

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	C-2018-3006534
	:	
Sunoco Pipeline, L.P.	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision approves a Joint Petition for Settlement filed on April 3, 2019, by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E) and Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners (SLP) (collectively, Joint Petitioners), as amended on June 28, 2019 by Joint Petitioners’ Addendum, because it is in the public interest. The settlement resolves the complaint brought by I&E concerning alleged violations of federal and state gas safety pipeline regulations by SLP stemming from an alleged incident involving a leak of highly volatile liquids of ethane and propane from a pipeline in Morgantown, Berks County, Pennsylvania.

HISTORY OF THE PROCEEDINGS

On December 13, 2018, I&E filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against SLP alleging violations of federal and state gas pipeline safety regulations by SLP 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 a Joint Petition for Approval of Settlement (Joint Petition) of the Formal Complaint. The Joint Petition consists of the proposed Settlement Agreement (Petition at 1-10) and attached: Appendix “A” (Statement of I&E at 1-19); Appendix “B” (Statement of SPLP, 1-13); and, Appendix “C” (Formal Complaint at 1-19). An Addendum to the Settlement was filed by Joint Petitioners on June 28, 2019. The Addendum modifies the Settlement Agreement Condition of Settlement at Paragraph 21.

Much of the history of this above-captioned proceeding is detailed in the Commission’s Opinion and Order entered June 10, 2019, which referred Docket No. C-2018-3006534 to the Office of Administrative Law Judge (OALJ) for such further proceedings and hearings, as deemed necessary, consistent with its Opinion and Order.

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)¹; and 7) Upper Uwchlan Township.

Intervenors were given leave to file Comments with the Secretary’s Bureau regarding the Joint Petition for Approval of 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. On August 16,

¹ 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 case.

2019, West Goshen Township filed an Objection. I&E and SPLP filed Reply Comments on September 16, 2019. 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. Also on September 16, 2019, SPLP filed a Motion to Strike West Goshen Township's Public Comments and a Motion to Strike the Flynn Intervenors' Comments. On September 23, 2019, Flynn Intervenors filed an Answer to I&E's Motion to Strike and an Answer to SPLP'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 SPLP'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 proceeding. The Interim Order gave Joint Petitioners leave to file further Reply Comments within 30 days. On November 12, 2019, I&E and SPLP filed Further Reply Comments.

The record closed on November 12, 2019. The Joint Petition for Approval of Settlement as amended by an Addendum is ripe for a decision.

FINDINGS OF FACT

1. *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), the Bureau of Investigation and Enforcement is the entity authorized to prosecute complaints against public utilities.

2. Respondent Sunoco Pipeline, L.P. 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 intrastate.

3. 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.

4. 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.

5. On April 1, 2017, at 3:57 p.m., the Mariner East I pipeline segment identified as Twin Oaks to Montello experienced a leak near Morgantown Road, Morgantown, Berks County, Pennsylvania.

6. On April 1, 2017, at approximately 6:30 p.m., SPLP telephoned the manager of the I&E's Safety Division to inform him of the leak. SPLP filed an accident report with Pipeline Hazardous Materials Safety Administration (PHMSA) and reported a total product loss of twenty barrels.

7. On April 2, 2017, an I&E Safety Division safety inspector visited the leak site but was unable to inspect the facility because the pipeline was still being purged of the product.

8. On April 3, 2017, I&E's safety inspectors returned to the site to examine the affected pipeline.

9. SPLP crews excavated and exposed the pipeline on April 3, 2017.

10. I&E inspectors' visual examination of the pipe showed localized corrosion at the bottom of the pipe in the six o'clock position.

11. SPLP sent an eight-foot section from a larger portion of the pipe it had cut out for laboratory analysis.

12. The analysis of that portion of the ME1 pipe attributed the leak and loss of product to external corrosion at the pinhole leak on a weld.

13. It is SPLP's internal procedure to fully replace sections of pipe between joints.

14. SPLP replaced and hydrostatically tested eighty-three feet of new pipe which it welded between the joints; thus, replacing the portion of ME1 that had been removed.

15. The new section of pipe consists of eight (8) inch coated steel with a wall thickness of 0.322 inches.

16. Following the leak, I&E's Safety Division conducted in 2017-2018 an investigation of the leak site, including SPLP's corrosion control practices and procedures relative to applicable regulations.

17. I&E's Safety Division found no corrosion on ME1 aside from the pinhole leak in Morgantown.

18. I&E's Safety Division concluded microbiologically influenced corrosion (MIC) was not the primary factor in causing the pinhole leak but it may have contributed to corrosion.

19. In its Complaint, I&E alleged SPLP failed to demonstrate the adequacy of cathodic protection of ME1 in the area of the leak as required by 49 CFR § 195.571.

20. SPLP's practices and procedures have been revised and examined by I&E as part of its investigation.

21. The Joint Settlement as amended by the Addendum provides relief designed to enhance SPLP's cathodic protection and corrosion control program to prevent a similar leak from occurring again on ME1.

22. I&E Safety Division requests and receives from SPLP Alignment sheets dissecting pipelines in a segment-by-segment basis showing the pipe material, age, global positioning system (GPS) coordinates, type of coating, casing, repairs, and replacements of pipe.

23. Alignment sheets are similar in function to the Accufacts Comment at pages 4-5 suggesting the creation of a pipeline map.

24. Alignment sheets, a Remaining Life Study, ILI runs, CIS and integrity management program improvements benefit the public by enhancing I&E Safety Divisions' and SPLP's ability to identify any anomalies on or potential threats to ME1.

