



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY
PLEASE REFER
TO OUR FILE
M-2020-3004646

December 16, 2020

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Energy Transfer Company d/b/a ETC Northeast Pipeline, LLC
Docket No. M-2020-3004646
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B - the Bureau of Investigation and Enforcement’s Statement in Support; and (2) Appendix C - the Statement in Support of Energy Transfer Company d/b/a ETC Northeast Pipeline, LLC.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie M. Wimer", written in a cursive style.

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
(717) 772-8839
stwimer@pa.gov

SMW/jfm
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3004646
	:	
Energy Transfer Company d/b/a	:	
ETC Northeast Pipeline, LLC	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”) and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC (“ETC” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation conducted by I&E’s Safety Division in connection with a September 10, 2018 pipeline failure and ensuing fire in Center Township, Beaver County, Pennsylvania on the Company’s Revolution Pipeline. As part of this Settlement Agreement, I&E and ETC (hereinafter referred to collectively as the “Parties” or “Joint Petitioners”) respectfully request that the Commission approve the Settlement without modification for the compelling public interest reasons stated herein. Proposed Ordering Paragraphs are attached hereto as **Appendix A**. Statements in Support of the Settlement expressing the individual views of I&E and ETC are attached hereto as **Appendix B** and **Appendix C**, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC with its principal place of business at 1300 Main Street, 2nd Floor, Houston, TX 77002.

2. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction. *See 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); *See also* 66 Pa.C.S. § 308.2(a)(11).

3. ETC is a pipeline operator in that it "owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws." 58 P.S. § 801.102.

4. The Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* ("Act 127"), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws and regulations.

5. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators for violations of Act 127. A pipeline operator may be subject to the civil penalties provided under Federal pipeline safety laws or Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), whichever is greater. *Id.*

6. ETC is registered with the Commission as a pipeline operator. *See* Docket No. A-2015-2508371.

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of the Company in its capacity as a pipeline operator in Pennsylvania.

II. BACKGROUND

8. On September 10, 2018, at approximately 04:54, a pipeline failure and subsequent fire occurred near 750 Ivy Lane in Center Township, Beaver County, Pennsylvania.

9. The I&E Safety Division, which is the entity responsible for investigating, inspecting, and enforcing pipeline safety violations, received National Response Center (“NRC”) report #1224150 at 06:04 on that same day. The NRC report indicates that greater than three million cubic feet of gas was released. The fire was extinguished at 07:00.

10. The I&E Safety Division identified the failed pipeline as ETC’s Revolution Pipeline, which is a 24-inch coated steel line that is approximately 40 miles in length and intended to transport natural gas from the Pike compressor station in Butler County, south to the Revolution cryogenic processing plant in Washington County.

11. As part of the construction process, ETC retained Project Consulting Services, Inc. (“PCS”) as the pipeline design team for the Revolution Pipeline project. PCS in turn retained geotechnical engineers with Terracon Consultants, Inc. (“Terracon”) to conduct a geohazard assessment of the proposed pipeline route in 2015, which included certain in person field assessments of the pipeline right of way (“ROW”). Terracon's "Geohazard Evaluation Report" (Jan. 2016) (“Terracon Geohazard Evaluation Report”) was intended to

provide "an overview of anticipated geologic hazards (geohazards)." The Terracon Geohazard Evaluation Report was included in the construction bid package for the general contractor for the project and became part of the overall construction plans specification package under the terms of the Master Services Agreement ("MSA"). Willbros Construction (U.S.) ("Willbros") was selected as the prime contractor for Spread 2 of the Revolution Pipeline project.

12. Construction on the pipeline began in mid-March 2017. Pursuant to design and construction specifications, ETC filed its Erosion and Sedimentation Control Plan ("E&S Plan") with the Beaver County Conservation District ("District"), which the District reviewed and approved. ETC also applied for and received Erosion and Sedimentation Control General Permits ("General Permits") from the District pursuant to the authority of the Pennsylvania Department of Environmental Protection ("PA DEP").

13. The pipeline was successfully hydrostatically pressure tested without failure in February 2018. ETC completed construction of the pipeline on March 19, 2018 and initiated the purge and pack process on or around August 27, 2018. ETC was bringing the pipeline up to optimal operating pressure when the incident occurred on September 10, 2018.

14. Twenty-two miles of the pipeline are classified as a Type A regulated gathering pipeline under Federal Pipeline Safety Act ("PSA") regulations at 49 C.F.R. Part 192 based on an established maximum allowable operating pressure ("MAOP") of 1440 pounds per square inch gauge ("psig") and Class 3 locations. The failure occurred on a Type A regulated gathering pipeline segment regulated under Act 127 and 49 C.F.R. Part 192.

15. The September 10, 2018 pipeline failure and subsequent ignition of the released natural gas destroyed a single-family residence at 752 Ivy Lane as well as a garage

and multiple motor vehicles on the property. No fatalities or injuries occurred as the residents of 752 Ivy Lane evacuated before the fire reached their home. The incident was precipitated by heavy rain conditions caused by Tropical Storm Gordon which in turn prompted a landslide and when the landslide occurred, a section of the Revolution Pipeline separated, resulting in a loss of containment and a fire. The pressure at the time of failure was 813 psig.

16. Several acres of wooded land burned, and six transmission towers operated by the FirstEnergy Corporation carrying electrical transmission lines collapsed. The fire also destroyed a power line operated by the Duquesne Light Company.

17. Residents of approximately 49 homes in the area evacuated their properties and emergency responders established a buffer zone of a half mile radius from the fire.

18. At the time of the incident, the weather conditions were cloudy with rain and the temperature was approximately 60 degrees Fahrenheit. The area experienced a sustained, heavy rainfall event associated with Tropical Storm Gordon for approximately three days prior to the failure. A September 9, 2018 construction inspection report prepared by one of ETC's contractors did not identify any observations of land movement in the incident area.

19. ETC's control room in San Antonio, Texas, recorded the pressure of the Revolution Pipeline on September 10, 2018. The recordings reveal significant drops in pressure between 04:44 and 05:44, when the pressure was zero pounds per square inch, gauge ("Psig").

20. ETC's control room in San Antonio, Texas, maintained the ability to automatically close the valves on the segment of the pipeline that experienced the failure. However, the automatic shut-off capability was not enabled on the day of the incident as the

line was in the filling process and would have shown false drops in pressure. Local ETC employees traveled to the valve locations in order to manually close them.

21. The I&E Safety Division's investigation consisted of visiting the incident site, observing a metallurgical analysis of the failed section of the pipeline at a laboratory in Ohio, conducting interviews of ETC employees and the service of nine (9) sets of data requests directed to the Company and review of the responses thereto.

22. The Company cooperated with the I&E Safety Division's investigation.

23. The I&E Safety Division examined the metallurgical analysis of the failed section of the pipeline, which found no evidence of corrosion, material deficiencies, stress corrosion cracking or mechanical damage, as well as no evidence of weld defects, weld imperfections or weld discontinuities.

24. Such conclusion led the I&E Safety Division to focus on the preconstruction conditions of the failed site. The I&E Safety Division reviewed the January 2016 Terracon Geohazard Evaluation Report ("Terracon Report") regarding the Revolution Pipeline.¹ The Terracon Report contains a landslide model representing landslide hazards on a scale from 1 to 9, with 9 being the greatest risk of occurrence of a landslide. The model categorizes the slope at the failure site as a 9.

25. The I&E Safety Division also reviewed a November 15, 2018 report entitled "Landslide Evaluation – Beaver County, Pennsylvania for ETC Northeast Pipeline, LLC,"

¹ ETC designated the Terracon Geohazard Evaluation Report as Confidential Security Information pursuant to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 – 2141.6, and the Commission's regulations at 52 Pa. Code §§ 102.1-102.6. Accordingly, the Terracon Report has not been produced and the discussion of it is limited to details that are not confidential security information ("CSI").

which was prepared for ETC by GeoEngineers, Inc. (“GeoEngineers Report”).² Following review of the GeoEngineers Report, the I&E Safety Division concluded that daily construction logs prepared by various ETC contractors documented prior slide events at or very near the failure site.

26. Additionally, the I&E Safety Division reviewed a post-incident report dated February 1, 2019, that was prepared by Dynamic Risk Assessment Systems Inc. (“Dynamic Risk Report”) for ETC and provided a direct cause analysis of the failure.³ The I&E Safety Division concluded from its review of the Dynamic Risk Report that the area surrounding the failure site had experienced past slope instability, and that slope instability contributed to the incident. The I&E Safety Division further concluded, based on a review of the Dynamic Risk Report, that the pipeline was not consistently trenched into bedrock at the failure site and that the newly placed fill did not provide enough structural resistance to prevent movement of the pipe during the land movement that occurred.

27. Upon review of all data, the I&E Safety Division concluded that the September 10, 2018 failure of the Revolution Pipeline was caused by slope failure on ETC’s right-of-way precipitated by severe tropical storm rainfall. The slope failure created extensive shear forces that exceeded the tensile strength of the pipe and caused a pipeline leak or rupture that allowed the release of pressurized natural gas. The slope failure was exacerbated by the placement of the pipeline, which, in the affected segment, was not

² Similar to the Terracon Geohazard Evaluation Report, ETC designated the GeoEngineers Report as CSI pursuant to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 – 2141.6, and the Commission’s regulations at 52 Pa. Code §§ 102.1-102.6. Accordingly, the GeoEngineers Report has not been produced and the discussion of it is limited to details that are not CSI.

³ ETC has likewise designated the Dynamic Risk Report as CSI pursuant to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 – 2141.6, and the Commission’s regulations at 52 Pa. Code §§ 102.1-102.6. Accordingly, the Dynamic Risk Report has not been produced and the discussion of it is limited to details that are not CSI.

entrenched in bedrock and resting on colluvial soil. The released natural gas was introduced to an ignition source, likely either the power lines located in the same right-of-way or another ignition source at 752 Ivy Lane.

III. ALLEGED VIOLATIONS AND ETC'S RESPONSES

28. Had this matter been fully litigated, I&E would have proffered evidence regarding the facts I&E claims above and legal arguments to demonstrate that ETC committed the following violations:

- A. ETC's construction procedures were inadequate in that they failed to incorporate or consider preconstruction research, *i.e.* information from the January 2016 Terracon Geohazard Evaluation Report into the design and construction of the pipeline.

