**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held November 18, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

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| --- | --- |
| Meghan FlynnRosemary FullerMichael WalshNancy HarkinsGerald McMullenCaroline HughesMelissa HainesAndover Homeowners AssociationMelissa DiBernadinoRebecca BrittomLaura Obenski v.Sunoco Pipeline, L.P. | C-2018-3006116P-2018-3006117C-2018-3003605C-2018-3005025C-2019-3006898C-2019-3006905 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions and Replies to Exceptions of various Parties to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Elizabeth H. Barnes issued April 12, 2021. Exceptions were filed by the following Parties: East Goshen Township (East Goshen) and Downingtown Area School District (Downingtown) on June 3, 2021; Sunoco Pipeline, L.P. (Sunoco or the Company) and Chester County on June 7, 2021;[[1]](#footnote-2) Melissa DiBernardino (Ms. DiBernardino) on June 8, 2021; and the Andover Homeowners’ Association, Inc. (Andover HOA) on June 14, 2021. Replies to Exceptions were filed by the following Parties: Downingtown, The Rose Tree Media School District (Rose Tree) and East Goshen on July 1, 2021; and Flynn Complainants,[[2]](#footnote-3) Sunoco, Range Resources – Appalachia, LLC (Range Resources) and Chester County on July 2, 2021. [[3]](#footnote-4)

On consideration of the Exceptions and Replies, we shall deny the Exceptions and adopt the Initial Decision, consistent with this Opinion and Order.

# Background

This matter is the consolidated Formal Complaints (Complaints) initiated by the Flynn Complainants as well as the Andover HOA. Melissa DiBernadino, Rebecca Brittom and Laura Obenski (collectively, Complainants for all of the consolidated complaints) against Sunoco in opposition to Sunoco’s installation and operation of the Mariner East Pipeline (ME1) transporting highly volatile liquids (HVL) and constructing Mariner East 2 (ME2) and Mariner East 2X (ME2X) of its Mariner East pipeline project in the Commonwealth, raising issues concerning, *inter alia*, the safety of the construction and location of Sunoco’s pipeline facilities, Sunoco’s pipeline integrity management, Sunoco’s public awareness and emergency responder training, and adverse economic impact due to the requested relief.

Generally, the Complainants and the aligned Intervenors, as set forth, *infra.*,[[4]](#footnote-5) opposing the operation and/or construction associated with Sunoco’s ME1, ME2 and ME2X, argue that the transport of hazardous HVLs presents an unacceptable risk to life and property in the Commonwealth. The Parties in opposition to the pipeline project ask the Commission to direct, *inter alia*, that Sunoco cease operation of its ME1 pipeline immediately and to prohibit operation of an ME2 and ME2X “workaround pipeline,” or in the alternative, ask that the Commission direct the Company to take certain action to protect public safety. In response to the opposition to ME1, ME2 and ME2X, Sunoco and the aligned Intervenors maintain that the Company takes the required minimum actions necessary for the safe construction and operation of the Mariner East pipeline project, and that the Commission should direct no further action by Sunoco.

The ALJ’s Initial Decision declined to direct that Sunoco cease operation of the ME1 pipeline project within the Commonwealth, however, pursuant to the utility’s duty to provide adequate, safe and reasonable service and facilities under Section 1501 of the Public Utility Code (Code), directed that Sunoco take certain reasonable actions to protect public safety, regarding the construction and operation of ME1, ME2, and ME2X.

# History of the Proceeding

## Flynn Complainants’ Petition for Interim Emergency Relief and Second Amended Complaint

On November 19, 2018, the Flynn Complainants filed a Petition for Interim Emergency Relief at Docket No. P-2018-3006117, concurrently with a Complaint at Docket No. C‑2018-3006116, against Sunoco. On November 26, 2018, the Andover HOA filed a petition to intervene to be aligned with the Flynn Complainants. On November 29, 2018, Sunoco filed an Answer Opposing the Intervention of the Andover HOA and Range Resources petitioned to intervene that aligned with Sunoco on November 27, 2019. Emergency hearings were held as scheduled on November 29 and 30, 2018. At the November 29, 2018 hearing, the Andover HOA and Range Resources were granted intervenor status, and the Petition docket was also consolidated with the consolidated Complaints of the Flynn Complaints.

On December 11, 2018, ALJ Barnes issued an Order Denying the Flynn Complainants’ Petition for Emergency Interim Relief and certified the denial of the relief requested to the Commission as a material question requiring interlocutory review. On December 20, 2018, the Commission issued an order extending the time for consideration of the material question to the January 17, 2019 Public Meeting. On February 1, 2019, the Commission entered an Opinion and Order affirming the denial of interim emergency relief and returning the matter for disposition.

On December 11, 2018, Sunoco filed an Answer and New Matter as well as Preliminary Objections to the consolidated Complaints of the Flynn Complainants. On December 21, 2018, the Flynn Complainants filed their First Amended Complaint. On January 7, 2019, Sunoco filed an Answer and New Matter to the Flynn Complainants’ First Amended Complaint. On January 10, 2019, Sunoco filed Preliminary Objections to the Flynn Complainants’ First Amended Complaint. On January 18, 2019, the Flynn Complainants filed a Reply to New Matter and Response in Opposition to Preliminary Objections. By Order entered March 12, 2019 (Second Interim Order), Sunoco’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 (I&E) Complaint against Sunoco at Docket No. C-2018-3006534.

On March 22, 2019, the Flynn Complainants filed a Motion for Reconsideration of Second Interim Order seeking to be allowed to include the allegations of the I&E Complaint at Docket No. C-2018-3006534 in their First Amended Complaint. On April 15, 2019, Sunoco filed an Answer Opposing Complainants’ Motion for Reconsideration of Second Interim Order. On April 17, 2019, the Flynn Complainants filed a Reply Memo in Further Support of their Motion for Reconsideration. On May 16, 2019, Sunoco filed a Motion to Strike Filings Disallowed pursuant to the Commission’s Rules of Practice and Procedure. On May 30, 2019, the Flynn Complainants filed an Answer to Sunoco’s Motion to Strike Filings. By Order dated June 6, 2019, the Flynn Complainants’ Motion for Reconsideration of Second Interim Order was granted, in part, and denied, in part. Specifically, the Flynn Complainants were precluded from including the allegations of the I&E Complaint at Docket No. C‑2018-3006534 in their First Amended Complaint but were granted leave to file a Second Amended Complaint.

On June 18, 2019, the Flynn Complainants filed a Second Amended Complaint that included, notwithstanding the directive in the Second Interim Order, the allegations of the I&E Complaint at Docket No. C-2018-3006534. On July 9, 2019, Sunoco filed an Answer and New Matter and Preliminary Objections to the Second Amended Complaint. On July 10, 2019, the Flynn Complainants filed a Reply to New Matter, and on July 15, 2019, they filed a Response to Preliminary Objections. By Order dated July 31, 2019, Sunoco’s Preliminary Objections to the Second Amended Complaint were granted and Paragraphs 67-93 of the Second Amended Complaint containing the allegations of the I&E Complaint at Docket No. C-2018-3006534 were stricken.

As previously noted, both Range Resources and the Andover HOA were granted intervention in the Flynn Complaint proceeding by intervening in the consolidated Petition for Interim Emergency Relief proceeding. In addition, Downingtown, Rose Tree, Twin Valley School District (TVSD), East Goshen, West Whiteland Township (West Whiteland), Uwchlan Township, Middletown Township (Middletown), Delaware County, West Chester Area School District (WCSD), Thornbury Township, Chester County, Edgmont Township, and Senator Thomas Killion[[5]](#footnote-6) also each filed Petitions to Intervene in that proceeding, and Sunoco filed timely responses to each of the Petitions.

On March 12, 2019, the Second Interim Order granted intervenor status to Downingtown, Rose Tree, Twin Valley, East Goshen, West Whiteland, Uwchlan , Middletown Township, and Delaware County. The June 6, 2019 Procedural Order granted Senator Killion’s intervention in his personal capacity. The June 6, 2019 Procedural Order also granted intervenor status to Thornbury Township, Chester County, Edgmont Township, and WCSD.

## DiBernardino Complaint

On September 28, 2018, Melissa DiBernardino (Ms. DiBernardino, or DiBernardino) filed a Complaint against Sunoco at Docket No. C-2018-3005025 (DiBernardino Complaint). On December 3, 2018, Sunoco filed Preliminary Objections and an Answer and New Matter. On December 18, 2018, Ms. DiBernardino filed an Answer to Preliminary Objections. By Order dated December 21, 2018, Sunoco’s Preliminary Objections were granted, in part, and denied, in part.

On December 19, 2019, Thomas Casey filed a Petition to Intervene in the DiBernardino Complaint proceeding. 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, both individuals were granted intervenor status.

## Britton Complaint

On January 2, 2019, Rebecca Britton (Ms. Britton, or Britton) filed a Complaint against Sunoco at Docket No. C-2019-3006898 (Britton Complaint). On January 24, 2019, Sunoco filed Preliminary Objections and an Answer and New Matter. Sunoco’s Preliminary Objections were denied by Order dated March 15, 2019.

On February 8, 2019, Josh Maxwell (Mr. Maxwell or Maxwell) filed a Petition to Intervene in the Britton Complaint proceeding. Mr. Maxwell was granted intervenor status by Order dated March 15, 2019, at Docket No. C-2019-3006898. However, by Order dated September 25, 2020, Mr. Maxwell’s intervention was rescinded, and his name was 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.

## Obenski Complaint

On January 2, 2019, Laura Obenski (Ms. Obenski or Obenski) filed a Complaint against Sunoco at Docket No. C-2019-3006905 (Obenski Complaint). Sunoco filed Preliminary Objections and an Answer and New Matter on January 24, 2019. By Order dated March 15, 2019, Sunoco’s Preliminary Objections were denied.

## Andover Homeowners’ Association, Inc. Complaint

On July 24, 2018, the Andover HOA filed a Complaint against Sunoco at Docket No. C-2018-3003605 (Andover HOA Complaint). On August 22, 2018, Sunoco filed Preliminary Objections and an Answer and New Matter to the Andover HOA Complaint. On September 10, 2018, the Andover HOA filed a Reply to Answer and New Matter and Preliminary Objections to Sunoco’s Answer. On September 17, 2018, the Andover HOA filed an Answer to Preliminary Objections.

The Andover HOA Complaint was consolidated with Pennsylvania State Senator Andrew E. Dinniman’s Complaint and Petition proceedings against Sunoco at Docket Nos. C-2018-3001451 and P-2018-3001453, respectively, (collectively, *Dinniman Proceeding*). The *Dinniman Proceeding* was stayed as directed by the Pennsylvania Commonwealth Court at *Sunoco Pipeline L.P. v. Pa. State Senator Andrew E. Dinniman and Pa. 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 DinnimanComplaint 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, Sunoco’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.

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. On October 9, 2019, Sunoco filed an Answer opposing the Petitions to Intervene. By Order dated October 21, 2019, the Petitions to Intervene of Ms. Fuller, Ms. DiBernardino and East Goshen were denied as moot due to the consolidation of complaints listed below, while the Petition to Intervene of the Clean Air Council was granted.

## Consolidation of Complaints

The June 6, 2019 Procedural Order granted consolidation of the Complaints of Ms.Obenski, Ms. Britton and Ms. DiBernardino, with the Flynn Complainants at Docket No. C-2018-3006116. By Order dated October 21, 2019, the Andover HOA Complaint was also consolidated with the complaint proceeding at Docket No. C‑2018‑3006116.

On November 27, 2018, Sunoco moved for a Protective Order, which was granted by Order dated November 28, 2018. On April 17, 2019, Sunoco 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, the Flynn Complainants and Sunoco entered into a Joint Stipulation to the Amended Protective Order, which was admitted into the record by Order dated January 2, 2020.

## Procedural Schedule and Evidentiary Hearings

Procedural schedules were issued for the consolidated proceeding at Docket No. C-2018-3006116.

The in-person hearings for lay witnesses took place on October 23, 24, and November 20, 2019.

The Complainants and aligned Intervenors served written direct testimony on or about January 15, 2020, consistent with the Joint Stipulation of Record.

## Protective Order and Joint Stipulation

 On March 18, 2020, Sunoco filed a Partially Unopposed Motion to Stay Proceedings and Request for Expedited Response and Ruling for a sixty-day stay of proceedings due to the COVID-19 pandemic, which motion was granted by Order dated March 26, 2020. The March 26, 2020 Order also suspended the prior procedural schedule for sixty days and required Sunoco to confer with the Parties within thirty days and submit a status report that included a proposed revised procedural schedule. On April 28, 2020, Sunoco submitted the required status report containing a proposed, revised procedural schedule to which no party objected. By Order dated May 28, 2020, the revised procedural schedule was adopted. The Parties complied with the procedural schedule as set forth in the May 28, 2020 Order and the hearings took place as scheduled.

Evidentiary hearings were held on September 29, 2020, through October 9, 2020, and October 13-14, 2020, as previously scheduled. All of the Parties appeared and several witnesses testified. On September 28, 2020, Sunoco filed its Answer Opposing Flynn Complainants’ Motion to Submit Additional Evidence. The Motion was granted at hearing and Sunoco was given until October 28, 2020, to submit responsive evidence, by a Briefing Order dated October 23, 2020. Sunoco filed its responsive evidence on October 28, 2020, as Sunoco Exhibit No. 53. By Order dated November 16, 2020, the responsive evidence was admitted into the record and the evidentiary record closed on November 16, 2020.

## Motions for Partial Summary Judgement, Motions in Limine, and Motion to Submit Additional Evidence

On July 28, 2020, Sunoco filed a Motion for Partial Summary Judgment Regarding Integrity Management, Corrosion Control and Cathodic Protection. On July 28, 2020, Sunoco also filed a Motion for Partial Summary Judgment Regarding Consequence Without Probability. The Flynn Complainants, the Andover HOA, and the Complainants Britton, DiBernardino, and Obenski filed Answers in response to these motions.

Subsequently, on August 21, 2020, Sunoco filed two Motions for Leave to Reply to Answers to its Motions for Partial Summary Judgment. The Flynn Complainants filed responses to Sunoco’s two motions on August 26, 2020. On August 27, 2020, the Flynn Complainants filed a Motion for Partial Summary Judgment. On September 1, 2020, the Flynn Complainants filed an Amended Motion for Partial Summary Judgment. On September 16, 2020, Sunoco filed an Answer to the Flynn Complainants’ Amended Motion for Partial Summary Judgment. On the same date, Sunoco filed a Motion in Limine to Narrow Issues. On September 22, 2020, the Flynn Complainants filed a Motion to Submit Additional Evidence. On September 23, 2020, the Flynn Complainants filed an Answer to Sunoco’s Motion in Limine, and the next day they filed a Reply to Sunoco’s Answer to Motion for Partial Summary Judgment.

By Order dated September 25, 2020, “all motions for partial summary judgment were denied; Sunoco’s Motion in Limine to Limit Testimony of Rosemary Fuller was denied; the Flynn Complainants’ Motion for Finding of Spoliation was deemed withdrawn and Sunoco’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.”

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

### ALJ’s Initial Decision

On April 12, 2021, ALJ Barnes issued her Initial Decision, declining to direct that Sunoco cease construction and operation of the Mariner East project within the Commonwealth, however, ALJ Barnes directed that the Company take certain actions to ensure public safety in the construction and operation of the Mariner East Pipeline project.

### Extension of Time to File Exceptions

By Secretarial Letter issued April 23, 2021, the Parties’ joint request for an extension of time to file Exceptions and Replies to Exceptions was granted, wherein, the Flynn Complainants were granted sixty days for Exceptions and thirty days for Replies to Exceptions, and all other Parties were granted fifty-five days for Exceptions and twenty-five days for Replies to Exceptions.

### Exceptions and Replies

Exceptions were filed by East Goshen and Downingtown on June 3, 2021, by Chester, Uwchlan (joining and adopting the Exceptions of Chester County), and Sunoco on June 7, 2021, by Ms. DiBernardino on June 8, 2021, and by the Andover HOA on June 14, 2021.

Replies to Exceptions were filed by: Downingtown, Rose Tree, Media and East Goshen School Districts, on July 1, 2021; the Flynn Complainants on July 2, 2021; Sunoco on July 2, 2021; Range Resources, July 2, 2021; Chester County, July 2, 2021; and Uwchlan (joining and adopting the Reply Exceptions of Chester) on July 2, 2021.