25. I&E avers coating disbondment did not occur because the ME1 pipe removed was bare steel and not coated.

TERMS AND CONDITIONS OF SETTLEMENT

The Settlement consists of the following terms and conditions – subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission on April 3, 2019, as amended on June 28, 2019 by Joint Petitioners' Addendum to April 3, 2019 Joint Petition For Approval of Settlement.

III. SETTLEMENT TERMS

I&E and Respondent, intending 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:

A. 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).

B. Remaining Life Study:

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

The Remaining Life Study should be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration ("PHMSA") or State Commissions, and the Pipeline Research Counsel International ("PRCI"), American Petroleum Institute ("API"), or the Interstate Natural Gas Association of America ("INGAA"). Within thirty (30) days of entry of a Commission Order approving any settlement of this matter, SPLP shall provide I&E with a list of three (3) proposed independent experts, along with contact information, a brief description

of the expert's background and a disclosure as to whether the proposed expert performed any work in relation to ME1 as well as a description of that work. I&E will select one (1) expert from the list provided by SPLP and SPLP will hire and pay the expert to complete and review the study. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. A summary of the expert's findings shall be made public (excluding proprietary or confidential security information (CSI)).

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

- ME1 corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;
- Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;
- Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;
- Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;
- A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;
- A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;
- A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;
- A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;
- An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;
- A summary of the leak history on ME1 including a description of the size of each leak;

- A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and
- A discussion to illustrate how managing integrity lengthens pipeline life.

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

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

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.

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.

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.

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.

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.

18. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Respondent failed to comply with the obligations claimed in the Complaint for the time periods covered by I&E's Complaint.

19. I&E and Respondent jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, promotes public and facility safety, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix A** and **Appendix B** are Statements in Support submitted by I&E and Respondent, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

20. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

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 this Settlement

Agreement in any way, including, but not limited to, ordering any additional process² 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 Agreement 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 other party within twenty (20) days after the latter of³ 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 and in footnote 1 below. A decision not to elect to withdraw from this Settlement Agreement for any modification shall not constitute a waiver of election and right to withdraw for any other or future modification. The Joint Petitioners agree that the benefits of the Settlement, which contain certain public safety features which are “above and beyond” current regulatory requirements,⁴ 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.

22. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

² “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, briefing or other process.

³ 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 modification.

⁴ These include undertaking on an expedited basis a Remaining Life Study for ME, 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 procedures. This Study will be conducted by an independent expert and submitted to BIE with ongoing annual summary reports. The Settlement also provides for ILI 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.

23. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

24. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

25. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

26. The Parties request that the Commission decide this matter directly and to permit comment by any interested entity or person within thirty (30) days of entry of any Commission Order that publishes this Settlement Agreement. The Parties further request that the Joint Petitioners be permitted to file Reply Comments within thirty (30) days of the due date for Comments.

DISCUSSION

A. Legal Standards

The Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *also* 52 Pa. Code § 69.401 *et seq.*, relating to settlement guidelines for major rate

cases, and a Statement of Policy relating to the Alternative Dispute Resolution Process (Mediation), 52 Pa. Code § 69.391, *et seq.* Settlements lessen the time and expense that Parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

The Commission's evaluation of whether to approve a settlement is not based on a "burden of proof" standard, as is utilized for contested matters. *See Pa. Pub. Util. Comm'n, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011), at 11. The Commission reviews proposed settlements to determine whether the terms are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC. 767 (1991); *Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009); *Pa. Pub. Util. Cmm'n v. Phila. Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); 52 Pa. Code § 69.1201.

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. Pub. Util. Comm'n*, 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. The Commission regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans 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).

B. Civil Penalty

1. Joint Petitioners

I&E and SPLP agreed to a civil penalty of Two Hundred Thousand Dollars (\$200,000) in addition to injunctive relief. Joint Petitioners contend the \$200,000 civil penalty is an adequate civil penalty in that there was no personal injury or property damage resulting from the leak in Morgantown. Additionally, the civil penalty may not be claimed as a tax deduction by operation of law. Settlement at 5. This penalty represents 89% of the penalty I&E sought in the Complaint and is sufficient to deter SPLP from committing future violations. The penalty is similar to those previously assessed by the Commission for pipeline failures related to corrosion. *See* I&E Statement at 15-16. The Settlement requires SPLP to conduct other actions which have significant financial impacts on SPLP such as In-Line Inspections and Close Interval Surveys in shorter time periods than required under the law. SPLP Statement in Support at 12. SPLP stated in its Reply Comments that the frequency of Close Interval Surveys will cost approximately \$350,000 per survey. Additionally, SPLP must pay for the expert to conduct the Remaining Life Study, which will entail significant time and fees and ongoing annual updates. The costs of these additional Settlement terms, along with the \$200,000 civil penalty, is appropriate given Commission precedent and is a sufficient deterrent to prevent similar future occurrences. *See Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2009-1505396,

Opinion and Order at 8. (Order entered Aug. 3, 2010) (Finding that when considering the proposed settlement as a whole, the civil penalty was adequate). Additionally, I&E asserts that some of the injunctive relief obtained through the Settlement is “above and beyond what the applicable laws and regulations require.”

2. West Goshen Township

West Goshen Township (WGT) commented that the civil penalty is “disproportionately low taking into account the potential for catastrophe caused by the release of HVLs into high density areas, and completely disregards SPLP’s compliance history in Pennsylvania.” WGT avers the penalty should be increased from \$200,000 to Two Million Dollars (\$2,000,000), the maximum allowed per violation per day since 66 Pa. C.S. § 3301(c) was amended. WGT argues SPLP shows “wanton” disregard for public safety and protection of the environment warranting the maximum penalty.

