

January 19, 2021

Via Electronic Filing

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

**Re: Docket Nos. P-2018-3006117, C-2018-3006116, C-2018-3005025,
C-2019-3006898, C-2019-3006905, and C-2018-3003605
Meghan Flynn, et al. v. Sunoco Pipeline, L.P.**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the County of Chester's Reply Brief in the above-referenced matter.

A copy of the attached has been forwarded in the manner indicated on the attached Certificate of Service.

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

Sincerely,



Mark L. Freed
For CURTIN & HEEFNER LLP

MLF:bya
Enclosures
cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Flynn, Rosemary Fuller,	:	
Michael Walsh, Nancy Harkins,	:	
Gerald McMullen, Caroline Hughes,	:	Docket No. P-2018-3006117
and Melissa Haines,	:	Docket No. C-2018-3006116
<i>Complainants,</i>	:	Docket No. C-2018-3005025
v.	:	Docket No. C-2019-3006898
	:	Docket No. C-2019-3006905
Sunoco Pipeline, L.P.,	:	Docket No. C-2018-3003605
<i>Respondents.</i>	:	

REPLY BRIEF OF INTERVENOR CHESTER COUNTY

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I. SUMMARY OF REPLY

In its Post-Hearing Brief (“Sunoco Brief”), Sunoco Pipeline, L.P. (“Sunoco”) absolves itself of all failings, argues against logic and the testimony of many witnesses that Chester County (“Chester County” or the “County”) and others already have all the information and emergency planning assistance they need, belittles the concerns of individual plaintiffs, and makes a siting argument that is blatantly contrary to law. Sunoco reveals itself as an entity determined to push its agenda forward without regard for its obligations and with no concern for or cooperation with the very public that it serves.

If Sunoco were the model public utility it paints itself to be in the Sunoco Brief, Chester County would not be a party to this action. If Chester County had the tools and information needed from Sunoco for the County to develop a proper emergency preparedness plan, and the residents of Chester County were informed and clear about what to do in the event of a pipeline leak or rupture as a result of a proper public awareness program, Chester County would not be a party to this action. That Chester County is a party in this action is testament to Sunoco’s failures. Sunoco has been difficult to deal with, has failed to provide the County with the information and tools needed by the County to perform its obligations, has failed to meet the requirements set forth in the Code of Federal Regulations (“CFR”) for an enhanced public awareness program for pipelines located in high consequence areas, and has failed to meet its obligations under the Pennsylvania Public Utility Code.

In its Brief, Sunoco appears to view the County, other local government bodies, and the public they serve as little more than annoyances to be dealt with and dismissed. This is improper. Sunoco profits from its designation as a public utility and, in return, it must meet its obligations to

the County and the public. Under Pennsylvania law, Sunoco is required to “at all times use every reasonable effort to properly warn and protect the public from danger.” 52 Pa. Code § 59.33(a). Sunoco has failed to do so. The Commission has the power and the authority to order Sunoco to comply.

II. ARGUMENT

A. Sunoco Has Failed to Meet Its Obligations Under the Law

In its Brief, Sunoco expresses no concerns that stakeholders have extensively testified that they do not have the information or tools needed to plan, prepare for, or evacuate from a pipeline leak or rupture. Sunoco merely states that it has checked the boxes, done the minimum required. If its efforts have failed to achieve the desired result, Sunoco essentially argues that it bears no responsibility for that; that its obligations do not extend to actually achieving the goals of pipeline safety.

The problem with Sunoco’s argument is that it has not checked all the boxes. Further, even if it had, such does not provide it with a free pass to ignore serious shortfalls in compliance or achievement of the goals of stakeholder education. Federal law does not direct the Secretary of Transportation to provide *maximum* safety standards, limiting what can be required for public safety. To the contrary, the law provides that the Secretary will provide “*minimum* safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C.A. § 60102(a)(2) (emphasis added). The CFR, which incorporates the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162 (“RP 1162”), is no different. The CFR does not state that operators may meet minimum standards and then nothing further can be required of them. The CFR states that “[t]he 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 CFR Part § 195.440(f) (emphasis added). Further, the CFR expressly requires enhancement of a public awareness program where the pipeline is located in a high consequence area.

The applicable public awareness and emergency responder regulations, 49 C.F.R. Part 195.403, 49 C.F.R. Part 195.3(b)(8) (incorporating American Petroleum Institute (API) Recommended Practice (RP) 1162), 49 C.F.R. Part 195.440, expressly require an enhancement of a baseline public awareness program if there is heightened inquiry and construction in high consequence areas.

Wilmer Baker vs. Sunoco Pipeline, C-2018-3004294, Initial Decision of ALJ Barnes, December 18, 2019 (“*Baker Decision*”), p. 57, ¶13. It is undisputed that the Sunoco pipelines are located in high consequence areas. (Sunoco Brief, p. 29).

The Pennsylvania Code also refers to “minimum” safety standards. The “*minimum* safety standards” for hazardous liquid public utilities, such as Sunoco, “shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199...” 52 Pa. Code § 59.33(b). Though Sunoco sets a low bar for itself, the Pennsylvania Code does not. It provides that each public utility, such as Sunoco, “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).

In Pennsylvania, every public utility, like Sunoco, is required to maintain safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501. The Pennsylvania Public Utility Commission (“Commission”) has the power and duty under the Public Utility 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.A. § 1505(a).

Therefore, Sunoco is required to pay attention to the voices of the numerous stakeholders pleading for information and tools necessary to develop a proper emergency preparedness plan, to

prepare for potential pipeline leaks, and to understand their safest options for evacuation. Sunoco is required to use every reasonable effort to properly warn and protect the public from danger. It is required to develop a program and media as comprehensive as necessary to achieve the goals of pipeline safety. The evidence presented in this matter and detailed herein and in the County's Post-Hearing Brief prove by a preponderance of the evidence that Sunoco is in violation of its obligations under the law.