# DISCUSSION

## A. Legal Standards

**1. Burden of Proof**

In the present proceeding, the Commission’s jurisdiction over the Parties is established under Section 701 of the Code which authorizes any person, corporation or municipal corporation to file a written complaint regarding any act by a public utility in violation of the Code. 66 Pa. C.S. § 701. As Sunoco is a certificated public utility pursuant to 66 Pa. C.S. § 102 (providing that a “public utility” includes an entity providing intrastate transmission services of petroleum refined products and HVLs for shipper(s) to points within the state), the Complainants in the instant case are authorized to file the formal complaints regarding acts of Sunoco alleged to be in violation of the Code and Commission 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).

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015; Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See Id*. It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See* *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant’s claim. *See Milkie*,768 A.2d at 1220.

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See* *Milkie*,768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also*, *Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore.* In determining whether a complainant has met the burden of persuasion, the factfinder[[6]](#footnote-7) may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*,citing *Suber v. Pa. Comm’n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005), *appeal denied*, 586 Pa. 776, 895 A.2d 1264 (2006).

At the hearing, a complainant may prove his/her claim through the complainant’s own personal testimony and/or “the testimony of others as well as other evidence that goes to that issue.” *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

**2. Section 501**

The Commission’s general power to regulate and oversee the operations of public utilities, including Sunoco, are set forth in 66 Pa. C.S. § 501, which provides in pertinent part:

1. 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.

1. 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. . . .

1. 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 Sunoco and to create or amend regulations.

 **3. Section 101**

The Commission’s authority extends only to those matters that the state legislature has specifically delegated to it in the Code. 66 Pa. C.S. § 101 *et seq.* Therefore, the Commission generally lacks jurisdiction to adjudicate claims regarding violations of Municipal law or environmental regulations that are beyond the scope of the Code or a Commission order or Regulation. *Rovin, D.D.S. v. Pa. PUC*, 502 A.2d 785 (Pa. Cmwlth. 1986) (*Rovin*) and *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995) (*Country Place*). 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 such as the quality or purity of water, did not fall under the Commission’s jurisdiction to regulate the quality or character of water service provided by a public utility per the meaning of 66 Pa. C.S. § 1501.

**4. Section 1501 of Title 66 and Section 59.33 of Title 52**

The duties of a public utility, including Sunoco, are established pursuant to Section 1501 of the Code, which provides that a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See,* 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

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.

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.

Specifically pertaining to Sunoco’s operation, 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. 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). Further, 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, 52 Pa. Code § 59.33(b) provides the following:

(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. §§ 6010160503 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. §§ 60101-60503 and as implemented at 49 C.F.R. 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 Envtl. 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).

 **5. Limits to an Agency’s Authority**

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. Envtl. 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).

**6. 49 U.S.C. § 60102(a)(1) and The Pipeline Safety Act - Part 195 of the Code of Federal Regulations**

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. § 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. § 60102(a)(2)(emphasis added). Part 195 of the Code of Federal Regulations 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:

1. 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)
2. 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.
3. 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.
4. 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 . . .

1. The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.
2. 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.
3. 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 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 CFR Part 195 and the Commission’s Regulation at 52 Pa. Code § 59.33(b), are applicable to the ME1, ME2, twelve-inch workaround pipeline, and will apply to the ME2X when completed and operable even though some of ME1 and the twelve-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.

49 C.F.R. § 195.303(d). Also, an operator must establish the maximum operating pressure under Part 195.406(a)(5). 49 C.F.R. § 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. 49 C.F.R. § 195.114 (a),(b).

ME1, originally built in 1931, is not an existing pipeline within the meaning of 49 U.S.C. § 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 C.F.R. § 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 C.F.R. 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 (Order entered September 23, 2020) (*Baker*).

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. [[7]](#footnote-8)

**7. Pennsylvania’s Hazardous Material Emergency Planning and Response Act**

Pennsylvania’s 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.[[8]](#footnote-9)

 **8. Construction Related to Public Utilities**

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 and management decisions are generally vested in the corporation, not the Commission. *Pa. R.R. Co. v. Pa. PUC****,*** 146 A.2d 352 (Pa. Super. 1958), v*acated*, 396 Pa. 34, 152 A.2d 422 (1959).

 **9. Department of Environmental Protection**

The Pennsylvania Department of Environmental Protection (DEP) reviews a pipeline operator’s construction permits to protect waterways, 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.

 **10. Financial/technical, Need and Tariff Rates**

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 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/public rights-of-ways (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 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). *See*, e.g., *W. Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, at 10-11 (Order entered October 1, 2018) (Commission exercise of its authority to interpret and rule upon the terms of an agreement between the municipality and a pipeline operator, pertaining to siting of the operators’ facilities and imprint in the township within which it operates).

The 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 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.

**11. Gas and Hazardous Liquids Pipelines Act (Pipeline Act or Act 127)**

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 Sunoco’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 Code. *W. Penn Power v. Pa. PUC*, 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. PUC*, 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 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) (*Delaware Riverkeeper*), 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).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

## B. ALJ’s Initial Decision

In the Initial Decision, ALJ Barnes made three hundred and eighty-two Findings of Fact (FOF) and reached seventy-one Conclusions of Law (COL). I.D. at 15‑69, 184-197. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly, or by necessary implication rejected or modified, by this Opinion and Order.[[9]](#footnote-10)

ALJ Barnes granted, in part, and denied, in part, the consolidated Complaints filed against Sunoco by the Andover HOA and the several individuals residing in close proximity to the hazardous liquids pipelines. Specifically, the Initial Decision directed Sunoco 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 HVLs 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 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 Sunoco, its controller, or other operator designee/county liaison. The ALJ further directed that: (1) in Delaware County, additional emergency contact phone numbers/email addresses shall include the Principal of Glenwood Elementary; and (2) 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 Sunoco. I.D. at 1 & 199 (Ordering Paragraph No. 14).

The ALJ also denied the Andover HOA’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 as moot because Sunoco and its parent company in 2019 had already expanded their buffer beyond 2,800 feet and they intended to continue using the new buffer distance going forward. The Initial Decision referred this issue to the Commission’s Rulemaking Proceeding pending at Docket No. L‑2019‑3010267. I.D. at 1, 142 & 199 (Ordering Paragraph No. 12).

Pursuant to any non-disclosure agreements Sunoco deems necessary to protect its confidential security information, the ALJ directed Sunoco to share the results of any geophysical test reports, inspection and evaluation reports assessing the condition of its pipelines located in East Goshen or Middletown Township to Township Solicitors or their designated engineering consultants at least on an annual basis and more frequently while construction is ongoing along Sunoco’s right-of-way in these townships. I.D. at 1-2 & 199 (Ordering Paragraph No. 13).

The ALJ also directed that Sunoco 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 is the responsibility of the townships and counties to apprise Sunoco of their respective contact information and any changes to this information. I.D. at 2 & 200 (Ordering Paragraph No. 15).

Additionally, the ALJ directed Sunoco to contact the Delaware and Chester County Commissioners and all municipalities’ supervisors therein within thirty 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, among other things: (a) create a public outreach and education program; (b) develop evacuation plans; (c) provide notifications of any work or other pipeline activity to be initiated or done in the affected county; and (d) develop proper and effective disaster prevention and response programs and public warning systems. Similarly, Sunoco is directed to contact the WCSD, TVSD, Downingtown, and Rose Tree, within thirty 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. I.D. at 2 & 200-01 (Ordering Paragraph Nos. 16-17).

The ALJ also directed that, absent exigent circumstances, Sunoco is 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 to provide such training and institute such emergency notification procedures as reasonably requested. I.D. at 2 & 201 (Ordering Paragraph No. 18).

The ALJ further directed that, within 120 days of the entry of the Final Opinion and Order in this proceeding, Sunoco shall file for review with the Commission, with copies served on the Bureau of Technical Utility Services (TUS) and I&E, 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) 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 days of the enhanced public awareness plan’s submission to the Commission, the plan will be deemed accepted and approved. I.D. at 2-3 & 202 (Ordering Paragraph No. 19).

The ALJ found that Sunoco must, 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 Sunoco’s cost; and that within six months from the date of entry of the Final Opinion and Order in this proceeding, Sunoco 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 on TUS and I&E. I.D. at 3 & 202 (Ordering Paragraph No. 21).

The ALJ also directed Sunoco 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, (Sunoco Exhibits MG-11 and MG-12) regarding Mariner East pipelines as long as they are purposed for carrying HVLs a/k/a natural gas liquids. Sunoco is further directed to bury its ME1 and twelve-inch pipelines following its Standard Operating Procedure (SOP) HLI.08 (Lowering or Raising In-Service Pipelines) (Sunoco Exhibit MG-11) such that the depth of cover is appropriate and such that spacing is in conformity with at least twelve inches separation from other underground pipes or utility structures unless Sunoco can show it is providing adequate corrosion control in these areas where the pipes are less than twelve inches apart. These requirements last as long as these pipelines are purposed for transporting HVLs. I.D. at 3 & 202-03 (Ordering Paragraph Nos. 22‑23).

The Initial Decision further directed Sunoco to file a report with the Commission and send copies to TUS and I&E within 120 days of the date of entry of the Final Order. The report shall certify whether ME1 and the 12-inch workaround pipeline that are transporting HVLs within Delaware and Chester 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 twelve 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 ME1 8-inch pipeline, and the 12-inch workaround pipeline) carrying HVLs 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. The Initial Decision directed that this report be filed annually for a period of three years. I.D. at 3-4 & 203 (Ordering Paragraph No. 24).

The Initial Decision also found that the Complainants’ and aligned Intervenors’ request for a Commission-directed remaining life study of ME1 is deemed withdrawn by Flynn Complainants and denied as moot. The Complainants’ and aligned Intervenors’ request for a Commission-directed remaining life study of the 12-inch workaround pipeline was also denied. I.D. at 4, 189 (Conclusion of Law No. 28) & 203 (Ordering Paragraph No. 27).

The ALJ further denied Complainant Obenski’s and aligned Intervenors’ request that the Commission direct Sunoco to relocate a valve station currently on Dorlan Mill Road near Glenwood Elementary School. The Complainants’ and aligned Intervenors’ requests that the Commission amend/restrict Sunoco’s certificates of public convenience at Docket No. A-140001 within Delaware and Chester Counties, such that Sunoco’s authority is restricted from providing transportation service of natural gas liquids, or any mixture thereof, in those counties was denied as well. I.D. at 4 & 204 (Ordering Paragraph No. 29).

Finally, the ALJ denied the 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 of the Mariner East pipeline facilities that would audibly notify the public of a leak, emergency, or other potential danger along these pipelines and a directive that an odorant and/or dye be added to the HVLs of ethane, butane, and propane being transported, as relief that cannot be granted through this complaint proceeding. The ALJ concluded that these requests should be vetted through the *ANOPR* (rulemaking proceeding currently pending at Docket No. L-2019-3010267, pertaining to HVL safety standards)*,* to not deprive Sunoco and other interest groups their due process rights. Likewise, the request for an alarm and odorant as an accommodation under the federal Americans With Disabilities Act (ADA) was denied for lack of jurisdiction to grant such an accommodation. Instead, the Initial Decision directed that such issues pertaining to public audible warning alarm systems and odorant additives be referred to Docket No. L-2019-3010267. I.D. at 4-5 & 204 (Ordering Paragraph No. 30).

# Discussion

## Exceptions of the Andover HOA[[10]](#footnote-11)

### Andover HOA Exception No. 1 (Commission Jurisdiction Over Siting)

#### Positions of the Parties

The Andover HOA, as consolidated with the Flynn Complainants and the aligned Intervenors argued that the Commission had jurisdiction to determine whether Sunoco’s location and operation of the Mariner East pipeline facilities in high consequence areas of Chester and Delaware Counties contravened 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, based upon the history of pipeline accidents and demonstrated risks to public safety. The Flynn Complainants and the aligned Intervenors asserted that, based upon the Commission’s finding of violations of the above-referenced provisions, the Commission’s authority extended to directing relocation of valve stations, and/or restriction of Sunoco’s Certificate of Public Convenience to prohibit transport of HVLs in Delaware and Chester Counties. Andover HOA M.B. at 9-31; See, I.D. 84-88.

Sunoco and its aligned Intervenor asserted that the siting, construction, and environmental issues raised by the Flynn Complainants and their aligned Intervenors are beyond the scope of the Commission’s jurisdiction and do not allege a colorable violation of 66 Pa. C. S. § 1501. Sunoco contended that the location of the Mariner East Pipeline project in high consequence areas throughout Delaware and Chester counties is expressly authorized by law. Sunoco M.B. at 29-36; *See* I.D. at 89-90 (citing Pipelines and Hazardous Materials Safety Administration (PHSMA) regulatory requirements).

#### Initial Decision

The ALJ analyzed the question of whether the Flynn Complainants and their aligned Intervenors had established any violation of law, under any applicable statutory or regulatory provision and, if so, whether Commission jurisdiction extended to direct Sunoco’s location and operation of the Mariner East pipelines. The ALJ concluded that certain violations had occurred, related to pipeline depth/separation and directed that the Commission monitor Sunoco’s compliance with 49 C.F. R. Parts 195.210, 195.248, and 195.250 (pertaining to minimum standards for operation of HVL pipeline). With respect to the authority to direct Sunoco’s siting location of pipeline facilities, including location of valves, the ALJ concluded that no violation of any statute or regulation had been established which might warrant consideration of the question of siting and location, and specifically valve location.

The ALJ denied the relief requested regarding siting of pipelines and facilities and opined that the Commission’s authority regarding siting of the HVL pipeline is limited, citing *W. Goshen Twp*., at 10-11 (Commission acknowledged lack of statutory authority to require specific location of valves generally). The ALJ rejected the Flynn Complainants’ arguments that pipelines should be precluded from operation in high consequence areas, and therefore be prohibited from operation within high consequence areas within Delaware and Chester Counties. The ALJ noted that even if the Commission did have authority over the siting of pipeline and associated facilities, both state and federal law expressly allow HVL pipelines in high consequence areas, citing 52 Pa. Code § 59.33(b).

The ALJ drew a contrast between the Commission’s limited jurisdiction over siting of HVL pipeline with Commission jurisdiction over siting of electric transmission lines, which is governed by specific regulations establishing applicable standards for Commission jurisdiction over siting of such utility facilities. The ALJ rejected any argument that the Commission should apply certain formulas for approval of siting of HVL pipelines and concluded that such arguments should be directed to the PUC’s pending rulemaking proceeding on the subject at *ANOPR*. I.D. at 90-106

#### Exceptions and Replies

In its Exception No. 1, the Andover HOA asserts that the Commission has the authority, but failed to exercise its authority to regulate routing of natural gas liquids pipelines, where the record establishes safety concerns. Specifically, the Andover HOA asserts that the Commission failed to use its authority under *Delaware Riverkeeper*. Andover HOA Exc. at 3-6.

Specifically, Andover HOA asserts, that the Commission should have prohibited Sunoco from any location within 100 meters of a dwelling pursuant to 15 Pa. C.S. § 1511(b), which does not allow taking of property within that distance of any pipeline. Andover HOA Exc. at 3, citing, *In re Sunoco Pipeline (Katz)*, 165 A.3d 1044, 1047 at fn. 6 (Pa. Cmwlth. 2017). In addition, Andover HOA asserts that the Commission has oversight authority to regulate condemnations on land subject to conservation easements. *See* 26 Pa. C.S. § 208 (providing that a condemnor must seek Orphans’ Court approval to disturb lands protected by a conservation easement unless the Commission or the Federal Energy Regulatory Commission reviews the proposed condemnation). Thus, Andover HOA argues, that the General Assembly anticipated that the Commission, in conjunction with the Orphans’ Court, had at least some oversight authority. *Id*. at 4

In its Replies, as a preliminary procedural matter, Sunoco asserts that the Andover HOA, who is represented by counsel in this consolidated proceeding, filed and served its Exceptions on June 13, 2021, six days late. Sunoco asserts that the late-filed Exceptions should not be considered.