3. Flynn Intervenors

Flynn Intervenors. commented that the civil penalty provides no meaningful relief because it imposes no credible deterrent on SPLP, a unit of Energy Transfer, a company with \$54 billion in revenue in 2018. Flynn Intervenors argue that SPLP has already been fined over Twelve Million Dollars (\$12,000,000) by the Pennsylvania Department of Environmental Protection as of the fall of 2018, which is not a sufficient deterrent to make Energy Transfer comply with state law.

4. West Whiteland Township

West Whiteland Township takes no position with regard to the imposition of a civil penalty.

5. Disposition

Section 3301(c) (Civil Penalties for Violations) provides in pertinent part.

(c) Gas pipeline safety violations.--Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

66 Pa. C.S. § 3301(c).

Section 3301(c) mirrors the guideline of 49 U.S.C.A. § 60122(a)(1), which provides:

(a) General Penalties.—

(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$200,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is \$2,000,000.

49 U.S.C.A. § 60122(a)(1).

Section 60118(a) provides:

(a) General Requirements.—A person owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title;

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a)–(d) of this title; and

(4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c).

49 U.S.C.A. § 60118(a).

The Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy Statement”) requires an examination of the consequences of the conduct at issue. 52 Pa. Code § 69.1209(c)(2). The Policy Statement notes that “these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). The Policy Statement notes that “when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa.Code § 69.1201(b). These factors and standards are as follows:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-0092409 (Final Order entered February 10, 2000). Turning now to these ten factors:

- (1) Whether the conduct at issue was of a serious nature. There is insufficient evidence to show SPLP's conduct pertaining to the Morgantown leak involved willful fraud or misrepresentation.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. *Pa. Pub. Util. Comm'n, Bureau of*

Investigation and Enforcement v. First Taxi Cab Company d/b/a C-Pride Taxi Company LLC, Docket No. C-2016-2548862 (Order entered February 8, 2018) at 4. I agree with SPLP and I&E that consequences of a serious nature did not occur with respect to the April 1, 2017 leak in Morgantown. The leak did not result in a fire, explosion or cause personal injury. I&E is unaware of any reported property damage. As consequences of a serious nature did not ensue, this factor weighs in favor of the agreed-upon civil penalty of \$200,000.

(3) Whether the conduct at issue was deemed intentional or negligent. As this factor is only considered in fully litigated proceedings, and there is a settlement, this factor is irrelevant.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. In the instant case, revised procedures have already been implemented to I&E's satisfaction including:

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.

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.

Settlement at 10. The proposed settlement indicates SPLP made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar leaks in the future.

(5) The number of customers affected and the duration of the violation. There are few customer shippers that ship their HVLs on ME1. No evidence is in the record to show how

these customers were impacted by the leak and temporary shut-down of ME1 for repairs and replacement of the 83 feet of pipe. None of SPLP's customers petitioned to intervene in this matter.

(6) The compliance history of the regulated entity which committed the violation. When evaluating the Policy Statement factor that considers compliance history, 52 Pa. Code § 69.1201(c)(6), the Commission reviews a public utility's compliance with laws and regulations subject to the Commission's jurisdiction and as found in Commission records. For example, the Commission has stated that:

[T]he Respondent's compliance history and the need to deter future violations are important considerations when weighing the amount of a civil penalty. 52 Pa. Code § 69.1201. We believe that it is reasonable to review Commission records for a period of three years prior to the date of the filing of the Complaint in this case and up to and including the date of Commission action in this matter to determine whether a particular company has a satisfactory compliance record.

Id.

I recognize the comments of WGT regarding SPLP's history before the Commission including the fact that SPLP has been ordered to shut down operations in the interest of public safety. *Amended Petition of Pennsylvania State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket No. C-2018-3001453 and *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.* Docket No. C-2018-3001451 (Order entered June 15, 2018) (prohibiting construction, including drilling activities on the ME1 and ME2X pipelines in West Whiteland Township, Chester County, Pennsylvania); *Petition of the Bureau of Investigation and Enforcement of the Pa. Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 (Ratification Order entered March 15, 2018) (prohibiting SPLP from reinstating hazardous liquids transportation service on ME1 until SPLP completed a number of corrective actions designed to address subsidence due to carbonate geology around the pipeline). Additionally, WGT avers that SPLP only installed two safety valves after WGT sued SPLP to enforce a 2015 Settlement Agreement. *West Goshen Township v. Sunoco Pipeline, L.P.* Docket No. C-2017-2589346 (*West Goshen*). The *West Goshen* case was ultimately resolved through the adoption of a Recommended Decision in full, which

precluded construction of a valve on the Janiec 2 property, located next to the West Goshen Fire Department on Boot Road, West Chester, but also did not find SPLP had breached its settlement agreement. *Id.* (Order entered October 2018 at 18-20). WGT argues that SPLP has a reckless disregard in protecting the natural resources of this Commonwealth and is currently subject to a Pennsylvania Department of Environmental Protection (DEP) shut down order and unable to complete ME2 and ME2X because of grossly inadequate construction techniques, and its failure to protect wetlands and streams.