The County has obligations under the Hazardous Material Emergency Planning and Response Act ("Emergency Planning Act")¹ and is tasked with protecting the health, safety and welfare of its residents. The County has tried to work with Sunoco, to no avail. The County's demands are simple and reasonable and include such things as regular and ongoing training, exercises, and community outreach/public education as well as assistance with emergency preparedness plans. Sunoco's resistance to such demands is neither appropriate nor legally sufficient and may be remedied pursuant to an order of the Commission in this action.

B. Municipal Emergency Management Planners and Emergency Responders Do Not Have All the Information They Need

Sunoco, in its Brief, ignores the extensive testimony in which first responders and government officials tasked with developing emergency preparedness plans pleaded their acute need for information and tools from Sunoco. Sunoco argues that such stakeholders have all the information that they need or that Sunoco is required to provide. (Sunoco Brief, p. 78). A review of testimony belies Sunoco's assertions. For example:

- Ronald Gravina, a trained first responder for 48 years (N.T. 1121:16-22), testified:
 - He has major concerns about dealing with a potential problem or incident related to the Mariner pipelines. N.T. 1126:21-25.

¹ 35 P.S. § 6022.101 *et seq.*

- He is unsure how he would begin to figure out where the potential cloud of gas is located. N.T. 1127: 2-8.
- The meters on the fire vehicles do not detect the product in the Mariner pipeline. N.T. 1127: 14-16.
- Fire companies have requested meters for detecting leaks, but have not received them yet. N.T. 1127: 9-13.
- He has not been provided with sufficient information to respond to a pipeline incident in Edgmont Township for products in the Mariner pipelines. N.T. 1127:24-25; 1128:1-4).
- Mr. William H. Turner, Deputy Director for Emergency Management of the Chester County Department of Emergency Services and accepted in this action as an expert in emergency management and emergency preparedness (Turner, St. 1, 2:5-18; N.T. 2197:1-5), testified:
 - He does not have the information needed to develop a proper emergency response plan in the event of a pipeline incident. N.T. 2244:1-4.
 - He needs to know the type of product, maximum operating pressures, hazards of the product, location of valve stations, and flow direction of materials in the pipelines. These are all important facts necessary for creating an emergency response plan for natural gas liquid pipelines. N.T. 2233:13-25; 2234, 1-3.
 - It has been very difficult for him to get information from Sunoco. N.T. 2244:1-4.

- He has sought out the information needed to develop a proper emergency plan, but dealing with Sunoco has been difficult. N.T. 2363:2-14.
- The CoRE meetings held by Sunoco were not actual “trainings,” but simply a “buy dinner and provide awareness of pipelines in your jurisdiction.” N.T. 2212:13-23.
- The MERO training was an hour and half Power Point presentation by Mr. Noll. N.T. 2243:1-15.
- Sunoco does not even allow its emergency response plan to be viewed or referenced in the MERO class. N.T. 3383:6-7.
- Mr. Noll, the person conducting the MERO training, has not even seen the Sunoco emergency response plan himself. N.T. 3382:10-17.
- Mr. Turner likened his attempts to get information from Sunoco to hitting “a brick wall.” N.T. 2363:2-14.
- Mr. Timothy Hubbard, the fire marshal/emergency management officer in Charlestown Township, Chester County, who is certified in emergency management by PEMA and is partly responsible for developing and maintaining emergency policies and procedures in the municipality (N.T. 68:21-25; N.T. 69:1-9; N.T. 71:18-25), testified:
 - He has encountered difficulties in obtaining information from Sunoco that have caused him concern. N.T. 80:15, 18.
 - He has found it to be very difficult to have “consistent contact that

would be able to provide information that would be useful from an emergency management perspective, what product is flowing at any given time, when it's flowing, when products are changing and the nature of the products." N.T. 80:18-23.

- There is 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. 80:24-25; 81:1-2.
- Though Sunoco has made appearances before the township, "those appearances are lacking the information that is needed for us to rely upon." N.T. 2319:23-25; 2320:1-3.
- Dr. Emile Lonardi, superintendent of schools for the Downingtown Area School District (N.T. 901:14-21), testified:
 - She has been given conflicting information. N.T. 913:4-5.
 - She does not have a "credible or practical or realistic plan in place to keep the students safe in the event of leak" from the Mariner East pipeline. N.T. 921:9-14.
 - She was not even informed when HVLs started flowing through the 12-inch pipeline at the school. N.T. 921:23-25.
 - The school district itself does not employ experts on pipelines, HVLs, or valve stations and does not have enough information to create its own emergency plans. N.T. 935:7-18; 936:13-15.
- Mr. Kevin Campbell, the director of facilities and operation for the West Chester

Area School District for the past 20 years, who oversees emergency plan generation and annually reviews the plans from 17 sites in the district (N.T. 1247:2-7; N.T. 1247:17-25; 1248:1-2), testified:

- There is information regarding the pipeline that he does not have that would make a difference to him in carrying out his job. N.T. 1248:8-12.
- Because he does not have information on the types of material moving through the pipeline, and their pressure, he cannot predict the blast zone. If he cannot predict the blast zone, he cannot develop an effective emergency plan. N.T. 1249:14-24.
- Mr. Campbell wants Sunoco to provide information that other pipeline operators have provided such as what product is traveling in the pipeline, the speed it is traveling, and, based on the national standards, the appropriate safe distances for an evacuation. N.T. 1252: 19-25; 1253:1-6.
- Sunoco has never told Mr. Campbell how long it would take them to come to the site to help with an evacuation. N.T. 1255:8-11.

Instead of listening to and assisting first responders and emergency management personnel with their concerns, Sunoco has tried to turn the good-faith efforts of these stakeholders to educate themselves against them. (Sunoco Brief, p. 67). First responders and emergency management personnel are dedicated to their professions, whether paid or volunteer. It is no surprise that they have been working and learning as much as possible about the Sunoco Pipelines and HVLs over the last several years. Such is necessary in order for these first responders and emergency

management personnel to be as prepared as possible in the event of a leak or rupture that would expose the public to HVLs. That these first responders and emergency management personnel now know more than they did in the past about HVLs and the Sunoco Pipelines that carry them is not, as Sunoco argues in its Brief, evidence that these stakeholders have all the information they need. It is simply evidence that they have been doing everything within their power to educate themselves so that they can be prepared to protect the public that they serve. Once again, if these stakeholders had all the information they needed, Chester County would not be a party to this action.

