts—including personnel responsible for emergency planning and preparedness—expressed confusion over first steps in a pipeline emergency. N.T. 1290-1291. West Chester and Twin Valley both plan to have students shelter in place until further notice from emergency responders. N.T. 1243, 1313. These plans contravene SPLP's apparent recommendation to evacuate the scene of a pipeline emergency, on foot, immediately.

Moreover, SPLP does not provide schools with any guidance on how far a safe distance for evacuation may be. N.T. 4263- 4267.

Dr. Emile Lonardi is the superintendent of schools for the Downingtown Area School District. N.T. 901. There are five Downingtown area schools that are located near the Mariner East pipelines: Lionville Middle School, 600 feet from the pipeline; Downingtown East High School, 1,175 feet from the pipeline; Lionville Elementary School, 1,425 feet from the pipeline; Shamona Creek Elementary School, 300 feet from the pipeline; and Marsh Creek Sixth Grade Center, 1,000 feet from the pipeline. N.T. 904-906. There is an above-ground valve station on Dorlan Mill Road adjacent to Shamona Creek Elementary School. N.T. 907. Shamona Creek Elementary School sits on the top of a hill, and Marsh Creek Sixth Grade Center is located partway down that hill. Beyond the hill is a patch of rough, grassy terrain that is not tended by the school district. N.T. 908.

Dr. Lonardi has been given conflicting information. N.T. 913. She is not sure whether to shelter in place, use cell phones to call 911, or to use vehicles to evacuate. N.T. 913. Dr. Lonardi would like clarification on the precise emergency practices for pipeline emergencies from SPLP. N.T. 913. Dr. Lonardi has been asked by parents of her students whether or not their children are safe at Shamona Creek Elementary and she cannot look them in the eye and say with certainty that the answer is yes. N.T. 914. Dr. Lonardi has been told that children walking to school should look for dead animals or dead vegetation and to report them if found. This is not advice she can give to parents. N.T. 914. Dr. Lonardi wants an early detection system so that the students can be safely evacuated in a timely manner. N.T. 914-915. An early detection system should not include small children looking for dead animals on the way to school.

There is a SPLP valve station located almost squarely between the exit and entrance of the Shamona Creek and Marsh Creek schools and these exits are used every day. N.T. 919. Dr. Lonardi does not have a “credible or practical or realistic plan in place to keep the students safe in the event of leak” from the Mariner East pipeline. N.T. 921. She was not informed when HVLs started flowing through the 12-inch pipeline at the school. N.T. 921. The

school district does not employ experts on pipelines, HVLs, or valve stations and does not have enough information to create its own emergency plans. N.T. 935-936.

Mr. Timothy Hubbard is the Chief Security Officer of the Downingtown Area School District. He oversees school district security matters, coordinates emergency response procedures and protocols, evaluates current safety and security protocols and implements improvements, as necessary. He acts as liaison with various local, county, state, and federal authorities, and develops and maintains the emergency policy and procedure manual. He performs security and risk assessments and assists with large scale event planning. He is also responsible for the management of contract security services to include staffing and personnel evaluation and for responding to emergencies in and around School District owned properties. He also performs fire and life safety inspections at School District owned facilities, participates in organization and evaluation of emergency drills to include Intruder, Fire, and Severe Weather, consults with school leadership regarding safety and security issues and presents training and professional development courses to various personnel in emergency response procedures and guidelines. Hubbard, St. 1, p. 3.

SPLP's public awareness brochure suggests that in the event of a rupture, people should move on foot out of the area, both upwind and uphill if possible and should avoid turning light switches on or off or starting any motor vehicles. N.T. 87. However, the school district has a student population of children from kindergarten through twelfth grade. There are special needs children, including those in electric wheelchairs. N.T. 87-88. There are 50 to 60 kindergarten age children as well as autistic support children. The school district is worried about how to move them. N.T. 90. Further, making a determination as to wind direction is a hit-or-miss situation. The best case scenario is if a flag has been raised and gives an indication, but the flag direction could also change. N.T. 91. The school district has also had internal discussions about sheltering in place as a response to a leak, but it has not been provided with information to make that decision. N.T. 103. No one at the school district currently has a meter that would detect natural gas liquid vapors. N.T. 113. Mr. Hubbard is not aware of anyone at the school district who has "intrinsically safe communication devices." N.T. 113.

If a leak occurred across from the playground when young children were present it could cause asphyxiation. There are also roads nearby, so a car could drive through the cloud and ignite an explosion, whatever the size of the vapor cloud. N.T. 104-105.

In Mr. Hubbard's professional opinion, the two-page brochure distributed by SPLP is not sufficient to adequately inform the public to protect them. It does not provide enough information "for people to really have the knowledge to choose an action." N.T. 107. It is the pipeline operator's responsibility to give information to the schools which is sufficient to enable the schools to create their emergency response plan. N.T. 127.

There are four phases to any aspect of emergency management, mitigation, preparedness, response, and recovery. In the instant matter, Mr. Hubbard states that he is missing the mitigation and preparedness phases. N.T. 2313. Mr. Hubbard has been looking for information that relates directly to the pipelines in question and the volume of product that they would have to deal with should a catastrophic leak occur. Mr. Hubbard also needs to know what is the duration that that product is going to be released for. He does not know how much product is going to be flowing potentially in and around the school buildings until the shut-off valves are activated. Also, SPLP has industry experts. It would be useful to have such experts in the planning process. N.T. 2318-2319. Though SPLP has made appearances, those appearances were lacking the information needed by Mr. Hubbard that he could rely upon. N.T. 2319-2320.

The school agency has the custodial responsibility over the children and staff in the schools. With regard to identifying a potential vapor cloud that would result in the need to evacuate school property, Mr. Hubbard stated that the school district employees need to be able to make that determination prior to, in many cases, the first responders arriving on scene. It would be irresponsible to wait for the first responders to tell them what to do. N.T. 2326.

Up until December 2018, when there was a meeting at which SPLP had a consultant present who gave incorrect information, the Downingtown Area School District did not have proper information with respect to the pipeline, its contents, pressures and things of that nature. Up until that point and even beyond, "we have been met with a brick wall." N.T. 2363.

Although SPLP representatives meet with Delaware and Chester Counties' local emergency response committees every other month (N.T. 2856.) and SPLP participates in bi-weekly meetings with townships across Chester and Delaware Counties and regularly participates in the Chester County Association of Township Officials monthly meetings to provide project updates (SPLP St. No. 6, McGinn Rebuttal Test. at 4-5), I agree with School Districts that there is substantial evidence supporting the need for emergency response measures by SPLP that will maximize the timeliness and effectiveness of the school districts' response at each of their facilities.

To take reasonable steps to protect the public from danger requires direct notification to schools and school districts and meetings with school districts to assist them in their emergency preparedness planning. 52 Pa. Code § 59.33. Under the current system, schools lose valuable time in an emergency waiting for instructions from local fire departments. SPLP will be directed to directly contact schools in these counties wishing to be contacted directly, but the schools are responsible for updating any contact information with the operator. 52 Pa. Code § 59.33.

These schools face logistical challenges that render the advice in SPLP's current public awareness campaign challenging. Schools are required to move thousands of children. In places like Twin Valley, students' escape routes are limited by heavily trafficked roads, or the pipeline itself. N.T. 1315. In addition, witnesses from multiple school districts testified that they were not certain whether they could use cellphones to coordinate an evacuation. N.T. 1227-1293, 1317.

If multiple school districts cannot articulate emergency plans that are in concert with SPLP's recommendations, or that account for basic communication between parties, then SPLP's public awareness campaign is unreasonable service within the meaning of 66 Pa. C.S. § 1501. I find in favor of Complainants and aligned Intervenors on this issue. SPLP will be directed the narrowly tailored injunctive relief of working with Downingtown School District, Rose Tree Media School District, West Chester Area School District and Twin Valley School District to assist them in developing emergency plans.

c. Preparing Emergency Responders

Regarding complaints that SPLP is unwilling to share its emergency response plans with emergency managers in Delaware and Chester Counties, on November 25, 2020, Governor Tom Wolf signed Act No. 130 into law, effective January 25, 2021, adding 66 Pa. C.S. § 1512, which provides:

§ 1512. Emergency response plans.

(a) Plans.--A public utility that engages in the delivery of natural gas liquids through a high consequence area in this Commonwealth as defined in 49 CFR 192.903 (relating to what definitions apply to this subpart) shall make available upon written request the public utility's emergency response plans to all of the following:

- (1) The secretary of the commission.
- (2) The Pennsylvania Emergency Management Agency.
- (3) The emergency management director of each county in this Commonwealth where the high consequence area is located.

(b) Confidential information.--

(1) If the emergency response plan under subsection (a) contains confidential security information as defined in section 2 of the act of November 29, 2006 (P.L.1435, No.156), known as the Public Utility Confidential Security Information Disclosure Protection Act, and the public utility has marked the information in the plan as confidential security information, each reviewer of the plan under subsection (a) shall have the following duties:

- (i) Comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act to protect the information from dissemination to the public.
- (ii) Enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements under this paragraph.

(2) A public utility shall provide a copy of a proposed agreement under paragraph (1)(ii) to the commission before making available an emergency response plan under subsection(a) that contains confidential security information as specified under paragraph (1).

(c) Penalties.--A public utility that fails to comply with subsection (a) may be subject to an enforcement action by the commission.

66 Pa. C.S. § 1512.

Thus, SPLP as a carrier of natural gas liquids is now required to make available, upon written request, the pipeline operator's emergency response plan to the emergency response coordinator of Delaware and Chester Counties pursuant to 66 Pa. C.S. § 1512. If the plan contains confidential security information, the recipient must comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act and "enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements. . ." This is the procedure SPLP has been following with public officials and schools involved in the instant proceeding. It provides the information in a manner that emergency responders may use to develop an emergency response plan. Thus, the emergency management directors of Delaware and Chester Counties are entitled by law to receive copies of SPLP's emergency plans pursuant to 66 Pa. C.S. § 1512. This accessibility to information should assist the counties with preparation of their own emergency preparedness plans under Title 35.

Regarding other requests, the most recent caselaw precedent on this issue is the Commission's Opinion and Order in *Baker v. Sunoco Pipeline, L.P.*, C-2018-3004294 (Opinion and Order entered September 23, 2020). The Commission held that certain issues regarding the adequacy of the utility's emergency preparedness programs in Cumberland County went beyond the scope of the issues presented in that case and were more appropriately being considered in a separate rulemaking proceeding. *Id.*, citing *ANOPR*. Specifically, in this *ANOPR*, the Commission sought comments on proposed regulations regarding: (1) utility interactions with local government officials, including but not limited to such topics as emergency planning and emergency response coordination, periodic drills with utility/municipal coordination; (2) whether there should be regulations requiring periodic public awareness meetings with municipal officials and the public; and (3) Pennsylvania specific enhancements to public utility's public awareness programs pursuant to 49 CFR § 195.440 and API Recommended Practice 1162.

