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December 16, 2020

via Electronic Filing

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



Re: *Meghan Flynn, et al. v. Sunoco Pipeline L.P.*,
Consolidated Docket Nos. C-2018-3006116; Sunoco Pipeline L.P. Main Brief;
PUBLIC VERSION

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (PUC) are:

- (1) Sunoco Pipeline L.P.'s Main Brief (Public Version);
- (2) Appendix A - Sunoco Pipeline L.P.'s Proposed Findings of Fact (Public Version);
- (3) Appendix B - Sunoco Pipeline L.P.'s Proposed Conclusions of Law; and
- (4) Appendix C - Sunoco Pipeline L.P.'s Proposed Ordering Paragraphs

The Highly Confidential Versions of Sunoco Pipeline L.P.'s Main Brief and Appendix A - Sunoco Pipeline L.P.'s Proposed Findings of Fact will be separately transmitted directly to the Secretary for filing, and also provided directly to certain parties' counsel under the terms of the Amended Protective Order. Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Diana A. Silva". The signature is written in a cursive, flowing style.

Diana A. Silva

For MANKO, GOLD, KATCHER & FOX, LLP

DAS/bad/11842.019

Enclosure

cc: Administrative Law Judge Elizabeth Barnes (via email only)
All Counsel and Pro Se Parties on attached Service List



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated: December 16, 2020

PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**SUNOCO PIPELINE L.P.'S
MAIN BRIEF**

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PUBLIC VERSION

TABLE OF CONTENTS

I. Summary of Argument 1

II. Statement of Issues Involved 5

III. Statement of the Case and Procedural History 7

 A. Flynn Complainants’ Petition for Interim Emergency Relief..... 7

 B. The Flynn Complainants’ Complaint..... 8

 C. DiBernardino Complaint..... 9

 D. Britton Complaint 9

 E. Obenski Complaint 10

 F. Andover HOA Complaint 10

 G. Interventions 11

 1. Interventions in the *Flynn* Complaint Proceeding 11

 2. Interventions in the *DiBernardino* Complaint Proceeding 12

 3. Intervention in the *Britton* Complaint Proceeding..... 12

 4. Intervention in the *Andover HOA* Complaint Proceeding 13

 H. Consolidation of Complaints 13

 I. Protective Orders and Joint Stipulation 13

 J. Procedural Schedule and Evidentiary Hearings..... 13

 K. Motions for Partial Summary Judgement, Motions in Limine, and Motion to Submit Additional Evidence 15

IV. Burden of Proof and Legal Standards 17

 A. Burden of Proof..... 17

 B. Legal Standard for Pipeline Safety 19

 C. Standards for Injunctive Relief 21

 D. Hearsay Evidentiary Standards..... 23

 E. Evidentiary Standards on Expert Opinion and Lay Witness Testimony 24

 1. Standards for Expert Qualifications..... 24

 2. Expert testimony must be competent..... 25

 3. Lay witness testimony is limited to direct personal knowledge 26

V. Argument 29

 A. SPLP’s operation of the Mariner East pipelines in high consequence areas of Chester and Delaware Counties does not violate Section 1501 of the Pennsylvania Public Utility Code..... 29