Should the Commission consider the Exceptions, Sunoco reiterates its position in the proceeding below and asserts that the ALJ properly concluded that Commission jurisdiction does not extend to the siting and location of HVL pipelines and related facilities, including valves. Sunoco further asserts that the Andover HOA misconstrues 15 Pa. C.S. § 1511(b) (pertaining to prohibition on condemnation of land within 100 meters of dwelling) to conclude that the General Assembly disfavors condemnation of land for placement of pipelines within 100 feet of a home. Sunoco notes that Section 1511(b) contains *an express exemption* for pipelines carrying petroleum products, such as Mariner East, which carries propane, ethane and butane. Sunoco further asserts that 26 Pa. C.S. § 208 (pertaining to Commission review of proposed condemnation of land subject to conservation easement) is irrelevant in the present case, given the express exemption of petroleum products from 15 Pa. C.S. § 1511(b). Sunoco R. Exc. at 13-15.

#### Disposition

As a procedural matter, noted *supra.* at fn*.* 6, we shall consider the Exceptions of the Andover HOA. Upon review of the Exceptions and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Andover HOA’s Exception No. 1.

We agree with the ALJ’s conclusion that, in the circumstances, the Commission’s jurisdiction with respect to the specific location of HVL pipelines and facilities, including valves, is limited, consistent with *W. Goshen Twp.*

As noted *supra*., Pennsylvania has adopted the minimum federal pipeline safety standards and participates in the pipeline safety program administered by PHMSA. Under PHMSA’s standards, HCAs identify specific locales and areas where a failure could have the most significant adverse consequences. Operators such as Sunoco are required to devote additional resources to preventing and mitigating hazards to pipeline safety within HCAs. However, currently, as noted in *W. Goshen Twp.,* 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. *See* *W. Goshen Twp. v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 10-11.

The ALJ reasoned that unless a party can show a violation of 49 C.F.R. § 195.260(c), Section 59.33 of Commission Regulations (pertaining to minimum safety standards), Section 1501 *et seq*, of the Code, or other applicable provision, the party fails to satisfy the burden of proof to establish a claim related to siting and location of pipelines, including valves. I.D. at 99-100. We agree.

Upon review of the relevant state legal authority, including, the Code, which, as the ALJ noted, does not currently delegate siting authority for pipelines to the Commission, and 52 Pa. Code Chapter 59, which as the ALJ noted, contains no specific provisions for valve spacing, the ALJ properly concluded that questions of pipeline siting and valve location is limited under 49 C.F.R. 195.260(c) (pertaining to general standard for valve installation). *See* *Id.*

Based upon the facts of this proceeding, finding no violation of any applicable statutory or regulatory provision related to the siting of the Mariner East pipelines and related facilities, specifically as it pertains to valves, we shall deny the Andover HOA’s Exception No. 1.

### Andover HOA Exception No. 2 (Commission Jurisdiction Over Operation)

#### Positions of the Parties

The positions of the Parties pertaining to Commission jurisdiction of siting and location of HVL pipelines as discussed *supra*., at the Andover HOA Exception No. 1, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to Commission jurisdiction over operation and location of HVL pipelines as discussed *supra*., at Andover HOA Exception No. 1, b., is adopted and incorporated herein by reference. In considering the Complainants’ request that the ALJ recommend enjoining the operation of the Mariner East pipelines as “unsafe,” the ALJ applied the legal standard for injunctive relief in the present circumstances and concluded the standard was not satisfied.

The ALJ’s analysis of the Complainants’ requested injunctive relief for cessation of operations of the Mariner East pipelines, applied legal standards that the Complainants must satisfy under Pennsylvania law and the Commission’s Regulations to be entitled to the relief requested. The ALJ explained that:

[i]n 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).

I.D. at 170-171.

The ALJ concluded that the unrebutted evidence submitted by Range Resources demonstrated that a shutdown of the Mariner East pipelines would harm the public interest. *See* I.D. at 171-175. Accordingly, the ALJ declined to direct that Sunoco cease operation of the Mariner East pipelines.

#### Exceptions and Replies

In its Exception No. 2, the Andover HOA assertsthe Commission has, but failed to exercise its siting authority over HVL pipelines to enjoin operation of the pipelines where the pipelines cannot be made adequately safe. The Andover HOA alleges “the Commission utterly refuses to accept its duty to protect the citizens of the Commonwealth” because the ALJ did not recommend enjoining the operation of Sunoco’s pipelines. Andover HOA Exceptions at 6-8.

In its Replies, Sunoco asserts that the Andover HOA’s Exception should be denied because there has been no record establishing that the Mariner East pipelines are unsafe. Sunoco notes that the Andover HOA cites no record evidence in support of its allegations that the Mariner East pipelines are “too risky or dangerous” to be allowed to operate.

Sunoco asserts that the Andover HOA’s bald allegations are unsupported by the evidence of record and should be rejected. To the contrary, Sunoco asserts that its construction, maintenance, and operation of its pipelines meets or exceeds all applicable safety standards. Sunoco notes that the Andover HOA did not challenge the ALJ’s findings that Sunoco’s construction, operation, and maintenance of its pipelines are not unsafe.

Sunoco further argues that the ALJ correctly concluded there is no basis under the facts or law to order any relief on this basis, in particular the extreme relief of enjoining operation of a public utility, citing the Initial Decision at 23, 25. Sunoco argues that the Andover HOA misconstrues the term “safety” pursuant to 66 Pa. C.S. § 1501 to mean “the absence of harm.” Sunoco concludes that the ALJ correctly recognized that to establish that utility operations are unsafe, the law requires both a showing of consequence and likelihood of harm, which all Complainants, and specifically, the Andover HOA, fails to do. Sunoco R. Exc. at 15-16 (citing I.D. at 23, 25-26, 188-189.)

In its Replies, Range Resources asserts that the ALJ properly denied the Complainants’, including the Andover HOA’s, request for injunctive relief, *i.e.*, a cessation of operation of the Mariner East pipelines. Range Resources asserts that the ALJ correctly applied the legal standard applicable for injunctive relief and concluded that the Complainants had not satisfied the standard. Specifically, Range Resources asserts that the Andover HOA’s Late Exception No. 2 should be denied on the merits because the unrebutted record evidence presented by Range Resources and Sunoco demonstrated that a shutdown of the Mariner East pipelines would cause substantial public harm and is not in the public interest. Range R. Exc. at 3-7 (citing I.D. at 98, 175‑176).

Accordingly, Sunoco and Range Resources assert that the Andover HOA’s Exception No. 2 must be denied.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Upon review, and as discussed *supra,* at the Andover HOA Exception No. 1, c., and incorporated herein by reference, we agree with the ALJ that the Commission’s jurisdiction over operation and siting of HVL pipelines is limited. Further, to the extent the Andover HOA raises an exception based upon the allegation that Sunoco’s operation of the Mariner East pipeline is “unsafe” pursuant to Section 1501, we agree with the Replies of Sunoco and Range Resources that the assertion misconstrues the language of Section 1501, is unsupported by the record evidence, and must be rejected. While Section 1501 prohibits the utilities unreasonable conduct in the provision of service in a safe manner, the standard is not applied to require the “absence of harm.”

We further agree with the ALJ that the applicable legal standard for imposing injunctive relief such as cessation of the pipeline’s operation is not satisfied in the present circumstances. Specifically, the record reflects that substantial public harm would result from the cessation of the Mariner East Pipelines where the ethane that normally flows on ME1 would either be sold into an alternate market or be rejected into the gas stream, resulting in significant financial losses for Range Resources. *See* Range St. 1-R at 12-13. In addition, a decrease in ethane, propane, butane and natural gas supply resulting from a shut-in of ME1 and ME2 would cause a likely increase in the price of NGLs and natural gas to consumers in the Commonwealth. Range Statement 1‑R at 14-15. Therefore, based upon the facts of this proceeding, finding that the Andover HOA’s allegation that the Mariner East pipelines are “unsafe” pursuant to Section 1501 is unsupported by the record evidence, and based upon our conclusion that the public interest would be harmed by a cessation of the Mariner East Pipelines, in the circumstances, we conclude that standard for injunctive relief is not satisfied. Accordingly, we shall deny the Andover HOA’s Exception No. 2.

## Exceptions of Ms. DiBernardino

### Positions of the Parties

The Complainants and their aligned Intervenors, including Ms. DiBernardino, generally argued that the ALJ should impose certain proposed relief which are not addressed by current statutory or regulatory provisions. Specifically, Ms. DiBernardino requested a mass warning system be placed near the pipelines and that odorant be placed in the pipelines. I.D. at 120.

Sunoco maintained that its present public awareness program satisfies applicable safety standards. Sunoco further argued that the relief requested*, i.e.*, a mass warning system and odorant, which was beyond the scope of existing statutory and regulatory requirements is prohibited as retroactive rulemaking, in violation of Sunoco’s due process rights. I.D. at 133.

### Initial Decision

The ALJ analyzed the Complainants’ requests for relief, *i.e.*, requirement for mass warning system and odorant added to the HVL pipelines, and determined the relief sought was based upon allegations of violations by Sunoco that are actions which are not required by applicable federal pipeline safety regulations, or statutory provisions. To the extent the ALJ concluded the relief requested are the subject of the Commission’s proposed rulemaking docket relating to pipeline safety, the ALJ determined that the proposed standards should be referred for consideration at that *ANOPR*.

The ALJ further concluded that such allegations, which are beyond the scope of existing statutory or regulatory requirements, cannot satisfy the requirement to demonstrate a violation of applicable law or regulation. The ALJ declined to impose the requested relief. I.D. at 167-69, 190 (Conclusions of Law 36), 192 (Conclusions of Law 48) (citing *Baker* at 11).

### Exceptions and Replies

Inher Exception, Ms. DiBernardino, acting *pro se*, generally challenges the ALJ’s determination that certain relief requested must be referred to the Commission’s pending *ANOPR* regarding pipeline operation. Specifically, Ms. DiBernardino asserts that “pushing off” the relief requested, including a requirement that Sunoco add an odorant to the HVL pipelines, for consideration at the rulemaking docket, will be inadequate to address the immediate safety issues. DiBernardino Exc. at 1-4.

In its Replies, Sunoco asserts that the ALJ properly concluded that the requested relief which is beyond the scope of existing statutory and regulatory provisions should be addressed in the Commission’s *ANOPR* pertaining to pipeline operation, to ensure the input of the wide variety of impacted stakeholders and commentators. Sunoco asserts that the ALJ correctly found that addressing such issues in the present proceeding would impose retroactive legal or regulatory obligations, in violation of Sunoco’s due process rights. Accordingly, Sunoco asserts the Exceptions of Ms. DiBernardino should be denied. Sunoco R. Exc. at 11.

### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We agree with the ALJ’s analysis and conclusions, as set forth in the Conclusions of Law, that to impose the requested relief, *i.e.*, a requirement for a mass warning system and the addition of odorant to the HVL pipelines, would effectively find Sunoco in violation of standards of which Sunoco had no notice – *i.e*., to create new regulations through the adjudicatory process and retroactively apply them to Sunoco. We note that, in contrast with the circumstances under which relief was granted in the present proceeding, the ALJ denied the relief here, for a mass warning system and odorant added to the HVL pipelines, where the ALJ did not find that the lack of a mass warning system or odorant added to the HVL pipelines constituted a violation of Sunoco’s duty under Section 1501 of the Code, to provide adequate and safe service and facilities.

Therefore, we agree with the ALJ’s recommendation that such requested relief should be treated as “proposed standards” more appropriately considered in the Commission’s *ANOPR* concerning pipeline operations. *See* COL 36 and COL 48. Accordingly, we shall deny Ms. DiBernardino’s Exceptions.

## Exceptions of Chester County

### Chester County Exception No. 1.

#### Positions of the Parties

The Complainants and their aligned Intervenors asserted that Sunoco’s public awareness and outreach was insufficient to meet a reasonable standard for public safety.

The Complainants and their aligned Intervenors raised challenges based on the lack of meaningful communication of essential safety-related information which would enable local officials to be adequately informed of Sunoco’s pipeline operations and prepare for any pipeline emergency which might arise. Specifically, Middletown and East Goshen requested, *inter alia*, that Sunoco be directed to perform and share the results of geophysical testing, inspection and evaluation to assess the condition of the pipelines and report such results and findings to the Middletown, Delaware County and East Goshen officials. I.D. at 121-123, 132. *See, generally*, I.D. at 42-45 (FOFs pertaining to geophysical testing).

Sunoco maintained that its public awareness plan meets and exceeds the minimum requirements of 49 C.F. R. § 195.440. On that basis, Sunoco asserted that there can be no finding of a violation of Section 195.440, and no additional requirements may be imposed.

#### Initial Decision

In the Initial Decision, the ALJ concluded that the deficiencies in Sunoco’s public awareness program constituted a violation under Section 1501 of the Code. In the circumstances, the ALJ agreed with the Complainants that it would be unreasonable for Sunoco to construct and operate the HVL pipelines without adequate information concerning geophysical testing, given the importance of such testing in evaluating safety issues, and where that information was not shared with the responsible local officials, as a matter of public safety. The ALJ directed that, as a reasonable measure to ensure public safety, and pursuant to applicable non-disclosure agreements, Sunoco was “to share geophysical testing inspection and evaluation reports assessing the condition of its pipelines to . . . Township Supervisors or their designee engineering consultants[.]” Specifically, the ALJ provided the following:

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.

I.D. at 199 (Ordering paragraph 13).

The ALJ declined to order public disclosure of the results, concluding that ordering the geophysical results to be public is contrary to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6 (CSI Act). I.D. at 8, 199, Ordering Paragraph 13.

#### Exceptions and Replies

In its Exception No. 1, Chester County challenges the ALJ’s directive at Ordering Paragraph 13 and asserts that the geophysical test reports should be made public as they reflect the characteristics of the land and not the pipeline infrastructure. Chester County asserts there is no claim for confidentiality of the geographic profile of the county’s terrain. Chester County further asserts that there is no reason to restrict Sunoco’s sharing of the reports to the two specified townships. Rather, Chester County asserts that the public interest rational for sharing the geophysical testing is equally applicable to the county and other impacted municipalities. Chester Exc. at 1-3.

In its Replies, Sunoco asserts that the disclosure of its geographic test reports may not be ordered, since the disclosure of such records is contrary to law, unsupported by the record, and the issue has been waived by Chester County and East Goshen.

Sunoco asserts that the ALJ properly protected the results of geophysical testing from disclosure consistent with the CSI Act. Sunoco noted that the CSI Act puts the responsibility on the public utility to identify whether a document contains Confidential Security Information and to treat it according to the Act if it does. Sunoco maintains that ordering it to publicly disclose documents regardless of whether those documents contain Confidential Security Information is directly contrary to the CSI Act.

Sunoco further argues that no evidence of record supports the allegation that “these geophysical reports deal only with the characteristics of the land and not the pipelines themselves,” or that geophysical reports “were a matter of public record until February 26, 2020.” Sunoco R. Exc. at 7-8, citing East Goshen Exceptions at 5; Chester Exceptions at 3. Sunoco maintains that such allegations should not be considered where they are facts alleged for the first time in exceptions. *Id*., citing *Application of Apollo Gas Co*., 1994 Pa. P.U.C. Lexis, at \*8-14 (Order entered February 10, 1994) (“It is well established that parties cannot introduce new evidence at the exceptions stage.”).

Finally, Sunoco avers that the Complainants and aligned Intervenors, including Chester County and East Goshen, have waived the issue of public disclosure of the geophysical testing by not raising it before the ALJ, and therefore may not raise it now for the first time on Exception. Sunoco notes that no party challenged the confidential status of Sunoco’s submission of a similar report, *i.e*., Sunoco Exh. RK-8. Instead, East Goshen and Chester County raise the issue for the first time in exceptions. Sunoco R. Exc. at 9, citing *Cynthia Young-Nelson v. PECO*, Docket No. F‑2019‑3009953, 2020 WL 7239799, Opinion and Order at 5 (Order entered Dec. 3, 2020) (holding allegation not raised by Complainant in Complaint and raised in exception untimely and disregarding issue from consideration of exceptions). Sunoco maintains that the issue is, therefore, waived.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We agree with the ALJ’s analysis and conclusion directing Sunoco to perform and share the results of geophysical testing with the responsible local authorities pursuant to Sunoco’s duty to provide adequate and safe service and facilities under Section 1501 of the Code. We are not persuaded that the results of the geophysical testing conducted by Sunoco should be made public. We disagree with Chester County that the reports should be released because they regard the terrain rather than Sunoco’s infrastructure.