The Commission reversed my granting injunctive relief in the form of a directive to submit a plan to enhance public awareness programs and meet with emergency responders in Cumberland County in order to provide further training upon request, over and above the already offered CoRE and MERO exercises.

However, SPLP was directed to hold a virtual public awareness meeting with the public in Cumberland County as their cancellation of a prior meeting in Lower Frankford Township was unreasonably cancelled with less than 24-hours' notice to the township, and the company had no intent to reschedule the meeting. Although the Commission agreed with SPLP that the applicable federal regulations do not currently require SPLP's attendance at any public outreach meeting, the Commission still held that Section 1501 of the Public Utility Code requires that the Company act in a reasonable manner in the performance of its public outreach duties. The Company's cancellation of attendance on short notice at a scheduled public outreach meeting at which the Complainant and county officials were in attendance without a valid excuse and no rescheduling of the meeting together with a finding that "there have been insufficient public outreach meetings in Cumberland County" led the Commission to hold the company acted unreasonably within the meaning of Section 1501.

In the instant case, emergency preparedness issues are squarely within this consolidated proceeding. The Counties of Delaware and Chester and their municipalities such as Uwchlan and Middleton Townships have the function of emergency preparedness and school districts intervening also have certain obligations under Title 35 of the Pennsylvania Consolidated Statutes to have emergency preparedness plans. While these entities may be participating through comments to a rulemaking proceeding, this does not preclude an examination or review of whether the operator is compliant with current regulations regarding emergency preparedness. Section 195.402 requires the operator to have a procedural manual for operations, maintenance and emergencies. Section 195.402 and API RP 1162, Section 2.3.2 (Emergency Responder liaison activities) requires operators maintain liaison with fire, police and other appropriate public officials and coordinate with them on emergency exercises or drills and actual responses during an emergency. I interpret this section to mean SPLP must maintain a liaison with more than just one lead emergency manager per county. This section implies a duty is upon the operator to coordinate with school board officials (or their designees) as they are "other public officials" on emergency exercises or drills and actual responses during an emergency. Here, numerous school districts have intervened to request additional training, exercises or drills and actions such as a direct notification from the operator the same information it would provide to the lead emergency coordinator for the county.

Section 195.403 requires operators to conduct a continuing training program to instruct emergency response personnel to know the characteristics and hazards of hazardous liquids including flammability of mixtures with air, odorless vapors and water reactions. Sections 195.440(a),(e) and (f) require an operator to develop and implement a written public education program that follows the guidance provided in the API RP 1162, that includes activities to advise affected municipalities, school districts, businesses and residents of pipeline facility locations. The program and media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid or carbon dioxide.

RP 1162 1st edition provides a solid framework and the bare minimum regulatory baseline guidelines from which SPLP should seek to improve its PAP. It is reasonable and in the public interest for a school district responsible for 2,000 - 8,000 students in close proximity to the Mariner East Pipelines and facilities to be directly notified through data transmission or telephone and advised of certain incidents involving more than a quantifiably small intended or accidental release (for example more than 5 gallons of product from the HVL lines). Being informed of the name of the pipeline, time of discharge, location of discharge, reason for discharge, name and estimate of volume of product involved and wind/weather conditions would be helpful for anyone in charge of directing a “shelter-in-place” or “evacuation” strategy for a school population of that size.

However, I am unaware of any specific federal requirement in the current regulatory framework requiring the pipeline operator’s controller to directly notify school districts at the same time it notifies the county’s emergency manager and police. I do think there is a requirement that a liaison be made available to meet with and assist the districts and local municipalities’ emergency responders with their emergency plans that they must have under Title 35. SPLP is not responsible for making the plans required under Title 35, but as local officials and responders are required to make and implement these plans, the information SPLP can provide is valuable to that endeavor. I am not judging compliance with Title 35 as the Commission has no jurisdiction to make any determination whether a governmental entity or school district is compliant with Title 35. However, I am finding SPLP to be violating 66 Pa. C.S. § 1501 as their refusal to meet with School District representatives and public officials in

Chester and Delaware Counties to assist in the preparation of emergency plans is unreasonable and in violation of Section 1501. Similar to the directed meeting in Cumberland County in the *Baker* decision, SPLP will be directed to meet with these schools and public officials.

Although SPLP may be compliant with federal regulations directly notifying only the local police and lead emergency responder contact person (which appears to be by county), any time delay (such as the ten minutes suggested) between when that message is relayed to police then trickle-down relayed to the schools, could foreseeably delay action following a release. SPLP has not justified why they cannot add more contact names and phone number, email addresses, to a distribution list on a county-by-county table of emergency contact numbers or to provide an immediate notification via data transfer from a monitoring alarm similar to one that notifies SPLP's controller of a release. The burden of adding contacts by township and school district does not appear on the face to be unduly burdensome on the operator, but ultimately, whether a 911 system wired into the SCADA silent alarm to the control room of the operator should be a requirement is an issue I think more appropriately vetted through the regulatory/statutory proceedings pending at the Commission and before the General Assembly, respectively. I recognize House Bill 483, which seeks to amend title 66 with the inclusion of Section 1543 regarding a requirement to notify local emergency management is pending but is not currently law. To the extent that Complainants/Intervenors wish to advocate for additional requirements that operators notify schools and local municipalities in Pennsylvania of emergency situations involving HVL pipeline facilities, they can do so before the Pennsylvania General Assembly and the Commission. They can also participate in rulemaking proceedings before the United States Department of Transportation.

This consolidated complaint proceeding has afforded many stakeholders with similar safety messages an opportunity to communicate with the pipeline operator. The Call before you Dig national 811 number is advertised in the brochure, and this raises awareness among professional excavators and homeowners about the importance of calling 811 before embarking on a digging project so that underground utilities including HVL pipelines can be marked ahead of time. However, improvements can be made by this pipeline operator in

communicating with emergency responders and the public and measuring the overall effectiveness of its communications.

Meeting the bare minimum requirement of Section 195.440, can be one goal, but also having positive feedback from school districts, townships, and emergency responders who feel comfortable knowing what to expect, and what they have been advised to do is goal worthy. The measure of success in reaching goals can be measured by the feedback from governmental entities. There is a directive that the pipeline operator “maintain liaison” with emergency officials. SPLP argues it’s conduct is maintaining a liaison, but the emergency officials/responders testified otherwise. It is clear the Complainants/Intervenor want SPLP to move from bare minimal compliance-driven programs toward corporate social responsibility and they want a named liaison contact person dedicated to their respective counties.

RP 1162 requires pipeline operators to provide information to emergency response officials as part of the operator’s public awareness program. SPLP Ex. JP-1 at 18-19. RP 1162 states further that continuing liaison with emergency officials including training and periodic communication is important. *Id.*

SPLP has conducted Mariner Emergency Response Outreach (MERO) training two times each in Delaware and Chester Counties in 2017 and repeated that training in 2020. SPLP St. No. 4, Noll Rebuttal Test. at 8-11; N.T. 3213-3214, McGinn Test. The MERO training was conducted by Gregory Noll, SPLP’s expert witness in emergency planning and emergency response training. *Id.*

The MERO training sessions each lasted approximately two-and-one-half hours and consisted of a 100-page PowerPoint presentation and questions and answers. N.T. 3299-3300, Noll Test.; SPLP Ex. GN-2. The MERO training emphasizes a risk-based approach that is a process that can be applied to any pipeline release, whether it is a puncture, a rupture or a leak. The risk-based approach is based upon an analysis of the problem, assessing the hazards, estimating potential consequences, and then determining courses of action based on facts, circumstances and science. SPLP St. No. 4, Noll Rebuttal Test. at 10-11; SPLP Ex. GN-2 at

slides 16-17; N.T. 3301-3302, Noll Test. The risk-based approach emphasizes that you cannot have an emergency response plan for each potential incident or each potentially affected neighborhood and that the incident commander on the emergency response team must apply the risk-based approach based on the facts unique to each incident. (SPLP St. No. 4, Noll Rebuttal Test. at 11-12.)

The MERO training provides a: (i) description of the nature of materials in the pipeline, (ii) the general properties and hazards associated with the HVLs, (iii) information and medical response to exposure to these HVLs, (iv) the direction of flow of the product in the Mariner East 2 pipelines, (v) mapping resources regarding the location of the pipeline, (vi) information on how to detect a release by sight, sound and smell, and (vii) emergency response procedures to follow for an ignition release and a non-ignition release. SPLP St. No. 4, Noll Rebuttal Test. at 13-17; SPLP Ex. GN-2.

Over 500 people who attended the MERO training sessions in 2017 completed an evaluation of the program. In response to the question “do you have a better understanding of pipelines in your area,” 560 people responded “yes” and three responded “no.” In response to the question “did the presentation increase your knowledge about what to do in case of a pipeline emergency in your community,” 557 people said “yes” and six said “no.” And in response to the question “do you feel you have enough information to respond to an emergency involving our pipeline,” 547 people said “yes” and seven said “no.” N.T. 3302-03. Two of the three experts proffered by Complainants and aligned Intervenor were invited to the MERO training, but chose not to attend. N.T. 1976, Boyce Test.; N.T. 2344, Hubbard Test.

SPLP also participates annually in CoRE training for emergency responders offered by all of the pipeline operators in Chester and Delaware Counties. (SPLP St. No. 5, Perez Rebuttal Test. at 12.) SPLP’s witness Noll was retained by Intervenor Chester County to provide two tabletop emergency response exercises to emergency responders. (SPLP St. No. 4, Noll Rebuttal Test. at 24.) The evaluation scores for these exercises on average exceeded 4.6 on a scale of 1 to 5. (Id. at 25-26.) SPLP has written to all municipalities and school districts in Chester and Delaware Counties and offered to have Noll perform additional tabletop exercises

and to meet with emergency responders to discuss “best in class” components to include in the emergency response plans required to be developed by the municipalities and school districts. SPLP Exhibits. 48 and 49; N.T. 3214, McGinn Test.

SPLP has provided additional emergency response training, tours, and exercises in Delaware and Chester counties. SPLP Statement No. 13-RJ, Gordon Rejoinder Outline; N.T. 2851-2858, Gordon Test. SPLP has also made substantial equipment purchases for municipalities within Chester and Delaware counties to enhance their emergency response capabilities. Between 2016 and 2019, SPLP provided first responder grants totaling \$625,394.15, of which \$172,794.60 went to Chester County emergency services and various police and fire departments and \$452,599.55 went to similar organizations in Delaware County. (SPLP St. No. 6, McGinn Rebuttal Test. at 5-6.) In addition, as part of a negotiated easement agreement, SPLP provided funding to Middletown Township for emergency response training in Oklahoma. (Id. at 6.)