PUBLIC VERSION

- 1. The location of the Mariner East pipelines in high consequence areas is expressly authorized by law..... 29
- 2. Complainants have the burden to establish by a preponderance of the evidence that the operation of the Mariner East pipelines in Chester and Delaware Counties will cause harm..... 30
 - a. Evidence of consequence without the likelihood of the consequence occurring is insufficient to establish a violation of Section 1501. 32
 - b. Complainants’ “consequence” evidence was based on the use of a “black box” to model the consequences of worst-case assumptions that have never occurred in a high consequence area. 34
 - c. The PHMSA database contains no evidence of a rupture of an HVL pipeline in a high consequence area and thus does not establish that the operation of HVL pipelines in Chester and Delaware Counties violates Section 1501..... 35
 - d. SPLP’s operational history does not establish that SPLP’s operation of the Mariner East Pipelines in Chester and Delaware Counties violates Section 1501..... 36
- B. There is no basis for any relief concerning the integrity management, cathodic protection, or corrosion control of the ME1 and 12-inch pipelines. 37
 - 1. SPLP’s integrity management plan and related standard operating procedures are robust, comprehensive, and comply with regulatory requirements. 42
 - 2. SPLP follows its integrity management plan and SOPs related to cathodic protection and corrosion control 45
 - 3. The ME1 and 12-inch pipelines are safe and are being appropriately tested, monitored, and remediated to ensure continued safety. ... 49
 - a. Corrosion..... 51
 - b. ILI Tools, Hydrostatic Tests, and Digs 53
 - c. Cathodic Protection (CP) Testing and Monitoring 55
 - i. Cathodic Protection (CP) Criteria..... 56
 - ii. Close Interval Potential Surveys (CIPS)..... 56
 - iii. Notice of Proposed Violation (NOPV) 57
 - iv. Coatings. 57
 - v. Stray Current Interference..... 58

PUBLIC VERSION

- d. Dr. Zamanzadeh’s recommended remaining-life study for the 12-inch line is based on speculative concerns, lacks proven facts, is not based upon a violation of law or regulations, and is unnecessary given SPLP’s integrity management and corrosion control and cathodic protection practices. 58
- 4. SPLP performed risk assessments required by PHMSA’s regulations..... 61
- C. SPLP’s Public Awareness Plan Complies with PHMSA’s regulations at 49 C.F.R. § 195.440 64
 - 1. Complainants have the burden of proving by a preponderance of the evidence that SPLP’s public awareness programs fails to comply with 49 C.F.R. § 195.440 and Complainants have not met their burden. 64
 - 2. SPLP’s public awareness program is comprehensive, multi-faceted and communicates the required information and training to the four stakeholder groups identified in Section 195.440 and RP 1162 69
 - a. SPLP’s public awareness program for the affected public. 70
 - b. SPLP’s public awareness program for excavators..... 71
 - c. SPLP’s public awareness program for schools and public officials. 72
 - d. SPLP’s public awareness and training program for emergency responders..... 73
 - e. SPLP’s Public Awareness Program has been independently audited and found to be effective. 77
 - 3. Complainants’ and aligned Intervenor’s claimed deficiencies in SPLP’s public awareness program lack merit. 77
 - a. Determining what is a “safe distance” to evacuate in the event of a pipeline release..... 78
 - b. Disclosure of SPLP’s emergency response plan..... 79
 - c. Use of cell phones..... 80
 - d. Determining wind direction 80
 - e. Conflict between moving away from pipeline and moving upwind..... 80
 - f. Evacuate or shelter in place. 81
 - g. Evacuating those with physical or mental limitations 81
 - h. Notice of potential death or burns from a pipeline release 81
 - 4. Complainants’ and aligned Intervenor’s demands are neither required by regulation or necessity. 83
- D. Siting, construction and environmental issues presented by Complainants and aligned Intervenor’s are beyond the scope of the Commission’s jurisdiction and regardless are not a violation of Section 1501..... 85

PUBLIC VERSION

- 1. The Commission has no jurisdiction over the siting and location of public utilities. 85
- 2. The evidence demonstrates that SPLP’s Mariner East pipelines in Chester and Delaware Counties, including the location of valve sites, complies with all state and federal regulatory requirements. 87
- 3. There is no evidence that the construction of the Mariner East 2/2X pipelines violates Section 1501’s safety standards. 89
- 4. The Commission also lacks jurisdiction to address environmental issues related to the construction of ME/2X, as PADEP is the agency delegated with responsibility and authority to address such matters. 93
 - a. Earth features that have developed during the construction of the Mariner East 2/2X pipelines, did not and do not, present any safety risk for the operating Mariner East pipelines. 96
 - b. The Shoen Road seep is not a violation of 1501 and does not present a safety concern for the operating pipelines. 100
 - c. Inadvertent returns of drilling mud during the HDD process are not a violation of Section 1501 and are fully addressed by PADEP’s plans and permits for the ME2/2X pipeline construction. 101
 - d. Complainant Rosemary Fuller’s water well concerns fall within the jurisdiction of PADEP and relate to a private property claims that the Commission cannot address. 102
- E. The economic benefits of the Mariner East pipelines are wide-ranging and uncontroverted. 105
 - 1. Enjoining the operation and construction of the Mariner East Pipelines will damage SPLP, its shippers, and the public. 108
 - 2. Complainants presented no competent evidence on any of the public utility benefits and economic considerations of the Mariner East pipelines to rebut the need for SPLP’s Commission-approved public utility service. 113
- VI. Conclusion 114