Similarly, Sunoco's touting of its MERO and CoRE training for emergency responders falls flat. Mr. Turner stated that the CoRE meetings were not actual "trainings," but simply a "buy dinner and provide awareness of pipelines in your jurisdiction." N.T. 2212:13-23. The MERO training was an hour and a half Power Point presentation by Mr. Noll. N.T. 2243:1-15. Sunoco does not even allow its emergency response plan to be viewed or referenced in the MERO class. N.T. 3383:6-7. Indeed, Mr. Noll, the person conducting the MERO training, has not even seen the Sunoco emergency response plan himself. N.T. 3382:10-17.

Sunoco presented evidence of post-MERO training attendee evaluations in which attendees, given the option of a "yes" or "no" response, checked "yes" that, among other things, the program increased their knowledge and gave them a better understanding of pipelines. (Sunoco Brief, p. 74). In contrast, Chester County has provided evidence of attendees at Mr. Noll's tabletop exercises who, in response to post-training questionnaires seeking detailed feedback, stated that they needed: continued additional pipeline training, development of pipeline props, additional training for LE personnel who will likely be first on scene, continual improvement of communications between stakeholders, clarification of lines of communication, and a process to

get up-to-date, accurate information. N.T. 3360:17-22; 3361:4-8. Further, the most received written comment after Mr. Noll's December 13, 2018 tabletop exercise was that there should be more pipeline operator information and involvement. N.T. 3362:14-22; 3363:2-5.

In any case, Sunoco's touting of feedback where attendees agree that they have increased their knowledge is out of focus. The proper question is what has Sunoco done to assist the first responders and emergency planners who responded that they needed more training, more information, more communication with Sunoco, and processes to get up-to-date accurate information? Sunoco does not say. Mr. Noll, Sunoco's own expert in the area of emergency planning, emergency response, public awareness and incident management for pipelines, was unaware that municipalities and counties have alleged publicly and through these proceedings that they felt the information shared with them has not been sufficient. N.T. 464:21-24; N.T. 3338:12-16.

First responders and emergency management personnel have taken the time and effort to come before the Commission and testify precisely because they *do not* have what they need from Sunoco. Do first responders and municipal emergency planners know more now than they did years ago, prior to the introduction of HVLs into the Sunoco Pipelines? Yes. And this is no surprise given their dedication and the seriousness of the threat in the event of an HVL release. Do they have all the information and tools they need from Sunoco to properly perform their jobs? No. As stated by Mr. Turner, Deputy Director for Emergency Management of the Chester County Department of Emergency Services, emergency planners have hit the proverbial brick wall. N.T. 2363:2-14.

C. **Chester County's Demands for Information and Tools For Its First Responders and Emergency Management Planners Are Simple and Reasonable**

The County has certain obligations under the law. Under its police powers, the County is tasked with protecting the health, safety, and welfare of its residents. Under the Emergency Planning Act, the County is obligated to have an emergency response plan which must include, among other things, methods for determining a release, procedures for emergency and medical personnel, and evacuation plans. 35 P.S. § 6022.203(k). The County cannot meet its obligations without the cooperation of Sunoco.

As set forth in its Post-Hearing Brief, Chester County's Deputy Director for Emergency Management of the Chester County Department of Emergency Services, William Turner, testified that Sunoco can and should be required to enhance public warning, provide detailed information regarding its infrastructure to the County, assist in development of an evacuation plan for use by municipalities with concepts on how evacuation would occur, create a public outreach and public education program, and fund more training for first responders. N.T. 2245:23-25; 2246:1-17. Chester County is asking for nothing more than what is required for it to comply with its obligations under the law.

Though already set forth in its Post-Hearing Brief, the County reiterates here – because it is the essence of why Chester County is a party to this action – the following demands which are not only necessary and reasonable, they are demands that Sunoco should *want* to meet. Sunoco should *want* to be a safe public utility, should *want* to work with the communities it serves, and should *want* to enhance pipeline safety and the public trust.

1. Emergency Preparedness

- A dedicated pipeline planner. Exelon funds a full-time position with responsibilities to plan exclusively for an emergency involving either the Limerick or Peach Bottom nuclear plants. A dedicated pipeline planner

from Sunoco would benefit the County since the planner would address the unique and specific needs of the municipalities and the public in a pipeline emergency. Turner, St. 1, 10:4-7, 9-14.

- Annexes to EOPs. Sunoco needs to develop, in cooperation with state, county, and local emergency services and municipalities evacuation and shelter in place plans or annexes to the EOP for each county, municipality, neighborhood, high-occupancy structure, high-hazard area, school, hospital, church, public gathering place, or any other area or parcel that may need assistance or direction evacuating during a pipeline emergency. Sunoco has the technical expertise regarding the pipeline operations and should provide detailed information and assistance with the creation of the specific annexes or plans.
- Ongoing training and education. Sunoco should have regular and ongoing training, exercises, and community outreach / public education to anyone who may be impacted (directly or indirectly) by an evacuation or shelter in place order. Sunoco's current outreach is generic and provides minimal information to the public.
- Comprehensive database. Sunoco should be required to maintain a comprehensive database of pipeline information and to provide this information to the County Department of Emergency Services including:
 - Maps of all transmission lines listing material moved, pipeline diameter, mainline valve locations and maximum operating pressures, and maximum allowable operating pressure; and

- Information about the location of any anomalies that merit pressure reduction in the pipeline and the presence of "immediate," "60-day" or "180-day" repair conditions for liquid pipelines or "immediate" or "one- year" repair conditions for gas pipelines.