I recognize that SPLP has taken steps to prepare the emergency responders but it could do more by offering additional table-top and boots-on-the-ground training in Chester and Delaware Counties. Enterprise TEPPCO offers boots-on-the-ground training and it is unreasonable not to offer that kind of training when requested by these governmental entities. SPLP can work with Enterprise TEPPCO to conduct an expanded/combined training program to save resources, or it can develop and offer its own expanded training. There is no authority to require the utility give money for equipment, but I will direct meetings be held to greater prepare the public officials, emergency responders and school districts for an emergency event.

d. Odorant/Mass Warning System

An HVL “is defined in pipeline safety regulations as a hazardous liquid that will form a vapor cloud when released to the atmosphere and has a vapor pressure exceeding 276 kPa (40psia) at 37.8 degrees C (100 degrees F). 49 CFR § 195.2” *Baker* at 4, n.1. The physical properties of NGLs are that they are odorless, colorless, and tasteless. N.T. 3316. Though mercaptan, a chemical odorant, can be added to HVLs to give them a distinctive smell,

mercaptan has not been added to products anywhere to the pipeline. N.T. 3159. The product in the SPLP Pipelines is therefore colorless and odorless. N.T. 3159-3160.

During a release of HVLs, there will be a condensation of moisture and air which will produce a visible vapor cloud. However, the odorless, colorless, flammable vapors may extend beyond the visible vapor clouds. N.T. 477. The visible vapor cloud does not show the extent of the problem. N.T. 511. How far the cloud extends is dependent on the circumstances of the incident, including the weather conditions and the size of the breach. N.T. 500. Further, even where there is a visible vapor cloud, it would take a period of time for a person inside a building to observe that vapor cloud building up outside the building. N.T. 3317.

Further, even if an HVL leak produced a visible vapor cloud, and even if that cloud built up over time so that a person in a building could observe it, if the leak occurred at night, it could be obscured by the darkness and could be missed by if the occupants of the building were sleeping. Indeed, even with a visible vapor cloud appearing in broad daylight, the person in the building could fail to see the vapor cloud while he or she is consumed with everyday activities such as working, childcare and household chores. The vast majority of people do not spend their days checking out the window for vapor clouds. Finally, even if a person were to notice a vapor cloud, the average person would have trouble differentiating between a low-lying fog in a pipeline area and an NGL vapor cloud. N.T. 3337. Mr. Gregory Noll, a certified safety professional and certified emergency manager, who was proffered by SPLP as an expert for incident management for pipelines, testified that he himself would have trouble differentiating between a low-lying fog and a vapor cloud. N.T. 460-464, 3337.

The two main dangers associated with a propane vapor leak are asphyxiation from displacement of oxygen and ignition of the cloud. N.T. 86-87. A vapor cloud can ignite if it comes in contact with ignition sources such as automobiles or any electric device. N.T. 476, 503. Even cell phones may have to potential to ignite a vapor cloud and must not be used in the event of a pipeline leak. N.T. 2221; McGinn, N.T. 3238.

Fatality is a potential consequence of exposure to HVLs. N.T. 3113. If a vapor cloud ignites, there is the potential for vast numbers of people to be burned and/or killed. N.T. 105, 3108. For example, between the Marsh Creek Sixth Grade Center and the Shamona Creek Elementary School, there are well over 2,000 staff and students on location and, in a worst-case scenario, some or all of those numbers could be affected by severe injury, burns, and/or death. N.T. 2323-2327.

There is a fundamental difference between natural gas distribution operators and what is mostly an interstate pipeline operation regarding how it chooses to deliver messages to its audience. A natural gas distribution company (NGDC) must install distribution pipelines in developed areas to serve its customers. An NGDC sends its customers' information through bill-inserts on a monthly basis. Whereas an interstate transmission pipeline operator usually seeks to distance its facilities from populated areas and the landowners are not generally its customers. The landowners are not the shippers of the product. If you are not a customer of SPLP, then you may or may not be aware they have a pipeline close to your house, workplace or school and you may not be aware of the dangers around construction sites, digging around the pipelines, etc.

The level of awareness of the ME1, ME2, 12-inch workaround pipeline should be greater than normal because the pipelines are located or in the process of being located through a high consequence areas through Chester and Delaware Counties, mostly into a right of way in existence since 1931, that has been expanded and arguably encroached upon by development over the years since. These pipeline assets of the company traverse in areas close to Complainants' McMullen, Higgins and White's houses, possibly 20-35 feet from Chester County Library, adjacent to the Exton Mall, underneath a playground and a baseball field. I am persuaded by Exhibit McMullen 4 to find the distances between existing and proposed mariner east pipelines adjacent to Mr. Mullen's home and the Chester County Library and District Center is an average of 8 feet between each of the four pipes within at 25 feet area. In other words, the pipes are parallel to each other. ME1 is eight feet from ME2X, which is 8 feet from ME2, which is 9 feet from the 12-inch workaround pipe. Exhibit McMullen 4.

These requests for an early warning alarm system for residents/schools residing in close proximity of the pipelines and an odorant are worthy of consideration; however, further notice and opportunity to be heard ought to be provided to interest groups and stakeholders to ensure due process rights are not violated before there are such requirements. There are no current federal regulations nor any state statutes or regulations specific to Pennsylvania requiring SPLP to either place an early warning system at specific distance intervals across its pipelines, nor to place an odorant in the HVLs being transported. There is no requirement that the operator, possibly through its controller or its own monitoring silent alarm system also be wired to automatically notify a school district designee at the same time it notifies a controller of a release. API RP 1167, Second Edition June 2016, Pipeline SCADA Alarm Management recommended practices. BI&E has submitted a comment requesting odorization or in the alternative enhance leak detection to identify small leaks. *See Bureau of Investigation and Enforcement Safety Division's Comments to Advance Notice of Proposed Rulemaking Order*, Docket No. L-2019-3010267, ANOPR Order at 19-20 (comments submitted August 28, 2019) (requesting "odorant utilization" on page 9). There are technological issues in early warning systems that may result in false positives. SPLP St. No. 4, Noll Rebuttal Test. at 23. I am persuaded by the credible testimonies of SPLP witnesses Noll and Zurcher who testified:

I don't know how a company could implement something like that. It would have to be a government agency that would require it. You can't just have an alarm. A company can't just set out a huge alarm out there -- ... without approval from all kinds of people There would have to be reasons for it and there would have to be approvals.

N.T. 442-443. Mr. Noll is not aware of an early warning system being used in any pipeline right of way.

There is a considerable amount of credible testimony and photographs showing individuals with disabilities residing in close proximity to the Mariner East pipelines will take considerable time to escape from an HVL pipeline-related emergency. Complainants and aligned Intervenor request an odorant and alarm system for these reasons. However, the Commission's regulatory standards must be sufficiently definite to permit decisions to be fairly predictable and the reasons for them to be understood. Additionally, the Commission is not a

federal court, which is designed to make such determinations regarding violations of the Americans With Disabilities Act (ADA).⁸ *See also, Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa PUC LEXIS 30 (entered May 19, 1999) (*MAPSA*), and *Mid-Atlantic Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa.Cmwlth. 2000), wherein the Commonwealth Court affirmed that the Commission did not have jurisdiction to find a violation of the federal Unfair Trade Practices Act. Accordingly, the Commission has no jurisdiction to find Mrs. McMullen or Mr. McDonald's 88-year-old mother, for example, to be disabled within the meaning of the ADA and subsequently direct SPLP to provide them with ADA accommodations near the Chester County Library or the Wellington Facility for early notifications of possible releases such as an alarm or odorant as requested by Flynn Complainants.

While a sulphur odorant (similar to one added to natural gas distribution service lines) might notify those in close proximity to valves of a small leak in the pipeline facilities through the olfactory sense of smell, this alone is insufficient to support a finding that the operator has violated a statute, regulation or Commission order requiring same. Although odorant is commonly added to a methane/natural gas distribution line leading to someone's property, the purpose of this product is for it to be burned to provide thermal heat to operate appliances and heating apparatus. Odorant can be added to propane gas for the same reason. Ethane, however, is a commercial reagent used in the manufacturing of other products, such as plastics. Ethane can be used as a refrigerant in cryogenic refrigeration systems. At room temperature and air pressure, ethane is an extremely flammable gas and can form an explosive mixture when mixed with air at certain volumes. Ethane can displace oxygen and become an asphyxiation hazard. Its usual commercial purpose is not to be burned, but rather through chemical reactions with other chemicals primarily to manufacture plastics. An odorant might interfere with chemical reactions with ethane. These are sub-issues being considered in the

⁸ The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The ADA includes changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA is published in the United States Code. The Federal Communications Commission is the federal agency regulating telephone relay services.

Commission's rulemaking proceeding. Complainants are also free to send comments to PHMSA and the General Assembly requesting odorant, dye, and/or mass warning systems. Those entities promulgate regulations and statutes.

As an example, HB 1735, introduced in May 2019 by Rep. Danielle Friel Otten with nine co-sponsors to date, would provide standards and a fee-generated funding mechanism to cover the cost of real-time leak detection systems that communicate directly with the appropriate first responders. The bill takes into account the size of the pipeline within the municipality, miles of pipeline, pressure in the pipeline, volume of product flowing through the pipeline, population density within potential impact radii, setbacks, report of the pipeline operator on pressure, contents and location of pipes to other pipes in the easement, in establishing a fee imposed on the pipeline operator. The Commission is currently considering comments from Downingtown Area School District to incorporate or implement this program so the School district would be a beneficiary of a detection system and immediate notification in the event of a leak within the proximity of one of its schools.

There are transmission pipelines and there are distribution pipelines. While federal odorization requirements follow a risk-based approach by focusing on pipelines in populated areas, the officials and stakeholders submitting comments to the Commission's rulemaking proceeding disagree on the need to modify existing requirements. The Mariner East pipelines will be challenging to odorize for safety but on the other hand, they are located in non-rural and high consequence areas of Chester and Delaware Counties. Further, as the HVLs will be travelling at high pressure, it is doubtful that an odorant can mitigate risk of rupture. *See Gas Pipeline Safety Stakeholders' and Officials' Views on Federal Odorizing Requirements*, GAO Report dated April 2018. Exhibit Britton ZCR-1.

D. INJUNCTIVE RELIEF/ECONOMIC IMPACT

Whether SPLP should be enjoined from operating the ME1, 12-inch workaround pipeline, ME2 and/or ME2X in Delaware and Chester Counties.

1. Complainants and Aligned Intervenor's Position

Andover HOA requests SPLP be enjoined from operating the ME1, 12-inch workaround pipeline, ME2 and ME2X in Delaware and Chester Counties even if the operator adds risk hazards/consequences to its public awareness mailers and changes the location of its valve by Glenwood Elementary School due to the inherent risk to populations surrounding the pipeline operator's facilities. Flynn Complainants request either a remaining life study for the 12-inch workaround pipeline or that the operator be enjoined from transporting NGLs through Delaware and Chester Counties. Although Complainants and aligned Intervenor admit that SPLP and its customers might experience some economic pain during some shutdown scenarios. However, they argue the economic impact/loss of a shut down or a restriction on the authority of the operator to transport HVLs through Delaware and Chester Counties is overstated.