We further agree with the ALJ’s conclusion that it would be improper to order disclosure of such testing given that, under the CSI Act, the utility is charged with the duty of the initial determination whether to classify the record as CSI. *See* 35 P.S. §§ 2141.1-2141.6 (providing that the utility initially determines classification of CSI). We are also persuaded by Sunoco’s argument that, for purposes of this proceeding, the issue is waived where the parties did not raise it before the ALJ and did not challenge Sunoco’s classification of similar exhibits as confidential, consistent with *Cynthia Young-Nelson v. PECO,* Docket No. F-2019-3009953, 2020 WL 7239799, Opinion and Order at 5 (Order entered Dec. 3, 2020). Therefore, we will not consider the issue now on Exception.

Accordingly, we shall deny Chester County’s Exception No. 1.

## Exceptions of Downingtown Area School District (Downingtown)

### Downingtown’s Exception No. 1.

#### Position of the Parties

The Complainants, and Intervenors including Downingtown and East Goshen, sought relief pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities.

Sunoco asserted that the Commission is without authority to direct any additional requirements beyond the Company’s existing public awareness and emergency responder training, which meet the standards set forth under the applicable state and federal rules. I.D. at 132-134.

#### Initial Decision

In the ALJ’s Initial Decision, certain duties were identified by the ALJ as necessary for Sunoco to meet its obligation to provide adequate and safe service and facilities, where pipeline safety issues directly involved Downingtown, East Goshen and other similarly situated municipalities, pursuant to Section 1501 of the Code. Specifically, the ALJ determined that in the interest of public safety it was reasonable to require that:

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.

I.D. at 201-202, Ordering Paragraphs 17-19 (the Relief Provisions) (expressly referencing nonproprietary versions).

#### Exceptions and Replies

In its Exception No. 1, Downingtown does not challenge the ALJ’s Initial Decision and Relief Provisions. Rather, Downingtown seeks Commission clarification and modification of the relief granted by Ordering Paragraphs 17-19 sought by the Complainants, including Downingtown and East Goshen, to include an express requirement that any financial responsibilities or expenses incurred pursuant to the Relief Provisions be borne by Sunoco. Downingtown Exc. at 4-5.

In its Replies, Sunoco asserts that neither the record nor the applicable regulations provide a basis to order any of the relief in the Initial Decision’s Ordering Paragraphs 16-19, including the clarification and modifications sought by Downingtown’s Exception No. 1 (and East Goshen’s Exception No. 3). Sunoco R. Exc. at 9-10, citing Sunoco Exception Nos. 4, 5, 7, 8. Sunoco further asserts that the requests for additional relief or modification of the relief granted would be improper, since the Relief Provisions are in error. Sunoco argues that its satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the company’s compliance with 49 C.F.R. § 195.440 and API RP 1162. Sunoco maintains that where meetings with public and school officials are expressly part of the Commission’s *ANOPR,* such relief may not be the subject of this Complaint proceeding.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We agree with the ALJ’s decision to require Sunoco to implement the Relief Provisions specified in Downingtown’s Exception No. 1. However, we do not find that the clarification or modification sought by Downingtown’s Exception No. 1, is warranted in the circumstances. Sunoco is required to comply with the specified Relief Provisions, as every public utility is required to maintain safe and reasonable service and facilities. 66 Pa. C.S. § 1501. Such compliance should be conducted in a reasonable manner. However, nothing on the record supports the conclusion that Sunoco should be required to burden any associated costs.

With respect to Sunoco’s recurring argument that Sunoco’s satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the company’s compliance with 49 C.F.R. § 195.440 and API RP 1162, and/or Section 1501 of the Code, we disagree. There is no requirement that where the Commission has initiated an *ANOPR* on related issues, that the Commission’s authority to address questions pertaining to a utility’s reasonable provision of safe and adequate service and facilities is somehow diminished in any respect. While the ALJ found it prudent to refer certain matters to the existing *ANOPR*, the ALJ was neither required to do so, nor obligated thereby to refrain from ruling on other related safety concerns.

The Commission has the power and duty under the Code to enter such orders to assure that public utility service and facilities are safe and reasonable. 66 Pa. C.S. § 1505(a). In this instance, the ALJ set forth specific Relief Provisions which adequately address the reasonable safety concerns at issue. We are not persuaded that Sunoco’s obligations under the Relief Provisions includes a requirement that any costs shall be borne by Sunoco, incident to the obligation to provide reasonable service under Section 1501. Accordingly, we shall deny Downingtown’s Exception No. 1.

### Downingtown’s Exception No. 2.

#### Positions of the Parties

The positions of the Parties pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception No. 1, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception No. 1, b., is adopted and incorporated herein by reference.

#### Exceptions and Replies

In its Exception No. 2, Downingtown does not challenge the ALJ’s Initial Decision and Relief Provisions. Rather, Downingtown seeks Commission clarification and modification of the relief granted by Ordering Paragraphs 17-19 sought by the Flynn Complainants, including Downingtown and East Goshen, to include an express requirement for clear and identifiable benchmarks for compliance*.*

In its Replies, Sunoco asserts that neither the record nor the applicable regulations provide a basis to order any of the relief in the Initial Decision’s Ordering Paragraphs 16-19, including any modifications to include compliance benchmarks sought by Downingtown’s Exception No. 2. Sunoco R. Exc. at 9-10, citing Sunoco Exception Nos. 4, 5, 7, 8. In addition, Sunoco argues any requests for additional relief or modification of the relief granted would be improper, since the Relief Provisions are in error. Sunoco argues that its satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the company’s compliance with 49 C.F.R. § 195.440 and API RP 1162. Sunoco maintains that where meetings with public and school officials are expressly part of the Commission’s *ANOPR,* such relief may not be the subject of this Complaint proceeding.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Our discussion and analysis of the clarification and modification of the Relief Provisions at issue, *supra*., at Downingtown Exception No. 1.d., is adopted and incorporated herein by reference. For the same reasons stated above at Downingtown’s Exception No. 1, we find that Downingtown’s Exception No. 2, is without merit.

Sunoco’s compliance with the specified Relief Provisions is subject to Commission oversight and is expected to be carried out in a reasonable manner. We do not find it is necessary at this time to set forth specific compliance benchmarks for Sunoco. We note that Sunoco is expected to comply in good faith and the Parties are expected to work cooperatively for the benefit of the public’s safety. Therefore, we decline to impose any compliance bench marks currently. Accordingly, we shall deny Downingtown’s Exception No. 2.

## Exceptions of East Goshen Township (East Goshen)

### East Goshen Exception No. 1.

Like Chester County’s Exception No. 1, East Goshen asserts in its Exception No. 1, that the geophysical test reports should be made public as they reflect the characteristics of the land and not the pipeline infrastructure.

#### Positions of the Parties

The positions of the Parties pertaining to public disclosure of geophysical testing by Sunoco, as discussed *supra*., at Chester County Exception No. 1, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to public disclosure of geophysical testing by Sunoco, as discussed *supra*., at Chester County Exception No. 1, b., is adopted and incorporated herein by reference.

#### Exceptions and Replies

In its Exception No. 1, East Goshen asserts, as did Chester County, that the geophysical testing by Sunoco should be made public. The discussion of Chester County’s Exception No. 1 and Sunoco’s Replies, c., is adopted and incorporated herein by reference. East Goshen Exc. at 5.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Consistent with our discussion *supra.*, at Chester County’s Exception No. 1, d., which is adopted and incorporated herein by reference, we shall deny East Goshen’s Exception No. 1.

### East Goshen Exception No. 2.

#### Positions of the Parties

The positions of the Parties pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception Nos. 1 and 2, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception No. 1 and 2, b., is adopted and incorporated herein by reference.

#### Exceptions and Replies

In its Exception No. 2, East Goshen does not challenge the ALJ’s Initial Decision and Relief Provisions. Rather, like Downingtown’s Exception No. 2, East Goshen seeks Commission clarification and modification of the relief granted by Ordering Paragraph 16 sought by the Complainants, including Downingtown and East Goshen, to include an express requirement that the information shared pursuant to Ordering Paragraph 16 be made available to all County and municipal staff on an “as needed” basis. East Goshen Exc. at 5.

In its Replies, Sunoco asserts that neither the record nor the applicable regulations provide a basis to order any of the relief in the Initial Decision’s Ordering Paragraphs 16-19, including any modifications to include a requirement that information be provided on an “as-needed” basis, as sought by East Goshen’s Exception No. 2. Sunoco R. Exc. at 9-10, citing Sunoco Exception Nos. 4, 5, 7, 8. In addition, Sunoco argues any requests for additional relief or modification of the relief granted would be improper, since the Relief Provisions are in error. Sunoco argues that its satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the company’s compliance with 49 C.F.R. § 195.440 and API RP 1162. Sunoco maintains that where meetings with public and school officials are expressly part of the Commission’s *ANOPR,* such relief may not be the subject of this Complaint proceeding. Sunoco R. Exc. at 9.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Our discussion and analysis of the clarification and modification of the Relief Provisions at issue, *supra*., at Downingtown Exceptions Nos. 1 and 2, d., is adopted and incorporated herein by reference. For the same reasons stated above at Downingtown’s Exceptions Nos. 1 and 2, d., we find that East Goshen’s Exception No. 2, is without merit.

Sunoco’s compliance with the specified Relief Provisions, including the duty established under Ordering Paragraph 16, is subject to Commission oversight and is expected to be carried out in a reasonable manner. We do not find it is necessary at this time to set forth a specific obligation that Sunoco share information with County and municipal authorities on an “as-needed” basis. We note that Sunoco is expected to comply in good faith and the Parties are expected to work cooperatively for the benefit of the public’s safety. Therefore, we decline to impose any further requirement upon Sunoco to provide information on an “as-needed” basis. Accordingly, we shall deny East Goshen’s Exception No. 2.

### East Goshen Exception No. 3.

#### Positions of the Parties

The positions of the Parties pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception No. 1, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to public safety requiring certain obligations for communication by Sunoco with Downingtown, East Goshen and other similarly situated municipalities, as discussed *supra*., at Downingtown Exception No. 1, b., is adopted and incorporated herein by reference.

#### Exceptions and Replies

In its Exception No. 3, East Goshen does not challenge the ALJ’s Initial Decision and Relief Provisions. Rather, East Goshen, like Downingtown’s Exception No. 2, seeks Commission clarification and modification of the relief granted by Ordering Paragraph 16 sought by the Complainants, including Downingtown and East Goshen, to include an express requirement that Sunoco provide funding and active participation in development in evacuation plans, including plans requiring ADA compliance. East Goshen Exc. at 5.

In its Replies, Sunoco asserts that neither the record nor the applicable regulations provide a basis to order any of the relief in the Initial Decision’s Ordering Paragraphs 16-19, including the clarification and modifications sought by East Goshen’s Exception No. 3. Sunoco R. Exc. at 9-10, citing Sunoco Exception Nos. 4, 5, 7, 8. Sunoco further asserts that the requests for additional relief or modification of the relief granted would be improper, since the Relief Provisions are in error. Sunoco argues that its satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the company’s compliance with 49 C.F.R. § 195.440 and API RP 1162. Sunoco maintains that where meetings with public and school officials are expressly part of the Commission’s *ANOPR,* such relief may not be the subject of this Complaint proceeding. Sunoco R. Exc. at 5-7.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Our discussion and analysis of the clarification and modification of the Relief Provisions at issue, *supra*., at Downingtown Exception No. 1, d., is adopted and incorporated herein by reference. For the same reasons stated above at Downingtown’s Exception No. 1, we find that East Goshen’s Exception No. 3, is without merit.

Sunoco’s compliance with the specified Relief Provisions, including Ordering Paragraph 16, remains subject to Commission oversight and is expected to be carried out in a reasonable manner. We do not find it is necessary currently to establish an express requirement that Sunoco provide funding and active participation in the development of evacuation plans, including plans requiring ADA compliance. We note again that Sunoco is expected to comply in good faith and the Parties are expected to work cooperatively for the benefit of the public’s safety. Therefore, we decline to impose an express requirement that Sunoco provide funding and active participation in development of evacuation plans, including plans requiring ADA compliance. Accordingly, we shall deny East Goshen’s Exception No. 3.

## Exceptions of Sunoco

### Sunoco Exception No. 1

#### Positions of the Parties

The Complainants and aligned Intervenors argued that the Commission had jurisdiction to determine whether Sunoco’s location and operation of the Mariner East pipeline facilities in high consequence areas of Delaware and Chester Counties contravened 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, based upon the history of pipeline accidents and demonstrated risks to public safety. The Complainants and the aligned Intervenors asserted that, based upon the Commission’s finding of violations of the above-referenced provisions, the Commission’s authority extended to directing relocation of valve stations, and/or restriction of Sunoco’s Certificate of Public Convenience to prohibit transport of HVLs in Delaware and Chester Counties. I.D. 84-88.

Sunoco and its aligned Intervenor asserted that the siting, construction, and environmental issues raised by the Complainants and their aligned Intervenors are beyond the scope of the Commission’s jurisdiction and do not allege a colorable violation of 66 Pa. C. S. § 1501. Sunoco contended that the location of the Mariner East Pipeline project in high consequence areas throughout Delaware and Chester Counties is expressly authorized by law. I.D. at 89-90 (citing PHMSA regulatory requirements).

#### Initial Decision

The ALJ analyzed the question of whether the Complainants and their aligned Intervenors had established any violation of law, under any applicable statutory or regulatory provision and, if so, whether Commission jurisdiction extended to direct Sunoco’s location and operation of the Mariner East pipelines. The ALJ concluded that certain violations had occurred, related to pipeline depth/separation and directed that the Commission monitor Sunoco’s compliance with 49 C.F.R. Parts 195.210, 195.248, and 195.250 (pertaining to minimum standards for operation of HVL pipeline).

Specifically, regarding the ALJ’s finding that Sunoco had violated pipeline depth/separation requirements, the ALJ directed:

* 1. 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.

* 1. 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.

* 1. 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.

* 1. 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, 8inch 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.

* 1. That the report in Ordering Paragraph No. 24 shall be filed annually for a period of three (3) years.

I.D. at 202-203, Ordering Paragraphs 22-26.

The ALJ denied the relief requested regarding siting of pipelines and facilities and reasoned that the Commission’s authority regarding siting of the HVL pipeline is limited, citing *W. Goshen Twp.*, at 10-11 (Commission acknowledged lack of statutory authority to require specific location of valves generally). The ALJ rejected the Complainants’ arguments that pipelines should be precluded from operation in high consequence areas, and therefore be prohibited from operation within high consequence areas within Delaware and Chester Counties. The ALJ noted that even if the Commission did have authority over the siting of pipeline and associated facilities, both state and federal law expressly allow HVL pipelines in high consequence areas, citing 52 Pa. Code § 59.33(b). I.D. at 91.

#### Exceptions and Replies

In its Exception No. 1, Sunoco asserts that the ALJ erred by the Initial Decision’s Ordering Paragraphs 22-26, directing Sunoco to conduct a survey of depth of cover and separation distance between other underground pipelines/structures for the ME‑1 and the 12-inch pipelines, where none of the Complainants or aligned Intervenors raised these issues in their Complaints or sought this relief. Sunoco Exc. at 10-14.

Sunoco asserts that the ALJ’s directives, if adopted, constitute a violation of Sunoco’s due process, since Sunoco was not on adequate notice that the safety issues identified by the Complainants and aligned Intervenors may encompass the depth of cover and separation distance between the Mariner East pipelines carrying HVLs. *Id*.

In their Replies, the Flynn Complainants assert that Sunoco’s claim that depth of cover and separation distance of Sunoco’s HVL pipelines were not at issue in the present case, is without merit. The Flynn Complainants assert that the uncontested factual record establishes that the issue of depth of cover and separation distance were not only encompassed by the safety violations alleged in the Flynn Complainants’ Second Amended Complaint, but directly raised by the testimony, to which Sunoco did not object, including, *inter alia*:

Witness Gerald McMullen gave evidence that four separate Sunoco pipelines are within twenty-five feet of his residence. (McMullen 4, N.T. 951). He also identified Ex. McMullen 15, a photograph of two exposed Sunoco pipes. (N.T. 965). He explained what they were and why he was concerned. (N.T. 965 — 967). Sunoco raised no objections to that testimony. Further, when it came time to offer the exhibit into evidence, Sunoco did not object to McMullen 4 (N.T. 976) or McMullen 15. (N.T. 977). In addition, regarding Mariner East 1, McMullen said he believed it was shallow. (N.T. 979).