This is a violation of 49 C.F.R. § 192.13(c) (requiring each operator to maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under 49 CFR Part 192) and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators) (one count).

- B. ETC failed to take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides or other hazards that may cause the pipeline to move or sustain abnormal loads in that the potential for landslides near the failure site was revealed in the January 2016 Terracon Geohazard Evaluation Report, slides were documented during construction along the alignment, and the pipeline was not consistently placed into competent bedrock and was only partly supported on fill soils on top of questionable colluvium.

This is a continuing violation of 49 C.F.R. § 192.317(a) (requiring an operator to take all practicable steps to protect pipelines from washouts, floods, unstable soil, landslides or other hazards that may cause the pipeline to move or sustain abnormal loads); 49 C.F.R. § 192.9(c) (requiring operators of Type A gathering lines to comply with the requirements of Part 192 related to transmission lines, except the requirements in § 192.150, 192.285(e), 192.493, 192.506, 192.607, 192.619(e), 192.624, 192.710, 192.712, and subpart O); and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators) (multiple counts).

- C. ETC failed to maintain the structural integrity of the Revolution Pipeline under environmental conditions that were able to be anticipated in that the pipeline was not designed to withstand the forces of the earth movement that it was subjected to, which were known by ETC as evidenced by the January 2016 Terracon Geohazard Evaluation Report and as documented in the Company's daily construction logs.

This is a continuing violation of 49 C.F.R. § 192.53 (requiring an operator to use materials for pipe and components that are able to maintain the structural integrity of the pipeline under environmental conditions that may be anticipated) and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators) (multiple counts).

- D. ETC failed to follow its Standard Operating Procedures applicable to the shutdown and startup of natural gas pipelines, in that ETC did not notify emergency coordinators, *i.e.* state police, city and county fire departments, the Federal Aviation Administration and other gas companies, within a 10-mile radius of the release site when the incident occurred. Additionally, ETC released gas on September 11, 2018 that was contained in the mainline section between Main Line Valve 4 and Main Line Valve 5 and was unable to produce records demonstrating that it performed the necessary notifications as required by its Procedures. Furthermore, ETC blew down the pipeline from the Pike Compressor Station to a valve at Freedom Kreider Road, and the section from a valve at Broadhead Road and was unable to produce records demonstrating that it performed the necessary notifications as required by its Procedures.

This is a violation of 49 C.F.R. § 192.605(a) (requiring an operator to prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities and for emergency response) and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators) (three counts).

- E. ETC failed to notify the NRC at the earliest practicable moment following discovery of the incident, but no later than one hour after the confirmed discovery, in that on the morning of the incident, pressure reading data from the ETC control room confirms a pressure drop between 04:44 AM and 04:54 AM, Eastern Time, and ETC issued the NRC notification at 06:04, Eastern Time. Local ETC employees interviewed by I&E confirmed being notified of the pressure drop as early as 4:56 AM and arrived at the incident site as early as 5:15 AM to begin the valve closure process.

This is a violation of 49 CFR § 191.5 (requiring an operator to notify the National Response Center of certain incidents at the earliest practicable moment following discovery but no later than one hour after the confirmed discovery) and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators) (one count).

29. Had this matter been fully litigated, ETC would have proffered evidence and legal arguments to demonstrate that I&E's allegations of noncompliance are without basis in law and/or fact, as follows:

- A. I&E's allegation of noncompliance with the federal PSA regulation 49 C.F.R. § 192.13(c) is without basis as a matter of law and fact. The regulation makes no reference to "preconstruction research" or other analyses beyond plans, procedures, and programs. The federal agency authorized to promulgate and enforce the PSA regulations, the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), has never issued enforcement under this provision for failure to revise procedures as a result of preconstruction findings, let alone "preconstruction research." Thus, ETC believes that this allegation is improperly pleaded.

PHMSA regulations do not expressly require that a preconstruction geohazard evaluation be undertaken. Even though it was not required under the regulations, on December 10, 2015, Terracon performed an onsite field geohazard site assessment inspection of the pipeline route in the area surrounding the failure location. In January 2016, Terracon further prepared a "Geohazard Evaluation Report" for the pipeline design contractor PCS in order to account for the potential geohazards in the area of the Revolution Pipeline route in western Pennsylvania. The report identified areas that were considered to be "prone" to landslide, subsidence, and surface mine hazards, and categorized areas along the proposed route by geologic unit, rock type, and associated hazard value. The Terracon Geohazard Evaluation Report was intended to provide an overview of anticipated geologic hazards along the proposed project and general guidance for field construction personnel to evaluate and mitigate potential geohazards encountered in the field during various stages of development.

ETC included the Terracon Geohazard Evaluation Report in the construction bid package that was provided to the companies that participated in the bid process. It therefore became part of the overall construction plans and specification package under the terms of the MSA. ETC also incorporated the Terracon Geohazard Evaluation

Report into the specifications and drawings under the MSA with the primary construction contractor for the construction spread at issue, Willbros. Moreover, Willbros acknowledged in the MSA that it had examined the nature and location of the construction, and specifically the site conditions and "the character, quality and quantity of surface and subsurface materials to be encountered" and "the conditions of the terrain[.]" MSA Pt. I at 1-2, Pt. IV at 18. Willbros further represented to ETC that it could accomplish the work in line with all applicable safety standards. MSA Pt. II at 3.

As a result, there was no need for ETC to modify the construction specifications in light of the Terracon Geohazard Evaluation Report since (1) it was not legally required, (2) even though not legally required, it was already incorporated as part of the overall construction specifications and drawings for the project, and (3) the prime contractor had agreed that it could safely install the pipeline.

- B. I&E's allegation for noncompliance with 49 C.F.R. § 192.317(a) has no basis in law or fact. 49 C.F.R. § 192.317(a) requires that operators take practicable steps during construction to protect the pipeline from hazards, including landslides.

Based on the information known at the time, ETC took practicable steps during construction to protect the Revolution Pipeline from hazards such as landslides and unstable soil consistent with its extensive design and construction specifications and in light of the geohazard inspection and review performed by Terracon geotechnical engineers and observations along the ROW through daily monitoring. These steps were implemented through comprehensive design and construction specifications under the oversight of PA PUC and PHMSA. PA PUC performed inspections in November 2017 and again in May 2018, both of which determined that "no violations [were] discovered." The May 2018 inspection related to construction Spread 2 which includes the location of the failure.

During and after construction, the ROW was regularly visually monitored by environmental inspectors for changing erosion and sedimentation conditions, such as those associated with landslides. Based on daily environmental construction inspections in the field, ETC identified slips and debris between Bunker Hill and Broadhead Road. In response, ETC employed erosion and sedimentation control best management practices to contain the debris and restore the ROW.

Taken together, these measures were reasonably intended to protect the pipeline against a landslide or similar event and they were supported by sound engineering judgment. The Revolution Pipeline incident was

preceded, however, by unprecedented rainfall, including three days of heavy rain associated with Tropical Storm Gordon just prior to the incident and 14 inches of rain in a two and a half month period. This record setting precipitation changed the loading conditions on the pipeline just prior to the failure. Thus, the allegation of a violation, let alone a continuing violation, cannot stand. For these reasons, the I&E allegation of noncompliance with 49 C.F.R. § 192.317(a) is incorrect and unsupported by both the facts and the law.

- C. The regulation at issue in this alleged violation, 49 C.F.R. § 192.53, requires that "*materials for pipe and components*" be "*able to maintain the structural integrity of the pipeline under temperature and other environmental conditions that may be anticipated.*" 49 C.F.R. § 192.53 (emphasis added). Yet the facts that the PA PUC alleges in support of this violation make no reference to pipe materials. Instead, the allegation is based on the same facts used to allege a violation under 49 C.F.R. § 192.317(a), as outlined in Section III, ¶ 29 B. above.

This regulation is expressly tied to pipe material and components, not construction methods or other measures. No regulator or third party consultant has indicated that a different type of pipe material or components should have been used or that the pipe grade or components were deficient in any way.

Further, because this allegation is based on the same facts and evidence as the above allegation (Section III, ¶ 29 B.), it is duplicative and cannot stand. Finally, as noted above, any allegation of a continuing violation is incorrect because record setting precipitation changed the loading conditions on the pipeline just prior to the failure. For these reasons, the I&E allegation of noncompliance with 49 C.F.R. § 192.53 cannot stand as a matter of fact and law.

- D. I&E's three alleged counts of noncompliance with 49 C.F.R. § 192.605(a) are incorrect as a matter of fact and law. As demonstrated in documentation previously provided to the PA PUC, ETC made all relevant notifications within twenty-four hours in advance of startup of the Revolution Pipeline pursuant to its Purge and Pack Plan and its Standard Operating Procedures ("SOP") No. 1.01, Pipeline Shutdown and Startup. With respect to the post-incident blowdown and flaring, I&E's application of ETC's SOP No. 1.01, Pipeline Shutdown and Startup, Section 7.3 is misguided. That section of the SOP very clearly states at the outset that the notification requirements apply "except in emergency cases," which include the days following the aftermath of an incident. For these reasons, the I&E allegation of noncompliance with 49 C.F.R. § 192.605(a) cannot stand as a matter of fact and law.

- E. I&E's allegation of noncompliance with 49 C.F.R. § 191.5 is incorrect as a matter of fact and law. As set forth in ETC's incident report (PHMSA Form 7100.2), an incident was confirmed at 5:21 am EST and ETC made an initial incident notification directly to the PA PUC at 6:02 a.m. and then notified the National Response Center ("NRC") at 7:04 am EST. Notification to the NRC was made once the Company was able to confirm that the pipeline location where the incident occurred was subject to reporting pursuant to 49 C.F.R. §§ 191.5 (immediate notice of certain incidents), 192.8 and 192.9 (regulatory requirements for gathering pipelines), and 192.5 (class locations). Accordingly, ETC made these reports at the earliest practicable moment following discovery and within one hour of "confirmed discovery," which is defined by PHMSA as "*when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if based on a preliminary evaluation.*" 49 C.F.R. § 191.3 (emphasis added). For these reasons, I&E's allegation noncompliance with 49 C.F.R. § 191.5 cannot stand as a matter of fact or law.

IV. SETTLEMENT TERMS

30. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,⁴ the Parties held a series of extensive and comprehensive technical discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter in a fair and reasonable manner without litigation.