No credible evidence was offered to show that the broader Pennsylvania economy would suffer in any way, and their witnesses failed to evaluate the ways in which the Pennsylvania economy would be better off if the pipelines were not operating.

2. Sunoco Pipeline L.P.'s and Intervenor Range Resource's Position

SPLP and Range Resources argue that the economic benefits of the Mariner East pipelines are wide-ranging and uncontroverted. The enjoining of the operation and construction of the Mariner East Pipelines in Delaware and Chester Counties will damage SPLP, its shippers and the public. SPLP and Range Resources contend that the Complainants presented no competent evidence on any of the public utility benefits and economic considerations of the Mariner East pipelines to rebut the need for SPLP's Commission-approved public utility service.

3. Disposition

As stated above, under Legal Standards, in order to obtain permanent injunctive relief, a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v.*

Jones, 571 Pa. 637, 644, 813 A.2d 659, 663 (2002), *cert. denied*, 540 U.S. 821 (2003). Where a complainant seeks temporary injunctive relief, however, they must also demonstrate that (1) the need for relief is immediate; and (2) injury would be irreparable if relief is not granted. See *Buffalo Twp.* 813 A.2d at 663 (citing *Soja v. Factoryville Sportsmen's Club*, 361 Pa. Super. 473, 522 A.2d 1129, 1131 (1987)). In addition, the Commission's regulations contemplate a party seeking a temporary injunction must also demonstrate that the requested relief is not injurious to the public interest. *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If any one of these essential pre-requisites is not proved by a complainant, the Commission will deny the relief requested. See *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993); see also *Cnty. of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988).

In the instant case, I find Range is a shipper on the Mariner East Pipelines. See Range St. 1-R at 5. A top 10 natural gas producer and a top 5 NGL producer in the country, Range Resources currently directly and indirectly transports 70,000 BPD of natural gas liquids on ME1 and ME2. Range St. 1-R at 3-5. Disaggregated, Range Resources transports 20,000 barrels per day ("BPD") of ethane on ME1. Range St. 1-R at 5. Range Resources transports 30,000 BPD of propane and 10,000 BPD of normal butane on the ME2 pipeline. Range St. 1-R at 5. Range Resources sells 10,000 BPD of a combination of propane and normal butane to a third party that transports this product on ME2.

Range Resource's shipments on the Mariner East Pipelines represents approximately 32% of its typical ethane and 100% of its current propane and normal butane production in Pennsylvania. Range St. 1-R at 5. Pipeline transportation provides the safest and most reliable means of transportation of natural gas and natural gas liquids. Range St. 1-R at 7. The Mariner East Pipelines provide Range with a safe and reliable takeaway capacity for the NGLs it produces from the NGL-rich natural gas that is produced in portions of the southwestern region of Pennsylvania. Range St. 1-R at 7. The Mariner East Pipelines alleviate NGL supply congestion and over-supply in the Appalachian market. Range St. 1-R at 7. Large volumes of ethane can only be transported by pipeline due to its boiling point that makes large scale bulk truck or rail transportation ineffective and uneconomic. See Range St. 1-R at 7-8.

In the absence of NGL pipeline capacity, a natural gas producer would be forced to limit or possibly shut-in wells and natural gas production as the downstream natural gas pipelines limit the BTU content of the natural gas, and therefore the amount of ethane that may be “rejected” or left in the natural gas stream that is transported by intra-or interstate pipelines. Range St. 1-R at 8. A rail alternative for liquified natural gas transportation through Pennsylvania, whether someday offered by New Fortress Energy or another entity, is not applicable to the transport of ethane and therefore does not alleviate the restraints on shipping ethane by rail. Tr. 2820. Propane and butane can be more easily chilled and/or compressed than ethane for transportation by rail or truck. Range St. 1-R at 8.

The volume of propane and butane transported by Range on the Mariner East Pipelines in any given month would necessitate 2,130 railcars or 7,600 trucks. Range St. 1-R at 8. The total volumes of Appalachian-produced propane and normal butane flowing on the Mariner East Pipelines today (estimated at a maximum of 200,000 barrels/day) exceed the available railcar and truck loading capacity in Appalachia. Range St. 1-R at 8. Range has previously confirmed the rail loading facilities operated by its midstream service provider did not have adequate loading capacity to accommodate the current NGL flows on the Mariner East Pipelines, i.e., 226,000 BPD of NGLs. Range St. 1-R at 9.

The Mariner East Pipelines are one of only two pipeline systems transporting propane from production in western Pennsylvania, Ohio and West Virginia. Range St. 1-R at 9-10. The other pipeline system is Enterprise’s TEPPCO pipeline, which has approximately 12.5% of ME2’s capacity. Range St. 1-R at 9. If western Pennsylvania production is prohibited from flowing on the Mariner East Pipelines, and the TEPPCO pipeline is already subscribed, the remainder of this Pennsylvania-based production would be forced to flow on available rail and truck loading capacity which would be quickly overwhelmed resulting in well-pad shut-ins. Range St. 1-R at 9. If the Mariner East Pipelines are forced to cease operations, then Range, and possibly other producers, would be forced to shut-in natural gas production throughout Pennsylvania, resulting in significant economic harms. Range St. 1-R at 8-9.

If the Mariner East Pipelines are forced to cease operations, Range's ethane that normally flows on ME1 would either be sold into an alternate market or be rejected into the gas stream, but only in limited quantity, resulting in significant financial losses. Range St. 1-R at 12. Assuming Range could find an alternative market for the ethane it normally flows on ME1, Range would incur approximately **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. **[END HIGHLY CONFIDENTIAL]** Range St. 1-R at 13 (emphasis added).

Assuming, railcars and railcar loading facilities were available in adequate quantities to transport the 50,000 BPD propane and normal butane production and alternate rail markets were available, Range would incur **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]
[REDACTED] **[END HIGHLY CONFIDENTIAL]** in increased costs (e.g., increased logistics fees and lower priced markets) per year. Range St. 1-R at 13.

It is more likely that Range would only be able to access rail cars and railcar loading capacity for the equivalent of 19,000 BPD of propane and butane and specifically noted that truck loading is not available for Range's NGL production. Range St. 1-R at 13. In this scenario, 31,000 BPD of Range's propane and butane production would be without access to rail or pipe loading **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. **[END HIGHLY CONFIDENTIAL]** Range St. 1-R at 13-14. Range's estimates of harm are based off past experience with three prior shutdowns of ME1. See Range St. 1-R at 10-12.

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL] N.T. 2787.

A shutdown of ME1, which would affect Range's transportation of ethane, could [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14. A shutdown of ME2, which would affect propane and butane transportation, where Range could only access railcars and railcar loading capacity for 38% of its 50,000 BPD of ME2 flows, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED]. [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

A decrease in ethane, propane, butane and natural gas supply resulting from a shut-in of ME1 and ME2 would very likely increase the price of NGLs and natural gas to consumers in Pennsylvania. Assuming a 10% increase in Northeastern winter propane and natural gas prices as a result of this lost supply, the EIA's October 2019 Winter Fuels Outlook report suggests that Northeastern natural gas consumers would pay an extra \$71/household during the winter while Northeastern propane consumers would pay an extra \$166/household. Range St. 1-R at 14-15. Range's price impacts analysis follows the basic tenets of supply and demand, i.e., "If you increase supply, prices go down. If you decrease, it can go up. Vice versa for demand." N.T. 2831. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [END HIGHLY CONFIDENTIAL] N.T. 2803.

Range has 457 employees in Pennsylvania and, if it were forced to shut-in production due to a cessation of ME1 and/or ME2 operations, it would likely be forced to implement layoffs. Range St. 1-R at 15. These job impacts could reverberate down the supply chain (Range St. 1-R at 15) and affect "people's livelihoods." N.T. 2807. Since the inception of

the drilling impact fee in 2012, it has generated nearly \$1.67 billion in new revenue for communities in all 67 counties of the Commonwealth. Range St. 1-R at 15. Drilling impact fees are based on production. Range St. 1-R at 16. Assuming only Range's volumes on ME1 and ME2 were impacted by the Complainants' requested relief, there would be approximately \$8.7 million less in drilling impact fees per year. Range St. 1-R at 16. The collective impact, accounting for the other producers that ship on ME1 and ME2, would be greater. Range St. 1-R at 16. Natural gas extraction and pipeline transportation companies, which provide critical supplies of energy to Pennsylvania residents and businesses, were deemed life-sustaining businesses and were permitted to remain open during the current Covid-19 pandemic. See Range St. 1-R at 5-6. Range witness Mr. Engberg testified:

While the duration of the COVID-19 pandemic and its effects upon Pennsylvania businesses remain unclear, it is essential that Pennsylvania-based energy producers continue to have access to safe and reliable means of transporting essential, locally produced products to end users across the state. The Complainants request would eliminate the primary means by which NGL producers such as Range-Appalachia transport these products in and across Pennsylvania. This would result in the substantial economic harms I detail below and could exacerbate the economic impacts of COVID-19 on the Commonwealth at a time when access to less-expensive, locally produced energy products is critical.

Range St. 1-R at 6.

I agree with Range Resources and SPLP that Complainants and their aligned Intervenor have failed to prove a mandatory permanent or temporary injunction enjoining the operator from transporting NGLs through Chester and Delaware Counties is warranted or in the public interest as a whole. Complainants' right to relief on this issue is not clear and an injunction would negatively economically impact the utility and its shipper. There are other means besides a shut-down or restrictive amendment to the operator's COS to bring the operator into compliance through the directed modifications to material content in mailers, meetings with school and public officials, enhancements to public awareness programs, depth of cover surveys, corrective action plans and the submission of reports over the next three years at the Commission. It would be injurious to the public interests of (Range Resources a customer/shipper) and SPLP's independent contractors (IBEW) to grant the mandatory relief

requested. There would be a negative economic impact to both SPLP and Range Resources if operations were to be restricted in the Delaware and Chester Counties and a negative impact on jobs in Pennsylvania as described more fully above.

E. CIVIL PENALTY ANALYSIS

In the *Baker* Proceeding, the Commission upheld the ALJ's assessment of a civil penalty in the amount of \$1,000:

The ALJ found that the pipeline operator has acted outside the guidelines of API Recommended Practice 1162 as incorporated in 49 CFR Part 195.440 pertaining to public awareness practices without good cause, thus violating the Public Utility Code at 66 Pa. C.S. § 1501, and Commission Regulation at 52 Pa. Code § 59.33. The ALJ concluded that because there have been no personal injuries or property damage as a result of the violation and the number of individuals affected is small, a civil penalty in the amount of \$1,000 is appropriate given an additional directive designed to enhance and improve the pipeline operator's public awareness and emergency training. I.D. at 54.

