**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held February 27, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Andrew G. Place

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission C-2018-3006534

Bureau of Investigation and Enforcement

 v.

Sunoco Pipeline, L.P.

**TENTATIVE OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Approval of Settlement (Settlement or Joint Petition or Settlement Agreement) filed on April 3, 2019, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Sunoco Pipeline, L.P. (Sunoco) (collectively, the Parties or Joint Petitioners), as amended on June 28, 2019, by the Addendum to the April 3, 2019 Joint Petition for Approval of Settlement (Addendum). On December 20, 2019, the Commission issued the Initial Decision of Administrative Law Judge Elizabeth H. Barnes approving the Settlement. Exceptions have not been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall adopt the Initial Decision, as modified by this Opinion and Order.

**History of the Proceeding**

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

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

Much of the history of the above-captioned proceeding is detailed in the Commission’s Opinion and Order entered June 10, 2019 (*June 2019 Order*) and will not be repeated here. In the *June 2019 Order* the Commission referred the matter to the Office of Administrative Law Judge (OALJ) for such further proceedings and hearings as deemed necessary, consistent with that order.

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

Paragraph 21 states as follows:

21. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies the Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the party within twenty (20) days after entry of an Order modifying the Settlement.

 Settlement at ¶ 21. According to the Addendum, the Joint Petitioners agreed to modify Paragraph 21 of the Settlement Agreement regarding a party’s right to withdraw from the Settlement, due to the Commission’s referral of this matter to OALJ. Consequently, Paragraph 21 of the Settlement was modified to read as follows:

 21. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the assigned Administrative Law Judge or Commission modifies the Settlement Agreement in any way, including, but not limited to, ordering any additional process[[1]](#footnote-1) in this settlement matter other than the notice and Comment and Reply Comment process specified in Paragraph 26, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the party within twenty (20) days after the latter of[[2]](#footnote-2) entry of any Administrative Law Judge or Commission Order or Ruling modifying the Settlement in any way, including, but not limited to, the modifying procedures, events or actions described above in footnote 1 below [above]. A decision not to elect to withdraw from this Settlement, which contain certain public safety features which are “above and beyond” current regulatory requirements,[[3]](#footnote-3) are in the public interest and should neither be delayed nor discouraged by any further litigation-like process that works at cross-purposes with encouraging, accomplishing and promptly allowing for implementation of this Settlement.

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

On July 15, 2019, an Order Granting Petitions to Intervene was issued. Seven Petitioners were granted Intervenor status, including: (1) Thomas Casey; (2) West Goshen Township; (3) Josh Maxwell (in his individual capacity); (4) West Whiteland Township; (5) Edgmont Township; (6) Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (collectively Flynn Intervenors)[[4]](#footnote-4); and (7) Upper Uwchlan Township.

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

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

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

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

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

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

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

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

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

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

**Discussion**

**Legal Standards**

*Pursuant to the Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E) and 66 Pa. C.S. § 308.2(a)(11), I&E is the entity authorized to prosecute complaints against public utilities. Pursuant to Section 59.33(b) of the Commission’s Regulations, 52 Pa. Code § 59.33(b), I&E’s Safety Division has the authority to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199.

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

A-140111 to operate the Mariner East 1 pipeline, which currently transports hazardous volatile liquids on intrastate facilities. A public utility transporting hazardous liquids may be subject to the civil penalties provided under Federal pipeline safety laws at 49 U.S.C.A. §§ 60122(a)(1) and 60118(a), as adjusted annually for inflation.

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

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

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

Furthermore, Commission Regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans at 49 CFR § 195.440 (relating to public awareness). A pipeline operator utility should use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a).

**Joint Petition for Settlement**

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

**III. SETTLEMENT TERMS**

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

1. ***Civil Penalty***

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

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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

1. ***Remaining Life Study***

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP’s Integrity Management Plan (“IMP”), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

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

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

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

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

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

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

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

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

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

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

• An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures; • A summary of the leak history on ME1 including a description of the size of each leak;

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

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

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

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

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

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

1. b. Close Interval Survey

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

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

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

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

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

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

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

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

Settlement at ¶ 17.