31. The Settlement is without admission and it is understood that this Settlement is a compromise of the allegations arising from I&E's investigation, which I&E intended to prove, and that ETC intended to disprove.

32. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the

⁴ See 52 Pa. Code § 5.231(a).

significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

33. I&E and ETC, intending to be legally bound and for consideration given, desire to fully and finally resolve I&E's investigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- A. ETC shall pay a civil penalty of \$1,000,000, pursuant to 66 Pa.C.S. § 3301(c). The payment shall be made within thirty (30) days of the date of the Commission's Final Order approving any settlement in this matter and shall be paid by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding 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. For the commissioning of regulated (in accordance with 49 CFR Part 192) pipelines owned by ETC, ETC shall implement measures to its startup procedures for purging and packing a pipeline to include 24-hour monitoring of all mainline⁵ valves on the pipeline that are undergoing startup. The 24-hour monitoring shall include onsite employees who are stationed at each valve and qualified to operate the valve. Such monitoring will continue until the pipeline reaches operating pressure. ETC shall modify its Standard Operating Procedure No. I.10 Pipeline Shutdown and Startup, Section 7.3, which shall be revised to define the end of an "emergency" in order to clearly delineate between emergency actions, which are taken to protect life and property, and operational decisions.

⁵ This term is limited to monitoring emergency, or mainline block, valves that are capable of isolating the pipeline. This term excludes ancillary valves that have no effect on isolating the pipeline in an emergency situation, *i.e.* small bypass valves on pig launchers or receivers.

- C. ETC shall establish procedures to further incorporate preconstruction research into its pipeline design and construction procedures so that such information is conveyed to the design team and construction inspectors working in the field. ETC shall use the outline of these procedures and policies provided to I&E on October 9, 2020 to complete the full policies and procedures document for submission to I&E upon completion with the following modification: ETC's Engineering Standard Volume 2 - Pipeline Design, Geohazard Evaluations for Pipeline Projects 2.0203 dated 08/01/2020 shall be modified to provide that "The Geohazard Management Plan *shall* be delivered to COMPANY PM for review prior to the start of construction." These procedures and policies will apply to all of ETC's pipelines in Pennsylvania.
- D. ETC shall within 40 days of start-up or operational date of the Revolution pipeline, employ in-line inspection ("ILI") tools to verify the integrity of the pipeline. The in-line tools for this ILI run shall include, but not be limited to,⁶ an inertial measurement unit ("IMU"), geometry tool, and MFL technology. The tools shall be run on the southern segment of the pipeline designated as the section from the Pike Compressor Station to the Revolution Cryo Plant, a distance of approximately 35 miles. This term does not apply to the segment of the pipeline north of the Pike Compressor Station, which is approximately 5 miles in length, based upon an April 30, 2019 Landslide Hazard Evaluation report prepared by GeoEngineers, Inc. and sealed by a Professional Engineer finding that the identified slope features pose low risk to the integrity of the pipeline in this segment. ETC shall within 6 months of the initial ILI inspection above, perform another ILI inspection utilizing, but not limited to, an IMU and geometry tool on the same segment of the pipeline described above. The data shall be collected and analyzed by ETC or a contractor retained by ETC on an expedited basis, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC's receipt of the analysis and/or results.
- E. Inclusive of the second ILI run in paragraph D., ETC shall perform five annual in-line inspections, at least once per calendar year with intervals not to exceed 15 months, to verify the integrity of the Revolution pipeline (years 2021-2025). Upon conclusion of the initial 5-year period, ETC shall meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols.

⁶ Strain analysis will be performed utilizing the data collected from the geometry tool and IMU.

ETC shall also perform a minimum of one additional ILI run in 2028. Upon conclusion of the ILI run in 2028, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2031. Upon conclusion of this ILI run, which would be performed no later than 2031, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2034.

ETC shall provide I&E with notification 30 days in advance of each ILI run. The in-line tools must include, but not be limited to, an IMU and geometry tool. The data shall be collected and analyzed by ETC or a contractor retained by ETC, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC's receipt of the analysis and/or results. The purpose of the continued, scheduled in line inspections is to determine if the pipeline is moving and to measure and monitor strain on the pipeline in any other location in the right-of-way.

- F. ETC shall provide I&E immediate notice of any slope failure that affects pipeline integrity. ETC shall implement a three-phase approach to monitoring and patrolling the entire Revolution pipeline right-of-way ("ROW").
- Phase 1. ETC shall walk the entire ROW at least every 7 days and after every 0.1" rainfall. Phase 1 shall continue until Notice of Termination of the PA DEP permit is received, but no sooner than the end of 2022. ETC shall utilize its staff of Environmental Inspectors that have been trained by and who shall work under the guidance and supervision of geotechnical subject matter experts ("SMEs"). The EIs shall report all observations to the geotechnical SMEs on a weekly basis, and, based on the nature of the observations, the geotechnical SMEs will perform a field investigation. A quarterly report shall be generated by the geotechnical Engineer of Record(s) and shall be provided to I&E.
 - Phase 2. Beginning after Phase 1, ETC shall patrol the portion of the ROW containing Steep Side Slope Fill Segments where gradients of 40 percent or steeper and where the pipeline is oriented parallel to contour (side slope) or oblique to contour either on-foot or by motorized all-terrain vehicle or similar vehicle at least once monthly and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas until the year 2025. This

patrolling will be performed by ETC personnel that are trained to perform the inspections and will be under the guidance of an in-house geotechnical engineer. ETC shall provide I&E with a list of the locations containing Steep Side Slope Fill Segments that are subject to the patrolling. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.

- Prior to the end of Phase 2, ETC shall present and discuss with I&E the data collected from the ILI tool run analysis and monitoring and patrolling and agree to a path forward for further monitoring based on the data. In the event the parties do not reach agreement, ETC shall proceed with the monitoring as described in Phase 3.
- Phase 3. Beginning after Phase 2, ETC shall monitor the Steep Side Slope Fill Segments described in Phase 2 on a quarterly basis and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.

- G. ETC shall implement a quality assurance/quality control program to oversee pipeline siting and construction practices for ETC's gas and hazardous liquid pipelines in Pennsylvania. ETC submitted an outline of these procedures and policies to I&E on October 9, 2020 for review. ETC will submit the policies and procedures document to I&E upon completion.
- H. Based upon this settlement, I&E will not prevent ETC from placing the Revolution Pipeline in service.

34. This Settlement is without admission that the foregoing rights and obligations have any nexus to the allegations arising from I&E's investigation and/or that such rights and obligations are intended to abate any alleged violation.

35. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released ETC from all past claims that were made or could have been made for monetary and/or other relief based on allegations associated with the September 10, 2018 incident on the Revolution pipeline.

36. I&E and ETC 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 arose from the findings of the I&E Safety Division’s investigation, imposes terms on ETC that are “above and beyond” regulatory and statutory requirements⁷ and those that I&E could achieve through litigation, promotes public safety, and avoids the time and expense of litigation, which entails hearings, potential travel for ETC’s witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and ETC which are incorporated herein as to the positions of each party, respectively, and setting forth the bases upon which they believe the resolution of their differences by this Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

37. 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.

38. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement in any way, any party

⁷ Under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.*, the Commission in regulating Revolution may not impose regulatory requirements “greater or more stringent than the minimum standards and regulations” adopted by PHMSA and the Federal Pipeline safety law. 58 P.S. § 801.501.

may elect to withdraw from the Settlement and, in such event, this Settlement Agreement shall be void and of no effect, and any party may proceed with litigation. 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 entry of an Order modifying the Settlement.

39. 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 matter. It is further understood that, by entering into this Settlement Agreement, ETC 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 in this or any other proceeding.

40. 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.

41. 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.

42. 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.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

Respectfully submitted and filed by:

**Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement**

By:



Stephanie M. Wimer, Senior Prosecutor,
PA Attorney ID No. 207522
Michael L. Swindler, Deputy Chief Prosecutor
PA Attorney ID No. 43319
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
stwimer@pa.gov
mwindler@pa.gov

Date: December 16, 2020

**Energy Transfer Company
d/b/a ETC Northeast Pipeline LLC**

By:



Thomas J. Sniscak, Attorney ID No. 33891
Whitney E. Snyder, Attorney ID No. 316625
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
tjsniscak@hmslegal.com
wesnyder@hmslegal.com

Date: 12-16-20

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2020-3004646
 :
Energy Transfer Company :
d/b/a ETC Northeast Pipeline LLC :

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on December 16, 2020 between the Commission’s Bureau of Investigation and Enforcement and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC is approved in its entirety without modification.
2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, Energy Transfer Company d/b/a ETC Northeast Pipeline LLC shall pay a civil penalty of One Million Dollars (\$1,000,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
3. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.
4. That the above-captioned matter shall be marked closed upon receipt of the civil penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	Docket No. M-2020-3004646
	:	
Energy Transfer Company	:	
d/b/a ETC Northeast Pipeline LLC	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC (“ETC” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and ETC are collectively referred to herein as the “Parties.”

I. BACKGROUND

The I&E Safety Division serves as a registered agent for the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), a federal agency housed in the U.S.

Department of Transportation and, as such, is contracted to enforce Federal pipeline safety standards on jurisdictional intrastate pipelines. The I&E Safety Division employs engineer-inspectors who possess engineering degrees and are trained and qualified by PHMSA to perform pipeline safety inspections. Accordingly, the I&E Safety Division maintains exclusive jurisdiction over pipeline safety and matters impacting pipeline integrity on intrastate pipelines in Pennsylvania.

I&E’s Safety Division conducted an in-depth investigation of a pipeline failure and subsequent fire that occurred on September 10, 2018 at approximately 04:54 in Center Township, Beaver County, Pennsylvania on the Revolution Pipeline, which is a pipeline facility owned and operated by ETC.

The Revolution Pipeline is a natural gas gathering line and approximately forty miles in length, traversing between Butler and Washington Counties. ETC completed construction of the Revolution Pipeline on March 19, 2018 and was bringing the pipeline up to optimal operating pressure when the incident occurred.

It was raining at the time of the incident and the area had been experiencing a sustained, heavy rainfall event associated with Tropical Storm Gordon for approximately three days prior to the failure. At the incident area, the pipeline had been placed on a steep slope.

ETC's control room in San Antonio, Texas, recorded the pressure of the Revolution Pipeline on September 10, 2018. The recordings reveal significant drops in pressure between 04:44 and 05:44, when the pressure was zero pounds per square inch, gauge ("Psig").