Bibianna Dussling gave testimony that between the Higgins home and the White home, the distance is only 30 feet. At least three pipelines are found within that space and Sunoco's answers to interrogatories confirm that they are as close as 5.1 feet to the Higgins home and two of them are not even 10 feet apart. (N.T. 1181-1183).

Coupled with the admissions of Sunoco witnesses Gordon and Zurcher, Complainants made out a case that there were pipelines within 50 feet of homes; some of them were exposed; and some were believed to be shallow. It was reasonable, therefore, for the ALJ to conclude that complainants had made out a prima facie case that the depth and separation of existing Mariner East pipelines were questionable and Sunoco failed to give any evidence whatsoever to rebut that evidence.

ALJ Barnes also succinctly summarized evidence of the Lenni Road Aqua incident: "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 Dussling1).

Flynn Complainants R. Exc. at 3-8.

The Flynn Complainants further assert that Sunoco fails to assert a violation of due process in the circumstances. They assert that *Barasch v. Pa. PUC*, 521 A.2d 482, 496 (Pa. Cmwlth. 1987), while cited by Sunoco for the general requirements of due process, supports a finding that Sunoco was afforded due process. The Flynn Complainants note that in *Barasch*, the Commonwealth Court *denied* the claim that due process was violated where the Court found that,

[f]rom the time of the original show cause order the potential imposition of a cost-containment plan was manifest to all the litigants. Testimony was adduced on this subject by virtually all the parties, and an examination of the record demonstrates that more than an adequate opportunity for litigation was provided.

*Id*.

Further, the Flynn Complainants note that Sunoco cites *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) for general due process principles but omits the relevant analysis. The Flynn Complainants assert that in *Hess*, the Commonwealth Court identified the essential elements which ensure due process, stating:

Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.

*Hess v. Pa. PUC* at 266.

Finally, the Flynn Complainants assert that given the principles of *Barasch* and *Hess*, *supra*, it is evident that Sunoco was afforded due process in the present proceeding. Sunoco participated fully in the presentation and admission of evidence pertaining to the safety issues associated with pipeline depth of cover and separation distance in fall, 2019, to which Sunoco offered no objection as to relevance, or otherwise. Further, the Flynn Complainants note that Sunoco was directed during discovery to supply, and did supply over its objections, information regarding both the depth and spacing of Mariner East pipes. Sunoco had a year to review that evidence and offer whatever countervailing evidence it may have chosen- but elected not to do so. The Flynn Complainants conclude that Sunoco had ample notice and an opportunity to be heard, to cross-examine witnesses, and to present its own, and may not now claim, it was not aware that depth of cover and separation distance were relevant safety issues under consideration. Flynn Complainants R. Exc. at 3-8.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We agree with the ALJ’s decision to require Sunoco to implement the directives related to pipeline depth of cover and separation distance contained in Ordering Paragraphs 22-26 of the ALJ’s Initial Decision at issue in this Exception. In Pennsylvania, every public utility is required to maintain safe and reasonable service and facilities. 66 Pa. C.S. § 1501. The Commission has the power and duty under the Code to enter such orders and promulgate regulations as are necessary to assure that the public utility service and facilities are safe and reasonable. 66 Pa. C.S. § 1505(a). Further, any determination of what is “reasonable service” under Section 1501 is done on a case-by-case analysis and is subject to the Commission’s broad authority to make such determinations to assure that the public utility service and facilities are safe and reasonable.

Clearly, the safety issues asserted generally in the Flynn Complainants’ Second Amended Complaint encompassed the safety issues relevant to the depth of cover and separation distance of Sunoco’s HVL pipelines. Similarly, we agree with the Flynn Complainants that the evidence and testimony presented over the course of the years-long litigation, to which Sunoco did not object, refutes any claim for violation of due process now raised by Sunoco.

We specifically note that the cases cited by Sunoco for the general principles of due process, *Barasch v. Pa. PUC* and *Hess v. Pa. PUC*,when applied to facts of the present case, establish that Sunoco was afforded due process concerning the safety issues associated with depth of cover and separation distance of Sunoco’s HVL pipelines.

Accordingly, we shall deny Sunoco’s Exception No. 1.

### Sunoco Exception Nos. 2 and 3

#### Positions of the Parties

The positions of the Parties pertaining to depth of cover and separation distance of Sunoco’s HVL pipelines, as discussed *supra*., at Sunoco’s Exception No. 1, a., are adopted and incorporated herein by reference.

#### Initial Decision

The Summary of the ALJ’s Initial Decision pertaining to depth of cover and separation distance of Sunoco’s HVL pipelines, as discussed *supra*., at Sunoco’s Exception No. 1, b., is adopted and incorporated herein by reference.

In addition to the discussion incorporated herein, the ALJ found that the Complainants and aligned Intervenors established a *prima facie* showing, by unrefuted evidence, that ME-1 and the 12-inch line are not buried under the required depth of cover in violation of 49 C.F.R. §§ 195.210(b) and 195.248. The ALJ further found that this violation is sufficient for the Commission to assess a civil penalty against Sunoco and direct Sunoco to conduct a depth of cover survey and submit compliance filings to the Commission on an annual basis. I.D. at 196 (Conclusions of Law 69), 202-203 (Ordering Paragraphs 22-26).

Specifically, the ALJ found:

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.D. at 97-98.

#### Exceptions and Replies

In its Exception Nos. 2 and 3, Sunoco asserts that the ALJ erred in holding that the Flynn Complainants and aligned Intervenors established a *prima facie* case that Sunoco violated 49 C.F.R. §§ 195.210(b) and 195.248 (pertaining to pipeline depth of cover) and 49 C.F.R. § 195.250 (pertaining to pipeline distance of separation). Sunoco maintains that the ALJ erred first by misinterpreting the applicable regulations. Sunoco asserts that the regulations at 49 C.F.R. §§ 195.210(b), 195.248, and 195.250 apply only to new construction, and do not require the *maintenance* of a minimum depth of cover and distance of separation over the life of a pipeline. Sunoco further asserts that the record evidence on which the ALJ relies demonstrates that the Complainants and aligned Intervenors failed to establish a *prima facie* showing of a violation of the depth of cover regulations for ME-1 and the 12-inch line. Sunoco Exc. at 14-22.

Sunoco asserts that the ALJ erred in finding a violation of Sections 195.210(b) and 195.248 where the ALJ relied upon irrelevant testimony, exhibits and other evidence. Sunoco further asserts that as a violation of Section 195.250 cannot be established because the Complainants and aligned Intervenors failed to show that there was less than 12 inches of clearance *and* inadequate corrosion control. Sunoco also argues that in finding a violation of clearance requirements the ALJ incorrectly refers to distances measured in photographs of relevant pipeline locations in inches rather than feet. Sunoco Exc. at 21-22.

Specifically, Sunoco avers that there is a lack of substantial evidence to support a finding of a violation of depth of coverage, where the ALJ expressly acknowledged that there were no exact measurements regarding the depth of coverage within 50 feet of the Chester County Library or the McMullen’s house. Sunoco Exceptions at 17, citing, I.D. at 93. Sunoco asserts that where the Complainants failed to offer any explicit measurements into evidence, they failed to establish a *prima facia* case for violation of Sections 195.210(b) and 195.248. *Id*.

Sunoco further asserts the ALJ’s reliance upon the testimony of Complainant Gerald McMullen that the pipeline near his residence was “shallow” was insufficient to conclude a violation of Sections 195.210(b) and 195.248 had occurred. Sunoco Exc. at 17, citing I.D. at 93; N.T. at 979, lines 10-12; I.D. at 35. Sunoco also asserts that ALJ Barnes’ Judicial Notice of an Administrative Order issued by the Pennsylvania Department of Environmental Protection (DEP) to Sunoco on September 11, 2019, requiring Sunoco to cover 43 locations of exposed pipeline across the Commonwealth, was misplaced, where there is no evidence that any exposed pipelines identified by DEP were located in Chester or Delaware Counties. Sunoco Exc. at 19, citing I.D. at 97.

With respect to the ALJ’s finding of a *prima facia* showing of a violation of Section 195.250, Sunoco asserts that the ALJ erred by finding a violation of the clearance requirement without examining whether, despite the violation, the evidence may have shown that adequate provisions were made for corrosion control. Sunoco Exc. 20-22. According to Sunoco, in order to establish a *prima facia* showing of a violation of Section 195.250 the Complainants and aligned Intervenors were required to show both that: (1) a clearance violation and (2) no adequate corrosion control. *Id*.

In its Replies, the Flynn Complainants assert that Sunoco was incorrect to claim 49 C.F.R. §§ 195.210(b), 195.248 and 195.250 are applicable only to new construction and not existing pipeline. The Flynn Complainants note that Sunoco omits any reference to the express language of the regulations which provide as follows:

No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in 195.248

49 C.F.R. § 195.210(b)

Unless specifically exempted in this subpart, all pipe must be buried so that it is below the level of cultivation. Except as provided in paragraph (b) of this section, the pipe must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom (as determined by recognized and generally accepted practices), as applicable, complies with the following table...

49 C.F.R. § 195.248(a).

Where 12 inches is impracticable, the clearance may be reduced if adequate provisions are made for corrosion control

49 C.F.R. § 195.250.

The Flynn Complainants assert that, contrary to Sunoco’s contention, the words “new construction” appear nowhere in the above provisions and no basis is offered for the claim that the provisions apply only to new construction.

In addition, the Flynn Complainants note that Section 195.200 provides that:

This subpart 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. However, this subpart does not apply to the movement of pipe covered by 195.424.

49 C.F.R. § 195.200. Since Section 195.200 expressly states that this subpart prescribes minimum requirements for “otherwise changing” existing pipeline systems that are constructed with steel pipe. The Flynn Complainants assert that the words “otherwise changing” are distinguishable from the term “new construction,” making it evident that the chapter is not merely addressing new construction. Flynn Complainants R. Exc. 8‑12.

With respect to Sunoco’s assertions that the ALJ incorrectly concluded that a *prima facia* case for violation of 49 C.F.R. §§ 195.210(b), 195.248 and 195.250 had been established, the Flynn Complainants assert that the ALJ properly relied upon the credible testimony of record, and the corroborating exhibits. Flynn Complainants R. Exc. at 8-12.

Specifically, with respect to evidence supporting a finding of violation of Sections 195.210(b) and 195.248, the Flynn Complainants assert:

 Witness Gerald McMullen gave evidence that four separate Sunoco pipelines are within twenty-five feet of his residence. (McMullen 4, N.T. 951). He also identified Ex. McMullen 15, a photograph of two exposed Sunoco pipes. (N.T. 965). He explained what they were and why he was concerned. (N.T. 965 — 967). Sunoco raised no objections to that testimony. Further, when it came time to offer the exhibit into evidence, Sunoco did not object to McMullen 4 (N.T. 976) or McMullen 15. (N.T. 977). In addition, regarding Mariner East 1, McMullen said he believed it was shallow. (N.T. 979).

Bibianna Dussling gave testimony that between the Higgins home and the White home, the distance is only 30 feet. At least three pipelines are found within that space and Sunoco's answers to interrogatories confirm that they are as close as 5.1 feet to the Higgins home and two of them are not even 10 feet apart. (N.T. 1181-1183).

Coupled with the admissions of Sunoco witnesses Gordon and Zurcher, Complainants made out a case that there were pipelines within 50 feet of homes; some of them were exposed; and some were believed to be shallow. It was reasonable, therefore, for the ALJ to conclude that complainants had made out a prima facie case that the depth and separation of existing Mariner East pipelines were questionable and Sunoco failed to give any evidence whatsoever to rebut that evidence.

Flynn Complainants R. Exc. at 5.

With respect to Sunoco’s argument that the ALJ erred in finding a violation of Section 195.250, where the Complainants failed to also allege inadequate corrosion control, the Flynn Complainants assert Sunoco misreads Section 195.250 to place a burden on the Complainants. Rather, they assert, Section 195.250, read properly, requires clearance between a pipe and an underground structure has to be at least 12 inches. If the public utility wishes to be relieved of that burden, it has the burden of showing such clearance is impracticable. In that case the company must also demonstrate adequate provision is made for corrosion control. Thus, the Flynn Complainants assert, it is the utility which bears the burden, in order to avoid meeting this minimum requirement the utility must show both that clearance is impracticable, and that adequate corrosion control has been provided. Flynn Complainants R. Exc. at 11-12.

Further, with respect to Sunoco’s contention that the ALJ’s finding that Sunoco was in violation of the minimum separation between pipelines and other underground structure, the Flynn Complainants’ note that the undisputed record reflects that Complainants furnished evidence that some of the new Mariner East lines consist of two pipelines encased in a larger pipe, which clearly establishes a violation of the distance between pipelines. Flynn Complainants R. Exc. at 12. The Flynn Complainants assert that, notwithstanding any misstatement of the distances (as in inches rather than feet) the ALJ properly concluded the record evidence taken as a whole establishes a *prima facia* violation of Section 195.250.

#### Disposition

Upon review of the Exceptions and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exceptions.

We agree with the ALJ’s conclusion that 49 C.F.R. §§ 195.210(b), 195.248 and 195.250 are applicable to the existing pipeline. We further reject Sunoco’s assertion that the provisions requiring depth of cover and clearance distances are only violated when originally so constructed and cannot be found to be violated based upon Sunoco’s failure to *maintain* the required depth of cover and clearances required by those provisions over the life of the pipeline. As the ALJ’s recognized, violations of depth of cover and clearance distances for pipelines carrying HVLs have serious safety implications, especially where, as in the present case, the pipelines may be located near dwellings, schools and libraries.

We further agree with the Flynn Complainants that Sunoco’s argument that the regulations are not applicable to the existing HVL pipelines is without merit. The express language of the applicable regulations indicates that existing pipelines are subject to their provisions.

We agree with the ALJ’s conclusion that the Flynn Complainants had established a *prima facia* showing based on substantial evidence presented that Sunoco was in violation of the minimum depth of cover and separation distances under 49 C.F.R. §§ 195.210(b), 195.248 (pertaining to depth of cover) and 49 C.F.R. § 195.250 (pertaining to distance of separation), where Sunoco utilizes existing pipeline for the purpose of transporting HVLs. We also find that the evidence of record, including credible testimony of witnesses regarding the depth of cover and separation distances of the pipelines in question constitutes substantial evidence that the violations of depth of cover and separation distance more likely than not occurred.

Specifically, the ALJ’s analysis turned upon a detailed review of the testimony presented by the Complainants and aligned Intervenors, and Sunoco’s rebuttal, or lack thereof, to the credible testimonial and exhibit evidence. *See* I.D. at 93-99. The ALJ concluded that Sunoco failed to refute the testimony and exhibits presented, which the ALJ found to be credible, which established that a violation of 49 C.F.R. §§ 195.210(b), 195.248 (pertaining to depth of cover) and 49 C.F.R. § 195.250 (pertaining to distance of separation) more likely than not occurred, therefore the concluding that Sunoco’s conduct was in violation of Section 1501 of the Code. We agree.

We reject Sunoco’s arguments that the ALJ could not find a violation of depth of cover or clearance distances, where the Complainants failed to offer specific measurements into evidence. The Complainants and Aligned Intervenors presented testimony and corroborating photographic evidence of the shallow cover and narrow clearance asserted. In addition, the ALJ took judicial notice of the DEP ordering Sunoco to cover exposed pipelines, as well as “Matt Gordon and John Zurcher’s testimony previously regarding the spacing of pipes” in a separate proceeding before the Commission. I.D. at 97 and 94 citing N.T. 979-981. In response, Sunoco did not offer evidence of measurements to refute the allegations of inadequate depth of cover and clearances. We note that the fact the DEP found exposed pipelines and ordered Sunoco to remedy depth of cover in forty-three instances, regardless of the location of those violations, establishes strong evidence of Sunoco’s failure to meet the minimum depth of cover standards, and supports the ALJ’s conclusion that the depth of cover violation more likely than not had occurred.