Baker at 10.

In the instant case, I find a violation of the recommended practice of API 1162 as incorporated in 49 CFR § 195.440, as incorporated in 52 Pa. Code § 59.33 and 66 Pa. C.S. § 1501. Additionally, I find a violation of 49 CFR 195.248 regarding lack of appropriate depth of cover of ME1 in Chester County and that there is prima facie evidence that there are multiple locations along ME 1 and the 12-inch pipelines in Chester and Delaware Counties to suggest there is lack of appropriate depth of cover as well as improper distance between these pipelines and other pipelines, underground utilities/structures in violation of 66 Pa. C.S. § 1501 and 52 Pa. C.S. § 59.33. I also find a violation of 66 Pa. C.S. § 1501 due to unreasonable service on the part of SPLP in not meeting with school districts representatives and municipalities first responders on a more frequent basis to address their needs in preparing their PEMA plans. Accordingly, as there are violations, a civil penalty analysis is undertaken.

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

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

66 Pa. C.S. § 3301(c).

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

(a) General Penalties.—

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

49 U.S.C.A. § 60122(a)(1).

Section 60118(a) provides:

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

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

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

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

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

49 U.S.C.A. § 60118(a).

Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that "these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest." 52 Pa.Code § 69.1201(a). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

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

In the instant case, the fact that the material content in the safety pamphlets is insufficient in that it fails to mention property damage, personal injury, asphyxiation, burns, death or fatality is a violation but is administrative. Management from the company believed the pamphlets to be in compliance with the regulations and claim that PAPERS, a consultant third-party evaluated their PAP and did not notify the company that the material content was insufficient. No evidence was offered to show anyone suffered property damage, personal injury or death as a result of the omitted language. SPLP voluntarily expanded its buffer communications area to greater than 2,800 feet in 2019 from the mid-point of Mariner East 2, as that pipeline is now operational [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [END HIGHLY CONFIDENTIAL]

N.T. 3185-3186, Exhibits SPLP GG-1 and GG-2. Thus, the amount of civil penalty is mitigated

as the operator shows willingness to voluntarily amend its PAP and increase its communication buffer before PHMSA issued a final order regarding its PAP.

SPLP's failure to meet with school districts, emergency responders of municipalities, counties and public officials in the Chester and Delaware Counties violates Part 195.440 and 66 Pa. C.S. § 1501 as it is unreasonable and not safe service. The conduct is intentional but is mitigated by the fact that there has been no injury as a result. The company has had some meetings with emergency responders through its MERO and CoRE exercises and some other supplemental meetings, but there is more that can be done to meet the reasonable requests of the school districts and municipalities and counties. Violations of 66 Pa. C.S. § 1501 due to unreasonable unwillingness to meet with school officials, public officials and emergency first responders in Chester and Delaware Counties is deemed to be negligent as the company has taken some steps to hold some meetings with these entities/individuals even though it is not to a reasonable standard.

Regarding the violation of 49 CFR 195.249, depth of cover, and as a result 66 Pa.C.S. § 1501, there is insufficient evidence to show violation of 195.248 regarding lack of depth of cover over ME1 is intentional. It appears to be based upon mistaken belief that this regulation does not apply to ME1 and the 12-inch pipelines as they are "pre-existing pipelines" built prior to 1968. However, as there is no evidence of personal injury directly caused by lack of depth of cover or lack of separation by at least 12 inches distance to other pipelines/utility structures, the civil penalty should be lessened and compliance filings over the next 3 years will be directed. 66 Pa. C.S. § 3301(c).

There was no Commission-investigation, so the seventh factor will not be applied to the facts of this case. There is evidence of heightened public sensitivity to pipeline emergencies and significant construction and subsidence events in roadways, at Sleighton Park, and Lisa Drive for example in Delaware and Chester Counties; however, there is also evidence to show that the Company is modifying internal operating procedures to improve its public education and emergency training in these counties to meet the public's greater demand; thus, mitigating damages from the violations. There still appears to be a "one size fits all" approach to

public awareness as the mailers are mailed from Texas-based Energy Transfer L.P. for all of its operations along the 350-mile pipeline through all 17 counties and communications buffers at least within Pennsylvania and perhaps also in other states. N.T. 3184. The operator has an interest in this streamlined “one size fits all” approach to federal regulations for consistency on a federal level of operations rather than an enhanced public outreach program specific to the needs of these two Counties, their municipalities and school districts, which have a high population working, studying and residing in close proximity to the Mariner East pipelines traversing through their lands to the Marcus Hook Facility.

There are thousands of stakeholders affected by the conduct and their claims are not lightly made. I am considering a past Commission decision, the *Baker* proceeding, (assessing a civil penalty of \$1000 for failure to mail the public safety pamphlet on a consistent bases to Wilmer Baker in Cumberland County as he resided within 1000 feet of the ME1 pipeline). In *Baker*, a civil penalty of \$1000 was assessed to deter future violations and was within the statutory guideline of 66 Pa. C.S. § 3001(c); also, in *Baker*, a directive was issued requiring the operator to schedule a meeting with Cumberland County Commissioners for the purpose of scheduling a remote public awareness meeting and was considered appropriate injunctive relief by the Commission in that case. Similarly, a \$2,000 civil penalty and directives will be issued in this consolidated case proceeding. However, the evidence does not rise to the level necessary for a mandatory injunction from transporting NGLs in Delaware and Chester Counties as no irreparable injury has been proven at this time. *See Allen*, 417 A.2d at 401. As long as SPLP shows compliance with the ordering paragraphs below, it shall maintain its certificate of public convenience.

VI. CONCLUSION

In conclusion, I agree with the Flynn Complainants, Andover HOA and aligned Intervenor when I find SPLP is not compliant with their public awareness plan (PAP) as submitted to the Commission because there is no mention of the terms “personal injury,” “property damage,” “asphyxiation” or “fatality” in their written safety pamphlet materials that they mail every two years to the general public. In their pamphlets to emergency responders, the

consequence of hazards such as leaks or ruptures, specifically the ignition of an HVL vapor cloud, is also not disclosed. In both mailers, only the hazard of possible ignition of HVL is lightly touched upon and that the product in the line can be a skin irritant.

As substantial record evidence demonstrates that the operator has violated 49 CFR Part 195.440 and as a result 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33, the operator will be assessed a civil penalty in the amount of \$2,000 and will be directed to revise its safety pamphlets for its next planned issuance and going forward such that the public, public officials, and emergency responders who do not attend CoRE meetings will be made aware that in a rupture event releasing HVL product in the Chester/Delaware Counties, the ignition of a vapor cloud around the rupture could result in the potential for property damage, personal injury and personal injury resulting in loss of life.

Additionally, I find a violation of 49 CFR 195.248 regarding lack of appropriate depth of cover of ME1 in Chester County and that there is unrefuted *prima facie* evidence that there are multiple locations along ME 1 and the 12-inch pipelines in Chester and Delaware Counties with lack of appropriate depth of cover as well as improper distance between these pipelines and other pipelines, underground utilities/structures in violation of 66 Pa. C.S. § 1501 and 52 Pa. C.S. § 59.33. I also find a violation of 66 Pa. C.S. § 1501 due to unreasonable service on the part of SPLP in not meeting with school districts representatives and municipalities first responders on a more frequent basis to address their needs in preparing their PEMA plans and in failing to provide them with a named liaison.

The Commission commonly hosts collaborative efforts among stakeholders regarding implementations of utility programs. This is to foster better understanding and the feasibility of requests. Through its rulemaking proceeding at L-2019-3010267, the Commission is deciding whether to propose additional regulations with additional more stringent, but still compatible, regulations to the federal ones regarding public awareness, emergency preparedness etc. While I agree with SPLP that RP 1162 provides the pipeline operator with some flexibility to select the optimum combination of message, delivery method and frequency that meets the needs of the intended audience, it does not appear SPLP is following its own public awareness

plan regarding material content and this is unreasonable service. Also, it is unreasonable service to deny Delaware and Chester Counties as well as the townships Uwchlan, Middletown, West Whiteland, West Goshen and East Goshen therein the opportunity to meet with a liaison representative from the company, whom they can offer a visitor's tour of the buildings and land features near the pipelines so that the operator is in a better position to advise public officials and emergency responders in handling an unlikely release or rupture event. If certain school districts consider themselves to be the first responders as volunteer firefighters are relied upon, then they ought to be invited to boots-on-ground, CoRE and MERO exercises and contacted directly prior to excavation/construction near the schools in their districts. They should also be contacted directly by the operator through its controller or liaison in the event of a release or rupture event occurring near their schools. For all of these reasons, I find in favor of the Complainants and aligned-Intervenors in part and in SPLP in part on the issues regarding public awareness and emergency responder plans.

Finally, I recommend the Commission initiate under a separate docket number a joint public awareness program working group (PAPWG) to foster public awareness, continuous improvements. The objective of this group would be to share diverse perspectives and offer greater awareness on the current state of pipeline public awareness efforts and would include all pipeline operators in this working group, not just SPLP as it is clear from this proceeding that others operate in Chester and Delaware Counties, such as Enterprise TEPPCO. This group could report key findings to the Commission for greater oversight. The group could consist of pipeline safety regulators, pipeline operators, emergency response organizations, excavators, public safety officials, associations, and municipal utilities. Clearly Pennsylvania has unique geology/hydrology and high consequence areas due to large population densities surrounding the pipelines as they approach the Marcus Hook Facility along the Delaware River. A joint collaborative working group might be a less costly way for the public, local governments, schools, excavators, pipeline operators and other interested persons to raise and address issues surrounding public awareness plans and emergency preparedness plans in the future.

VII. CONCLUSIONS OF LAW

1. The Public Utility Code's provisions affords Complainants a forum for their rights, and reasonable notice and hearing, on complaints that the location of SPLP's utility facilities are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. 66 Pa. C.S. § 701.

2. The Commission is vested with authority to supervise and regulate SPLP and to create or amend regulation. 66 Pa. C.S. § 501.

3. As the proponent of a rule or order, Complainants have the burden under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992).

4. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. To satisfy their burden of proof, Complainants must show that SPLP is responsible or accountable for the problems alleged in their Complaints. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). "The offense must be a violation of the Public Utility Code, a Commission Regulation or Order or a violation of a Commission-approved tariff." *Baker v. SPLP*, Docket No. C-2018-3004294 at 6 (Opinion and Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701).

6. The Commission's adjudications must be supported by "substantial evidence" in the record. 2 Pa. C.S. § 704; *Samuel J. Lansberry*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). "Substantial evidence" is such relevant evidence that a reasonable mind

might accept as adequate to support a conclusion. *Consolidated Edison Co. of New York v. Nat'l Lab. Rels. Bd.*, 305 U.S. 197, 229 (1938).

7. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dept. of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

8. A legal decision must be based on real and credible evidence that is found in the record of the proceeding. *Pocono Water Co. v. Pa. Pub. Util. Comm'n*, 630 A.2d 971, 973-74 (Pa. Cmwlt. 1993); *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 507 A.2d 433, 437 (Pa. Cmwlt. 1986).

9. Upon presentation of evidence sufficient to initially establish a *prima facie* case, the burden to rebut the complainant's evidence shifts to the respondent. If the evidence that the respondent presented is of co-equal weight, then the complainants have not satisfied their burden of proof. Complainants now must provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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

11. The Commission regulations at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 C.F.R. Part 195.

12. Under Section 1501 of the Code, “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities” 66 Pa. C.S. § 1501.

13. To find that a pipeline is unsafe requires proof that it violates applicable regulatory standards that address pipeline safety. *See, e.g., Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, No. C-2014-2421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebeur, J.) (Final by Act 294, Dec. 30, 2014); *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014).

14. To find that the Mariner East pipelines are unsafe, Complainants must prove by a preponderance of the evidence that SPLP violated an applicable regulatory standard in 49 C.F.R. Part 195, which is the set of federal regulations that govern hazardous liquid pipelines.

15. “Complainants’ assertions alone, regardless of how honest or strong, cannot form the basis of a finding . . . since assertions, personal opinions or perceptions do not constitute factual evidence.” *Herring v. Metro. Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

16. The Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory changes occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications. *Baker v. SPLP*, Docket No. C-2018-3004294, at 26 (Opinion and Order entered Sept. 23, 2020) (citing *ANOPR*).

17. In order for the Commission to sustain a complaint brought under 66 Pa. C.S. § 1501, the utility must be in violation of its duty under this section. Without such a violation by the utility, the Commission lacks authority, when acting on a customer's

complaint, to require any action by the utility. *W. Penn Power Co. v. Pa Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984); see also *Twp. of Spring. v. Pennsylvania-American Water Co.*, Dkt. Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007). *Baker v. SPLP*, Docket No. C-2018-3004294, at 6 (Opinion and Order entered Sept. 23, 2020).

18. “Injunctive relief must be narrowly tailored to abate the harm complained of.” *Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977); *West Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018); *West Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No C-2017-2589346, Recommended Decision at 42 (Barnes, J.) (adopted in full by Commission by Order dated Oct. 1, 2018). See also *Baker v. SPLP*, Docket No. C-2018-3004294, at 26 (Opinion and Order entered Sept. 23, 2020).

19. To justify the need for a permanent injunction, the moving party must demonstrate that “greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006).

20. Complainants have satisfied their burden of demonstrating that SPLP violated Section 1501 of the Pennsylvania Public Utility Code. 66 Pa. C.S. § 1501.

21. Complainants have satisfied their burden of showing SPLP violated 52 Pa. Code § 59.33.

22. Propane, a natural gas liquid a/k/a highly volatile liquid, is a “petroleum product” within the meaning of the Public Utility Code at 66 Pa. C.S. Section 102, definitions of “public utility” as well as the meaning in Pennsylvania Business Corporations Law of 1988, 15 Pa. C.S. 1511(b). See *Petition of Sunoco Pipeline, L.P. for Amendment of the Order Entered on August 20, 2013*, P-2014-2422583 (Opinion and Order entered July 24, 2014); *In re Sunoco Pipeline, L.P.*, 143 A.3d 1000 (Pa. Cmwlth. 2016), *appeal denied In re Condemnation By Sunoco Pipeline, L.P. of Permanent*, ___ A.3d ___ (Pa. No. 571-573 MAL 2016, filed Dec. 29,

2016) filed December 29, 2016) (Brobson, J., dissenting); *id.* at 2028-29 (McCullough, J., dissenting); *In Re: Condemnation by Sunoco Pipeline L.P.*, (Pa. Cmwlth., No. 220 C.D. 2016, filed May 15, 2017), Dissent slip op. at 1-3 (Cosgrove, J., dissenting).

23. Evidence of impact of a hypothetical full rupture of the Mariner East 2 between two valves in Chester and Delaware Counties without sufficient evidence as to the probability or likelihood of the hypothetical impact is insufficient to show a violation of any Commission regulations or to warrant the injunctive relief requested of directing the relocation of the pipeline operator's facilities from high consequence areas or to amend SPLP's certificate of public convenience such that it is restricted from transporting HVLs in high consequence areas of Chester and Delaware Counties. 66 Pa. C.S. 1501, 52 Pa.Code 59.33, 49 CFR 195.210(a).

24. HVL pipelines are authorized in high consequence areas as long as integrity management programs are applied. 52 Pa. Code § 59.35 (incorporating 49 U.S.C. §§ 6010-6053 and 49 C.F.R. Part 195); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.1(a)(1), 195.450, and 195.452.

25. A pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings and places of public assembly. 49 C.F.R. Part 195.210(a).

26. A pipeline may only be located within 50 feet of any private dwelling or any industrial building or place of public assembly in which persons work, congregate or assemble if it is provided with at least 12 inches of cover in addition to cover prescribed under 195.248. 49 C.F.R. Part 195.210(b).

27. A consequence/impact-only analysis is not sufficient to prove a violation of 66 Pa. C.S. § 1501 or any regulation over which the Commission has jurisdiction. *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 29-30 (Order entered March 28, 2019) (holding for a complainant to sustain burden of proof a

preponderance of the evidence must show “that a utility’s service of facilities will likely cause harm”), *aff’d* in relevant part, *Povacz v. Pa. Pub. Util. Comm’n*, Dkt. Nos. 492, 606, 607 CD 2019, 2020 W.L. 5949866, *10-11 (Pa. Cmwlth. Ct. Oct. 8, 2020) (affirming burden of proof standard).

28. Complainants have not met their burden of proving a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order with respect to Integrity Management, Corrosion Control, and Cathodic Protection and thus cannot obtain any injunctive relief of a Commission-directed remaining life study on 12-inch pipeline or an injunction from operations in Delaware/Chester Counties on this issue. *West Penn*, 478 A.2d at 949.

29. Circumstantial evidence regarding the ME1 pipeline is insufficient to hold the operator should be directed to hire a third-party to conduct a remaining life study on the 12-inch pipeline. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff’d* 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied*, 859 A.2d 770 (Pa. 2004); *Monaci v. State Horse Racing Com’n*, 717 A.2d 612, 618 (Pa. Cmwlth. 1998).

30. SPLP’s Integrity Management Plans comply with applicable regulations. 49 C.F.R. § 195.452.

31. SPLP has complied with corrosion control and cathodic protection regulations. 49 C.F.R. 195 Subpart H; 49 C.F.R. § 195.573(e).

32. Flynn Complainants’ requested relief of a remaining life study on the 12-inch pipeline is redundant of required integrity management practices on the same pipeline. 49 C.F.R. § 195.452; September 25, 2020 Order at ¶ 9.

33. SPLP is not in violation of 66 Pa. C.S.A. § 1512, which requires pipeline operators in high consequence areas to make available, upon written request, the pipeline

operator's emergency response plan to the emergency response coordinator of each county. 66 Pa. C.S.A. § 1512.

34. SPLP has complied with the PHMSA regulations and RP 1162 by its willingness to disclose its emergency response plans subject to the execution of a nondisclosure agreement to protect the confidentiality of the information contained in the plans. 66 Pa. C.S.A. § 1512.

35. SPLP complied with regulatory requirements regarding risk assessments and Flynn Complainants' counsel conceded and this is no longer an issue in the case. 49 C.F.R. § 195.452(i)(1)-(2); N.T. 2733-2771, 4284, 4323, 4333.

36. Any requirement to add odorants, dye or to employ an early warning system must be done by regulation and is outside the authority of the Commission to order in this Complaint proceeding. *Baker v. SPLP*, Docket No. C-2018-3004294, at 11 (Opinion and Order entered Sept. 23, 2020).

37. Complainants met their burden of proving that SPLP's public awareness program as implemented violated 49 C.F.R. § 195.440, 52 Pa.Code 59.33 and 66 Pa. C.S. 1501, and thus injunctive relief will be narrowly tailored to require the operator to add hazards/consequences regarding the terms: asphyxiation, property damage, personal injury, fatalities or death to its printed materials for the public safety. *West Penn*, 478 A.2d at 949; *Baker v. SPLP*, Docket No. C-2018-3004294, at 6 (Opinion and Order entered Sept. 23, 2020).

38. The public awareness program must be audited or internally reviewed with a working group and plans to enhance the operator's public awareness plan must be submitted to the Commission for review. 49 C.F.R. § 195.440(d).

39. The public awareness program must include information on: (i) use of one-call notification prior to excavation; (ii) possible "hazards" associated with unintended

releases from a hazardous liquids pipeline; (iii) physical indications that such a release may have occurred; (iv) steps to be taken in the event of a release; and (v) procedures to report such an event. 49 C.F.R. § 195.440(d). *Id.*

40. The PHMSA regulations expressly require that the public awareness program identify the hazards of the products in the pipeline and incorporate the general recommendations of API RP 1162 (Public Awareness Programs for Pipeline Operators) (“RP 1162”). 49 C.F.R. §§ 195.440(b) and (c).

41. Because the word “should” is used in API RP 1162 before the word “consequences” it is recommended that the operator identify the consequences of those hazards (e.g., hazards of NGLs being flammable are burns, personal injury, property damage and/or fatality). 49 C.F.R. § 195.440(d)(2)

42. The term “hazard” necessarily includes “consequences” from ignition of an HVL such as property damage, personal injury, asphyxiation, burns and fatalities. 49 C.F.R. § 195.440 and API RP 1162.

43. SPLP’s implementation of its public awareness program is not in compliance with its programs or the requirements of 49 C.F.R. § 195.440 and API RP 1162.

44. Complainants failed to meet their burden of proving that SPLP’s public awareness program failed to inform of other key required components of 49 C.F.R. § 195.440 and API RP 1162, including: use of the one-call notification system; physical indications that a release may have occurred; steps that should be taken for public safety in the event of a hazardous liquid pipeline release; and procedures to report such an event. 49 C.F.R. §§ 195.440 (a) and (d).

45. The counties, municipalities and school districts have the legal obligation and authority pursuant to the Pennsylvania’s Emergency Management Agency’s Code to create and implement their own emergency plans. 35 Pa. C.S. § 7101 *et seq.*

46. SPLP's unwillingness to meet with school districts and public officials and the withholding of information useful in the preparation of PEMA plans is a violation of Commission regulation, warranting the directive to provide information and emergency training to assist these political subdivisions and school districts. 52 Pa.Code § 59.33, 66 Pa. C.S. § 1501.

47. Complainants did not meet their burden of proving that SPLP's existing leak detection systems and equipment are in violation of any law or regulation over which the Commission has jurisdiction or any Commission Order. 49 C.F.R. § 195.444.