Although ETC's control room maintained the capability to automatically shut-off valves on the segment of the pipeline that experienced the failure, this feature was not enabled on the day of the incident and local ETC employees had to travel to the valve locations in order to manually close them. Greater than three million cubic feet of natural gas was released.

The pipeline failure and subsequent ignition of the released natural gas destroyed a single-family residence at 752 Ivy Lane as well as a garage and multiple motor vehicles on the property. No fatalities or injuries occurred as the residents of 752 Ivy Lane evacuated before the fire reached their home. Additionally, residents of approximately 48 other homes in the area evacuated their properties. Several acres of wooded land burned, and six transmission towers operated by the FirstEnergy Corporation carrying electrical transmission lines collapsed. A power line operated by the Duquesne Light Company was also destroyed.

The I&E Safety Division's investigation consisted of visiting the incident site, observing a metallurgical analysis of the failed section of the pipeline at a laboratory in Ohio, conducting interviews of ETC employees and the service of nine (9) sets of data requests directed to the Company and review of the responses thereto. The Company cooperated with the investigation.

The I&E Safety Division found that ETC obtained preconstruction research related to potential geohazards on ETC's Revolution Pipeline right-of-way. This preconstruction research revealed that the slope at the incident site had a great risk for a landslide.

Additionally, the I&E Safety Division found that entries on inspection reports during the construction of the pipeline documented landslides and/or slide events at or very near the failure site.

Upon review of all data, the I&E Safety Division concluded that the September 10, 2018 failure of the Revolution Pipeline occurred on a regulated segment of the pipeline and was caused by slope failure on ETC's right-of-way. The slope failure created extensive shear forces that exceeded the tensile strength of the pipe and caused a pipeline leak or rupture that allowed the release of pressurized natural gas. The slope failure was exacerbated by the placement of pipeline, which, in the affected segment, was resting on colluvial soil and not entrenched in bedrock. The released natural gas was introduced to an ignition source, likely either the power lines located in the same right-of-way or another ignition source at 752 Ivy Lane.

The results of the I&E Safety Division's investigation formed the basis for the allegations that I&E would have advanced had this matter been litigated. I&E would have alleged that ETC committed numerous violations of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* ("Act 127") and 49 CFR Part 192 in connection with the incident, including 49 C.F.R. § 192.13(c) (requiring each operator to maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under 49 CFR Part 192), 49 C.F.R. § 192.317(a) (requiring an operator to take all practicable steps to protect pipelines from washouts, floods, unstable soil, landslides or other hazards that may cause the pipeline to move or sustain abnormal loads), 49 C.F.R. § 192.53 (requiring an operator to use materials for pipe and components that are able to maintain the structural integrity of the pipeline under environmental conditions that may be anticipated),

49 C.F.R. § 192.605(a) (requiring an operator to prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities and for emergency response), 49 CFR § 191.5 (requiring an operator to notify the National Response Center of certain incidents at the earliest practicable moment following discovery but no later than one hour after the confirmed discovery) and 58 P.S. § 801.302 (adopting the Federal pipeline safety laws and regulations as the minimum safety standard for pipeline operators).

I&E and ETC engaged in extensive negotiations regarding the complex and technical issues raised by the allegations advanced by I&E, which resulted from the I&E Safety Division's investigation. On December 16, 2020, I&E and ETC (collectively, the "Parties") filed a Joint Petition for Approval of Settlement resolving all issues between I&E and ETC in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Safety Division informal investigation and provide substantial public benefits.

Most notably, ETC has committed to perform certain measures that exceed the standards set forth in the Federal pipeline safety regulations. Class 1 gathering lines are not subject to *any* of the Federal pipeline safety regulations and, no class of gathering lines is subject to *any* of the integrity management regulations set forth in Subparts O and P of Part 192 of Title 49 of the Code of Federal Regulations. Yet, the instant Settlement achieves an

agreement from ETC to perform in-line inspections (“ILIs”),² an integrity management measure, on the Revolution Pipeline, which is a gathering line. Through the instant Settlement, ETC has agreed to perform a minimum of six (6) ILIs on the Revolution Pipeline between the present time and 2028, with an estimated cost of \$975,000.

Moreover, ETC has been cooperative and proactive with I&E related to identifying policies and procedures that can be further improved to assist ETC in enhancing the safety of its pipeline facilities. The Company has agreed to implement increased monitoring of pipeline facilities undergoing startup, enhance the coordination of preconstruction research with the pipeline design and construction crews, implement a quality assurance program to oversee pipeline siting and construction in Pennsylvania and increase patrolling of the Revolution Pipeline through at least 2025.

I&E intended to prove the allegations that arose from the findings of the I&E Safety Division’s investigation at hearing, to which the Company would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and ETC may disagree with respect to I&E’s factual allegations, the Company recognizes the need to prevent a similar incident from reoccurring.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it achieves a preferable outcome compared to one that would have been reached through

² An in-line inspection is a preventative maintenance examination of a pipeline using a tool that travels inside the pipeline and is able to identify corrosion, cracks or other defects that may result in the failure of the pipeline.

litigation in that ETC has agreed to perform actions above and beyond those required by applicable regulations. As such, I&E respectfully requests that the Commission approve the Settlement without modification so that these important public benefits may be realized expeditiously.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and ETC have agreed as follows:

- A. ETC shall pay a civil penalty of \$1,000,000, pursuant to 66 Pa.C.S. § 3301(c). The payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving any settlement in this matter and shall be paid by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding 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. For the commissioning of regulated (in accordance with 49 CFR Part 192) pipelines owned by ETC, ETC shall implement measures to its startup procedures for purging and packing a pipeline to include 24-hour monitoring of all mainline³ valves on the pipeline that are undergoing startup. The 24-hour monitoring shall include onsite employees who are stationed at each valve and qualified to operate the valve. Such monitoring will continue until the pipeline reaches operating pressure. ETC shall modify its Standard Operating Procedure No. I.10 Pipeline Shutdown and Startup, Section 7.3, which shall be revised to define the end of an “emergency” in order to clearly delineate between emergency actions, which are taken to protect life and property, and operational decisions.

³ This term is limited to monitoring emergency, or mainline block, valves that are capable of isolating the pipeline. This term excludes ancillary valves that have no effect on isolating the pipeline in an emergency situation, *i.e.*, small bypass valves on pig launchers or receivers.

- C. ETC shall establish procedures to incorporate preconstruction research into its pipeline design and construction procedures so that such information is conveyed to the design team and construction inspectors working in the field. ETC shall use the outline of these procedures and policies provided to I&E on October 9, 2020 to complete the full policies and procedures document for submission to I&E upon completion with the following modification: ETC’s Engineering Standard Volume 2 - Pipeline Design, Geohazard Evaluations for Pipeline Projects 2.0203 dated 08/01/2020 shall be modified to provide that “The Geohazard Management Plan *shall* be delivered to COMPANY PM for review prior to the start of construction.” These procedures and policies will apply to all of ETC’s pipelines in Pennsylvania.
- D. ETC shall within 40 days of start-up or operational date of the Revolution Pipeline, employ in-line inspection (“ILI”) tools to verify the integrity of the pipeline. The in-line tools for this ILI run shall include, but not be limited to,⁴ an inertial measurement unit (“IMU”), geometry tool, and MFL technology. The tools shall be run on the southern segment of the pipeline designated as the section from the Pike Compressor Station to the Revolution Cryo Plant, a distance of approximately 35 miles. This term does not apply to the segment of the pipeline north of the Pike Compressor Station, which is approximately 5 miles in length, based upon an April 30, 2019 Landslide Hazard Evaluation report prepared by GeoEngineers, Inc. and sealed by a Professional Engineer finding that the identified slope features pose low risk to the integrity of the pipeline in this segment. ETC shall within 6 months of the initial ILI inspection above, perform another ILI inspection utilizing, but not limited to, an IMU and geometry tool on the same segment of the pipeline described above. The data shall be collected and analyzed by ETC or a contractor retained by ETC on an expedited basis, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC’s receipt of the analysis and/or results.
- E. Inclusive of the second ILI run in paragraph D., ETC shall perform five annual in-line inspections, at least once per calendar year with intervals not to exceed 15 months, to verify the integrity of the Revolution Pipeline (years 2021-2025). Upon conclusion of the initial 5-year period, ETC shall meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols.

ETC shall also perform a minimum of one additional ILI run in 2028. Upon conclusion of the ILI run in 2028, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for

⁴ Strain analysis will be performed utilizing the data collected from the geometry tool and IMU.

future inspections, ETC shall perform an additional ILI run no later than 2031. Upon conclusion of this ILI run, which would be performed no later than 2031, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2034.

ETC shall provide I&E with notification 30 days in advance of each ILI run. The in-line tools must include, but not be limited to, an IMU and geometry tool. The data shall be collected and analyzed by ETC or a contractor retained by ETC, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC's receipt of the analysis and/or results. The purpose of the continued, scheduled in line inspections is to determine if the pipeline is moving and to measure and monitor strain on the pipeline in any other location in the right-of-way.

- F. ETC shall provide I&E immediate notice of any slope failure that affects pipeline integrity. ETC shall implement a three-phase approach to monitoring and patrolling the entire Revolution Pipeline right-of-way ("ROW").
- Phase 1. ETC shall walk the entire ROW at least every 7 days and after every 0.1" rainfall. Phase 1 shall continue until Notice of Termination of the Pennsylvania Department of Environmental Protection ("PA DEP") permit is received, but no sooner than the end of 2022. ETC shall utilize its staff of Environmental Inspectors that have been trained by and who shall work under the guidance and supervision of geotechnical subject matter experts ("SMEs"). The EIs shall report all observations to the geotechnical SMEs on a weekly basis, and based on the nature of the observations, the geotechnical SMEs will perform a field investigation. A quarterly report shall be generated by the geotechnical Engineer of Record(s) and shall be provided to I&E.
 - Phase 2. Beginning after Phase 1, ETC shall patrol the portion of the ROW containing Steep Side Slope Fill Segments where gradients of 40 percent or steeper and where the pipeline is oriented parallel to contour (side slope) or oblique to contour either on-foot or by motorized all-terrain vehicle or similar vehicle at least once monthly and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas until the year 2025. This patrolling will be performed by ETC personnel that are trained to perform the inspections and will be under the guidance of an in-house geotechnical engineer. ETC shall provide I&E with a list of the locations containing Steep Side Slope Fill Segments that are subject to the patrolling. A quarterly report that shall

be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.