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

**ALJ’s Initial Decision**

The ALJ made twenty-five Findings of Fact and reached nine Conclusions of Law. I.D. at 3-6, 38-39. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Following her analysis of the arguments put forth by the Parties in their Comments, Reply Comments, Objections and Answers to the several issues in the Settlement,[[5]](#footnote-5) the ALJ recommended that the proposed Settlement filed on April 3, 2019, as amended by the June 28, 2019 Addendum, be approved in its entirety without modification because it is in the public interest. I.D. at 1, 37, 39. According to the ALJ, the Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process. The ALJ noted that the Settlement satisfies the “public interest” standard and benefits that show a likelihood or probability of public benefits that need not be quantified or guaranteed. *Id.* at 37. The ALJ also stated that the terms and conditions of the proposed Settlement, taken as a whole, represent a fair and reasonable resolution of the issues raised by I&E in this matter. *Id.* at 38. Therefore, the ALJ approved the Joint Petition for Settlement and encouraged Sunoco to share the full Remaining Life Study reports with townships requesting to review them subject to non-disclosure agreements with the township solicitors and technical experts as this is also in the public interest. *Id.*

**Disposition**

In her Initial Decision, ALJ Barnes recommended adoption of the Joint Petition for Settlement filed on April 3, 2019 as modified by the Addendum filed on June 28, 2019, in its entirety. We shall adopt the ALJ’s Initial Decision and approve the Joint Petition for Settlement, as modified by this Tentative Opinion and Order.

We shall modify the Remaining Life Study that the Parties have agreed should be carried out by an independent pipeline expert in the Settlement. As indicated in the Settlement, the Study will, among other things, provide remaining life calculations for the pipeline by: (1) segment; (2) age; (3) coating type; and, (4) soil conditions. Settlement at ¶ 17. The information collected in this Study will be invaluable for any determinations regarding the operations of ME1. Because of the importance of this Study, the independence and expertise of the entity chosen to conduct the study is critical.

The process agreed upon in the Settlement for choosing the expert is that Sunoco will provide I&E with a list of three experts that have conducted studies for, but not limited to, the Pipeline and Hazardous Materials Safety Administration, other state commissions, the Pipeline Research Counsel International, the American Petroleum Institute, or the Interstate Natural Gas Association of America. The Settlement provides that within thirty (30) days of entry of the order approving the Settlement, Sunoco is to forward a list of the three experts to I&E. Settlement at ¶ 17. We clarify that I&E shall select the expert to conduct the Remaining Life Study within thirty (30) days of receipt of the list.

The Settlement also states that any work done by the expert on the ME1 pipeline must be disclosed. For purposes of transparency, we believe that adding a provision requiring disclosure of any projects this expert has worked on for Sunoco, Sunoco’s parent company, Energy Transfer Partners, or any Sunoco affiliate. This information should be furnished to I&E in accordance with the provisions of the Settlement Agreement.

The Settlement provides that Sunoco is responsible for paying for the Remaining Life Study. To further ensure the independence of the Study, we believe that only the final form Study, not interim drafts, shall be delivered to Sunoco and I&E on or before the end of the agreed upon six-month contract term. We believe these modifications will ensure a transparent and objective process. With these controls put in place, we conclude that Joint Petition for Settlement is in the public interest. As such, Paragraph 17(B) of the Settlement is modified as follows:

1. ***Remaining Life Study***

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP’s Integrity Management Plan (“IMP”), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

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

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

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

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

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

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

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

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

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

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

• An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures; • A summary of the leak history on ME1 including a description of the size of each leak;

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

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

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

**Conclusion**

In light of the above, we shall issue this Tentative Opinion and Order that adopts the ALJ’s Initial Decision to approve the Settlement, as modified. Any active parties and interested parties shall have ten (10) days from the date of entry of this Tentative Opinion and Order to file comments, and pursuant to the terms of the Settlement, the Joint Petitioners will have twenty (20) days from the date of this Tentative Opinion and Order to withdraw from the Settlement. If no adverse comments are received and if no party withdraws from the Settlement Agreement, this Tentative Opinion and Order shall become final without further Commission action;

**THEREFORE,**

 **IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on December 20, 2019, as it pertains to the Joint Petition for Approval of Settlement filed on April 3, 2019, at Docket Number C-2018-3006534, by the Commission’s Bureau of Investigation and Enforcement and Sunoco Pipeline, L.P., as amended on June 28, 2019 by the Addendum to the April 3, 2013 Joint Petition for Approval of Settlement, is adopted, as modified by this Tentative Opinion and Order.
2. That Sunoco Pipeline, L.P. will pay a civil penalty in the amount of Two Hundred Thousand Dollars ($200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission’s final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C‑2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

 Rosemary Chiavetta, Secretary

 Pennsylvania Public Utility Commission

 Commonwealth Keystone Building

 400 North Street

Harrisburg, PA 17120

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

1. That Sunoco Pipeline, L.P. shall retain an independent expert, unaffiliated with Sunoco Pipeline, L.P. or its affiliates, as selected by the Commission’s Bureau of Investigation and Enforcement to conduct a Remaining Life Study that will consist of a summary of Sunoco Pipeline, L.P.’s Integrity Management Plan (“IMP”), a remaining life evaluation of Mariner East 1, calculations that are described in the Settlement Agreement, and will be forward-looking in manner, and intended to assess the longevity of Mariner East 1.
2. That the Remaining Life Study shall be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) or State Commissions, and the Pipeline Research Counsel International (“PRCI”), American Petroleum Institute (“API”), or the Interstate Natural Gas Association of America (“INGAA”).