PUBLIC VERSION

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Allen v. Colautti</i> , 417 A.2d 1303 (Pa. Cmwlth. 1980)	23
<i>Application of PPL Elec. Utilities Corp.</i> , Docket A-2009-2082652, 2010 WL 637063, (Feb. 12, 2010).....	28
<i>Application of Shenango Valley Water Co.</i> , Docket No. A-212750F0002, 1994 WL 932364 (Jan. 25, 1994)	25
<i>Baker and Blume v. Sunoco Pipeline, L.P.</i> , Docket No. C-2020-3022169, Initial Decision (Dec. 8, 2020).....	<i>passim</i>
<i>Baker v. SPLP</i> , Docket No. C-2018-3004294, Opinion and Order (Order entered Sept. 23, 2020)	<i>passim</i>
<i>Bennett v. UGI Central Penn Gas, Inc.</i> , Docket No. F-2013-2396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014)	20
<i>Bergdoll v. York Water Co.</i> , Docket No. 2169 C.D. 2006, 2008 WL 9403180 (Pa. Cmwlth. 2008).....	25
<i>BI&E v. SPLP</i> , Docket No. C-2018-3006534 (Opinion and Order entered Aug. 19, 2020)	61
<i>Big Bass Lake Community Association v. Warren</i> , 950 A.2d 1137, 1144 (Pa. Cmwlth. 2008)	23
<i>Buffalo Twp. v. Jones</i> , 813 A.2d 659 (Pa. 2002), <i>cert. denied</i> , 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003).....	21, 22
<i>Burleson v. Pa. PUC</i> , 443 A.2d 1373 (Pa. Cmwlth. 1982), <i>aff'd</i> , 461 A.2d 1234 (Pa. 1983).....	19
<i>Consolidated Edison Co. of New York v. National Labor Relations Board</i> , 305 U.S. 197 (1938).....	18
<i>Country Place Waste Treatment Co., Inc. v. Pa. Public Utility Com'n</i> , 654 A.2d 72 (Pa. Cmwlth. 1995)	94
<i>County of Allegheny v. Commonwealth</i> , 544 A.2d 1305 (Pa. 1988).....	22

PUBLIC VERSION

Crums Mill Assoc. v. Dauphin Consolidated Water Co.,
1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993)22

Crums Mill Assoc. v. Dauphin Consolidated Water Supply Company,
Docket No. C-00934810, 1993 Pa. PUC LEXIS 89 (Interim Emergency Order
Denying Relief dated Mar. 23, 1993)23

D'Alessandro v. Pennsylvania State Police,
937 A.2d 404, 411, 594 Pa. 500, 512 (2007)23

Del. Riverkeeper Network v. Sunoco Pipeline, L.P.,
179 A.3d 670, 694 (Pa. Cmwlth. 2018)95

Dep't of General Servs. v. Ogontz Area Neighbors Ass'n,
483 A.2d 448 (Pa. 1984)95

Duquesne Light Co. v. Pa. PUC,
507 A.2d 433 (Pa. Cmwlth. 1986)19

Erie Resistor Corp. v. Unemployment Comp. Bd. of Review,
166 A.2d 96 (Pa. Super. 1961).....18

Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation,
Docket No. C-2018-2644957, Initial Decision at 16-18 (Nov. 14, 2018)
(Barnes, J.)24

Fiorillo v. PECO Energy Co.,
Dkt. No. C-00971088 (Order entered Sept. 15, 1999).....105