- Prior to the end of Phase 2, ETC shall present and discuss with I&E the data collected from the ILI tool run analysis and monitoring and patrolling and agree to a path forward for further monitoring based on the data. In the event the parties do not reach agreement, ETC shall proceed with the monitoring as described in Phase 3.
 - Phase 3. Beginning after Phase 2, ETC shall monitor the Steep Side Slope Fill Segments described in Phase 2 on a quarterly basis and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.
- G. ETC shall implement a quality assurance/quality control program to oversee pipeline siting and construction practices for ETC's gas and hazardous liquid pipelines in Pennsylvania. ETC submitted an outline of these procedures and policies to I&E on October 9, 2020 for review. ETC will submit the policies and procedures document to I&E upon completion.
- H. Based upon this settlement, I&E will not prevent ETC from placing the Revolution Pipeline in service.⁵

In consideration of ETC's payment of a monetary civil penalty and performance of the above-described corrective actions, I&E agrees that it has released ETC from all past claims that were or could have been made for monetary and/or other relief based on the allegations associated with the September 10, 2018 incident on the Revolution Pipeline.

⁵ The Revolution Pipeline has been out of service since the September 10, 2018 incident. On November 11, 2020, the PA DEP issued an Order prohibiting the Revolution Pipeline from commencing service until ETC performs certain measures pertaining to slope stability. ETC appealed the PA DEP Order to the Environmental Hearing Board on December 8, 2020. *ETC Northeast Pipeline, LLC v. Commonwealth of Pa., Dep't of Env'tl. Prot.*, Docket No. 2020-110-R. Given the expansive commitments secured by virtue of the instant Settlement, I&E agrees not to oppose ETC from re-starting the Revolution Pipeline, including when any current restrictions are lifted.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “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.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with 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”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in

settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the driving conduct in this matter involves ETC’s failure to protect the Revolution Pipeline from known hazardous conditions, *i.e.*, landslides, that caused the pipeline to move and sustain abnormal loads, as well as ETC’s failure to select and install materials and components for the Revolution Pipeline that were able to maintain the integrity of the pipeline under the anticipated environmental conditions, *i.e.*, the high probability of landslides at the failure site. I&E further alleges that ETC failed to adhere to its construction procedures in that it failed to react to the warnings set forth in a preconstruction report related to potential geohazards on ETC’s right-of-way, which predicted a strong likelihood of landslides occurring at the incident side. Even though ETC relied upon independent contractors to design and construct the Revolution Pipeline, ETC, as a regulated pipeline operator, bears the ultimate responsibility to comply with the Federal pipeline safety regulations. I&E therefore submits that the alleged violations resulting from the I&E Safety Division’s investigation are of a serious nature and were considered in arriving at the civil penalty and remedial relief set forth in the terms of the Settlement.

The second factor considered is whether the resulting consequences of ETC’s alleged conduct 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. 52

Pa. Code § 69.1201(c)(2). In this case, the pipeline failure released natural gas that resulted in a fire, which demolished one residential structure, six transmission towers and one electric power line. The fire also burned several acres of wooded land. Approximately forty-nine residential properties were evacuated, however, no fatalities or injuries occurred. The terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of ETC's pipeline facilities in Pennsylvania.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* This factor does not apply to the present case since this matter is being resolved through a settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the filing of the instant Settlement, ETC revised or was in the process of finalizing revisions to its procedures pertaining to pipeline siting and construction practices. One such revised procedure took effect on August 1, 2020 and relates to incorporating preconstruction research into pipeline design and construction, especially as it pertains to evaluating geohazards for pipeline projects. The Settlement ensures that ETC will further revise this procedure to guarantee that its pipeline project manager receives a copy of a geohazard management plan for each ETC pipeline construction project in Pennsylvania. Furthermore, ETC is in the process of developing a quality control program to oversee pipeline siting and construction practices in Pennsylvania. The I&E Safety Division reviewed an outline of these policies and procedures and the document will be submitted to I&E upon completion.

In addition to the procedures referenced above, ETC has committed to perform certain actions that exceed the standards set forth in the Federal pipeline safety regulations. Such actions include increased patrolling along the Revolution Pipeline right-of-way through at least 2025 and performing multiple ILIs on thirty-five (35) miles of the pipeline, including the segment that experienced the failure, through 2028. Significantly, there is no regulatory requirement that gathering lines be evaluated for integrity management, including employing ILIs. Moreover, approximately half of the forty mile Revolution Pipeline, including portions in which ETC has agreed to perform ILIs, is classified as a Class 1 gathering line that is not subject to *any* of the Federal pipeline safety regulations. The ILI settlement term alone produces a more favorable outcome than any result that would be acquired through litigation as I&E likely would not have been able to obtain relief outside of what the law and regulations prescribe.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, I&E asserts that the primary violations occurred during the construction of the Revolution Pipeline, which took place between 2016 and 2018. The consequence of these violations resulted in the pipeline failure and subsequent fire, which endured for approximately two hours on September 10, 2018 and impacted the public. The residents of approximately forty-nine properties were forced to evacuate and one family lost their home entirely. The fire also destroyed six transmission towers and a power line. Natural gas was not yet being transported to customers at the time of the incident as the pipeline was being brought up to optimal operating pressure. However, ETC's customers experienced delays

resulting from the pipeline failure as ETC was forced to re-route and reconstruct the failed segment of the Revolution Pipeline.

The sixth factor to be considered relates to the compliance history of ETC. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Energy Transfer Company d/b/a ETC Northeast Pipeline LLC⁶ has been the subject of three formal complaint proceedings before the Commission that were initiated by property owners whose properties either border or include an easement for the Revolution Pipeline. *See Mark Iancono v. Energy Transfer Company*, Docket No. C-2018-3003645; *Michelle Lutz v. Energy Transfer Company*, Docket No. C-2019-3014395; and *Michelle Lutz v. Energy Transfer Company*, Docket No. C-2020-3019394. All three matters were resolved by the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24(b). The instant matter is the first I&E investigation of ETC resulting in findings of alleged violations of the Federal pipeline safety regulations. Moreover, to I&E's knowledge, the Commission has not found ETC in violation of any law or regulation or directed ETC to pay a civil penalty in connection with a violation.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that ETC fully cooperated in the investigation and settlement process in this matter and that such cooperation demonstrates a commitment consistent with public safety goals and objectives.

⁶ This corporate entity is separate and distinct from Sunoco Pipeline L.P. a/k/a Energy Transfer Partners and is subject to the Commission's jurisdiction as a pipeline operator pursuant to Act 127.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$1,000,000, which may not be claimed as a tax deduction, in combination with the monetary cost of ETC's performance of all of the remedial measures, notably the estimated cost of \$975,000 related to operating at least six (6) ILIs on the Revolution Pipeline, is a significant pecuniary concession that is sufficient to deter ETC from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement provides comparable relief, and even greater relief, to the sole other enforcement matter involving a pipeline failure on a facility that was managed by an Act 127 pipeline operator. In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Order entered August 11, 2016), the Commission approved a settlement agreement that imposed a \$1,000,000 civil penalty upon continental Communities, LLC and Hickory Hills MHC, LLC ("Hickory Hills") in connection with a propane explosion in a mobile home community that resulted in one fatality, injury to another person and substantial property damage. I&E alleged that the results of its investigation revealed that the cause of the propane leak was localized corrosion on a steel pipe riser. I&E further alleged, *inter alia*, that Hickory Hills failed to have a manual that included procedures for controlling corrosion. The Settlement did not include any relief in the form of corrective measures as Hickory Hills abandoned the pipeline system after the incident and was no longer subject to the Commission's jurisdiction.

The instant matter provides the same civil penalty amount and affords greater relief when considering the corrective measures that ETC has agreed to perform, which surpass Federal pipeline safety requirements.

I&E submits that the instant Settlement Agreement should be viewed on its own merits and is fair and reasonable. However, in looking at the relevant factors that are comparable to other pipeline matters involving violations of the Federal pipeline safety regulations that resulted in very serious consequences, the instant Settlement is consistent with past Commission actions in that a substantial civil penalty will be paid and numerous, costly corrective actions to address the alleged violations will be performed.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions. Significantly, I&E asserts that it was able to obtain relief by virtue of this Settlement that it would not otherwise have been successful in obtaining had this matter been fully litigated as ETC has agreed to perform measures above and beyond what the applicable regulations require.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
stwimer@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
mwindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: December 16, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2020-3004646
 :
Energy Transfer Company d/b/a :
ETC Northeast Pipeline LLC :

**ENERGY TRANSFER COMPANY STATEMENT IN SUPPORT OF JOINT PETITION
FOR APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231 and 5.232 Energy Transfer Company d/b/a ETC Northeast Pipeline LLC (ETC) submits this Statement in Support of the Joint Petition for Approval of Settlement (Joint Petition or Settlement) to resolve all issues related to an informal investigation conducted by the Commission’s Bureau of Investigation and Enforcement (I&E) Safety Division in connection with a September 10, 2018 incident in Center Township, Beaver County, Pennsylvania on the Company’s Revolution Pipeline. The Settlement resolves all issues related to the Complaint and promotes public safety. Under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.*, the Revolution Pipeline is regulated under federal PHMSA regulations at 49 C.F.R. § 192. ETC has agreed to undertake various actions that go well above and beyond these federal regulatory requirements concerning pipeline safety to ensure the Revolution Pipeline continues to provide safe service. The Settlement terms and conditions are in the public interest as explained below.

I. THE COMMISSION SHOULD APPROVE THE SETTLEMENT

“It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).
The Settlement proposes safety and integrity features that are “above and beyond” what is required

under prevailing and applicable regulations which ETC is willing to do to amicably resolve this matter before the commencement of formal legal proceedings.

Timely and efficient approval promotes the public interest because the Settlement contains terms that require ETC to go “above and beyond” regulatory and statutory requirements and promote public safety which the Commission could not otherwise order: Under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.*, the Commission in regulating Revolution **may not impose regulatory requirements “greater or more stringent than the minimum standards and regulations” adopted by PHMSA and the Federal Pipeline safety law.** 58 P.S. § 801.501.

Timely approval will ensure prompt implementation of these Settlement terms and is in the public interest. Both the Commission’s regulations and the facts here support direct Commission decision on the Joint Petition.