I am not persuaded to increase the civil penalty to \$2,000,000 given the willingness of SPLP to perform injunctive relief it claims no duty to perform and because through settlement, there is at least certainty as to relief. There have been split decisions at the Commission level and in the Commonwealth Court regarding the application of current regulations to the conduct of pipeline operators. Although there has been a Commission-ordered emergency injunction regarding ME1 in March 2018 and there was a Commission-ordered interim injunction against construction of ME2 and ME2X in West Whiteland Township in June 2018, there have been no civil penalties assessed to SPLP for having violated Commission regulations to date. *See Pa. Pub. Util. Comm'n, Bureau of Investigation & Enforcement v. Burgly Gas & Oil Company*, Docket No. C-2014-2411284 (Order entered March 14, 2019) at 11 (finding that since the company had no substantive compliance history with the Commission, a lower penalty was warranted); *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Final Order entered August 11, 2016 adopting the Initial Decision of Administrative Law Judge Joel H. Cheskis dated June 7, 2016) (holding there was no history of noncompliance at the Commission as no compliance actions were taken against the entity before the Commission); *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.*, Docket No. M-2013-2338981 (Order entered September 26, 2013) (holding that upon a review of Commission records concerning the Company's compliance history, the case at issue represented the ninth time in approximately five years in which alleged gas safety violations were raised before the Commission).

The \$200,000 civil penalty is similar to other penalties involving pipeline failures attributable to corrosion that were decided by the Commission over the past ten (10) years. I&E Statement in Support at 15-17. The Settlement is in the public interest because it promotes public safety and SPLP has agreed to take steps above and beyond statutory and regulatory requirements that SPLP believes the Commission could not unilaterally order SPLP to undertake involuntarily if this Complaint had been fully litigated. The Settlement avoids the time and costs to the Parties and the Commission of full litigation, including potential appeals.

(7) Whether the regulated entity cooperated with the Commission's investigation. SPLP cooperated with I&E's investigation since notifying I&E of the pinhole leak on the day it occurred. SPLP had a laboratory analysis conducted of the segment of the pipeline where the leak occurred and provided the results to I&E. SPLP also complied with extensive requests for data.

(8) The amount of the civil penalty or fine necessary to deter future violations. The agreed-upon civil penalty of \$200,000 appears to be within the guidelines of the Policy Statement; 66 Pa. C.S. § 3301(c); 49 U.S.C.A. § 60122(a)(1); and 49 U.S.C.A. § 60118(a) taking into consideration SPLP's agreement to incur additional costs related to injunctive relief in the form of corrective action remedies to its business practices designed to help prevent the conduct alleged in the Complaint from occurring in the future. In their Reply Comments, neither SPLP nor I&E argued that Section 3301(c) does not apply to this case. It is in the public interest to ensure compliance with regulatory standards. These remedies will assist I&E in the monitoring of SPLP's activities regarding its pipeline facilities. The civil penalty in conjunction with the agreed upon injunctive relief should contribute to better integrity management and monitoring of ME1 to avoid leaks in the future. Accordingly, I find in favor of Joint Petitioners on this issue.

(9) Past Commission decisions in similar situations. The costs of these additional Settlement terms, along with the \$200,000 civil penalty, is in line with Commission precedent and is a sufficient deterrent to prevent similar future occurrences. *See Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2009-1505396, Opinion and

Order at 8. (Order entered Aug. 3, 2010) (Finding that when considering the proposed settlement as a whole, the civil penalty was adequate).

C. REMAINING LIFE STUDY (RLS)

1. Joint Petitioners

Joint Petitioners agree that SPLP will retain an independent expert at its cost, but as selected by I&E to perform the RLS of ME1. SPLP will select three independent experts from which I&E will choose one to perform the job.

The Settlement provides that a summary of the independent expert's findings as to the RLS will be publicly available, excluding proprietary information or CSI. SPLP argues a release of CSI information is against public policy, and would harm the public interest by endangering public safety and the safety of SPLP's pipeline operation. SPLP contends that the disclosure of CSI would cause substantial harm to the competitive position of SPLP. I&E takes no position on WGT's request to obtain a copy of the RLS through the non-disclosure agreement it maintains with SPLP. I&E takes no position on West Whiteland Township's (WWT's) request to obtain the full RLS provided the request is made to SPLP. However, I&E opposes release of the entire RLS to the public at large as portions of the RLS could consist of CSI. I&E avers it lacks ability to share or disclose CSI-marked materials to the public pursuant to 35 Pa.C.S. § 2141.6.

2. West Goshen Township

WGT commented the RLS should be conducted by an independent expert who has never worked for SPLP or its parent company, Energy Transfer. WGT requests the RLS be released in its entirety to the public for comment. SPLP should not be able to exclude portions of the report under the guise of confidentiality and proprietary information. Alternatively, the RLS report should be provided to WGT under an existing non-disclosure agreement so that it may be reviewed and commented upon by its Liquid Pipeline Safety Expert, Richard Kuprewicz

of Accufacts, Inc., or a person or entity acting for WGT that is similarly a nationally recognized expert in the field of liquids pipeline safety.

3. Flynn Intervenors

Flynn Intervenors commented that the RLS is “largely illusory” as it leaves most of the decision to SPLP with no articulated standards for I&E oversight. Flynn Intervenors request that I&E choose an expert independent of SPLP’s selection of three experts from which to choose. Additionally, the annual updates do not set forth requirements for ongoing evaluation but merely require SPLP to report the evaluation process it is using. Additionally, it does not provide relief beyond an existing requirement because Governor Wolf called for an RLS in a press release.

4. West Whiteland Township

WWT supports the agreement that SPLP will provide a summary report on an annual basis which supplements the RLS for so long as the ME1 pipeline remains in HVL service. In addition, the Township requests that certain amendments to the RLS provisions contained in Paragraph 17, Subparagraph B be adopted.