Turner, St. 1, 10:18-23; 11:1-17.

2. **Notification Systems**

- Monitoring/Public Warning Devices. Sunoco should install monitoring devices that integrate with public warning devices (such as feed into a siren) to improve notification to the community. This is currently being done for utilities with nuclear plants in the County.
- Direct Connections with 911 Centers. Sunoco should integrate direct connection from pipeline control centers with the County's 911 communications center. This will allow faster notification for emergency response and public warning in an emergency.
- Emergency Classification Levels. Sunoco should develop standard notification templates for public warning systems to be used during a pipeline emergency and develop emergency classification levels which are specifically designed to make the public aware of the situation.
- Odorants/Dyes. Sunoco should add an odorant and dye to all odorless and/or colorless liquids and gasses to allow for quick identification of a release or spill to enhance detection and notification to the public.
- Public Notification Devices. As technological improvements develop, Sunoco should install intrinsically safe (i.e. certified not to create a spark)

warning devices, along the pipeline right of way which would notify the public of a leak, emergency, or potential danger along the pipeline. Currently there are such devices installed on the valves along the pipeline.

Turner, St. 1, 8:6-22.

3. Information Sharing

- Local Emergency Planning Assistance. As a critical stakeholder, Sunoco should provide local emergency planning assistance to local emergency management partners that could consist of dedicated employee(s) and or funding to support additional employees.
- Advance Notification of Scheduled Pipeline Work. Sunoco must be required to notify not only the County but all municipalities in Chester County of anticipated, scheduled or commenced work done in Chester County.
- Advance Notification of Pipeline Activity. Sunoco must be required to notify County officials, in advance, of any pipeline activity, such as simulations, testing, routine maintenance, repairs etc.
- Notification Process Used by Nuclear Power Stations. Chester County recommends that the notification process used by the nuclear power stations be replicated for Hazardous Liquid utilities. Based on its experience with the Limerick Nuclear Plant Generating Station, Chester County strongly urges the Commission to adopt this process.

Turner, St. 1, 9:9-22; 10:1-2.

D. Sunoco's Public Awareness Program Has Failed

Sunoco would like to pretend that HVLs are no different than any other product that runs through a pipeline. They are not the same. Once leaked, the HVLs in the Sunoco pipelines would be in the form of an odorless, colorless gas, heavier than air, that moves with the wind and slides downhill. It is dangerous and highly combustible. It can cause asphyxiation, burns, injuries, and death. If you know it's there, which is not a given, you can flee it, but only on foot if you are fit and have a clear path. But as you don't know where it is – since it is odorless and colorless – you may actually be walking toward it. You can't evacuate schoolchildren on the bus or your toddler or elderly parent in your car. Simply turning the ignition could cause a deadly explosion.

It is not hard to understand why members of the affected public are not thrilled to be living, working, and sending their children to school next to the HVL pipelines without an adequate evacuation plan. At the very least, they deserve information, assistance, and understanding from Sunoco. Instead, Sunoco treats these stakeholders as annoyances, offers them no additional information or assistance, and simply argues that it has met minimum requirements.

1. The Failure of the Mailers

Sunoco argues that it has sent mailers once a year for the years 2018 through 2020. (Sunoco Brief, p. 70). However, despite the fact that RP 1162 requires the mailers to include notice of potential hazards and potential consequences posed by HVL's – and fatalities and burns are hazards associated with releases of HVLs – that information appears nowhere in the Sunoco mailers. RP 1162 §§ 4.2 and 4.3.1. N.T. 3112:11-14. The mailers do not contain specific information with regard to HVLs or vapor clouds and do not specify what distance is a "safe location" from a vapor cloud. Sunoco does not use response cards with their mailings so that stakeholders can give feedback. N.T. 3181:3-8.

The mailers do not include people who regularly work in the impacted zone or regularly come to shop in the impacted zone or for any other reason come to visit on a regular basis such as to the businesses, restaurants, and library. N.T. 3138:11-25. The mailings to individual stakeholders are generic and are addressed to “resident.” N.T. 3182:7-10. Sunoco does not use radio or television to notify the public that the mailing is coming, that it is important, that stakeholders should be on the lookout for it. N.T. 3181:18-23. Sunoco does not email the mailer to an email distribution list. N.T. 3181:24-25; 3182:1-2. Neither the Sunoco mailer nor the Sunoco website say how far to evacuate on foot and what to do if evacuation is not possible. N.T. 3135:16-23; N.T. 3135:24-25; 3136:1-2.

Sunoco argues in its Brief that it has met minimum requirements, and besides, those complaining that they don’t have enough information are only “a handful of the 1.2 million residents in Chester and Delaware Counties, some school officials and some municipalities.” (Sunoco Brief, p. 78). How many counties, municipalities, school districts, and individuals would Sunoco need to see as party to this action before it recognized that its public awareness program is insufficient and its relationship with the community it serves is fractured? Is Sunoco suggesting that other than the parties to this action, the remaining 1.2 million residents, school officials, and municipalities in Chester and Delaware Counties are fully aware, fully informed, and have all information needed to develop emergency response plans in the event of a HVL incident? The County, municipal entities, and the individual plaintiffs have all expended substantial time, effort, and resources in this action on issues that are of grave concern to them. It is self-evident that not every one of the 1.2 million residents of Chester and Delaware Counties is capable of such an undertaking or is even aware of the underlying reasons for such.

2. The Lack of Evacuation Guidance

Further, neither the Sunoco mailer nor the Sunoco website inform stakeholders how far to evacuate on foot and what to do if evacuation is not possible. N.T. 3135:16-25; 3136:1-2. Stakeholders have testified that the evacuation information in the Sunoco mailers is impractical and unusable for their situations. For example, Mr. William Clements, principal of the Twin Valley High School in the Twin Valley School District testified that the elementary school students would be unable to evacuate south away from the pipeline because they would be trapped by the Pennsylvania Turnpike. N.T. 1319:11-20. High school and middle school students would need to evacuate downhill to get away from the pipeline, but to do so traffic on Route 23 would have to be shut down and Principal Clements does not know how long that would take. N.T. 1321:5-9.