II. BACKGROUND

A. Facts

This matter involves a September 10, 2018 failure on ETC's Revolution Pipeline in Beaver County, Pennsylvania. The incident occurred on September 10, 2018, at 5:21 a.m. eastern standard time (EST), and was precipitated by a landslide. When the landslide occurred, a section of the Revolution Pipeline separated, resulting in a loss of containment and an ignition. Nearby residents were evacuated and there were no fatalities or injuries.

The Revolution Pipeline is an approximately 40 mile, 24-inch diameter pipeline carrying natural gas between two processing facilities and traversing Allegheny, Beaver, Butler, and Washington counties in Pennsylvania. Twenty-two miles of the pipeline are classified as a Type A regulated gathering pipeline under 49 C.F.R. Part 192 based on an established maximum

allowable operating pressure (MAOP) of 1440 pounds per square inch gauge (psig) and Class three locations. The pipeline consists of electric resistance welded pipe manufactured by Evraz, 0.495 wall thickness Grade X-70, with fusion bonded epoxy coating for the pipe and a two-part liquid epoxy coating for the girth welds.

As part of the construction process, ETC retained Project Consulting Services, Inc. (PCS) as the pipeline design team for the Revolution Pipeline project. PCS in turn retained geotechnical engineers with Terracon Consultants, Inc. (Terracon) to conduct a geohazard assessment of the proposed pipeline route in 2015, which included certain in-person field assessments of the pipeline right of way (ROW). Terracon's "Geohazard Evaluation Report" (Jan. 2016) (Terracon Geohazard Evaluation Report) was intended to provide "an overview of anticipated geologic hazards (geohazards)." The Terracon Geohazard Evaluation Report was included in the construction bid package for the general contractor for the project and became part of the overall construction plans specification package under the terms of the Master Services Agreement (MSA). Willbros Construction (U.S.) (Willbros) was selected as the primary contractor for Spread 2 of the Revolution Pipeline project.

Construction on the pipeline began in mid-March 2017 and was performed pursuant to extensive design and construction specifications consistent with 49 C.F.R. Part 192. As part of that effort, the Company filed its Erosion and Sedimentation Control Plan (E&S Plan) with the Beaver County Conservation District (District), which the District reviewed and approved. The Company also applied for and received Erosion and Sedimentation Control General Permits (General Permits) from the District pursuant to the authority of the Pennsylvania Department of Environmental Protection (PA DEP). The pipeline was successfully hydrostatically pressure tested without failure in February 2018, and construction was completed by mid-March 2018.

Appendix C

In accordance with its construction procedures, E&S Plan, and related General Permits, ETC was subject to extensive monitoring requirements. As such, the Company regularly monitored and inspected the ROW and performed ROW restoration activities as appropriate. As part of those activities, and due to indications of slips in April 2018 in the area between Bunker Hill and Broadhead Road, ETC expended significant efforts to stabilize the area, including installation of additional erosion and sedimentation controls according to best management practices, addition of sedimentation controls in the downslope area, installation of additional water bars, application of stabilized slip material, and seeding and mulching the affected areas. Throughout this time, the District, pursuant to the authority of the PA DEP, maintained close oversight and coordination with ETC with respect to these activities. PA PUC also conducted desktop and field inspections over the course of the construction project, including an inspection on May 3, 2018 of Spread 2, noting "no violations discovered." PA PUC Steel Pipeline Construction Inspection Report (May 3, 2018).

In late August 2018, ETC initiated the purge and pack process to bring the pipeline into service. During this time period an unprecedented amount of rainfall occurred (14 inches of rain in a two and a half month period). Beginning on September 7, 2018, the area at issue experienced three days of heavy rain associated with Tropical Storm Gordon. This record setting precipitation changed the loading conditions on the pipeline just prior to the failure. A September 9, 2018 construction inspection report did not identify any observations of land movement in the incident area. The metallurgical investigation of the incident concluded that the pipeline failed as a result of "tensile overstress" due to excessive strain. Kiefner and Associates, "Metallurgical Investigation of the 24-inch Revolution Pipeline Incident at Station Number 1116+09" (Nov. 15, 2018) (Kiefner Metallurgical Report), pp. 1, 13. Further examination of the pipe samples from the incident

confirmed that the pipe itself met all appropriate API specifications, and both the pipe and the weld at issue were found to be structurally sound, with no defects detected. *Id.*, p. 2.

B. Pipeline Safety Regulatory Framework

The Federal pipeline safety regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) are performance-based,¹ intended to establish minimum safety standards that are then tailored within the discretion of the pipeline operator to individual systems. Under these regulations, each operator is required to prepare a variety of manuals, specific to its own system, in a manner that will meet or exceed the minimum federal standards. Those manuals, in turn, become enforceable by PHMSA. *See e.g., Interpretation Letter from J. Caldwell, Director, OPS to H. Garabrant* (April 22, 1974) (“the procedures of an operating and maintenance plan are as binding on the operator as the federal standards”).

Rather than telling operators what to do, the regulations tell them what level of safety to achieve. [...] There is tremendous variation between pipeline operators and between pipeline facilities. In order for one set of regulations to be comprehensive in scope, it would have to be quite lengthy and detailed. It would have to prescribe what operating, maintenance and emergency procedures are appropriate for all conceivable scenarios. The performance-based regulations reject this approach. They tell operators what level of safety must be achieved but do not spell out all of the steps necessary to get there.

Final Order, In re: Kaneb Pipe Line, CPF No. 53509 (Feb. 26, 1998).

Accordingly, the relevant PHMSA regulations are not prescriptive in nature as to what details ETC’s procedures had to contain, as long as those procedures were within the bounds of the guidelines set forth in those regulations and industry guidelines incorporated therein. In

¹ Unlike many agencies that use prescriptive regulatory standards where “one size fits all,” PHMSA’s regulations “tell operators what level of safety must be achieved but do not spell out all of the steps necessary to get there,” *Final Order, In re: Kaneb Pipe Line*, CPF No. 53509 (Feb. 26, 1998).

keeping with this approach, PHMSA does not maintain regulations with express requirements specific to landslides beyond a general construction regulation that requires an operator to protect pipelines from "washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads." See 49 C.F.R. § 192.317. Even though landslides are expressly mentioned in this regulation, the specific construction methods and mitigation activities are left to the operator's discretion based on the circumstances and sound engineering judgment.

In addition, the only PHMSA guidance specific to landslides, was not issued until nine months after the underlying incident. See Advisory Bulletin, 84 Fed. Reg. 18919 (May 2, 2019). Further, this guidance only suggests actions that operators should "consider" in areas prone to earth movement primarily during pipeline construction, many of which ETC had employed on the Revolution Pipeline.

PHMSA regulation 49 C.F.R. § 192.13 ("What general requirements apply to pipelines regulated under this part?") outlines the scope of the application of design, construction, inspection, and testing regulations to implement the PHMSA statutory prohibition on retroactively applying design, construction, inspection, and testing regulations to pipelines in existence when those regulations were established (often referred to as grandfathered pipelines). 49 C.F.R. § 192.317(a) requires that operators take practicable steps during construction to protect the pipeline from hazards, including landslides. PHMSA has specifically discussed 49 C.F.R. § 192.317(a) in a rulemaking preamble, explaining that the agency "proposed to change the regulation to require that in construction of transmission lines and mains, operators 'take all practicable steps to protect' the pipeline against the cited hazards."² Final Rule, 61 Fed. Reg. 28770, 28777 (June 6, 1996)

² Twenty-two (22) miles of the Revolution Pipeline is a PHMSA regulated gathering pipeline, not transmission, and classified as a Type A regulated onshore gathering line pursuant to 49 C.F.R. § 192.9(c).

(emphasis added). As such, there is no continuing obligation under this regulation once a pipeline has been constructed. Moreover, the Agency explained that the requirement to take "all practicable steps to protect" was intended "to allow operators flexibility in compliance" because "any tightening of this performance wording would diminish that flexibility." *Id.* (emphasis added). In its Notice of Proposed Rulemaking, PHMSA even went further to recognize that some gas pipelines are in locations where complete protection of the pipe from the hazards is not feasible.

The relevant regulatory text at 49 C.F.R. § 192.13(c) further requires that every operator must "maintain, modify as appropriate and follow plans, procedures, and programs that it is required to establish under this part." As noted above, PHMSA regulations are performance based and dictate that a pipeline be constructed with written specifications that are "consistent" with Subpart G of the regulations. 49 C.F.R. § 192.303. For this reason, the regulatory language of 49 C.F.R. § 192.317 does not require that pipelines "must be protected," but instead requires that operators take "all practicable steps to protect" pipelines. Notice of Proposed Rulemaking, 57 Fed. Reg. 39572, 39576 (Aug. 31, 1992) (emphasis added).

PHMSA's regulations at 49 C.F.R. §§ 191.5 (immediate notice of certain incidents), 192.8 and 192.9 (regulatory requirements for gathering pipelines), and 192.5 (class locations) set forth the notice requirements for certain pipeline incidents. Such requirements are based on the time of "confirmed discovery," which is defined by PHMSA as "when it can be reasonably determined based on information available to the operator at the time a reportable event has occurred, even if based on a preliminary evaluation." 49 C.F.R. § 191.3 (emphasis added).

C. ETC's Response to Alleged Violations

Had this matter been fully litigated, ETC would have proffered evidence and legal arguments, including those outlined below, to demonstrate that I&E's allegations of noncompliance are without basis in law and/or fact.

1. I&E's allegation of noncompliance with the federal PSA regulation 49 C.F.R. § 192.13(c) is without basis as a matter of law and fact. ETC's construction specifications fully complied with PHMSA 49 C.F.R. Part 192 design and construction regulations. PHMSA regulations are performance based and dictate that a pipeline is to be constructed with written specifications that are "consistent" with Subpart G of the regulations. 49 C.F.R. § 192.303. As such, pipeline operators have considerable discretion in preparing construction specifications, including with respect to whether they should be modified based on additional information under the circumstances. Moreover, 49 C.F.R. § 192.13(c) makes no reference to "preconstruction research" or other analyses beyond plans, procedures, and programs. PHMSA has never issued enforcement under this provision for failure to revise procedures as a result of preconstruction findings, let alone "preconstruction research." Thus, ETC believes that this allegation is improperly pleaded.