48. The requested relief of adding odorant and/or dye to the products in the ME pipelines is not available as a form of relief in this complaint proceeding, but rather is a subject for the regulatory rulemaking process. *Baker v. SPLP*, Docket No. C-2018-3004294, at 11 (Opinion and Order entered Sept. 23, 2020).

49. Complainants have not established that adding odorant is necessary or appropriate for public safety. *See e.g., Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

50. Locating the Mariner East pipelines in Chester and Delaware Counties in high consequence areas are permitted as a matter of law. *See* 52 Pa. Code § 59.33(b) (incorporating 49 U.S.C.A. §§ 60101-60503 and 49 C.F.R. Part 195 regulations as safety standards for hazardous liquid public utilities); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.450 and 195.452; 49 C.F.R. § 195.450 (definition of high consequence area includes high population areas, i.e., urbanized areas, or other areas with concentrated populations); 49 C.F.R. § 195.452 (Pipeline integrity management in high consequence areas); 49 C.F.R. § 195.452(i)(1) (requirements for operator "to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area.)

51. The Commission generally and with few exceptions lacks jurisdiction over the siting and location of public utilities, including pipelines and related equipment, such as valve stations. *See West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018).

52. Pipeline siting is the subject of a current proposed rulemaking pending before the Commission, which seeks comments from hazardous liquids public utilities and the public on amendments and enhancements to Chapter 59 of the Commission’s regulations to “more comprehensively regulate the design, construction, operations and maintenance of public utilities transporting petroleum products and other hazardous liquids under the commission of the Jurisdiction.” *Advanced Notice of Proposed Rulemaking Order Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267, Order at 4 (June 13, 2019).

53. Complainants have failed to satisfy their burden of demonstrating that the location of the Mariner East valve sites at or near Duffer’s Tavern and Andover homes in Glen Mills and the valve located at Dorlan Mill Road, did not meet all state and federal regulatory requirements, or otherwise present a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order. 49 CFR Parts 195.258 (valves: general) and 195.260 (valves: location).

54. Complainants have not met their burden of proving that any incident that occurred during the construction of the Mariner East 2/2X is a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

55. The Commission does not enforce compliance with environmental construction laws, as the General Assembly has delegated that authority to the Pennsylvania Department of Environmental Protection (PADEP), the agency with expertise and competency in environmental matters within the Commonwealth. “As a creature of legislation, the Commission possesses only the authority the state legislature has specifically

granted to it in the Code.” *Pickford v. Pa. Pub. Util. Comm’n*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010).

56. The Commission does not have authority commensurate with PADEP over issues relating to inadvertent returns of drilling mud, earth features, or alleged water supply impacts that may occur during the construction of the Mariner East 2/2X pipelines – issues that are each encompassed in SPLP’s PADEP-issued permits for the project. *See Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169 at 8-9 (Initial Decision Dec. 8, 2020) (exceptions filed 12/28/20).

57. The Commission does not permit or regulate the environmental permitting process for SPLP’s construction. Those permits are sought, obtained, modified, and enforced by PADEP. *Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169 at 11 (Initial Decision Dec. 8, 2020) (exceptions filed 12/28/20).

58. Complainants have not met their burden of demonstrating that the seep at Shoen Road during the construction of Mariner East 2 and 2X is a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

59. Complainants have not satisfied their burden of proving that inadvertent returns of drilling mud are a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

60. The alleged issues with Complainant Rosemary Fuller’s water well are within the jurisdiction of PADEP, which held SPLP offered a reasonable accommodation, and relate to private property claims that the Commission cannot address with any relief in this action. *Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169 (Initial Decision Dec. 8, 2020) (exceptions filed 12/28/20).

61. Complainant Rosemary Fuller has not satisfied her burden of proving that her water well concerns or concerns with the use of bentonite products in the HDD

process in general, violates of any law or regulation over which the Commission has jurisdiction or any Commission Order as bentonite is safe and appropriate for HDD construction, approved by PADEP and other federal and international certifying entities and agencies, and poses no human health risk. 66 Pa. C.S. § 1501.

62. SPLP is a Commission-certificated public utility transporting or conveying, *inter alia*, butane, propane, and ethane for interstate and intrastate use under the Commission's governing statutes. See 66 Pa. C.S. § 102 - Definitions ("Public Utility (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: ... (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.").

63. The Commission, by approving the transfer of assets and a Certificate of Public Convenience at A-140001 and later issuing SPLP another Certificate of Public Convenience for Washington County at A-2014-2425633, held that SPLP's public utility service of transporting petroleum and refined petroleum products is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a).

64. Restricting SPLP's public utility service comes at a significant economic cost to the public interest. *Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm'n for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281, Order at 10 (Order entered May 3, 2018).

65. Shutting down or restricting transport of HVLs on the ME1 and the 12-inch workaround pipeline that is part of ME 2 would cause significant economic harm to Range Resources (a primary shipper/customer), SPLP and the International Brotherhood of Electrical Workers (IBEW) and other contractors/subcontractors working on the Mariner East Project and the Marcus Hook Facility. *Flynn v. Sunoco Pipeline, L.P.*, Docket No. P-2018-3006117, Order Denying Petition for Emergency Interim Relief and Certifying Material

Question at 15 (Order entered December 11, 2018) (affirmed by Commission Opinion and Order February 1, 2019).

66. The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)).

67. A party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *Allen v. Colautti*, 417 A.2d 1303, 1307 (Pa. Cmwlth. 1980).

68. The Complainants and aligned Intervenors have failed to show they will suffer irreparable injury if SPLP’s certificate of public convenience at A-140001 is not amended such that authority to transport petroleum products through Delaware and Chester Counties is revoked.

69. Complainants’ and aligned Intervenors’ *prima facie* showing of unrefuted evidence that ME1 and the 12-inch workaround pipelines are not buried under the required depth of cover (*i.e.*, 48 inches of cover when closer than 50 feet from dwellings) and are closer than 12 inches from other pipeline structures underground in violation of federal regulations 49 CFR Parts 195.210 and 195.243 and 195.250 is sufficient for the Commission to assess a civil penalty and direct a depth of cover survey be completed, compliance filings be made to the Commission, with copies sent to the Bureau of Technical Utility Services and Bureau of Investigation and Enforcement for review over the next three years on an annual basis.

70. As long as Sunoco Pipeline, L.P. files compliance filings offering justifications and corrective action plans to mitigate shallow or exposed pipe, insufficiently spaced pipe, and to provide adequate corrosion control and is timely remediating lack of cover

and distance between pipelines, it should be given leave to continue operations on the ME1, 8-inch and 12-inch pipelines for the transport of HVLs.

71. Sunoco Pipeline, L.P. should be assessed a civil penalty of \$2,000 for having violated regulations: 49 CFR 195.440; 49 CFR 195.210; 195.248; 66 Pa. C.S. § 3301(c); 49 U.S.C.A. § 60118(a); 52 Pa.Code § 69.1201; 66 Pa.C.S. § 1501 and 52 Pa.Code § 59.33.

VIII. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Second Amended Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines against Sunoco Pipeline, L.P. at Docket No. C-2018-3006116 filed on June 18, 2018, is granted in part and denied in part.

2. That the Complaint of Andover Homeowners' Association against Sunoco Pipeline, L.P. at Docket No. C-2018-3003605 filed on July 24, 2018, is granted in part and denied in part.

3. That the Complaint of Melissa DiBernardino against Sunoco Pipeline, L.P. at Docket No. C-2018-3005025 filed on October 1, 2018, is granted in part and denied in part.

4. That the Complainant of Rebecca Britton against Sunoco Pipeline, L.P. at Docket No. C-2018-3006898 filed on December 27, 2018, is granted in part and denied in part.

5. That the Complaint of Laura Obenski against Sunoco Pipeline, L.P. at Docket No. C-2018-3006905 filed on January 2, 2019, is granted in part and denied in part.

6. That within thirty (30) days of the date of entry of a Final Order, Sunoco Pipeline, L.P. shall pay a civil penalty in the amount of \$2,000 by certified check or money order made payable to “Commonwealth of Pennsylvania” and sent addressed as follows:

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

7. That Sunoco Pipeline, L.P. is directed to supplement the material content of its public awareness safety pamphlets in Delaware and Chester Counties to include information regarding potential adverse consequences of the hazards associated with a release of highly volatile liquids from its pipeline facilities, including but not limited to incorporating the following terms in its materials: property damage, personal injury, burns, asphyxiation, and death (or fatality).

8. That Sunoco Pipeline, L.P. is directed to supplement the material content of its public official and emergency responder safety pamphlets in Delaware and Chester Counties to include information regarding potential adverse consequences of the hazards associated with a release of highly volatile liquids from its pipeline facilities, including but not limited to the use of the following terms in its materials: property damage, personal injury, burns, asphyxiation, and death (or fatality).

9. That Complainants’ and their aligned-Intervenors’ requests for directives regarding additional information in Sunoco Pipeline, L.P.’s mailers pertaining to new evacuation procedures are denied but referred to the Commission’s Rulemaking Proceeding at L-2019-3010267.

10. That Complainants' and their aligned-Intervenors' requests for directives mandating the adding of a sulfur-based odorant and dye to the products transported in the Mariner East pipelines are denied in this proceeding but also referred to the Commission's Rulemaking Proceeding at L-2019-3010267.

11. That Complainants' and their aligned-Intervenors' requests for directives mandating Sunoco Pipeline, L.P install a mass warning system with intrinsically safe (i.e. certified not to create a spark) warning devices, along the Mariner East pipeline right of way which would audibly notify the public of a leak, emergency, or potential danger along the pipelines in Delaware and Chester Counties are denied but referred to the Commission's Rulemaking Proceeding at L-2019-3010267.

12. That Andover Homeowners' Association's request that the communication buffer of public mailers be expanded to a minimum distance of 2,800 feet from the center line of Mariner East's operational pipelines is denied as moot but referred to the Commission's Rulemaking Proceeding at L-2019-3010267.

13. That pursuant to any non-disclosure agreements Sunoco Pipeline, L.P. deems necessary to protect its confidential security information, Sunoco Pipeline, L.P. is directed to share the results of any geophysical test reports, inspection and evaluation reports assessing the condition of its pipelines located in East Goshen Township or Middletown Township to Township Supervisors or their designee engineering consultants at least on an annual basis and more frequently while construction is ongoing.

14. That Sunoco Pipeline, L.P. shall supplement its controller's emergency contact list for the Counties of Delaware and Chester such that if a telephone call/text or email notification is warranted to the Lead Emergency Responder for the Counties due to possible leak or rupture on its pipeline facilities in these Counties, so too will the police departments of municipalities and designees of school districts be directly notified by the operator, its controller, or other operator designee/county liaison. In Delaware County, additional emergency contact phone numbers/email addresses shall include the Principal of Glenwood Elementary.