Mr. Thomas McDonald testified that his 88-year-old mother resides in Wellington Senior Living facility where the Sunoco pipeline is 200 feet opposite the entrance to the facility. Mrs. McDonald, along with many other residents, is incapable of evacuating on her own. N.T. 995:9-14; 996:10-13, 22-23; 1002:22-25; 1003:4-7; 1006:9-23. Residents could not evacuate uphill, even if capable, because that would be toward the pipeline. N.T. 1004:24-25; 1005:1-3. The fire station is only half a mile away, but the first responders would have to cross the pipeline twice, once to leave the fire station and then again to access the Wellington Facility. N.T. 1007:15-25; 1008:1-4.

Numerous County residents are incapable of evacuating on foot. The 200 block of Hillside Drive has several elderly widows who are hemmed in by a cyclone fence. A handicapped neighbor several homes away from witness Dr. Gerald McMullens has spina bifida with associated mobility problems. She would be unable to evacuate on foot. N.T. 952:14-25; 953:1-18.

Caroline Hughes stated that Sunoco's formal recommendation to evacuate on foot, uphill, upwind, at least one-half mile while avoiding ignition sources presents a logistical burden on

larger, vulnerable communities like schools, nursing homes, senior facilities, health care centers, and those with limited mobility. N.T. 1032:14-20. She also testified that safely evacuating the hundreds of visitors at the ambulatory health center where she worked in an expedient manner in the recommended manner would be virtually impossible. N.T. 1035:11-20.

As set forth in Chester County's Post-Hearing Brief, many other stakeholders testified to similar concerns. Once again, rather than offer explanations or information, Sunoco appears to mock the stakeholders' concerns: "we don't know you can be burned or suffer a fatality in an explosion; we don't know how to tell which way the wind blows; we don't know in every conceivable potential pipeline release scenarios, for every specific neighborhood, how far to walk away to be at a safe distance." (Sunoco Brief, p. 77). It is inappropriate for Sunoco to be dismissive of people worried about the best way to protect themselves, their elderly parents, their disabled neighbors, their children in school.

The concerns of the stakeholders are real. The Sunoco mailer tells people to "leave the area immediately, on foot, if possible" (Sunoco Brief, p. 78), but does not say what to do if one cannot leave on foot. The mailer tells residents to call 911 "from a safe location" (Sunoco Brief, p. 78), but it does not tell them what a safe location is. Sunoco tells residents to use "sight, sound and smell to determine what is a safe location distance" (Sunoco Brief, p. 78), but does not explain how they can use sight, sound and smell when the HVLs are colorless, silent, and odorless.

Finally, with no good answers to the above concerns, Sunoco states that residents should "follow the direction of local emergency response agencies" and take "guidance from emergency responders." (Sunoco Brief, p. 78). But these are the very same local emergency response agencies and emergency responders who have testified in this proceeding that they *do not* have the information and tools they need to properly prepare for a pipeline incident and to guide residents

to safety. Sunoco's argument results in a dead end.

Even if emergency responders were fully prepared to deal with an HVL incident, it is entirely possible that they will not reach the residents, schools, and senior facilities in time in order to offer the needed guidance. Most fire agencies in Chester County are run by volunteers. N.T. 96:19-21. The only way for the nearby first responders to reach the Wellington Senior facility would involve them crossing the pipeline just to exit the firehouse. N.T. 1007:15-19. And, of course, none of the first responders would be able to drive their vehicles to the affected neighborhoods or schools. Mr. Hubbard stated that he believes it would be irresponsible to wait for the first responders to tell the school what to do. N.T. 2326:7-20. Time is of the essence in evacuations. Dr. Scanlon of the West Chester Area School District stated that an entire school can be evacuated in three minutes. N.T. 1224:14-16. Mr. Turner, the Deputy Director for Emergency Management in Chester County, stated that if the pipeline valve near the Downingtown Area School District had an emergency, he estimates that it would take 10 minutes from the time dispatch receives a call for someone to arrive on scene with a gas meter. N.T. 2240:12-19. Mr. Kevin Campbell, the director of facilities and operation for the West Chester Area School District, stated that it could take as long as 15 minutes for the County emergency personnel to respond to a gas leak at some of the schools and even longer than that for many others. N.T. 1254:12-17; 1260:10-17. The response time of Twin Valley Fire Department to the schools is about 10 to 12 minutes. N.T. 1314:17-18. Sunoco does not address any of these gaps in response times or provide any guidance as to what stakeholders should do in such situations.

On the issue of whether to shelter in place or evacuate, Sunoco once again states that the decision should be made “on a case-by-case basis *to be determined by the emergency responder.*” (Sunoco Brief, p. 81)(emphasis added). As explained above, in very many cases it will be

impossible to wait for the emergency responder to make such a decision. And since Sunoco has advised that cell phones are not intrinsically safe to use unless one has reached a “safe location” (Sunoco Brief, p. 80), stakeholders cannot even call emergency responders for guidance.

According to Joseph Perez, a Sunoco Energy Transfer senior vice president of project services, Sunoco has not conferred with emergency responders regarding their ability to respond to various locations in the immediate vicinity of Sunoco’s valve sites. N.T. 3127:22-25; 3128:1. Sunoco provides no explanation for its failure to do so.

Sunoco also gives short shrift to stakeholders concerned that they might not be able to accurately determine wind direction in making a decision as to which direction they should evacuate. For Sunoco, it is as easy as looking at a flag or feeling the breeze on your skin. (Sunoco Brief, p. 80). Sunoco has apparently never experienced variable or swirling winds. Making a determination as to wind direction is a hit-or-miss situation. N.T. 91:1-9. And there could be a lot riding on that determination. It is why weather stations have anemometers and don’t rely on sticking their fingers in the air.