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

1. That within thirty (30) days of receipt of the list, the Commission’s Bureau of Investigation and Enforcement shall select one (1) expert from the list provided by Sunoco Pipeline, L.P., which will hire and pay the expert to complete and review the study.
2. That the expert shall disclose any projects they have worked on for Sunoco Pipeline, L.P., Sunoco Pipeline L.P.’s parent company, Energy Transfer Partners, or any Sunoco affiliate. Such information shall be furnished to the Commission’s Bureau of Investigation and Enforcement in accordance with the provisions of this Settlement Agreement.
3. That a term of the agreement between Sunoco Pipeline, L.P. and the expert shall be that the Remaining Life Study shall be completed within six (6) months from being contracted by Sunoco Pipeline, L.P.
4. That the expert shall deliver only the final form Study, not interim drafts, to Sunoco Pipeline, L.P. and the Commission’s Bureau of Investigation and Enforcement on or before the end of the agreed upon six-month contract term.

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

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

11. That the public version of the supplemental summary annual reports shall not contain information that is proprietary or subject to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the Public Utility Commission’s Regulations implementing such Act at 52 Pa. Code §§ 102.1-102.4.

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

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

 14. That the Secretary’s Bureau shall mark the matter at Docket No. C‑2018-3006534 closed upon payment of the civil penalty in Ordering Paragraph No. 2, and upon compliance filings consistent with Ordering Paragraphs Nos. 3-13.

 15. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with Ordering Paragraphs Nos. 1-13 and per the body of this Initial Decision.

 16. That beginning one year after the date of entry of the Final Order in this proceeding and for the following two years, Sunoco Pipeline, L.P. shall file an annual progress report on its compliance with the directives in Ordering Paragraph Nos. 3-13, and that a copy of the progress report be served upon the Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

 17. That Sunoco Pipeline, L.P., the Commission’s Bureau of Investigation and Enforcement, or any other active parties and interested parties shall have ten (10) days from the date of entry of this Tentative Opinion and Order to file comments. Also, pursuant to the terms of the Settlement, the Joint Petitioners may withdraw from the Settlement Agreement within twenty (20) days from the date of entry of this Tentative Opinion and Order.

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

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

 **BY THE COMMISSION,**

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 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: February 27, 2020

ORDER ENTERED: March 10, 2020

1. “Additional Process” as used herein shall mean a procedural process in excess of notice and Comment and Reply Comment including, but not limited to, granting interventions, discovery, hearings, briefings or other process. [↑](#footnote-ref-1)
2. For instance, if the ALJ made a ruling that modified the Settlement, the Parties may elect to withdraw then or elect to withdraw within 20 days of the Commission’s final ruling upon review of the ALJ’s proposed modifications. [↑](#footnote-ref-2)
3. These include undertaking on an expedited basis a Remaining Life Study for ME1, which was suggested by Governor Wolf in a statement he released on February 8, 2019. The Study will assess the longevity of ME1, including risks to the pipeline and SPLP [Sunoco] procedures. This study will be conducted by an independent expert and submitted to BIE [I&E] with ongoing annual summary reports. The Settlement also provides for ILI [In-Line Inspection] tool runs at intervals that are accelerated and other testing and reporting that are above and beyond what existing state and federal regulations or law require. Finally, the Settlement includes Close Interval Surveys of ME1 pipeline at accelerated intervals above and beyond any federal or state regulation or law. All of these features of the Settlement will be significantly delayed if any procedure other than notice, Comments and Reply Comments occurs. [↑](#footnote-ref-3)
4. Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines are Complainants in a separate proceeding involving Sunoco (*See* *Flynn v. Sunoco Pipeline*, L.P., Docket No. C‑2018‑3006116). They are not Complainants but are Intervenors in the instant proceeding. [↑](#footnote-ref-4)
5. Pages 15 through 37 of the ALJ’s Initial Decision contains a discussion of the issues in this proceeding including: (1) Civil Penalty (I.D. at 15-24); (2) Remaining Life Study (I.D. at 24-30); (3) In-Line Inspection and Close Interval Survey of ME1 (I.D. at 30-35); and (4) Revision of Procedures and Pipeline Replacement (I.D. at 36-37). [↑](#footnote-ref-5)