WWT requests that the ALJ direct SPLP to produce information to the Township as to the RLS in greater detail than that of the public. WWT possesses unique obligations pursuant to the Pennsylvania Second Class Township Code, 53 P.S. § 65101, to protect the health, safety and welfare of all citizens and members of the public that work and traverse through the Township. The Township is similarly obligated pursuant to the Pennsylvania Emergency Management Code, 35 Pa. C.S. § 7103, to reduce the vulnerability of people and communities to damage, injury and loss of life and property resulting from disaster; and is tasked with providing a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

5. Disposition

Pursuant to 52 Pa. Code § 59.19 (relating to testing facilities and records), each public utility shall, as a minimum requirement, make tests as prescribed in Chapter 59 (Gas Service) with the frequency, in the manner, and at the places as provided in Chapter 59 or as may be approved or ordered by the Commission, and shall keep records of the tests. 52 Pa. Code § 59.19. The Commission has the authority and jurisdiction to direct the RLS of SPLP's ME1 pipeline facilities and the sharing of a report with I&E, a term of settlement in this matter.

Section 195.452(i) of the Code of Federal Regulations answers the question of what preventive and mitigative measures must an operator take to protect the high consequence area. 49 C.F.R. § 195.452. In general, an operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing emergency flow restrictor devices (EFRDs) on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls. 49 CFR § 195.452(i). The RLS appears to conform to Section 195.452(i) as it is a risk analysis of ME1 to identify additional actions to enhance public safety and environmental protection, including a recommendation as to when the ME1 should no longer transport HVLs.

SPLP has agreed to retain an independent expert, as selected by I&E, to perform an RLS of ME1 that is intended to assess the longevity of the pipeline using specific calculations and metrics that were suggested by I&E and agreed-to by SPLP. A summary of the independent expert's findings will be publicly available, excluding proprietary or CSI. SPLP cites as authority the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6); 49 U.S.C. § 60138 (protecting certain information contained in facility response plans).

On the one hand, the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, prohibits disclosure of material that could compromise security or endanger life, safety, or public utility facilities. Government agencies are prohibited from releasing, publishing or disclosing a public utility record that contains CSI, pursuant to 35 P.S. § 2141.5(a), and any public official or employee who knowingly or recklessly releases such information faces stiff penalties. 35 P.S. § 2141.6.

On the other hand, an operator overly broadly interpreting and withholding CSI from municipalities charged with maintaining emergency programs may not facilitate the necessary continuing training to instruct emergency response personnel. 49 C.F.R. Part 195.403(a). An operator must comply with 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.

Pennsylvania's Emergency Management Services Code (35 Pa. C.S. § 7101 *et seq.*) directs and authorizes every political subdivision (i.e., county, city, borough, incorporated town, and township) to have an emergency management program that includes a trained Emergency Management Coordinator (EMC), an Emergency Operations Plan (EOP), and a functioning Emergency Operations Center (EOC) with a trained staff. School districts are required to have a comprehensive disaster response and emergency preparedness plan under 35 Pa. C.S. § 7701(g). The townships are similarly obligated pursuant to the Pennsylvania Emergency Management Code, 35 Pa. C.S. § 7103, to reduce the vulnerability of people and communities to damage, injury and loss of life and property resulting from disaster; and are tasked with providing a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

There seems to be a conflict of interest between the townships' desire to view information marked "CSI" that it declares is necessary to assist the township in keeping its emergency management program current and the operator's desire to keep certain information it deems as "CSI" information private and out of the hands of potential terrorists and competitors. SPLP does not refute the townships' position that the CSI information might assist them in their

emergency preparedness programs. I am in favor of an arrangement whereby subject to a non-disclosure agreement, the townships' hired experts (i.e., Richard Kuprewicz of Accufacts, Inc.) and township solicitors could view the CSI information pertaining to RLS reports on an annual basis and that they be able to comment to the operator and I&E regarding the reports. Expert engineers and solicitors are bound and held to higher professional ethical standards including confidentiality standards as a part of their profession, greater than the average member of the public.

However, under the current law, applying the "plain language" doctrine of statutory interpretation, the general rule is that the public utility is responsible for determining whether a record or portion thereof contains CSI and the agency treats it as such until there is written notification to the utility by the agency of a request to examine records containing CSI or a challenge of its designation and an opportunity for agency review of the designation. Agency review is based upon consistency with the definition of CSI or when there are reasonable grounds to believe disclosure may result in a safety risk, including risk of harm to any person or mass destruction. 35 Pa. C.S. § 2141.3.

I&E avers that it cannot divulge CSI information of a utility to the public. I cannot pre-judge whether the CSI-marked material likely to be made a part of the RLS report should be open to the public without there being a review of the material in question. Applying the current rules of the Commission and the current law under which the Commission operates, 66 Pa. C.S. § 333(i), the Public Utility Confidential Security Information Disclosure Protection Act mandates the Commission create mechanisms for the safeguarding of CSI of public utilities from disclosure that may compromise security against sabotage or criminal or terrorist acts. The Commission entered a *Final Rulemaking Order* at L-00070185 on May 2, 2008 regarding 52 Pa. Code § 102.1 *et seq.* (Confidential Security Information). These regulations became effective on August 23, 2008 and provide for a procedure under which a utility files CSI information at the Commission in a manner that the public knows it is filed, but cannot access CSI information without a challenge to the designation. Once a challenge is initiated, the utility is notified of such within 5 days and has an opportunity to respond. The Commission has 60 days from the date of challenge or written request to render a decision. 52 Pa.Code § 102.4(a)(2).