Finally, Sunoco argues that evacuating those with physical or mental limitations during an HVL incident is no different from such evacuation challenges in any other emergency. This is not true. HVLs are not like hurricanes, floods, house fires, earthquakes, or tornados. People can smell smoke, feel heat, and hear the warnings from smoke detectors. They know to stop, drop and roll if in a burning building. People understand that they need to get outside when earthquakes shake their homes. Importantly, firefighters can drive right up to a house fire and use equipment, powered by electricity or otherwise, to rescue a disabled person from the second story. First responders can use motorboats to rescue families stranded on their rooftops during a flood. Family members can put children and elderly neighbors in a car and drive them away from danger. Under no other

emergency situation do we just tell the disabled to make a determination as to wind direction, topography, and location of the pipeline leak and then walk at least half a mile over whatever terrain happens to be in front of them in order to escape from a silent, odorless, colorless gas and to do it on their own until they reach a place where they “feel safe.”

3. Chester County’s Reasonable Public Awareness Program Demands

Sunoco would have the Commission believe that it has checked all the boxes and met its minimum obligations under the law. This is untrue. As set forth herein, Sunoco has violated baseline requirements and failed to adopt any significant supplemental requirements pursuant to RP 1162 with regard to its public awareness program. Setting up an Instagram, Facebook, and website means little unless you (i) drive people to the site and (ii) provide the information on that site that the parties to this action have amply illustrated is needed in order for stakeholders to be prepared in the event of an HVL incident.

The information provided to stakeholders should be on a scale relative to the seriousness of the catastrophe that could result. And that information must be disseminated in the most effective manner possible. Messaging is important. It must reach its desired audience and it must be complete and understandable.

Sunoco must correct its lack of physical presence regarding public outreach and education in Chester County. Any public outreach and education must be specific to the neighborhoods, streets, and houses potentially affected. The public outreach and/or education program should not be a generic “one size fits all” approach. Sunoco should:

- Create a more robust public outreach and public education program to inform the public about what to expect during training or routine maintenance as well as what to do in a pipeline emergency.

- Work with the local communities to educate the public of the options to shelter in place or evacuate providing clear and consistent messaging. This will permit all residents to discuss and create a responsible individual plan for their family regarding sheltering in place and evacuation.
- Enhance planning funding/resources for pipeline emergencies.
- Develop, in cooperation with state, county, and local emergency services and municipalities, evacuation and shelter in place plans or annexes to the EOP for each county, municipality, neighborhood, high-occupancy structure, high-hazard area, school, hospital, church, public gathering place, or any other area or parcel that may need assistance or direction evacuating during a pipeline emergency.

Turner, St. 1, 12:19-23; 13:1-11; 10:18-23; 11:1-17.

E. Chester County Has Met Its Burden of Proof

Chester County is required to prove its claims by a preponderance of the evidence, and it has done so. Further, the relief it has requested is reasonable, rational, appropriate, and within the power of the Commission to grant.

“The Pennsylvania Supreme Court has held that the term ‘burden of proof’ means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 858 (1950).” *Charles A. Patterson vs. Bell Telephone of Pennsylvania*, 72 Pa. P.U.C. 196, 1990 WL 10702674 (Feb. 8, 1990). Preponderance of the evidence is the lowest evidentiary standard and “is tantamount to a ‘more likely than not’ inquiry.” *Pennsylvania State Police v. Doe*, 217 A.3d 455, 464 (Pa. Commw. Ct. 2016). Preponderance of the evidence is where proof in support of a claim “*fairly outweighs* the probative value of any proof offered against the claim.” *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 48–49, 70 A.2d 854, 856 (1950)(emphasis in original).

Courts describe a preponderance of the evidence as evidence that has sufficient weight to “**tip the scales on the side of the plaintiff**,” Se-Ling Hosier v. Marqilies, 364 Pa. 45, 70 A. 2d 854, 856 (1950), and as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence,” Sigafoos v. Pa. Bd. Of Prob. & Parole, 94 Pa. Cmwlth, 454, 503 A.2d 1076, 1079 (1986).

Pennsylvania State Police v. Doe, 217 A.3d 455, 464 (Pa. Commw. Ct. 2016)(emphasis in original). The Complainant “must show that the utility is responsible or accountable for the problem described in the Complaint.” *Patterson*, 72 Pa. P.U.C. 196.

Chester County has carried its burden by proving by a preponderance of the evidence that Sunoco has failed to provide a proper public awareness program for emergency management planners, the public, and other stakeholders. Witness after witness has testified as to the difficulties of getting information from Sunoco. Witness after witness has testified that they remain at a loss to know what to do and how to evacuate in the event of an HVL incident; Sunoco’s generic mailers and website instructions have no practical relevance to their situations. Witness after witness has testified that first responders, emergency management personnel, and schools, among others, do not have the information and tools they need in order to properly plan and prepare for an HVL incident. As the County has previously stated, if Chester County had the tools and information needed from Sunoco for the County to develop a proper emergency preparedness plan, and the school districts and residents of Chester County were informed and clear about what to do in the event of a pipeline leak or rupture as a result of a proper public awareness program, Chester County would not be a party to this action. The preponderance of the evidence on the record and as set forth herein and in the County’s Post-Hearing Brief outweighs anything put forward by Sunoco in its defense and “tips the scales” on the side of the County.

Indeed, Sunoco offers very little in defense of the claims raised by the County. Sunoco

appears to believe that if it has met baseline requirements – a claim disputed by the stakeholders – then it is somehow inoculated against any claims by the stakeholders for its failure to maintain safe and reasonable service and facilities as required by the Public Utility Code. 66 Pa.C.S.A. § 1501. There is no basis in law for this argument and Sunoco cites none.

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” 49 U.S.C.A. § 60102(a)(1). As detailed earlier in this Brief, federal law does not direct the Secretary of Transportation to provide *maximum* safety standards, limiting what can be required for public safety. To the contrary, the law provides that the Secretary will provide “*minimum* safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C.A. § 60102(a)(2) (emphasis added).