Even though it was not required under the regulations, on December 10, 2015, Terracon performed an onsite field geohazard site assessment inspection of the pipeline route in the area surrounding the failure location. This review noted any observations of past or recent ground movement in the ROW, geohazard type, site setting, material type and other observations. In January 2016, Terracon further

prepared a "Geohazard Evaluation Report" for the pipeline design contractor PCS in order to account for the potential geohazards in the area of the Revolution Pipeline route in western Pennsylvania. The report identified areas that were considered to be "prone" to landslide, subsidence, and surface mine hazards, and categorized areas along the proposed route by geologic unit, rock type, and associated hazard value. The Terracon Geohazard Evaluation Report was intended to provide an overview of anticipated geologic hazards along the proposed project and general guidance for field construction personnel to evaluate and mitigate potential geohazards encountered in the field during various stages of development.

Specific to the landslide hazard overlay, the Terracon Geohazard Evaluation Report noted "[t]his classification is to be used for general reference only to help prioritize and evaluate conditions in the field. The type and severity of landslide hazards will vary significantly based upon the local geology, vegetation, presence of water, loading at the top of slope, and undercutting/erosion at the bottom of slope." Terracon, Geohazard Evaluation Report at 8. Finally, the Terracon Geohazard Evaluation Report provided suggested general mitigation measures for construction in sloping terrain, but not specific to any particular area along the proposed route. *Id.* at 11. ETC included the Terracon Geohazard Evaluation Report in the construction bid package that was provided to the companies that participated in the bid process. It therefore became part of the overall construction plans and specification package under the terms of the Master Service Agreement (MSA). ETC also incorporated the Terracon Geohazard Evaluation Report into the specifications and drawings under the MSA with the primary construction

contractor for the construction spread at issue, Willbros. Moreover, Willbros acknowledged in the MSA that it had examined the nature and location of the construction, and specifically the site conditions and "the character, quality and quantity of surface and subsurface materials to be encountered" and "the conditions of the terrain[.]" MSA Pt. I at 1-2, Pt. IV at 18. Willbros further represented to ETC that it could accomplish the work in line with all applicable safety standards. MSA Pt. II at 3.

As a result, there was no need for ETC to modify the construction specifications in light of the Terracon Geohazard Evaluation Report since (1) it was not legally required, (2) even though not legally required, it was already incorporated as part of the overall construction specifications and drawings for the project, and (3) the primary contractor had agreed that it could safely install the pipeline.

2. I&E's allegation for noncompliance with 49 C.F.R. § 192.317(a) has no basis in law or fact. 49 C.F.R. § 192.317(a) requires that operators take practicable steps during construction to protect the pipeline from hazards, including landslides

Based on the information known at the time, ETC took practicable steps during construction to protect the Revolution Pipeline from hazards such as landslides and unstable soil consistent with its extensive design and construction specifications and in light of the geohazard inspection and review performed by Terracon geotechnical engineers and observations along the ROW through daily monitoring. These steps were implemented through comprehensive design and

construction specifications under the oversight of PA PUC and PHMSA. PA PUC performed inspections in November 2017 and again in May 2018, both of which determined that "no violations [were] discovered." The May 2018 inspection related to construction Spread 2 which includes the location of the failure.

During and after construction, the ROW was regularly visually monitored by environmental inspectors for changing erosion and sedimentation conditions, such as those associated with landslides, in coordination with and under the oversight of the District and the PA DEP. Based on daily environmental construction inspections in the field, ETC identified slips and debris between Bunker Hill and Broadhead Road. In response, ETC employed erosion and sedimentation control best management practices to contain the debris and restore the ROW.

Specifically, the Company implemented actions pursuant to its E&S Plan requirements for earth disturbances associated with construction and its accompanying General Permits. The E&S Plan as approved by the Beaver County Conservation District and the General Permits issued by the District pursuant to PA DEP authority included detailed descriptions of the topographic features and soil characteristics, including depth to bedrock, along the pipeline ROW, and imposed extensive monitoring and site restoration requirements. Phase 2 E&S Plan §§ 2.1-2.2 (Aug. 5, 2016). The E&S Plan explicitly called for reclamation and restoration, and included provisions for permanent stabilization. Phase 2 E&S Plan App. K. Willbros, the construction contractor, was obligated under the MSA and the E&S Plan to restore the ROW to its preconstruction condition and complete final grading

to prevent slips, washes, and erosion. MSA Ex. A at 3, 14-15; Phase 2 E&S Plan § 2.7.2 ¶ 18, § 2.11.

In June through August of 2018, pursuant to the obligations described above, Willbros' restoration contractor excavated and recovered debris that was deposited downslope and outside the construction workspace to restore slips in this area. That restoration work included calcite treatment, installation of a curtain drain, and/or blanket dimple drains to intercept seeps, grading and filling to restore the pipeline corridor to original grades, repairing or installing new silt fencing, erosion matting, mulching, hydroseeding, and other activities. The District closely monitored these activities during this timeframe, including conducting meetings with Willbros.

Taken together, these measures were reasonably intended to protect the pipeline against a landslide or similar event and they were supported by sound engineering judgment. The Revolution Pipeline incident was preceded, however, by unprecedented rainfall, including three days of heavy rain associated with Tropical Storm Gordon just prior to the incident and 14 inches of rain in a two and a half month period. This record setting precipitation changed the loading conditions on the pipeline just prior to the failure.

There is no regulatory playbook that prescribes how an operator must protect a pipeline from hazards during construction. PHMSA 's performance-based regulations require that "practicable steps" be taken to protect the pipeline and provide the pipeline operator with the discretion to determine which steps are appropriate under the circumstances. ETC took such steps.

3. I&E's alleged violation of 49 C.F.R. § 192.53 is baseless. 49 C.F.R. § 192.53 requires that "*materials for pipe and components*" be "*able to maintain the structural integrity of the pipeline under temperature and other environmental conditions that may be anticipated.*" 49 C.F.R. § 192.53 (emphasis added). Yet the facts that the PA PUC alleges in support of this violation make no reference to pipe materials. Instead, the allegation is based on the same facts used to allege a violation under 49 C.F.R. § 192.317(a), as outlined in Section II, ¶ C.2. above. This regulation is expressly tied to pipe material and components, not construction methods or other measures. No regulator or third-party consultant has indicated that a different type of pipe material or components should have been used or that the pipe grade or components were deficient in any way.

Further, because this allegation is based on the same facts and evidence as the above allegation (Section II, ¶ C.2.), it is duplicative and cannot stand. Finally, as noted above, any allegation of a continuing violation is incorrect because record setting precipitation changed the loading conditions on the pipeline just prior to the failure. This regulation is expressly tied to pipe material and components, not construction methods or other measures. No regulator or third party consultant has indicated that a different type of pipe material or components should have been used or that the pipe grade or components were deficient in any way. In fact, the metallurgical evaluation performed by Kiefner and Associates indicated that the incident pipe samples had "no evidence of [...] material deficiencies." Kiefner Metallurgical Report, pp. 1, 14. Along those

lines, the report concluded that: the girth weld was determined to be free from any weld defects (imperfection of significant magnitude to warrant rejection based on the acceptance criteria in AP I 104) or weld discontinuities (anomalous imperfections that do not require repair). Evidence of weld defects, weld imperfections, or weld discontinuities were not observed on the fracture surfaces. The weld was determined to be structurally sound based on the radiographic review and fracture surface evaluation. *Id.*, p. 13.

4. I&E's three alleged counts of noncompliance with 49 C.F.R. § 192.605(a) are incorrect as a matter of fact and law. In compliance with 49 C.F.R. § 192.605(a) and as demonstrated in documentation previously provided to the PA PUC, ETC made all relevant notifications within twenty-four hours in advance of startup of the Revolution Pipeline pursuant to its Purge and Pack Plan and its Standard Operating Procedures ("SOP") No. 1.01, Pipeline Shutdown and Startup. With respect to the post-incident blowdown and flaring, I&E's application of ETC's SOP No. 1.01, Pipeline Shutdown and Startup, Section 7.3 is misguided. That section of the SOP very clearly states at the outset that the notification requirements apply "except in emergency cases," which include the days following the aftermath of an incident.

5. I&E's allegation of noncompliance with 49 C.F.R. § 191.5 is incorrect as a matter of fact and law. As set forth in ETC's incident report (PHMSA Form 7100.2), an incident was confirmed at 5:21 am EST and ETC made an initial incident notification directly to the PA PUC at 6:02 a.m. and then notified the National Response Center ("NRC") at 7:04 am EST. Notification to the NRC was

made once the Company was able to confirm that the pipeline location where the incident occurred was subject to reporting pursuant to 49 C.F.R. §§ 191.5 (immediate notice of certain incidents), 192.8 and 192.9 (regulatory requirements for gathering pipelines), and 192.5 (class locations). Accordingly, ETC made these reports at the earliest practicable moment following discovery and within one hour of "confirmed discovery," which is defined by PHMSA as "when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if based on a preliminary evaluation." 49 C.F.R. § 191.3 (emphasis added).

III. THE SETTLEMENT

After extensive negotiations, ETC and I&E agreed to the following settlement terms, which are "above and beyond" statutory and regulatory requirements.³ These provisions also involve significant expenses to ETC.

- A. ETC shall pay a civil penalty of \$1,000,000.00, pursuant to 66 Pa.C.S. § 3301(c). The payment shall be made within thirty (30) days of the date of the Commission's Final Order approving any settlement in this matter and shall be paid by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding 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 Under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.*, the Commission in regulating Revolution may not impose regulatory requirements "greater or more stringent than the minimum standards and regulations" adopted by PHMSA and the Federal Pipeline safety law. 58 P.S. § 801.501.