In view of the record as a whole, we agree with the ALJ’s conclusion that a *prima facia* showing of the violation of 49 C.F.R. §§ 195.210(b) and 195.248 (pertaining to pipeline depth of cover) and 49 C.F.R. § 195.250 (pertaining to pipeline distance of separation), was based upon substantial evidence and established a violation of Sunoco’s duty under Section 1501 of the Code. We further agree that the showing of serious risk to public safety where pipelines transport HVLs is sufficient for the Commission to assess a civil penalty against Sunoco and direct Sunoco to conduct a depth of cover survey and submit compliance filings to the Commission on an annual basis. *See* I.D. at 196, 202-203 (Order ¶¶ 22-26).

Accordingly, we shall deny Sunoco’s Exception Nos. 2 and 3.

### Sunoco Exception No. 4

#### Positions of the Parties

The Flynn Complainants argued that Sunoco is in violation of 49 C.F.R. § 195.440 because the public awareness safety brochures that the utility mails to the public do not contain sufficient information about adverse consequences of unintended HVL releases. Flynn M.B. at 82-86. They contended that the consequences of hazards should be disclosed in the pamphlet pursuant to API RP 1162,[[11]](#footnote-12) Section 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…” Tr. at 4239. The Flynn Complainants asserted that Sunoco’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; and, therefore, Sunoco’s public awareness program is not in compliance with Section 195.440 and API RP 1162, Section 4.2. Flynn M.B. at 82-86.

The Flynn Complainants and the Andover HOA argued that 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 Code of Federal Regulations because the information regarding what to do in the event of a hazardous release is implausible or unfeasible.[[12]](#footnote-13) Therefore, the Andover HOA requested that the Commission find that Sunoco’s inadequate public awareness program 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); and it further requested that either the Commission: (a) direct Sunoco to provide a plausible, credible, and usable public awareness program, or (b) direct Sunoco to immediately halt transportation of HVLs on the Delaware and Chester Counties’ portions of the Mariner East system. Andover HOA M.B. at 32-34.

Delaware County joined in and adopted the Flynn Complainants’ arguments. Delaware County Letter dated December 16, 2020.

Similarly, Chester County argued its emergency response personnel lack the information and tools from Sunoco necessary to respond appropriately to an HVL incident and to protect the residents of Chester County. Chester County M.B. at 5, 19-20 citing Turner St. 1. For example, Chester County stated that its volunteer firefighters are typically first on the scene of an incident, arriving in personal vehicles. Tr. at 96, 1135. Continuing, Chester County stated that these 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 Sunoco that would enable them to properly plan, prepare for, and execute a safe evacuation plan. Chester County concluded that any public awareness program must be specific to the neighborhoods, streets, and houses potentially affected in Chester County. The public outreach program should not be a generic “one-size-fits-all” approach.[[13]](#footnote-14) Chester County M.B. at 20-21.

Sunoco argued that the Flynn Complainants and aligned Intervenors have failed to prove that its public awareness plan is in violation of 49 C.F.R. § 195.440 and is simply an “end-run around the Pennsylvania rulemaking process.” Sunoco M.B. at 56, 59-60. Sunoco further argued that its public awareness program actually exceeds the requirements of Section 195.440, stating that its program is comprehensive, multi-faceted and communicates the required information and training to the four stakeholder groups identified in Section 195.440 and API RP 1162. Sunoco M.B. at 65-70. In addition, Sunoco asserted that its program provides more training, information, and equipment than the public awareness programs for the many other pipelines located in Delaware and Chester Counties. Sunoco M.B. at 71; Tr. at 1977, 2233, 2235-36, 2253. Sunoco further argued that all three of the experts offered by the Flynn Complainants conceded that its public awareness program complied with Section 195.440 and API RP 1162. Sunoco M.B. at 61-63. Sunoco concluded that all of the Flynn Complainants’ or aligned Intervenors’ claimed deficiencies to its public awareness program lacked merit and should be dismissed. Sunoco M.B. at 72-73.

#### Initial Decision

ALJ Barnes ruled that “emergency preparedness issues are squarely within this consolidated proceeding. … While these entities may be participating through comments to a rulemaking proceeding, this does not preclude an examination or review of whether [Sunoco] is compliant with current regulations regarding emergency preparedness.” I.D. at 159. In so finding, ALJ Barnes made additional rulings, summarized as follows:

1. Subject to any non-disclosure agreements that protects confidential security information, Sunoco “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 annually and more frequently if construction is occurring;
2. Sunoco is directed to include police departments and school districts on the Company’s emergency contact list for Chester and Delaware Counties and be contacted about a possible leak or rupture on its pipeline facilities in these counties whenever a telephone call, text or e-mail notification is warranted to the Lead Emergency Responder for the respective County;
3. Sunoco is directed to give advance notification to municipalities in Delaware and Chester Counties prior to proposed excavation on the pipeline system to both the directly-affected municipality as well as the county of the affected municipality and their specific emergency contact designee;
4. Sunoco is directed to contact Delaware and Chester 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 meetings and follow-up meetings to, *inter alia,* establish emergency contact lists; assist with establishing emergency plans for first responders; inform, educate and train staff on proper disaster prevention and disaster response activities; assist in developing an evacuation plan; create a public outreach and education program; notify county and municipal officials in advance of scheduled work to be done or of any pipeline activity, such as simulations, testing, or repairs; and share with Chester County’s Department of Emergency Services maps of all transmission lines and information about repair conditions for liquid and gas pipelines;
5. Sunoco is directed to contact affected school districts 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; and
6. Sunoco is directed to appear at the scheduled meetings and discuss additional communications and training and Sunoco is directed to provide such training as is reasonably requested by municipalities and school districts and institute such emergency notification procedures.

*Id.* at 199-201.

#### Exceptions and Replies

In its Exception No 4, Sunoco asserts that the ALJ erred in Ordering Paragraphs 13, 14, 15, 16, 17 and 18, which require Sunoco to implement public awareness program elements that are beyond existing regulatory requirements and therefore the proper subject of the Commission’s pending *ANOPR* and not this Complaint proceeding. Sunoco Exc. at 23-27.

Sunoco asserts that the ALJ correctly held that: (1) its public awareness program complies with the fundamental elements required by 49 C.F.R. § 195.440 and that it contains the key information about pipelines that satisfies the criteria set forth in 49 C.F.R. § 195.440(d); (2) Sunoco provides the specific information required for municipalities and schools under 49 C.F.R. § 195.440 and API RP 1162; and (3) its public awareness pamphlets are consistent with the same information that Delaware County sends to its own citizens in the County’s Emergency Planning Guide. Sunoco Exc. at 23 (citing I.D. at 52, 54 and 60 (Findings of Fact Nos. 268, 279-81, and 324)).

Sunoco again argues that its satisfaction of the § 195.440 minimum public awareness requirements should have ended the challenges to the Company’s compliance with 49 C.F.R. § 195.440 and API RP 1162. Sunoco asserts that any further requirements should have been reserved for the *ANOPR* and are not appropriate relief in the instant proceeding. *Id.* at 24. Sunoco states that the ALJ properly recognizes this position in holding that the requirements to implement a mass public warning system on pipelines; to add an odorant to Natural Gas Liquids (NGLs); to add new evacuation procedures to Sunoco’s public awareness pamphlet; to revise the Company’s public awareness mailers regarding wind direction, transporting persons other than by foot away from the pipeline and upwind from a release; and to conduct a remaining-life study are all properly reserved for the *ANOPR* and not proper subjects for this proceeding. *Id.* (citing I.D. at 115, 140, 167-69, 190 (Conclusion of Law No. 36), 192 (Conclusion of Law No. 48), 198 (Ordering ¶ 9)).

Sunoco argues that the ALJ improperly implemented public awareness program elements that are more stringent than existing regulatory requirements and that otherwise fall squarely within the pending *ANOPR*. *Id.* at 25. Sunoco provides four specific examples where it believes the Initial Decision requires more stringent public awareness elements than required by existing regulatory requirements. *Id.* at 25-27.

First, Ordering Paragraph No. 13 of the Initial Decision requires Sunoco to provide the results of geophysical test reports and inspection and evaluation reports assessing pipeline conditions in East Goshen and Middletown Townships on at least an annual basis even though existing regulations do not require pipeline operators to provide municipalities with reports of evaluations of pipeline conditions and this specific issue has been the subject of public comments in the *ANOPR*. *Id.*

Second, Ordering Paragraph No. 14 of the Initial Decision requires Sunoco to provide direct notice of a release event to police departments and school districts even though neither existing regulations nor API RP 1162 contain any such requirement and despite this issue being raised in the *ANOPR*. *Id.*

Similarly, Ordering Paragraph No. 15 requires Sunoco to give advanced notification of construction or excavation activities on the pipeline system to all municipalities within the two counties. Sunoco again argues that there are no existing regulations requiring such advanced notification and that this precise issue is properly the subject of the current *ANOPR*. *Id.*

Finally, Ordering Paragraph Nos. 16-18 of the Initial Decision require Sunoco to schedule and attend periodic public awareness meetings with municipal officers, school districts, and the public despite the fact that neither 49 C.F.R. § 195.440 nor API RP 1162 require such periodic public meetings or that this exact issue is properly before the *ANOPR*. *Id.*

Thus, Sunoco argues that the Initial Decision erred in imposing the above new requirements in Ordering Paragraph Nos. 13-18 because these proposed requirements are not contained in existing regulations, and they are otherwise properly the subjects to the existing *ANOPR*. Sunoco Exc. at 27.

In its Reply Exceptions, Chester County argues that Sunoco’s attempts to limit the power of the Commission by arguing that the relief requested by the Complainants regarding the elements of Sunoco’s public awareness program can only be resolved through the *ANOPR* is not supportable and should be rejected by this Commission. Chester County R. Exc. at 11. Chester County relies on the Code to support its position that every public utility is required to maintain safe and reasonable service and facilities. 66 Pa. C.S. § 1501. Further, Chester County asserts that the Commission has the power and duty under the Code to enter such orders as are necessary to assure that the public utility service and facilities are safe and reasonable. 66 Pa. C.S. § 1505(a). As such, Chester County argues that Sunoco’s decisions relating to its pipeline, including its safety awareness program, are subject to review by the Commission to determine whether Sunoco’s service and facilities “are unreasonable, unsafe, inadequate, insufficient, or unreasonable discriminatory, or otherwise in violation of the Public Utility Code ....” 66 Pa. C.S. § 1505(a). Chester County R. Exc. at 4-5, 12‑13 (citing *Delaware Riverkeeper*, 179 A.3d at 693).

Similarly, Chester County asserts that Sunoco’s argument that it just needs to meet minimum federal regulatory requirements without ever doing anything more is also unsupported by law. *Id.* at 11-12. In making this argument, Chester County states that the CFR does not state that operators may meet minimum standards and then nothing further can be required of them. Instead, the CFR expressly requires enhancement of a public awareness program where the pipeline is located in a high consequence area. Chester County R. Exc. at 12 (citing *Baker v. Sunoco Pipeline*, *LLC*, Docket No. C‑2018‑3004294 (Initial Decision of ALJ Barnes, December 18, 2019)). Chester County concludes, therefore, that Sunoco’s position that the Commission has no power or jurisdiction over Sunoco’s public awareness program if the company has complied with minimum federal standards is contrary to law and Sunoco’s Exception No. 4 should be denied.[[14]](#footnote-15)

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We agree with the ALJ’s decision that requires Sunoco to implement the disputed public awareness program elements at issue in this Exception. In Pennsylvania, every public utility is required to maintain safe and reasonable service and facilities. 66 Pa. C.S. § 1501. The Commission has the power and duty under the Code to enter such orders and promulgate regulations as are necessary to assure that the public utility service and facilities are safe and reasonable. 66 Pa. C.S. § 1505(a). Further, any determination of what is “reasonable service” under Section 1501 is done on a case-by-case analysis and is subject to the Commission’s broad authority to make such determinations to assure that the public utility service and facilities are safe and reasonable.

As ALJ Barnes stated in her decision, “emergency preparedness issues are squarely within this consolidated proceeding.” I.D. at 159. In this regard, for example, our Regulations provide that each public utility “shall ***at all times 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) (emphasis added). In implementing such a directive, the Commission is not precluded from exercising its power and authority simply because Sunoco has complied with certain minimum standards or because related public awareness issues are being considered in a pending rulemaking proceeding. Such a restrictive reading of the Code would unduly tie our hands when dealing with potentially unreasonable, unsafe, or dangerous public utility services or facilities. We cannot allow such a low bar to be set to preclude us from exercising our power and authority under the Code and our Regulations to protect public utility customers, employees, and the public at large.

Nor is Sunoco’s argument supported by any reasonable interpretation of the CFR. Nowhere in the CFR does it state that operators may meet minimum standards and nothing more is required of them. To the contrary, the CFR, which incorporates the guidance provided in API RP 1162, states that “**[t]he [public awareness] 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.” 49 C.F.R. § 195.440(f) (emphasis added). Additionally, the CFR expressly requires enhancement of a public awareness program where the pipeline is located in a high consequence area. *See Baker* (Initial Decision issued December 18, 2019) (ALJ held that the applicable public awareness and emergency responder regulations in the CFR expressly require an enhancement of a baseline public awareness program if there is heightened inquiry and construction in high consequence areas).

We find, therefore, that ALJ Barnes did not err in: (1) requiring Sunoco to include police departments and school districts on Sunoco’s emergency contact list for Delaware and Chester Counties, (2) directing Sunoco to give advance notification to municipalities prior to proposed excavation on the pipeline system, or (3) requiring Sunoco to meet with affected municipalities and school districts for information sharing, training, and other educational activities. In all of these instances, we are satisfied that Sunoco’s attempts to limit the power of the Commission are contrary to law and that ALJ Barnes exercised proper discretion and authority in reaching her decision on these issues. We shall, therefore, deny Sunoco’s Exception No. 4.

### Sunoco Exception No. 5

#### Positions of the Parties

Downingtown argued that the record supports a finding that Sunoco’s public awareness program increases the dangers facing school districts, municipalities, and the public at large from the risks of a pipeline or valve station event near several individual school buildings. Downingtown M.B. at 14. Downingtown asserted that the Intervenor opinion testimony offered relating to the assistance provided by Sunoco in the event of an emergency response event was that Sunoco failed to provide meaningful information or assistance which would help these schools to respond quickly and effectively to the event. *Id*. Downingtown criticized the evacuation versus “shelter in place” direction offered by Sunoco to school districts as being inadequate and potentially creating more harm being done if the incorrect response is adopted during an actual emergency. *Id*.

Downingtown also argued that these concerns could easily be resolved through early warning by Sunoco; direct early notice to the immediately affected areas; and a well-developed, effective emergency response plan that addresses the specific risks created by Sunoco’s pipelines. *Id*. Downingtown concluded by asserting that Sunoco has failed to offer any credible reason why the recommended measures would not assist school districts and municipalities who are responsible for students, first responders, and vulnerable members of the community at large who are confronting an emergency pipeline event to take effective measures to protect themselves. *Id.* at 15.

WCSD and TVSD similarly asserted that under Sunoco’s current public awareness program, Sunoco does not contact school districts directly regarding any pipeline emergencies and so school officials lose valuable time to respond to any such emergency. WCSD M.B. at 19. WCSD also complained that under Sunoco’s current program, it receives contradictory advice regarding proper course of action in the event of a pipeline emergency. *Id*. WCSD further argued that it is unclear how far the schools that are located within a few hundred feet of the Mariner East pipeline must evacuate to keep students safe or whether even if it is safe to communicate by cellphone during an emergency evacuation. *Id*. WCSD concluded that the Commission order Sunoco to provide immediate, direct notice of pipeline emergencies and to meet and work directly with school districts to provide an “enhanced public awareness campaign tailored to the [unique] concerns of school districts.” *Id.* at 20, 28-30.