15. That Sunoco Pipeline, L.P. is directed to give advance-notification prior to proposed excavation on the pipeline system in all municipalities of Delaware and Chester Counties to both the municipality directly affected as well as the county of the municipality and their specific emergency contact designees.

16. That Sunoco is directed to contact Chester County Commissioners, Delaware County Commissioners and all municipalities' supervisors therein within thirty (30) days of the date of entry of a Final Order in this consolidated proceeding to arrange for meeting(s) (either remotely or in-person or a combination thereof as mutually agreeable) to:

- a) establish emergency contact list information for the operator's controller and county liaison(s);
- b) disclose to Middletown Township, Delaware County, and Chester County any damage or potential damage to their respective facilities or properties resulting from the operation of the pipelines;
- c) assist with the establishment of emergency plans for first responders in the event of a leak, release, explosion, or other failure of the pipeline system and the communication of all information required under state and federal law to enable Middletown, Delaware County, and Chester County to prepare such emergency plans;
- d) inform and educate Middletown and Delaware County officials and staff on proper and effective disaster prevention and disaster response, including participation in "tabletop" activities and/or "boots on ground" exercises as referenced by Sunoco in its letter dated August 13, 2020 and admitted as exhibit SPLP-50 and as requested by Complainants and their aligned Intervenor;
- e) develop standard notification templates for public warning systems to be used during a pipeline emergency and develop emergency classification levels (i.e. a small leak release versus a rupture event) which are specifically designed to make the public aware of the situation;
- f) provide detailed information regarding its infrastructure;
- g) assist in the development of an evacuation plan for use by municipalities with concept of how evacuation would occur;
- h) create a public outreach and public education program;

- i) introduce to the operator's designated County liaison(s) a tour of the area surrounding the pipeline facilities such that the liaison(s) may be made aware of the geology, terrain and location of schools, libraries, retirement and apartment housing as well as train tracks, roadways, recreational parks, housing developments such that the liaison may provide local emergency planning assistance to local emergency management partners that could consist of dedicated employee(s) and or funding to support additional employees;
- j) notify not only the County but all municipalities in Delaware or Chester County of anticipated, scheduled or commenced work done in those counties;
- k) notify County officials, in advance, of any pipeline activity, such as simulations, testing, routine maintenance, repairs etc.;
- l) subject to a nondisclosure agreement, share with Chester County's Department of Emergency Services maps of all transmission lines listing material moved, pipeline diameter, mainline valve locations and maximum operating pressures (MOP), and maximum allowable operating pressure (MAOP) and information about the location of any anomalies that merit pressure reduction in the pipeline and the presence of "immediate," "60-day" or "180-day" repair conditions for liquid pipelines or "immediate" or "one- year" repair conditions for gas pipelines; and
- m) establish times and dates for follow-up meetings and periodic meeting schedules as mutually agreeable between municipalities, counties and Sunoco Pipeline, L.P.

17. That Sunoco Pipeline, L.P. is directed to contact the West Chester Area School District, Twin Valley School District, Downingtown Area School District, and Rose Tree Media School District, within thirty (30) days of the date of entry of a Final Order for the purpose of scheduling public awareness/education meetings to be held in each School District.

18. That absent exigent circumstances, Sunoco Pipeline, L.P. is directed to appear at the scheduled meetings referenced in Ordering Paragraph Nos. 15 and 16, and discuss additional communications and training (including establishment of procedures for immediate, direct notifications to municipalities and school districts of any leak or breach of the Mariner East Pipelines) and that Sunoco is directed to provide such training as reasonably requested by those parties and institute such emergency notification procedures.

19. That within one hundred twenty (120) days of the Final Order in this proceeding, Sunoco Pipeline, L.P. shall file with the Commission with a copy to the Bureau of Technical Utility Services for review a written plan to enhance its public awareness and emergency notification plans, including but not limited to addressing: a) direct notifications to municipalities, counties, and School Districts in high consequence areas of any leak, breach or other pipeline emergency; b) supplemental program enhancements to emergency training programs; c) plan to internal or external audits to evaluate the effectiveness of its programs; and d) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits, and that a copy of the plan shall be served upon the Commission's Bureau of Technical Utility Services and Bureau of Investigation and Enforcement.

20. That absent action by the Commission within ninety (90) days of the filing of the enhanced public awareness plan to the Commission as required in Ordering Paragraph No. 19, the plan will be deemed accepted and approved.

21. That Sunoco Pipeline, L.P. is directed to at minimum complete or plan to complete in a timely manner a comprehensive review of its public awareness program through either an internal self-assessment using an internal working group or through third-party auditors where the evaluation is undertaken by a third-party engaged at the operator's cost, and that within six (6) months from the date of entry of a final order Sunoco Pipeline, L.P. shall file with the Commission a copy of the completed review, or if the review is not completed a status update on the review, with copies served upon the Commission's Bureau of Technical Utility Services and Bureau of Investigation and Enforcement.

22. That Sunoco Pipeline, L.P. is directed to conduct a depth of cover and distance between other underground pipelines/structures survey regarding ME1 and the 12-inch workaround pipelines as long as they are purposed for carrying highly volatile liquids a/k/a natural gas liquids.

23. That Sunoco Pipeline, L.P. is directed to bury its Mariner East 1 and 12-inch pipelines as long as these pipelines are transporting HVLs such that they are at least 12

inches apart from other underground pipes or structures unless the operator can show it is providing adequate corrosion control in these areas where the pipes are less than 12 inches apart.

24. That within one hundred twenty (120) days of the date of entry of a final order Sunoco Pipeline, L.P. shall file a report with the Commission certifying whether Mariner East 1 and the 12-inch workaround pipelines that are transporting highly volatile liquids within Chester and Delaware Counties are buried so that they are below the level of cultivation and so the cover between top of pipe and ground level, road bed, river bottom or underwater natural bottom is in compliance with minimum regulatory requirements and the distance between pipeline exteriors and the exteriors of other underground pipelines/utility structures are at least 12-inches apart unless adequate corrosive control action can be shown, and that a copy of the report be served upon the Commission's Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement.

25. That the report as described in Ordering Paragraph No. 24 shall contain a corrective action plan regarding any areas of operating pipelines (including Mariner East 1, 8-inch pipeline, and the 12-inch workaround pipelines) carrying highly volatile liquids in Delaware and Chester Counties in need of remediation where there is lack of required cover and/or proper distance between other structures/pipelines in order to bring these pipelines up to federal minimum codified requirements.

26. That the report in Ordering Paragraph No. 24 shall be filed annually for a period of three (3) years.

27. That Flynn Complainants' request in Count 4 of their Complaint of a Commission-directed remaining life study of Mariner East 1 is deemed withdrawn and denied as moot.

28. That Complainants' and Aligned Intervenors' request for a Commission-directed remaining life study of the 12-inch workaround pipeline is denied.

29. That Complainant Obenski's and Aligned Intervenors' request that the Commission direct Sunoco Pipeline, L.P. relocate a valve station currently on Dorlan Mill Road near Glenwood Elementary School is denied.

30. That Complainants' and aligned Intervenors' requested relief for an early public audible warning alarm system for residents and places of congregation along the rights of way (ROW) of the Mariner East pipeline facilities and a directive that an odorant be added to the highly volatile liquids (HVLs) of ethane, butane, and propane being transported is denied.

31. That Complainants' and Aligned Intervenors' requests that the Commission amend Sunoco Pipeline, L.P.'s certificate of public convenience at A-140001, currently authorizing the operator the right to offer, render, furnish or supply intrastate petroleum and refined petroleum products pipeline service to the public, such that the operator's authority is restricted from providing transportation service of natural gas liquids, or any mixture thereof, in Chester and Delaware Counties is denied.

32. That as long Sunoco Pipeline, L.P. is working towards compliance and remediating lack of cover situations under Commission-observation, it may continue to operate the 8-inch and 12-inch pipelines for the transport of HVLs.

33. That a copy of this decision shall be served upon the Commission's Bureau of Investigation and Enforcement, Bureau of Technical Utility Services, and Law Bureau.

34. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with these Ordering Paragraphs.

35. That upon payment of the civil penalty in Ordering Paragraph No. 6 and the compliance filings in Ordering Paragraph No. 18-26, Docket Nos. C-2018-3006116, P-2018-306117, C-2018-3003605, C-2018-3005025, C-2018-3006898, and C-2018-3006905 shall be marked closed.

Date: April 9, 2021

/s/
Elizabeth H. Barnes
Administrative Law Judge

ATTACHMENT A - ACRONYM GLOSSARY

12-inch	The twelve-inch diameter 1930's workaround pipeline utilized as part of ME2
ALJ	Administrative Law Judge
Andover HOA	Andover Homeowners Association, Inc.
API	American Petroleum Institute
API RP 1162	American Petroleum Institute Recommended Practice 1162 (2003 First Edition)
<i>Baker Proceeding</i>	The Commission proceeding at Docket No. C-2018-3004294, initiated by Complaint by Mr. Wilmer Baker, and resulting in a Commission final order entered 9/23/20.
BI&E	The Commission's Bureau of Investigation and Enforcement
BPD	Barrels per day
CAC	Clean Air Council
CIPS or CIS	Close Interval Potential Survey
Complainants	Flynn Complainants, Andover HOA, Rebecca Britton, Melissa DiBernardino, Laura Obenski
CoRE	Coordinated Response Exercise
CP	Cathodic Protection
CPC	Certificate of Public Convenience
CSI	Confidential Security Information
DEP or PADEP	Pennsylvania Department of Environmental Protection
DER	Department of Environmental Resources
EOP	Emergency Operations Plan
EPA	Environmental Protection Agency
Flynn Complainants	Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines
GPR	Ground penetrating radar
HCA	High Consequence Area
HDD	Horizontal Directional Drilling
HVL	Highly Volatile Liquids
IBEW	International Brotherhood of Electrical Workers
ILI	In-line Inspection
IR	Inadvertent Return
MASW	Multi-spectral analysis of surface waves
MFL	Magnetic Flux Leakage
ME1	Mariner East 1
ME2	Mariner East 2
ME2X	Mariner East 2X
MERO	Mariner Emergency Responder Outreach
MIC	Microbiologically Influenced Corrosion
MOP	Maximum Operating Pressure
MPC	Municipal Planning Code
NACE	National Association of Corrosion Engineers

NDA	Non-Disclosure Agreement
NGL	Natural Gas Liquids
NOPV	Notice of Probable Violation
PHMSA	Pipeline and Hazardous Materials Safety Administration
PUC or Commission	The Pennsylvania Public Utility Commission
Range Resources	Respondent aligned Intervenor Range Resources Appalachia
REI	Electrical resistivity imaging
ROW	Right of Way
SALDO	Subdivision and Land Development Ordinance
SCC	Stress Corrosion Cracking
SOP	Standard Operating Procedure
SPLP	Sunoco Pipeline L.P.