Although the townships are genuine with their requests, I am not persuaded to add a requirement to the settlement, absent a directive in the form of legislation or a Commission regulation, to compel the release of CSI-marked report material to the townships. However, as WGT already has a Non-Disclosure Agreement with SPLP, then SPLP should make available annual reports to Mr. Kuprewicz of Accufacts, Inc. as long as the non-disclosure agreement is in effect and as long as Mr. Kuprewicz is retained as an expert for the township. SPLP operates a pumping station on Boot Road, and owns substantial right-of-way encroachments in WGT. It is in the public interest that the operator work with WGT to disclose information pursuant to non-disclosure agreements pertinent to that township's ability to train its emergency personnel and make other plans for its residents. The township is neither a terrorist nor a competitor of the operator. Any comments its hired experts offer to the operator and I&E ought to be received and considered. Additionally, I encourage the parties to work together to make the "public" reports available for viewing in locations along the pipeline throughout Pennsylvania (i.e., at SPLP's counsel's law offices or at public libraries) and consider publishing the reports online through SPLP's social media presence.

The General Assembly is currently considering amending the Act of November 29, 2006 (P.L.1435, No.156), entitled "An act relating to confidential security information of public utilities; and imposing penalties," in Senate Bill No. 284. Other relevant bills pending include: Pa. House Bill No. 1568 and Senate Bill No. 677. Pa. House Bill No. 1568 proposes to establish a Pipeline Safety and Communication Board and provide for its powers and duties, including the receipt of information relating to pipelines from the Commission and how that information should be treated. Pa. House Bill 1568 also proposes a repeal of the Public Utility Confidential Security Information Disclosure Act, P.L. 1435, No. 156. However, these bills are not law and as such are not binding.

I agree that as part of the process of selecting an independent expert to perform an RLS of ME1, I&E should be informed by SPLP as to whether any proposed expert previously performed work in relation to ME1 so as to avoid any affiliates or conflict of interest. However, as I&E is assuring the Commission that in vetting the proposed experts, it will carefully scrutinize their background including any past associations with SPLP and/or ETC in an effort to

evaluate their independence, I am not persuaded to modify the settlement terms to preclude any expert that has ever performed any work for SPLP and/or ETC.

D. IN LINE INSPECTION (ILI) AND CLOSE INTERVAL SURVEY OF ME1

1. Joint Petitioners

The Settlement represents a commitment from SPLP to conduct two remaining ILI runs in April 2019 then conduct ILI run #1 of ME1 18 months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 18 months after the completion of ILI run #1. At the conclusion of the three-year ILI period, the parties agree that SPLP will 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. Additionally, SPLP agrees to conduct a Close Interval Survey of ME1 to consider an ILI inspection interval that is more frequent than every 5 years, what the regulations mandate. 49 CFR § 195.573(a)(2). Accordingly, the Settlement has substantial "teeth" and contains a package of relief that is far more than what the Commission has authority to direct. I&E has negotiated for and SPLP has committed to the performance of ILI runs at accelerated intervals on the entire length of ME1.

Furthermore, the Settlement contemplates completion of successful ILI inspections. Therefore, if the ILI tool fails, it will be run again. Moreover, I&E will review the results of the inspections and if there are any detected anomalies, those threats will have to be managed by virtue of the Federal pipeline safety regulations.

Joint Petitioners argue that it is unreasonable to disapprove or modify the Settlement for not including other SPLP pipelines (such as the 12-inch workaround pipeline) that are outside the scope of I&E's investigation and Complaint. I&E avers the ME1 is made of bare, uncoated steel where the pinhole leak occurred on a weld. While an eight (8) foot section of the portion of the pipe that leaked was sent to a laboratory for analysis in April 2017, it is SPLP's procedure to fully replace sections of pipe between joints. Therefore, as noted in Paragraph 27

of I&E's Complaint, eighty-three (83) feet of new pipe were first hydrostatically tested and then installed to replace the portion that had leaked. The I&E Safety Division's investigation uncovered no corrosion on ME1 aside from the pinhole leak in Morgantown. I&E avers that the April 1, 2017 pinhole leak in Morgantown is the first leak to occur on ME1 in approximately twenty (20) years.

SPLP argues that Mr. Kuprewicz's testimony impermissibly injects under the Intervention Order a new issue arguing that the laboratory analysis should be made publicly available and that the Settlement should not be approved until the laboratory results are independently verified. This has no bearing on whether the Settlement is in the public interest – whether it provides public benefits. Instead, Mr. Kuprewicz is essentially seeking information that he is not entitled to by law or by the Complaint itself and is seeking collaterally to litigate and adjudicate I&E's Complaint with his attempt to engage in discovery into allegations, testing the credibility and accuracy of laboratory testing, and seeking injunctive relief. His allegations rely upon weighing evidence to adjudicate allegations in the Complaint and the proper remedy. That is not the standard here and Mr. Kuprewicz's allegations and attempt to use this proceeding to gather data are irrelevant.

SPLP contends that Flynn Intervenors' expert Dr. Zamanzadeh's ("Dr. Zee") Report goes even further in an attempt to litigate this matter, by impermissibly offering evidence and expanding issues in violation of the Intervention Order. He is essentially seeking a continuation of the allegations of the settled Complaint despite that anti-pipeline Flynn Intervenors have no right to prosecute further a complaint under longstanding Pennsylvania law when the complainant settles or discontinues its complaint. He opportunistically expands issues impermissibly under the Intervention Order and seeks an even greater wish list of relief.