- B. For the commissioning of regulated (in accordance with 49 CFR Part 192) pipelines owned by ETC, ETC shall implement measures to its startup procedures for purging and packing a pipeline to include 24-hour monitoring of all mainline⁴ valves on the pipeline that are undergoing startup. The 24-hour monitoring shall include onsite employees who are stationed at each valve and qualified to operate the valve. Such monitoring will continue until the pipeline reaches operating pressure. ETC shall modify its Standard Operating Procedure No. I.10 Pipeline Shutdown and Startup, Section 7.3, which shall be revised to define the end of an “emergency” in order to clearly delineate between emergency actions, which are taken to protect life and property, and operational decisions.
- C. ETC shall within 40 days of start-up or operational date of the Revolution Pipeline, employ in-line inspection (“ILI”) tools to verify the integrity of the pipeline. The in-line tools for this ILI run shall include, but not be limited to,⁵ an inertial measurement unit (“IMU”), geometry tool, and magnetic flux leakage (“MFL”) technology. The tools shall be run on the southern segment of the pipeline designated as the section from the Pike Compressor Station to the Revolution Cryo Plant, a distance of approximately 35 miles. This term does not apply to the segment of the pipeline north of the Pike Compressor Station, which is approximately 5 miles in length, based upon an April 30, 2019 Landslide Hazard Evaluation report prepared by GeoEngineers, Inc. and sealed by a Professional Engineer finding that the identified slope features pose low risk to the integrity of the pipeline in this segment. ETC shall within 6 months of the initial ILI inspection above, perform another ILI inspection utilizing, but not limited to, an IMU and geometry tool on the same segment of the pipeline described above. The data shall be collected and analyzed by ETC or a contractor retained by ETC on an expedited basis, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC’s receipt of the analysis and/or results.
- D. Inclusive of the second ILI run in paragraph D., ETC shall perform five annual in-line inspections, at least once per calendar year with intervals not to exceed 15 months, to verify the integrity of the Revolution Pipeline (years 2021-2025). Upon conclusion of the initial 5-year period, ETC shall meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols.

ETC shall also perform a minimum of one additional ILI run in 2028. Upon conclusion of the ILI run in 2028, ETC shall meet and confer with I&E to

⁴ This term is limited to monitoring emergency, or mainline block valves that are capable of isolating the pipeline. This term excludes ancillary valves that have no effect on isolating the pipeline in an emergency situation, *i.e.* small bypass valves on pig launchers or receivers.

⁵ Strain analysis will be performed utilizing the data collected from the geometry tool and IMU.

review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2031. Upon conclusion of this ILI run, which would be performed no later than 2031, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2034.

ETC shall provide I&E with notification 30 days in advance of each ILI run. The in-line tools must include, but not be limited to, an IMU and geometry tool. The data shall be collected and analyzed by ETC or a contractor retained by ETC, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC's receipt of the analysis and/or results. The purpose of the continued, scheduled ILIs is to determine if the pipeline is moving and to measure and monitor strain on the pipeline in any other location in the right-of-way.

- E. ETC shall provide I&E immediate notice of any slope failure that affects pipeline integrity. ETC shall implement a three-phase approach to monitoring and patrolling the entire Revolution Pipeline ROW.
 - Phase 1. ETC shall walk the entire ROW at least every 7 days and after every 0.1" rainfall. Phase 1 shall continue until Notice of Termination of the PADEP permit is received, but no sooner than the end of 2022. ETC shall utilize its staff of Environmental Inspectors that have been trained by and who shall work under the guidance and supervision of geotechnical subject matter experts ("SMEs"). The EIs shall report all observations to the geotechnical SMEs on a weekly basis, and, based on the nature of the observations, the geotechnical SMEs will perform a field investigation. A quarterly report shall be generated by the geotechnical Engineer of Record(s) and shall be provided to I&E.
 - Phase 2. Beginning after Phase 1, ETC shall patrol the portion of the ROW containing Steep Side Slope Fill Segments where gradients of 40 percent or steeper and where the pipeline is oriented parallel to contour (side slope) or oblique to contour either on-foot or by motorized all-terrain vehicle or similar vehicle at least once monthly and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas until the year 2025. This patrolling will be performed by ETC personnel that are trained to perform the inspections and will be under the guidance of an in-house geotechnical engineer. ETC shall provide I&E with a list of the locations containing Steep Side Slope Fill Segments that are subject to the patrolling. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.

- Prior to the end of Phase 2, ETC shall present and discuss with I&E the data collected from the ILI tool run analysis and monitoring and patrolling and agree to a path forward for further monitoring based on the data. In the event the parties do not reach agreement, ETC shall proceed with the monitoring as described in Phase 3.
 - Phase 3. Beginning after Phase 2, ETC shall monitor the Steep Side Slope Fill Segments described in Phase 2 on a quarterly basis and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.
- F. ETC shall implement a quality assurance/quality control program to oversee pipeline siting and construction practices for ETC's gas and hazardous liquid pipelines in Pennsylvania. ETC submitted an outline of these procedures and policies to I&E on October 9, 2020 for review. ETC will submit the policies and procedures document to I&E upon completion.
- G. I&E will not prevent ETC from placing the Revolution Pipeline in service beginning no earlier than November 16, 2020.

IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

“It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). The Settlement is in the public interest because it promotes public safety and ETC has agreed to take steps above and beyond statutory and regulatory requirements that ETC believes the Commission could not unilaterally order ETC to undertake involuntarily if a formal complaint had been filed and fully litigated. The Settlement avoids the time and costs to the Parties and the Commission of full litigation, including potential appeals.

ETC has acted in good faith to comply with I&E's investigation since notifying I&E of the September 10, 2018 incident on the day it occurred. ETC also notes that the incident did not result in injury to anyone. Each provision of the Settlement promotes the public interest.

Penalty. ETC has agreed to pay a penalty of \$1,000,000.00.

Start-up Procedures. While this term has no nexus to any allegation of noncompliance asserted by I&E, ETC has agreed as part of a settlement agreement, to modify its startup procedures for purging and packing to provide for 24-hour monitoring of all mainline valves. Specifically, this 24-hour monitoring will include onsite employees who are stationed at each valve and qualified to operate the valve, and such monitoring will continue until the pipeline reaches operating pressure. Additionally, ETC has agreed to revise its Standard Operating Procedure No. I.10 Pipeline Shutdown and Startup, Section 7.3, to define the end of an “emergency” in order to clearly delineate between emergency actions, which are taken to protect life and property, and operational decisions.

Procedures for Preconstruction Research. Although there is no regulatory definition or requirement associated with "preconstruction research" in the 49 C.F.R. Part 192 regulations, ETC has already developed and recently adopted an express procedure to address relevant preconstruction geohazard analysis for purposes of design and construction, including route selection: Energy Transfer Engineering Standard, "Geohazard Evaluations for Pipeline Projects," Document No. 2.0203 (eff. Aug. 1, 2020). In the Settlement, ETC agrees to revise Energy Transfer Engineering Standard, "Geohazard Evaluations for Pipeline Projects," to provide that “The Geohazard Management Plan *shall* be delivered to COMPANY PM for review prior to the start of construction” and that these procedures and policies will apply to all of ETC’s pipelines in Pennsylvania.

In-Line Inspection for Restart and Post-Restart. In the Settlement, ETC agrees to conduct restart and post-restart ILIs more frequently and in a shorter time-period than it is otherwise required to do. Specifically, this provision requires ETC to employ ILI tools to verify the integrity of the Revolution Pipeline at least once per year for the next five years upon the entry

of any Commission Order approving this settlement. Additionally, upon conclusion of the initial 5-year period, the Settlement requires ETC to meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols. .

ETC notes that it is already subject to and implementing substantially more comprehensive monitoring obligations pursuant to (1) the General Permits, E&S Plan, and additional plans submitted to the PA DEP in connection with an Oct. 29, 2018 Compliance Order with PA DEP; and (2) the Dec. 30, 2019 Consent Order and Agreement with PA DEP which imposes extensive and long term mitigation and monitoring plans and obligations in identified areas of the ROW, including the incident site. In addition, ETC is developing new guidelines that will be specific to monitoring in geohazard areas. Pursuant to its obligations to the PA DEP, ETC has been monitoring the ROW extensively for two years. ETC has also profiled the pipe at all slope stability monitoring sites with the assistance of third-party consultants, and it has not observed any evidence of conditions that would threaten pipe integrity. ETC also continues to monitor the ROW as required by the PA DEP permits and Orders referenced above, including monitoring for slope stability.

Again, this term is above and beyond PHMSA statutory and regulatory requirements and results in obtaining relief that ETC believes the Commission does not have the authority to unilaterally order⁶ ETC to undertake involuntarily had this matter proceeded to litigation. This term will provide for these inspections to be completed in a shorter time frame and with greater frequency than if this matter had proceeded to litigation. ETC also agreed to collaborate with I&E concerning future frequency of these inspections. ETC notes that the “above and beyond” ILIs are estimated to cost ETC approximately \$975,000 in total.

⁶ See footnote 3 regarding the Commission not being able to exceed federal PHMSA minimum standards.

Increased Patrolling. While ETC believes its current and future pipeline ROW monitoring program is comprehensive, the Parties were able to reach an understanding that ETC will implement a three-phase approach to monitoring and patrolling the entire Revolution Pipeline ROW. Again, ETC believes that this provision goes above and beyond regulatory requirements. Specifically, this provision requires ETC to walk the entire ROW at least every 7 days and after every 0.1” rainfall. ETC also agreed to collaborate with I&E concerning future monitoring based on data collected from the ILI tool run analysis and monitoring and patrolling.

Quality Assurance/Quality Control Program. The Settlement requires that ETC implement a quality assurance/quality control program to oversee pipeline siting and construction practices for ETC’s gas and hazardous liquid pipelines in Pennsylvania. ETC submits that it already maintains a robust Quality Assurance (QA) program through its Quality Assurance Manual (QAM) and has already submitted an outline of these procedures and policies to I&E on October 9, 2020 for review. As part of the Settlement, ETC will submit the policies and procedures document to I&E upon completion.

V. CONCLUSION

The Settlement is the result of extensive exchanges of information, negotiations, and give and take between the Parties and is in the public interest. It is the express policy of the Commission to promote and encourage settlements.⁷ ETC has agreed to take steps above and beyond the controlling federal statutory and regulatory requirements regarding safety and pipeline integrity which are the only laws under Act 127 the Commission may apply to the Revolution pipeline. ETC fully supports the Settlement and requests that the Commission approve it without modification as in the public interest.

⁷ Under 52 Pa. Code Section 5.321(a) “It is the policy of the Commission to encourage settlements.”

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. # 33891
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
tjsniscak@hmslegal.com
wesnyder@hmslegal.com

Dated: 12-16-20

*Attorneys for Energy Transfer Company d/b/a
ETC Northeast Pipeline LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3004646
	:	
Energy Transfer Company	:	
d/b/a ETC Northeast Pipeline LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Due to the COVID-19 emergency,
service is being made by Electronic Mail only:**

Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.
Hawke McKeon & Sniscak LLP
100 N. Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
wesnyder@hmslegal.com

Counsel for Energy Transfer Company



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

Dated: December 16, 2020