Gibson v. WCAB,
861 A.2d 938 (Pa. 2004)27

Halaski v. Hilton Hotel,
409 A.2d 367, 369, n.2 (Pa. 1979)26

Herring v. Metropolitan Edison,
Docket No. F-2016-2540875, 2017 WL 3872590 (Order entered Aug. 31,
2017)20, 89, 96

Hoffman v. Brandywine Hospital,
443 Pa. Superior Ct. 245, 661 A.2d 397 (1995)26

Kuznik v. Westmoreland Cty. Bd. of Comm'rs,
902 A.2d 476 (Pa. 2006)107

Lamagna v. Pa. Elec. Co.,
Docket No. C-2017-2608014, 2018 WL 6124353 (Oct. 30, 2018) (Final by
Act 294, Dec. 21, 2018)27, 28

PUBLIC VERSION

Lasko v. Windstream Pa., LLC,
Dkt. No. C-2010-2217869 (Final Order dated Apr. 1, 2011)105

McCann v. Amy Joy Donut Shops,
325 Pa. Superior Ct. 340, 472 A.2d 1149 (1984)26

Meghan Flynn et al. v. Sunoco Pipeline, L.P.,
Docket No. P-2018-3006117, Order Denying Petition for Emergency Interim
Relief and Certifying Material Question (Order entered December 11, 2018)
(affirmed by Commission Opinion and Order February 1, 2019)11, 107

Menarde v. Philadelphia Transp. Co.,
103 A.2d 681 (Pa. 1954)26

Metropolitan Edison Co. v. Pa. PUC,
437 A.2d 76 (Pa. Cmwlth. 1981)59

Milkie v. Pa. PUC,
768 A.2d 1217 (Pa. Cmwlth. 2001)19

Miller v. Brass Rail Tavern, Inc.,
664 A.2d 525 (Pa. 1995)27

Mitzfelt v. Kamrin,
526 Pa. 54, 584 A.2d 888 (1990)25

Monaci v. State Horse Racing Com'n,
717 A.2d 612 (Pa. Cmwlth. 1998)39

Murphy v. Comm. Dept. of Public Welfare, White Haven Center,
480 A.2d 382 (Pa. Cmwlth. 1984)19

Norfolk & Western Ry. Co. v. Pa. PUC,
413 A.2d 1037 (Pa. 1980) (*Norfolk*)18

Pa. Bureau of Corrections v. City of Pittsburgh,
532 A.2d 12 (Pa. 1987)20, 89

Patterson v. Bell Telephone Co. of Pennsylvania,
72 Pa. P.U.C. 196 (1990)18

Peoples Natural Gas Co. v. Pa. PUC,
555 A.2d 288 (Pa. Cmwlth. 1989)22

Perrige v. Metro Edison Co.,
Docket No. C-0004110 (Order entered July 3, 2003)105

PUBLIC VERSION

Pickford v. Pub. Util. Comm’n,
4 A.3d 707 (Pa. Cmwlt. 2010)28, 93, 94

Pocono Water Co. v. Pa. PUC,
630 A.2d 971 (Pa. Cmwlt. 1993)19

Povacz v. Pa. PUC,
Docket Nos. 492, 606, 607 CD 2019, 2020 W.L. 5949866 (Pa. Cmwlt. Ct.
Oct. 8, 2020)31

Povacz v. PECO Energy Co.,
Docket No. C-2015-2475023, Opinion and Order (Order entered March 28,
2019)26, 31, 32

Pye v. Com. Ins. Dep’t,
372 A.2d 33, 35 (Pa. Cmwlt. 1977)22

Randall v. PECO Energy Co.,
Docket No. C-2016-2537666, 2019 WL 2250792 (Order entered May 9,
2019)24

Roving v. Pa. Public Utility Com’n,
502 A.2d 785 (Pa. Cmwlt. 1986)94

Samuel J. Lansberry, Inc. v. Pa. PUC,
578 A.2d 600 (Pa. Cmwlt. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992)17, 18, 89