Chester County argued that it does not have “the information or tools needed to plan, prepare for, or evacuate from a pipeline leak or rupture.” Chester County R.B. at 2, 17-21. Further, federal and state law requirements only provide minimum safety standards for pipeline facilities, not maximum standards. Chester County, therefore, asserted that Sunoco cannot just meet the minimum standards and nothing more can be required of them. *Id.* at 2-3, 23-26. Chester County concluded that Sunoco should be ordered to work more closely with public officials through regular and ongoing training and public education and outreach as well as helping municipalities in creating and implementing their own emergency preparedness plans. *Id.* at 4, 11-13.[[15]](#footnote-16)

Sunoco argued that its public awareness program requirements for schools and public officials meet the recommendations of API RP 1162; and, in fact, its program goes beyond the baseline requirements by providing additional information as well. Sunoco M.B. at 72. Further, Sunoco stated that it met with school districts in both Delaware and Chester Counties, and that it was responsive in providing answers to follow-up questions that schools asked even though the applicable regulations and API RP 1162 do not require a pipeline to meet with schools, municipal officials, or the affected public. *Id.* at 72 (citing Sunoco St. 5, Perez Rebuttal Test. at 11). Continuing, Sunoco also asserted that it meets with local emergency response committees from the two counties every other month, and that it participates in bi-weekly meetings with township officials from the two counties as well. *Id.* at 72-73 (citing Tr. at 2856, Sunoco St. 6 & McGinn Rebuttal Test at 4-5).

#### Initial Decision

ALJ Barnes ruled that there is substantial evidence supporting the need for emergency response measures by Sunoco that will maximize the timeliness and effectiveness of the school districts’ response at each of their facilities. I.D. at 156. ALJ Barnes found that schools lose valuable time in an emergency waiting for instructions from local fire departments; and, therefore, held that Sunoco must: (a) provide direct notification to schools in Delaware and Chester Counties wishing to be contacted directly, and (b) meet with school districts to help with public education and training efforts relating to pipeline safety issues and to assist these entities as necessary in their emergency preparedness planning. *Id.* (citing 52 Pa. Code §59.33).

ALJ Barnes found that “these schools face logistical challenges in moving thousands of children that render the advice in Sunoco’s current public awareness campaign challenging.” *Id*. The ALJ concluded that if multiple school districts cannot articulate emergency plans that are in concert with Sunoco’s recommendations, then Sunoco’s public awareness campaign as it relates to the affected school districts is unreasonable service within the meaning of 66 Pa. C.S. § 1501. *Id*. In so finding, ALJ Barnes directed Sunoco to work with Downingtown, Rose Tree, WCSD, and TVSD to assist them in developing their own emergency plans. *Id*.

Regarding emergency responders in Delaware and Chester Counties, ALJ Barnes found that pipeline carriers like Sunoco are 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. I.D. at 161-62. Further, ALJ Barnes held that Sunoco is violating 66 Pa. C.S. § 1501 in its refusal to meet with public officials in Delaware and Chester Counties to assist in the preparation of emergency plans. As already discussed relating to Sunoco’s Exception No. 4 immediately above, ALJ Barnes directed Sunoco to meet with public officials in Delaware and Chester Counties to, *inter alia,* establish emergency contact lists; assist with establishing emergency plans for first responders; inform, educate and train staff on proper disaster prevention and disaster response activities; assist in developing an evacuation plan; create a public outreach and education program; notify county and municipal officials in advance of scheduled work to be done or of any pipeline activity, such as simulations, testing, or repairs; and share with Chester County’s Department of Emergency Services maps of all transmission lines and information about repair conditions for liquid and gas pipelines. I.D. at 200-01.

#### Exceptions and Replies

In its Exception No. 5, Sunoco asserts that the ALJ erred in holding that Sunoco refused to meet and provide information to municipalities and school districts and therefore violated 49 C.F.R .§ 195. Sunoco asserts that the ALJ erred in holding that Sunoco refused to meet and provide public awareness information to municipalities and school districts in violation of 66 Pa. C.S. § 1501. Sunoco Exc. at 27 (citing I.D. at 138, 140, 151, 160-61, 192 (Conclusions of Law 46)). Sunoco argues that there is no evidence in the record to support this conclusion. Sunoco Exc. at 27-28. Instead, Sunoco states that the ALJ’s Findings of Fact provide numerous examples of Sunoco’s meetings with municipal and school officials and of it providing these officials with extensive training, assistance, and emergency response planning information. *Id.* at 28-29. Sunoco further argues that the Flynn Complainants’ and Aligned Intervenors’ own emergency response experts directly contradict the ALJ’s findings on this issue. *Id.* at 29 (citing I.D. at 59 (Findings of Fact No. 320)). Sunoco concludes that if it violated Section 1501 “then every other pipeline operator in Chester and Delaware [Counties] must be violating Section 1501 as well.” *Id*. (footnote omitted.)

In its Replies, Chester County argues that ALJ Barnes did not err in finding that Sunoco violated Section 1501 in refusing to meet with municipalities and school districts and otherwise withholding information that would be useful in the preparation of emergency response plans. Chester County R. Exc. at 13. While Sunoco may have met the bare minimum requirement of 49 C.F.R. § 194.440, Chester County asserts that the ALJ was correct in finding that Sunoco should not have ignored the feedback from school districts and other public officials regarding what information they needed in reaching their goal of creating effective and useful emergency response plans. *Id.* at 13-14. Chester County then provides numerous examples of record evidence/testimony to support its position that more information was needed by these entities. *Id.* at 14-16. Chester County concludes that ALJ Barnes had sufficient evidence to base her finding that Sunoco is in violation of Section 1501 and, therefore, Sunoco’s Exception No. 5 should be denied. *Id.*

Downingtown similarly argues that there is sufficient evidence in the record to support ALJ Barnes’ finding that Sunoco refused to meet or provide necessary information and training to municipalities and school districts for them to create their own respective emergency response plans. Downingtown R. Exc. at 5. Downingtown criticizes Sunoco for attempting to “cherry pick” record references to support its claim and arguing that there is no evidence to support a contrary finding. *Id.* at 6. Downingtown concludes that there is sufficient, competent evidence in the record to support the ALJ’s findings on this issue and Sunoco’s Exception No. 5 should be denied. *Id.*

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

Upon review, we conclude that ALJ Barnes exercised proper discretion and authority in reaching her decision requiring Sunoco to meet, train, and provide information to municipalities and school districts to help these entities create their own emergency response plans. In so holding, we find that this issue was already addressed in substantial part in relation to Sunoco’s Exception No. 4, discussed immediately above. We will, therefore, incorporate by reference our discussion and legal analysis relating to Sunoco’s Exception No. 4 above to resolve the instant issue. Based on the foregoing analysis, we shall deny Sunoco’s Exception No. 5.

### Sunoco Exception No. 6

#### Positions of the Parties

The positions of the Parties pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception Nos. 4 and 5, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception Nos. 4 and 5, b., is adopted and incorporated herein by reference. In addition, as reflected in the above discussion, upon examination of Sunoco’s public awareness program, the ALJ concluded that Sunoco’s public awareness program was inadequate in several material respects and directed certain measures to be taken to ensure adequate communication with the public, regarding, *inter alia*, Sunoco’s print material content, direct communication with schools, excavators and public officials, and preparing emergency responders. *See, generally*, I.D. at 134-169. In view of the ALJ’s conclusion that Sunoco’s public awareness program was deficient in several material respects, the ALJ further directed that Sunoco conduct an independent audit of its existing plan, and report on the changes directed to ensure Sunoco’s compliance with directives intended to ensure the public awareness measures constituted safe and adequate provision of service, consistent with Sunoco’s duty under Section 1501 of the Code.

Specifically, the ALJ concluded:

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).

I.D. at 190 (COL No. 38). The ALJ further detailed the necessary elements that Sunoco’s public awareness program must satisfy to adequately inform public awareness regarding the safety issues associated with Sunoco’s transport of HVLs. I.D. at 134-169. Specifically, the ALJ directed:

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.

I.D. at 202 (Ordering Paragraph No. 19).

Consistent with the directive to implement a plan to enhance Sunoco’s public awareness program, the ALJ further directed that Sunoco conduct a comprehensive review of its public awareness program, directing:

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.

I.D. at 202 (Ordering Paragraph No. 21).

#### Exceptions and Replies

In its Exception No. 6, Sunoco asserts that the ALJ’s requirement in the Initial’s Decision’s Ordering Paragraph No. 21, that Sunoco independently audit its public awareness program, is moot.

Sunoco asserts that while the Order directs Sunoco to complete a review of its public awareness program through an internal self-assessment using an internal working group or through third-party auditors, the record reflects and the ALJ findings conclude that Sunoco has already completed an audit of its public awareness program. Specifically, Sunoco avers that the fact that Sunoco’s public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey (PAPERS), demonstrates that the ALJ’s directive is redundant, and moot. Sunoco Exc. at 30 (citing I.D. at 54 (FOF No. 277)), 144.

Sunoco further avers that the PAPERS audit concluded that Sunoco’s public awareness program was effective in achieving program objectives and was comparable to the other pipeline operators’ programs. I.D. at 54 (Findings of Fact No. 278). Sunoco argues that, therefore, Ordering Paragraph 21 of the Initial Decision is inconsistent and contrary to the evidence, and should be found to be moot. *Id*.

In its Replies, Chester County notes that the purpose of the internal review was to measure Sunoco’s existing practices against the changes directed by the ALJ’s Initial Decision. Chester County asserts that the performance of the prior audit does not render the requirement to perform a new audit moot, in view of the newly directed changes to Sunoco’s public awareness program.

Chester County also asserts that while Sunoco provides general citations for granting injunctive relief, the authority cited by Sunoco does not support its position. Accordingly, Chester County argues, that the ALJ did not err in Ordering Paragraph No. 21, directing Sunoco to perform a comprehensive review of its public awareness program. Chester County argues that substantial evidence was presented at the hearings that Sunoco’s public awareness program has failed and does not meet the goals for which such programs are intended. *See* Chester PH Brief at § V(C)-(D) and R.B. at §§ II (B), (D).

Further, Chester County asserts that there is substantial testimony from first responders, emergency management personnel, school district officials, municipalities, and residents regarding the failure of Sunoco’s public awareness program. For example, Chester County notes that:

… Ronald Gravina, a fire chief and first responder for 48 years testified that he has major concerns and has not been provided with sufficient information from Sunoco. N.T. 1121:16-22; 1126:21-25; 1127:24-25; 1128:1-4. Mr. William H. Turner, the Deputy Director for Emergency Management for the Chester County Department of Emergency Services Turner and accepted as an expert in emergency management and emergency preparedness, testified that he does not have the information needed to develop a proper emergency response plan in the event of a pipeline incident and it has been very difficult for him to get information from Sunoco. St. 1, 2:5-18; N.T. 2197:1-5; N.T. 2244:1-4. Mr. Timothy Hubbard, the fire marshal/emergency management officer in Charlestown Township, Chester County, testified that he encountered difficulties in obtaining information from Sunoco that caused him concern and that that there was a lack of any real, true and credible assistance from Sunoco, 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. 68:21-25; 80:15, 18; 80:24-25; 81:1-2. School district personnel such as Dr. Emile Lonardi, the superintendent of schools for the Downingtown Area School District, Dr. James Scanlon, the 18 2524945.1/55456 superintendent of the West Chester Area School District, and Kevin Campbell, the director of facilities and operation for the West Chester Area School District for the past 20 years, among others, N.T. 901:14-21; 1214:16-23; 1215:20-23; 1247:2-7, testified extensively about the failure of Sunoco’s public awareness program. Additionally, Chester County residents Dr. Gerald McMullen, Nancy Harkins, Caroline Hughes, Virginia Marcille-Kerslake, and Thomas McDonald, among others, have testified that they remain unsure of what to do in the event of a pipeline leak.

Chester County R. Exc. at 17-18, citing Chester County PH Brief at § V(D)(1) and (3).

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We conclude that ALJ Barnes exercised proper discretion and authority in reaching her decision requiring Sunoco to conduct a comprehensive review of its public awareness program. We agree with Chester County, that in view of the necessary and specified changes required by the Initial Decision, to address deficiencies in Sunoco’s public awareness program, the requirement to conduct a comprehensive review of the program is not moot. In so holding, we find that this issue was already addressed in substantial part in relation to Sunoco’s Exception No. 5, discussed immediately above. We will, therefore, incorporate by reference our discussion and legal analysis relating to Sunoco’s Exception No.5, above to resolve the instant issue. Based on the foregoing analysis, we shall deny Sunoco’s Exception No. 6.

### Sunoco Exception No. 7

#### Positions of the Parties

The positions of the Parties pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception No. 6, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception No. 6, b., is adopted and incorporated herein by reference. In addition, as reflected in the above discussion, the ALJ concluded that the relief directed at Ordering Paragraphs Nos. 16-20 of the Initial Decision was necessary for Sunoco to provide a safe and adequate public awareness program.

As previously noted, ALJ Barnes stated in her decision, “emergency preparedness issues are squarely within this consolidated proceeding.” I.D. at 159. The ALJ expressly acknowledged that any relief granted must be carefully drawn to abate the specific harm found under any violation of the utility’s duties under the applicable statute or regulations. The ALJ expressly stated:

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).

I.D. at 187 (COL 18).

The ALJ further noted that our Regulations provide that each public utility “shall ***at all times 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) (emphasis added). Pursuant to that authority, the ALJ directed the relief in Ordering Paragraphs Nos. 16-20 of the Initial Decision. I.D. at 200‑202.

#### Exceptions and Replies

In its Exception No. 7, Sunoco asserts that the ALJ erred because the mandatory injunctive relief directed by the Initial Decision’s Ordering Paragraphs Nos. 16-20 is not narrowly tailored and there is no evidence of irreparable injury if injunctive relief is not granted.

Sunoco asserts that Ordering Paragraphs Nos. 16-20 of the Initial Decision direct Sunoco to arrange for meetings with Delaware and Chester Counties, all municipal supervisors and all school districts “for the purpose of scheduling public awareness/education meetings” and to “discuss additional communications and training” and “provide such training as reasonably requested by those parties.” Sunoco avers that these are mandatory injunctive directives which are not narrowly tailored. For example, Sunoco avers that there is no direction as to the number of meetings, who is required to attend the meetings, or as to the scope of the training or information required to be provided. Further, Sunoco asserts that the ALJ failed to identify any specific emergency response information that Sunoco failed to provide municipalities and schools or is not willing to provide with an appropriate non-disclosure agreement to protect information protected by the Pipeline Security Act. Sunoco Exc. at 31-32.

Finally, Sunoco alleges that the grant of injunctive relief, in the form of a duty to meet with local officials, is not warranted where there is no express finding that the Complainants and aligned Intervenors will suffer irreparable injury if the meetings do not take place. Sunoco avers that the ALJ’s finding, that there is “insufficient evidence to show SPLP’s ME-1 and 12-inch pipelines are not being appropriately managed to ensure they are safe to operate” precludes a finding that imminent, irreparable injury is likely to occur without the additional meetings directed by the ALJ. Sunoco Exc. at 33, citing, I.D. at 29, FOF 99.

In its Replies, Chester County asserts that pursuant to Section 1501 of the Code, Sunoco is required to maintain safe and reasonable service and facilities. Therefore, Chester County asserts that the Commission has the authority to enter such orders as are necessary to assure that the public utility service and facilities are safe and reasonable. 66 Pa. C.S. § 1505(a). Chester County notes that the ALJ correctly concluded:

[a] sufficient public awareness program is a damage prevention measure just as routine inspection and maintenance, corrosion protection, and integrity management.

I.D. at 138. Chester County asserts that Sunoco’s position that the Commission cannot issue directives for enhanced public awareness and emergency training plans is directly contradicted by the *Baker* case upon which Sunoco relies. Chester County notes that in *Baker*, the Commission held that Sunoco must contact the Lower Frankford Township Supervisors and Cumberland County Commissioners within 30 days:

for the purpose of scheduling a public awareness/education meeting to be held in Cumberland County and to participate in such meeting.

*Baker at* 31-32. Chester County asserts that the requirement for Sunoco to meet with township supervisors, the very type of relief granted in the present proceeding, was upheld by the Commission in *Baker*.

Chester County further notes, with respect to *Baker*, that there the Commission declined to grant the relief of, *inter alia*, requiring Sunoco to provide training to local officials and perform a baseline evaluation of its public awareness program, and such relief was denied, not because the Commission lacks authority to direct such relief, but rather, because the Commission concluded that the relief exceeded the scope of the relief sought in the complaint in that proceeding. Chester County R. Exc. at 19, citing *Baker* at 25-26.