I&E interprets the laboratory analysis' finding that MIC may have contributed to the external corrosion that was observed as being inconclusive. I&E's investigation did not find that MIC was the primary factor in causing the pinhole leak. I&E avers that MIC is less likely to occur on bare steel unless the environmental conditions are conducive to bacteria induced corrosion. However, when MIC is present, the standard National Association of Corrosion

Engineers (“NACE”) criteria of -850 millivolts (“mV”) found in SP0169-2007 may not be effective at preventing external corrosion.⁵ I&E determined that such was not the case here. Cathodic protection, if properly implemented, is effective in preventing external corrosion on bare steel. 49 CFR § 195.571. I&E avers that if SPLP had at least met adequate cathodic protection, the pinhole leak may not have occurred. All of the relief obtained by virtue of the Settlement is designed to enhance SPLP’s cathodic protection and corrosion control program to prevent another instance such as the April 1, 2017 pinhole leak from occurring again.

As an added measure of protection to ensure the integrity of ME1 as well as any other pipeline, the I&E Safety Division requests and receives from SPLP alignment sheets in the ordinary course of its investigations. Alignment sheets dissect pipelines on a segment-by-segment basis and reveal information such as the material of the pipe, the age of the pipe, GPS coordinates, the type of coating on the pipe if there is coating, casing on the pipe, repairs that have been performed and whether the segment of pipe has been replaced. In essence, these alignment sheets serve the same function as the pipeline map that the Accufacts Comment suggests creating and this pipeline map would be duplicative. Thus, the alignment sheets, when used in combination with the RLS, ILI runs, CIS and SPLP’s integrity management program (“IMP”), provide a comprehensive method to identify any anomalies on or potential threats to ME1 so that they can be addressed by SPLP under the close supervision of the I&E Safety Division.

I&E rejects the suggestion in the Accufacts Comment that a comparison of SPLP’s old and new procedures be made so that an independent technical evaluation be performed. This suggestion is premised on a notion that the I&E Safety Division either lacks the technical ability to evaluate a pipeline operator’s corrosion control procedures or is somehow biased in its evaluation. The I&E Safety Division performs hundreds of inspections on an annual basis to evaluate the procedures of numerous pipeline operators and natural gas distribution companies (“NGDC”) in an effort to ensure compliance with the federal pipeline safety regulations. The Commission has delegated this function to I&E. *Implementation of Act 129 of*

⁵ NACE SP 0169 is incorporated by reference in the federal pipeline safety regulations at 49 CFR § 195.3. *See also* 49 CFR § 195.571.

2008; *Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5. This process is not disclosed to the public as pipeline procedures, such as SPLP's procedures, are commonly labeled as CSI.

I&E addresses Exhibit A of the Flynn Intervenors' Comment, the Preliminary Comments on the Proposed I&E and SPLP Morgantown Settlement of Matergenics LLC ("Matergenics"). I&E argues that the Matergenics Comment presumes that coating disbondment occurred and triggered a series of events that ultimately lead to corrosion, resulting in the April 1, 2017 leak. This presumption is false because the pipe was bare steel and uncoated at the leak. Thus, the Matergenics Comments are irrelevant.

Many of the items mentioned on pages 5 and 11 of the Matergenics Comment were reviewed and considered by the I&E Safety Division, and provided the basis for the allegations in I&E's Complaint as well as the foundation for the relief obtained in the Settlement. I&E is prohibited from disclosing the items listed on pages 5 and 11 of the Matergenics Comment that the I&E Safety Division reviewed in the course of its investigation as SPLP designated those records as containing CSI. Furthermore, the Matergenics Comment amounts to nothing more than another attempt of the Flynn Intervenors to gain access to information investigated by the I&E Safety Division in this proceeding for use in the Flynn Intervenors' pending complaint matter against SPLP.

2. West Goshen Township

WGT incorporates the comments of Richard Kuprewicz, who recommended that the Settlement should incorporate for ME1 a requirement that a pipeline map be developed showing the approximate areas of bare, or ineffective coating as well as coating type including "unknown" and be identified by milepost for additional assessments through direct field digs. The map will help the pipeline operator and regulators determine "hot zones" along the ME1 where additional corrosion assessment is warranted to assure cathodic protection is operating effectively or coating replacement is warranted to get external corrosion under control.

Additionally, Mr. Kuprewicz recommends additional parameters to assist I&E with gauging SPLP's performance or the effectiveness of external corrosion procedures. He suggested requiring the reporting of certain corrosion wall loss triggers to I&E similar to that proposed by PHMSA concerning external corrosion program effectiveness. These comments are relevant to the averment in the complaint that MIC may have been a contributive factor to corrosion and offers recommendations to address "hot spots" along the pipeline that may reduce MIC corrosion.

3. Flynn Intervenors

Flynn Intervenors argue that the only post-study obligations are (a) an annual report; (b) conduct of CIS; and (c) collaboration with I&E to agree on ILI interval period and that there is "nothing barring SPLP from simply choosing to never do an ILI run again." Flynn Comments at 12. Flynn Intervenors incorporate in their comments the comments of M. Zee, Ph.D of Matergenics Materials and Energy Solutions dated June 10, 2018 and incorporated by reference into the Flynn Intervenors' Comment.

4. West Whiteland Township

WWT takes no position regarding this relief.

5. Disposition

Pursuant to 49 CFR § 195.452(j)(3), a pipeline operator is required at minimum to establish five-year assessment intervals not to exceed sixty-eight (68) months for assessing pipeline integrity. Such assessment may be performed by using an internal inspection tool capable of detecting corrosion. 49 CFR § 195.452(j)(5)(i). See also 49 CFR § 195.573(a)(2).