Se-Ling Hosiery v. Margulies,
70 A.2d 854 (Pa. 1950)17, 89

Smalls, Sr. v. UGI Penn Natural Gas, Inc.,
Docket No. C-2014-2421019, 2014 WL 6807073 (Initial Decision entered
Oct. 24, 2014) (Ember S. Jandebour, J.) (Final by Act 294, Dec. 30. 2014)20

Soja v. Factoryville Sportsmen’s Club,
522 A.2d 1129, 1131 (Pa. Super. 1987)22

*Sunoco Pipeline L.P. v. Pennsylvania State Senator Andrew E. Dinniman and
Public Utility Commission*,
Docket No. 1169 C.D. 2018, Order10, 12

Nancy Manes, Docket No. C-20015803, 2002 WL 34559041 (May 9, 2002)27

*Petition of the Bureau of Investigation and enforcement of the Pennsylvania
Public Utility Commission for the Issuance of an Ex Part Emergency Order*,
Docket No. P-2018-3000281, Order (Order entered May 3, 2018)106

PUBLIC VERSION

Povacz v. PECO Energy Co., Docket No. C-2015-2475023, Opinion and Order at 61-62 (Order entered March 28, 2019); *aff'd in relevant part*, Dkt. No. 492 C.D. 2019, ___ A.3d. ___, 2020 WL 5949866 (Pa. Cmwlth. Oct. 8, 2020).....26

State Senator Andrew E. Dinniman for Interim Emergency Relief, Opinion and Order, Docket. No. P-2018-3001453 *et al.* (Order entered Jun. 14, 2018).....28

Township of Spring. v. Pennsylvania-American Water Co., Docket Nos. C-20054919.....18

Vertis Group, Inc. v. Duquesne Light Co., 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff'd*, 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied*, 859 A.2d 770 (Pa. 2004)25, 26, 38

Walker v. Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976)23, 24

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346 (Order entered Mar. 15, 2018)22, 86

West Penn Power Co. v. Pa. PUC, 478 A.2d 947 (Pa. Cmwlth. 1984)18

Williams Pipe Line Co. v. Mounds View, 651 F.Supp. 544 (D. Minn. 1986).....30

Woodward Twp. v. Zerbe, 6 A.3d 651 (Pa. Cmwlth. 2010)23

Statutes

35 P.S. § 961.1 *et seq.*.....94

2 Pa. C.S. § 505.....24

2 Pa. C.S. § 704.....18

66 Pa. C.S. § 102.....105

66 Pa. C.S. § 332(a)17, 64, 89

66 Pa. C.S. § 1103(a)106, 107

66 Pa. C.S. § 1501..... *passim*

35 P.S. §§ 2141.1-2141.6.....62, 79

73 P.S. § 176 *et seq.*.....91

PUBLIC VERSION

49 U.S.C. §§ 60101-6050319, 29
49 U.S.C. § 60109.....29, 30

Regulations

40 C.F.R. § 195.44082
49 C.F.R. Part 195..... *passim*
52 Pa. Code § 3.6(b)22
52 Pa. Code § 59.3319, 29

Rules

Pa. R.E. 60225, 27
Pa. R.E. 70125, 26, 27
Pa. R.E. 70224, 25, 26
Pa. R.E. 70327

Other Authority

*Advanced Notice of Proposed Rulemaking Order Regarding Hazardous Liquid
Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-
2019-3010267, Order at 4 (June 13, 2019)*..... *passim*
House Bill 229379
Joint Statement of Commissioners Coleman and Kennard, *Amended Petition of
State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket No.
P-2018-3001453 *et al.* (Jun. 14, 2018)28