Chester County argues that where, as here, the relief requested was squarely before the ALJ by the multiple Complainants and their aligned Intervenors, and directly at issue by the evidence and testimony presented, Sunoco may not claim that the Commission is powerless to direct the relief requested, which was carefully drawn to abate the deficiencies found in Sunoco’s public awareness program. Chester County R. Exc. 18-20.

In their Replies, Downingtown and East Goshen assert that Sunoco’s position that the narrow injunctive relief (*i.e.*, ordering meetings and discussions and providing information) is impracticable and not narrowly tailored to abate the harm caused by Sunoco’s deficient public awareness plan is incorrect. Downingtown and East Goshen assert that the ALJ correctly recognized that to obtain injunctive relief, as requested here, 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. Downingtown R. Exc. at 6, citing *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).

Downingtown and East Goshen assert that the injunctive relief ordered here, cooperative effort to meet and discuss, and provide certain disclosures to ensure safety, is relief narrowly tailored to harm caused by Sunoco’s deficient public awareness program, and the inability to adequately respond to a pipeline emergency. Accordingly, Downingtown and East Goshen assert that Sunoco’s Exception No. 7 should be denied.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We conclude that ALJ Barnes exercised proper discretion and authority in reaching her decision requiring Sunoco to take corrective action regarding its public awareness program, including, *inter alia*, the directives in Ordering Paragraphs Nos. 16‑20. We agree with Chester County, Downingtown and East Goshen, that in view of the necessary and specified changes required by the Initial Decision, to address deficiencies in Sunoco’s public awareness program. Ordering Paragraphs Nos. 16-20 are relief which is drawn carefully to abate those deficiencies, while allowing for the flexibility necessary for collaborative effort between Sunoco and the local authorities.

We conclude that the ALJ’s directives in Ordering Paragraphs Nos. 16-20 are within the scope of the relief requested in this proceeding and are consistent with the Commission’s authority to direct injunctive relief, per, *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 Order dated Oct. 1, 2018). *See also* *Baker v. SPLP*, Docket No. C-2018-3004294, at 26 (Opinion and Order entered Sept. 23, 2020)

We note our agreement with the ALJ that the requirement of working cooperatively with the impacted communities is an effective and efficient means of addressing public awareness issues at the local level. In so holding, we find that this issue was already addressed in substantial part in relation to Sunoco’s Exception No. 6 discussed immediately above. We will, therefore, incorporate by reference our discussion and legal analysis relating to Sunoco’s Exception No. 6, above, to resolve the instant issue. Based on the foregoing analysis, we shall deny Sunoco’s Exception No. 7.

### Sunoco Exception No. 8

#### Positions of the Parties

The positions of the Parties pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception No. 7, a., is adopted and incorporated herein by reference.

#### Initial Decision

The summary of the Initial Decision pertaining to the adequacy of Sunoco’s public awareness program, as discussed *supra*., at Sunoco’s Exception No. 7, b., is adopted and incorporated herein by reference.

#### Exceptions and Replies

In its Exception No. 8, Sunoco asserts that the ALJerred in the Initial Decision’s Ordering Paragraph No. 16(i) by directing Sunoco to designate a liaison to tour the area surrounding the pipeline and provide dedicated employees or funding.

Specifically, Sunoco asserts that the Commission has no authority to mandate that a pipeline operator employ a specific liaison or direct the activities that liaison must perform. Sunoco avers that such determinations are within a utility’s managerial discretion. Further, Sunoco asserts that the directive improperly places a duty on Sunoco where municipalities and schools alone have the responsibility to develop their emergency response plans under Title 35 of the Pennsylvania Consolidated Statutes. Sunoco Exc. at 34 citing, I.D. at 60, FOF No. 322.

Sunoco further avers that the ALJ erred by requiring Sunoco to fund dedicated local emergency response employees, and by requiring emergency response planning that is specific to the features of each neighborhood or school. Sunoco Exc. at 35 citing, I.D. at 57-58, FOF 307-308. Sunoco concludes that Ordering Paragraph 16(i) is, therefore, an impressible direction for Sunoco to implement a neighborhood, feature-by-feature, emergency response plan in direct contravention of the ALJ’s own finding that such plans are not feasible or appropriate. *Id*.

In its Replies, Chester County asserts that contrary to Sunoco’s characterization of the ALJ’s directive in Ordering Paragraph No. 16(i), there is nothing confusing or improper about the directive that Sunoco’s designated County liaison tour the areas around the pipeline so that the liaison will be better familiarized with the geology, terrain and the location of schools, libraries, retirement communities, roadways, etc. Chester County asserts that this directive is a common-sense response to the deficient communication under Sunoco’s current public awareness program. Chester County argues that this requirement will enable the liaison to be better informed when providing emergency planning assistance to impacted stakeholders. Chester County R. Exc. at 23-24.

Chester County refutes Sunoco’s position that the Commission lacks authority to direct Sunoco’s use of a liaison. Chester County asserts that Sunoco should already have liaisons with the County, as required by law under Section 195.402 and API RP 1162, Section 2.3.2 (Emergency Responder liaison activities). Chester County R. Exc. at 23-24, citing I.D. at 159. Chester County further asserts that “managerial discretion” does not give Sunoco immunity from performing its legal duties. *Id*.

Finally, Chester County maintains that the case law relied upon by Sunoco does not support its position. Chester County asserts that *Metro. Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth.1981), cited by Sunoco, is a ratepaying case, wherein the court noted that utilities have a right of self-management. Chester County asserts that Sunoco’s reliance on the case in misplaced, since:

… the Court made clear that “[a]n obvious corollary of the above proposition is that if there has been an abuse of managerial discretion, and the public interest has been adversely affected thereby, then the Commission is empowered to intervene.” Id. 437 A.2d at 80.

Chester County R. Exc. at 23-24. Chester County notes that, to the contrary of Sunoco’s position, the Commission has upheld directives to requiring the utility to meet with local officials. *Id*., citing *Baker* at 31-32

 Chester County maintains that by requiring Sunoco to visit the areas adjacent to the pipeline and liaison with emergency preparedness professionals and provide information, the Initial Decision directs reasonable means to assist those professionals in developing the best possible evacuation plans for the people under their care. Chester County R. Exc. at 23-25. Accordingly, Chester County asserts that Sunoco’s Exception No. 8 should be denied.

#### Disposition

Upon review of the Exception and Replies thereto, the record in the proceeding and the ALJ’s analysis and disposition of the issue, we shall deny the Exception.

We conclude that ALJ Barnes exercised proper discretion and authority in reaching her decision requiring Sunoco to take corrective action regarding its public awareness program, including, *inter alia*, the directive in Ordering Paragraph No. 16(i). We agree with Chester County, that in order to address deficiencies in Sunoco’s public awareness program, Ordering Paragraph No. 16(i) directs relief which is drawn carefully to address the problem of the lack of awareness regarding the pipeline’s proximity to schools and other high consequence areas, while allowing for the flexibility necessary for collaborative effort between Sunoco and the local authorities.

In so holding, we find that this issue was already addressed in substantial part in relation to Sunoco’s Exception No. 7, discussed immediately above. We will, therefore, incorporate by reference our discussion and legal analysis relating to Sunoco’s Exception No. 7, above, to resolve the instant issue. Based on the foregoing analysis, we shall deny Sunoco’s Exception No. 8.

# Conclusion

Based on the foregoing discussion, we shall deny the Exceptions, consistent with the discussion in this Opinion and Order and adopt the ALJ’s Initial Decision; **THEREFORE**,

**IT IS ORDERED:**

1. That the Exceptions to the Initial Decision of Administrative Law Judge Elizabeth H. Barnes issued April 12, 2021, at Docket Nos. C-2018-3006116, P‑2018-3006117, C-2018-3003605, C-2018-3005025, C-2019-3006898, and C‑2019‑3006905, filed by East Goshen Township and Downingtown Area School District on June 3, 2021, by Chester County, Uwchlan Township (joining and adopting the Exceptions of Chester County), and Sunoco Pipeline L.P., on June 7, 2021, by Melissa DiBernardino on June 8, 2021, and by the Andover Homeowners’ Association, Inc. on June 14, 2021, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes issued April 12, 2021, at Docket Nos. C-2018-3006116, P-2018-3006117, C‑2018‑3003605, C-2018-3005025, C-2019-3006898, and C-2019-3006905, is adopted, consistent with this Opinion and Order.
3. That the Second Amended Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Flynn Complainants) against Sunoco Pipeline, L.P. at Docket No. C‑2018‑3006116 filed on June 18, 2018, is granted, in part, and denied, in part.
4. That the consolidated Complaint of the Andover Homeowners’ Association, Inc. against Sunoco Pipeline, L.P. at Docket No. C-2018-3003605 filed on July 24, 2018, is granted, in part, and denied, in part.
5. That the consolidated 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.
6. That the consolidated Complainant of Rebecca Britton against Sunoco Pipeline, L.P. at Docket No. C-2019-3006898 filed on December 27, 2018, is granted, in part, and denied, in part.
7. That the consolidated Complaint of Laura Obenski against Sunoco Pipeline, L.P. at Docket No. C-2019-3006905 filed on January 2, 2019, is granted, in part, and denied, in part.
8. 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:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building, Second Floor

400 North Street

Harrisburg, PA 17120

1. 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).
2. 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).
3. That the Complaints at this consolidated docket seeking 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.
4. That the Complaints at this consolidated docket seeking directives mandating the Sunoco Pipeline, L.P add 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.
5. That the Complaints at this consolidated docket seeking directives that 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.
6. That the Andover Homeowners’ Association, Inc.’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.
7. 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.
8. That Sunoco Pipeline, L.P. shall supplement its controller’s emergency contact list for 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 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.
9. 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.
10. That Sunoco Pipeline, L.P. is directed to contact Chester County Commissioners, Delaware County Commissioners, and all municipalities’ supervisors therein within thirty (30) days of the date of Final entry of this Opinion and Order in this consolidated proceeding to arrange for meeting(s) (either remotely or in-person or a combination thereof as mutually agreeable) to:
11. establish emergency contact list information for the operator’s controller and county liaison(s);
12. 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;
13. 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;
14. 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 SUNOCO-50 and as requested by Complainants and their aligned Intervenors;
15. 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;
16. provide detailed information regarding its infrastructure;
17. assist in the development of an evacuation plan for use by municipalities with concept of how evacuation would occur;
18. create a public outreach and public education program;
19. 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;
20. notify not only the County but all municipalities in Delaware or Chester County of anticipated, scheduled or commenced work done in those counties;
21. notify County officials, in advance, of any pipeline activity, such as simulations, testing, routine maintenance, repairs, etc.;
22. 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
23. establish times and dates for follow-up meetings and periodic meeting schedules as mutually agreeable between municipalities, counties and Sunoco Pipeline, L.P.
24. 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 Final entry of this Opinion and Order for the purpose of scheduling public awareness/education meetings to be held in each School District.
25. That absent exigent circumstances, Sunoco Pipeline, L.P. is directed to appear at the scheduled meetings referenced in Ordering Paragraph Nos. 18 and 19, 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.

21. That within one hundred twenty (120) days of Final entry of this Opinion and Order, 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.

1. 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. 21, the plan will be deemed accepted and approved.
2. 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 Final entry of this Opinion and 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.
3. That Sunoco Pipeline, L.P. is directed to conduct a depth of cover and distance between other underground pipelines/structures survey regarding Mariner East 1 and the 12-inch workaround pipelines as long as they are purposed for carrying highly volatile liquids a/k/a natural gas liquids.
4. That Sunoco Pipeline, L.P. is directed to bury its Mariner East 1 and 12-inch pipelines as long as these pipelines are transporting Highly Volatile Liquids such that they are at least twelve 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 twelve inches apart.
5. That within one hundred twenty (120) days of the date of Final entry of this Opinion and 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 twelve 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.
6. That the report as described in Ordering Paragraph No. 26 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.
7. That the report as described in Ordering Paragraph No. 26 shall be filed annually for a period of three (3) years.
8. 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.
9. That the portion of the Complaints at this consolidated docket seeking directives that Sunoco Pipeline, L.P., conduct a remaining life study of the 12‑inch workaround pipeline is denied.
10. That Complainant Obenski’s request that the Commission direct Sunoco Pipeline, L.P. to relocate a valve station currently on Dorlan Mill Road near Glenwood Elementary School is denied.
11. That the portions of the Complaints at this consolidated docket seeking directives that Sunoco Pipeline, L.P., install an early public audible warning alarm system for residents and places of congregation along the rights-of-way of the Mariner East pipeline facilities and a directive that an odorant be added to the highly volatile liquids of ethane, butane, and propane being transported are denied.
12. That the portion of the Complaints at this consolidated docket seeking a directive 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 Delaware and Chester Counties is denied.
13. 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 highly volatile liquids.
14. 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.
15. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with these Ordering Paragraphs.
16. That upon payment of the civil penalty in Ordering Paragraph No. 8 and the compliance filings in Ordering Paragraph Nos. 21-26, Docket Nos. C‑2018‑3006116, P-2018-3006117, C-2018-3003605, C-2018-3005025, C‑2019‑3006898, and C-2019-3006905 shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 18, 2021

ORDER ENTERED: November 18, 2021

1. Uwchlan Township also filed a letter on June 7, 2021, in which it joins in and adopts Chester County’s Exceptions. [↑](#footnote-ref-2)
2. The Flynn Complainants are comprised of the following complainants: Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (collectively, Flynn Complainants). [↑](#footnote-ref-3)
3. Uwchlan Township also filed a letter on July 2, 2021, in which it joins in and adopts Chester County’s Reply Exceptions. [↑](#footnote-ref-4)
4. Various persons and entities have filed Petitions to Intervene in a number of filings associated with this case as more fully described below. [↑](#footnote-ref-5)
5. 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. [↑](#footnote-ref-6)
6. In formal complaint proceedings, the Commission, not the ALJ, is the ultimate factfinder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)). [↑](#footnote-ref-7)
7. Relevant to the present proceeding, the Commission has initiated a rulemaking proceeding at Docket No. L-20193010267, 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 utilities’ public awareness programs pursuant to 49 CFR § 195.440 and API RP 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. [↑](#footnote-ref-8)
8. 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, at 10-11 (Order entered October 1, 2018) (*W. Goshen Twp)*. [↑](#footnote-ref-9)
9. In re: Protection of Proprietary Information, to the extent this Opinion and Order adopts and relies upon the Findings of Facts and Conclusions of Law set forth in the ALJ’s Initial Decision, we note that designated proprietary information, submitted under protective order, and redacted in the public version of the ALJ’s Initial Decision, remains confidential and not subject to disclosure. Our incorporation by reference to the ALJ’s Findings of Fact and Conclusions of Law should be construed as reference to the NON-PROPRIETARY VERSION of the ALJ’s Initial Decision and, as such, does not constitute waiver of confidentiality of proprietary information in any context. [↑](#footnote-ref-10)
10. As a preliminary procedural matter, Sunoco and its aligned Intervenor, Range Resources, challenge the Andover HOA’s Exceptions as untimely filed. Sunoco and Range Resources argue that, where the Exceptions were due on June 7, 2021, and the Andover HOA filed its Exceptions on June 13, 2021, the Exceptions should be denied as untimely. We note that, pursuant to 52 Pa. Code § 1.2, where the Commission deems it appropriate in the interest of justice, and where no prejudice results, a procedural defect may be disregarded where the substantive rights of the parties are not prejudiced. Finding no prejudice will result from consideration of the Andover HOA’s Exceptions, in the circumstances, we shall consider the Exceptions. [↑](#footnote-ref-11)
11. American Petroleum Institute Recommended Practice 1162, First Edition, December 2003, *Pipeline Awareness Programs for Pipeline Operators.*  [↑](#footnote-ref-12)
12. Numerous examples of this impracticability were offered by the Complainants at the hearings. Tr. at 952-953, 1002-1007, 1046-1047. [↑](#footnote-ref-13)
13. Intervenor Uwchlan Township joined in the arguments of Chester County. Uwchlan Twp. Letters dated December 16, 2020, and January 19, 2021. [↑](#footnote-ref-14)
14. Downingtown, Rose Tree and East Goshen Township also make the same arguments as Chester County regarding Sunoco’s Exception No. 4 in their Replies to Exceptions. Downingtown R. Exc. at 4-5. [↑](#footnote-ref-15)
15. Delaware County joined in and adopted Chester County’s arguments. Delaware County Letter dated January 21, 2021. [↑](#footnote-ref-16)