Shorter than 5-year intervals are not mandated under current regulations. The Commission implicitly acknowledges this regarding inspection and survey frequency of testing in its June 13, 2019 *Advanced Notice of Proposed Rulemaking* at Docket No. L-2019-3010267

(“ANOPR”) as it seeks to potentially implement more stringent regulations regarding frequency of these tests. *See ANOPR* at 16-19. State Senator Andrew Dinniman introduced a bill that would require such study and require the Commission to implement regulations regarding such study. SB 677 of 2019. However the bill is not a binding requirement.

The Settlement states:

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.

Settlement at P 17.C.a.

This provision is in the public interest as increased frequency and shorter intervals of inspections as well as the hiring of a consultant will likely benefit the public. I&E will review Alignment sheets, which serve a similar function to Richard Kuprewicz’ pipeline map suggestion. I&E and SPLP have not agreed to all of the additional measures recommended by Mr. Kuprewicz and Dr. Zee. Joint Petitioners have not agreed to additional soil testing to address MIC at this time. I&E averred MIC was not the primary cause of the pinhole leak. The process of I&E’s review of old and new procedures is not required to be disclosed or reviewed by the public for comment or oversight in order for the settlement to be approved. If in the future, if I&E believes MIC is a significant contributor to external corrosion on the ME1, then it may request further testing and preventive measures at its discretion. I find in favor of Joint Petitioners on this issue.

E. REVISION OF PROCEDURES & PIPELINE REPLACEMENT

1. Joint Petitioners

The Joint Petitioners 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. SPLP has implemented the revised procedures and intends to replace pipe when it detects anomalies. If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action pursuant to its Corrosion Control Plans, IMP and the federal regulations.

2. West Goshen Township

WGT argues the joint settlement fails to disclose the revisions to procedures that address the relief requested in paragraphs 47(c) and (d) of the Complaint. Therefore, WGT is incapable of commenting on the adequacy of these revisions. Regarding pipeline replacement, WGT incorporates the expert public comments of Richard Kuprewicz in Attachment A to its comments.

3. Flynn Intervenors

Flynn Intervenors. argue that provisions (D) and (E) of the Settlement, which relate to the revision of procedures and implementation of revised procedures, reflect changes made prior to the Settlement and independent of the complaint, and therefore do not provide any new relief and do not show the Settlement is in the public interest. Flynn Comments at 9. Flynn Intervenors argue that Settlement provision (F) (regarding pipeline replacement as it relates to corrosion) does not support approval of the Settlement, is also baseless. Flynn Comments at 9.

4. West Whiteland Township

WWT takes no position with regard to this relief.

5. Disposition

SPLP's implementation of procedures prior to final resolution of the complaint shows the Company is attempting to correct its actions regarding the monitoring of ME1 for corrosion and leaks as well as measures designed to prevent corrosion.

Contrary to Flynn's suggestion, there is no requirement that every provision of the Settlement entail relief that requires SPLP to go above and beyond regulatory requirements. This argument overlooks that a requirement to comply with legal requirements in a settlement does provide additional relief because violation would result in not just violation of the law, but violation of the Settlement too. Regardless, even if compliance with the law was not an obvious public benefit, the Commission's public interest analysis requires consideration of the public interest based on the Settlement as a whole. Considering the Settlement as a whole, SPLP has agreed to undertake various actions that go well above and beyond statutory and regulatory requirements concerning pipeline safety to ensure ME1 continues to provide safe public utility service – this result is clearly in the public interest warranting expeditious approval of the Settlement.

Finally on this point, Flynn also misunderstands the basic nature of a settlement, which includes give and take and such give and take is not to be twisted, as Flynn does, into evidence of an admission or omission of any wrongdoing.

CONCLUSION

For all of the reasons stated above, I find that the proposed Settlement filed on April 3, 2019, as amended on June 28, 2019 by an Addendum, is in the public interest. The Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process. The instant proposed settlement satisfies the "public interest" standard and benefits that show a likelihood or probability of public benefits that need not be quantified or guaranteed.

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. Therefore, I approve the Joint Settlement Petition and I encourage Sunoco Pipeline, L.P. 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

3. Commission policy promotes settlements that are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code §§ 5.231 and 69.401.

4. 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, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011).

5. Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201.

6. The factors in the Policy Statement will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as

well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a).

7. When applied in settled cases, the factors and standards in the Policy Statement will not be applied in as strict a fashion as in a litigated proceeding but the parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. 52 Pa.Code § 69.1201(b).

8. A civil penalty of \$200,000 is reasonable given the additional injunctive relief agreed to by Sunoco Pipeline, L.P. 66 Pa.C.S. § 3301(c).

9. The Joint Petition for Approval of Settlement submitted in this proceeding as amended by an Addendum is adopted in its entirety without modification because it is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Settlement filed on April 3, 2019 as modified by an Addendum filed on June 28, 2019 is granted in its entirety.

2. That 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).

3. That Sunoco Pipeline, L.P. shall retain an independent expert, unaffiliated with Sunoco Pipeline, L.P. or its affiliates, as selected by the Bureau of Investigation and Enforcement 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.

4. 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 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 ME1 as well as a description of that work.

6. That the 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.

7. 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.

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

9. That for so long as ME1 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 ME1 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 ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements.

10. 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 PUC's regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

11. That at the conclusion of the three-year ILI 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 Bureau of Investigation and Enforcement to discuss planned ILI inspection frequency.

12. That Sunoco Pipeline, L.P. shall conduct a Close Interval Survey of ME1 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 ME1 for the next three (3) calendar years.

13. 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. 3-12.

14. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with Ordering Paragraphs Nos. 1-12 and per the body of this Recommended Decision.

15. 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. 3-12, and that a copy of the progress report be served upon the Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

Date: December 18, 2019

_____/s/_____
Elizabeth H. Barnes
Administrative Law Judge