Even had Sunoco met the minimum standards, which the County disputes, nowhere does the law state that those minimum standards are all that is ever required to protect the public. Quite the contrary. The United States Code provides that “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.*” 49 CFR Part § 195.440(b) (emphasis added). Further, “*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.” 49 CFR Part § 195.440(f) (emphasis added). As set forth below, Sunoco also ignores its obligations under the Public Utility Code, obligations which the Commission has the power and authority to enforce.

Finally, the Pennsylvania Code provides that each public utility, such as Sunoco, “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).

As set forth in detail above and in its Post-Hearing Brief, Chester County has proven by substantial evidence that Sunoco’s public awareness program for emergency personnel, schools, and individual stakeholders, among others, is not as comprehensive as necessary and does not address the unique attributes and characteristics of the Sunoco pipelines. For example, even while admitting that HVLs are colorless, silent, and odorless, Sunoco advises stakeholders to evacuate from them by using sight, sound, and smell (Sunoco Brief, p. 78). Even while admitting that there is no one-size-fits-all safe distance from an HVL incident, Sunoco tells residents to evacuate to a safe location distance (Sunoco Brief, p. 78). When stakeholders point out the contradictory and confusing nature of such instructions, Sunoco reverts to its catch-all response of “follow the direction of local emergency response agencies.” (Id.) But local emergency response agencies do not materialize out of thin air. As evidence presented in this matter has shown, it takes time for local emergency response agencies to arrive, especially given the fact that they cannot drive their vehicles to the scene and the locations where the stakeholders may be located.

Sunoco’s own Brief, in one line, illustrates the illogical and contradictory nature of its arguments. In touting the informative nature of its mailers, Sunoco points out that its mailers “state that a resident should ‘leave the area immediately, on foot, if possible’ and ‘*follow the direction of local emergency response agencies.*’ Then, ‘*from a safe location, call 911.*’” (Id.)(emphasis added). If stakeholders are being evacuated by first responders, why would they need to call 911 when they reach a safe location? In real life, how do the stakeholders contact the emergency response agencies in the first place? They cannot call 911 from their homes or schools because such call could spark an explosion. Sunoco appears to suggest that the first responders are magically on site

to guide the stakeholders to a safe location from which the stakeholders can call ... the first responders.

Sunoco further ignores the fact that these very same local emergency response agencies on whom Sunoco is putting so much responsibility are also complaining in this action that they do not have the information or the tools needed from Sunoco to protect the public in the event of an HVL leak. HVLs are not like oil in a pipeline, and their release into our communities, as previously discussed, is not similar in any respect to other emergencies such as fires, hurricanes, and floods. Response to an HVL leak or blast cannot be generic, as Sunoco suggests. Despite Sunoco's public awareness program, stakeholders such as emergency planning agencies, first responders, residents, school districts, and municipalities are confused and concerned and all are demanding information and tools necessary to protect themselves and their communities.

Sunoco has failed to provide the requested information and tools to stakeholders, failed to work with the community to address concerns, failed to satisfy its obligations under the Public Utility Code, and failed to achieve the purposes of the public awareness program. The evidence presented by Chester County "*fairly outweighs* the probative value of any proof offered [by Sunoco] against the claim" and "**tips the scales**" on the side of Chester County. *Se-Ling Hosier*, 70 A.2d 854, 856 (emphasis in original); *Pennsylvania State Police*, 217 A.3d at 464 (emphasis in original).

The cases cited by Sunoco in its Brief under the heading of "Legal Standard for Pipeline Safety," have little relevance to the instant action. (Sunoco Brief, p. 20). The matter of *Herring v. Metropolitan Edison*, Docket No. F-2016- 2540875, 2017 WL 3872590 (Order entered Aug. 31, 2017) is a "high bill" case. Ms. Herring was complaining that her utility bill was too high. There is a separate burden of proof standard in such "high bill" cases which is referred to as the *Waldron*

Rule. *Id.* at *3. Ms. Herring’s complaint was unsuccessful in that she “*did not provide any evidence.*” *Id.* (emphasis added). The complainant in *Milton R. Bennett vs. UGI Central Penn Gas, Inc.* was upset that UGI shut off his service after he failed to pay his utility bill. No. F-2013-2396611, 2014 WL 1747713 (Apr. 10, 2014). Once again, the complainant was unsuccessful because the Commission found that “the Complainant *did not present any evidence* challenging the accuracy of the overdue amount shown on his account.” *Id.* at *6. Likewise, in *Robert T. Smalls, Sr. vs. UGI Penn Natural Gas, Inc.*, No. C-2014-2421019, 2014 WL 6807073 (Oct. 24, 2014), the Commission found that “[t]he Complainant presented *no evidence* that the Respondent violated the Code, Commission regulation or order, or any federal regulations.” *Id.* at *3 (emphasis added).

The instant action is not one about high bills or termination of service for overdue accounts, and it is not a case where the complainants have failed to produce any evidence. The County’s complaints against Sunoco are well-documented in the record. Chester County has proven by a preponderance of the evidence that Sunoco’s public awareness program with regard to emergency management agencies, schools, and individual stakeholders is deficient and in violation of the Public Utility Code.

F. The Commission Has the Power to Grant Chester County’s Demands

Sunoco states that in order to obtain any relief, “Complainants must prove that [Sunoco] violated the Public Utility Code.” (Sunoco Brief, p. 18). The Complainants have done just that.

The Public Utility Code provides that

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such... 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. ... Subject to the provisions of this part and the regulations or orders of the

commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa.C.S.A. § 1501.

As set forth above, Sunoco is required, as a public utility, to “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).

In sum, as a public utility, Sunoco has an obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities and must “at all times use every reasonable effort to properly warn and protect the public from danger...” 52 Pa. Code § 59.33(a). Chester County has proven by a preponderance of the evidence that Sunoco’s public awareness program is a failure and does not meet the requirements and the goals of the Public Utility Code and the Pennsylvania Code. Stakeholders including the County, emergency management planners, first responders, schools, and individual residents have testified extensively, and with great concern, as to their lack of needed information and tools from Sunoco essential to plan and prepare for an HVL incident.

The Commission has the power and duty under the Public Utility 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.A. § 1505(a). The Commission’s powers are broad:

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. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions

of this part.

66 Pa.C.S.A. § 501(a).

Chester County respectfully requests that the Commission grant Chester County relief and order Sunoco to take those actions as are set forth in the County's Proposed Ordering Paragraphs set forth in the Appendix to the County's Post-Hearing Brief.

G. Sunoco's Siting Argument is Contrary to Law

Chester County feels compelled to respond here to the siting argument in the Sunoco Brief in that Sunoco's argument is contrary to law and cannot be left unchallenged. Sunoco states that "[i]t is undisputed that the Commission lacks jurisdiction over the siting and location of public utilities, including pipelines and related appurtenant equipment, such as valve stations." (Sunoco Brief, p. 85). This is demonstrably false.

In *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, the plaintiffs had filed a complaint in the Court of Common Pleas of Chester County which sought to prohibit Sunoco from constructing the ME2 pipeline in a manner that violated the West Goshen Township Zoning Ordinance. 179 A.3d 670, 673–74 (Pa. Commw. Ct.) (2018). The plaintiffs argued that Sunoco's ME2 pipeline was not properly located "because parts of it are proposed for incompatible residential zones where permission for such use has recently been withdrawn." *Id.*, 179 A.3d at 682. Under the West Goshen Ordinance, a public facility use was not permitted by right in residential districts, it was permitted only by conditional use. *Id.* The Ordinance regulated the location and setbacks for gas and liquid pipeline facilities. *Id.*, 179 A.3d at 675. The Court held that it viewed such assertions from plaintiffs "as implicating the reasonableness and safety of the pipeline transportation services or facilities, matters committed to the expertise of the PUC by express statutory language. 66 Pa. C.S. § 1505." *Id.*, 179 A.3d at 675.

In upholding the dismissal of the plaintiff's action on jurisdictional grounds, the Commonwealth Court stated:

Sunoco's decisions are subject to review by the PUC 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). In this manner, **Sunoco's decisions as to the location of its facilities are within the jurisdiction of the PUC.**

Delaware Riverkeeper, 179 A.3d at 693 (emphasis added).

The Pennsylvania Supreme Court is in accord:

[T]he Legislature has vested in the Public Utility Commission exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.

Chester Cty. v. Philadelphia Elec. Co., 420 Pa. 422, 426, 218 A.2d 331, 333 (1966). *See also Borough of Lansdale v. Philadelphia Elec. Co.*, 403 Pa. 647, 650, 170 A.2d 565, 566–67 (1961) ("[N]o principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the PUC." Initial jurisdiction of the PUC includes "location of utility facilities.")

Sunoco was a party to the *Delaware Riverkeeper* action and argued that the Commission has exclusive jurisdiction over the regulation of public utilities and their facilities. *Id.*, 179 A.3d at 685. Sunoco further argued before the Commonwealth Court that "Plaintiffs could bring their grievances before the PUC, and the PUC would have the power to adjudicate those claims." *Id.*, 179 A.3d at 688. The Commonwealth Court agreed:

On its own motion or upon complaint, and after notice and hearing, whenever the PUC finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code, the PUC shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or

facilities to be observed, furnished, enforced or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public. 66 Pa. C.S. § 1505(a) (entitled “Proper service and facilities established on complaint”); see also 66 Pa. C.S. § 701 (entitled “Complaints”). ***We acknowledge this express statutory remedy.***

Delaware Riverkeeper, 179 A.3d at 682 (emphasis added).

Now, when these issues are before the Commission and not the state courts, Sunoco inconsistently argues that the Commission does not have the very jurisdiction that Sunoco argued it did have in *Delaware Riverkeeper*.

The sole decision cited by Sunoco in support of its about-face is inapposite. In *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, 2018 WL 4851407 (Oct. 2018) (a different matter than *Delaware Riverkeeper*, discussed above, which also involved Sunoco and West Goshen Township), the heart of the matter before the Commission consisted of the interpretation of a Settlement Agreement between Sunoco, West Goshen Township, and Concerned Citizens of West Goshen Township with regard to the *locating* of a valve or its appurtenances. *Id.* Recommended Decision, July 16, 2018 (“Recommended Decision”), p. 1. The Opinion and Order of October 1, 2018 (“Opinion and Order”), cited in the Sunoco Brief, was issued in response to a Joint Petition for Settlement in Lieu of Exceptions filed by Sunoco and West Goshen Township. The Commission found that the Joint Petition was moot and adopted the Recommended Decision without modification. Opinion and Order, p. 1-2.

Nowhere does the Commission state in the Opinion and Order that the Commission has no jurisdiction over siting matters. The limitation of Commission authority that Sunoco references at pages 10-11 of the Opinion and Order (Sunoco Brief, pp. 85-86) is nothing more than Commission acknowledgement that it is not in the position to order Sunoco to build valves in particular

locations. Sunoco chooses the valve locations and the Commission reviews challenges to those locations. And in the unlikely event that the Opinion and Order can somehow be interpreted to state that the Commission has no jurisdiction over pipeline siting, such a finding is not precedential in that it directly conflicts with settled law as recognized by both the Commonwealth Court and the Pennsylvania Supreme Court in *Borough of Lansdale*, *Chester Cty.*, and *Delaware Riverkeeper*.

III. CONCLUSION

In light of the foregoing Reply Brief and Chester County's Post-Hearing Brief filed with the Commission on December 16, 2020 in this matter, Chester County respectfully requests that the Commission enter an order encompassing the Proposed Ordering Paragraphs attached to the County's Brief as Appendix A and order such other relief as is just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing filing upon parties identified below via email, unless otherwise indicated:

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