PUBLIC VERSION

ACRONYM GLOSSARY

12-inch	The twelve-inch diameter pipeline utilized as part of ME2
ALJ	Administrative Law Judge
Andover HOA	Andover Homeowners Association, Inc.
API	American Petroleum Institute
API RP 1162	American Petroleum Institute Recommended Practice 1162 (2003 First Edition)
<i>Baker Proceeding</i>	The Commission proceeding at Docket No. C-2018-3004294, initiated by Complaint by Mr. Wilmer Baker, and resulting in a Commission final order.
BI&E	The Commission’s Bureau of Investigation and Enforcement
CAC	Clean Air Council
CIPS or CIS	Close Interval Potential Survey
Complainants	Flynn Complainants, Andover HOA, Rebecca Britton, Melissa DiBernardino, Laura Obenski
CoRE	Coordinated Response Exercise
CP	Cathodic Protection
CSI	Confidential Security Information
DEP or PADEP	Pennsylvania Department of Environmental Protection
Flynn Complainants	Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines
HC	Highly Confidential
HDD	Horizontal Directional Drilling
HVL	Highly Volatile Liquids
Intervenors	All Intervenors in this proceeding except Range Resources
IR	Inadvertent Return
ME1	Mariner East 1
ME2	Mariner East 2
ME2X	Mariner East 2X
MERO	Mariner Emergency Responder Outreach
MIC	Microbiologically Influenced Corrosion
<i>Morgantown</i>	The Commission proceeding at Docket No. C-2018-3006534, initiated by an I&E Complaint and resulting in a Commission-approved settlement involving a pinhole release on the ME1 pipeline near Morgantown, PA.
NACE	National Association of Corrosion Engineers
NGL	Natural Gas Liquids
NOPV	Notice of Probable Violation
PHMSA	Pipeline and Hazardous Materials Safety Administration
PUC or Commission	The Pennsylvania Public Utility Commission
Range Resources	Intervenor Range Resources Appalachia
SOP	Standard Operating Procedure
SPLP	Sunoco Pipeline L.P.

PUBLIC VERSION

I. Summary of Argument

This case is about the actual evidence in the record. It is not about intentions, no matter how well meaning and heartfelt. It is not about how many residents have complaints or how many public officials chose to express concerns. It is first, foremost and last about the evidence.

Complainants and aligned Intervenors seek extraordinary relief. They want to alter the status quo by shutting down operating pipelines. That is mandatory, affirmative injunctive relief, often described as an extreme remedy. As such, Complainants and aligned Intervenors bear an extremely high burden of proof. They must demonstrate that they are clearly entitled to this relief.

On every issue in this case, Complainants and aligned Intervenors failed to meet that burden of proof. They have offered nothing more than complaints, concerns and speculation, all unsupported by the evidence in the record. In stark contrast, the actual evidence in this case, offered by SPLP's professionals and eminent, nationally-recognized experts in their fields, demonstrates that SPLP's operation of the Mariner East pipelines complies with or exceeds all regulatory requirements and is safe and reasonable under Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

Complainants and aligned Intervenors assert four arguments. First, they assert that locating the Mariner East pipelines in high consequence areas of Delaware and Chester Counties is unsafe and unreasonable under Section 1501. That argument fails as a matter of law. The PHMSA regulations expressly authorize HVL pipelines in high consequence areas and provide specific standards for doing so, which SPLP follows. If the mere locating of an HVL pipeline in a high consequence area violates Section 1501, pipelines across the county would be shut down and that portion of the PHMSA regulations would be rendered a nullity.

PUBLIC VERSION

Recognizing this fatal flaw, Complainants instead default to another argument: that the worst-case scenario of a rupture of a Mariner East pipeline is a consequence so great that it renders operation of the pipelines unsafe. In support of this “consequence analysis,” Complainants offered the testimony of Jeffrey Marx. As with their legal argument, however, Complainants’ factual argument is equally and fatally flawed. To assess risk and safety, it is necessary to evaluate the consequences of the worst-case scenario release *and* the likelihood/probability of that worst-case scenario occurring. Complainants conceded again and again that they offered no testimony on “likelihood.” Without that evidence, Complainants cannot establish that the pipelines are unsafe under Section 1501.

Complainants’ other assertions on this issue are likewise without factual support: (1) by his own admission, Marx’s consequence model is a worst-case scenario, using unknown inputs and Marx has provided no way for SPLP, the public or the Commission to evaluate the accuracy of his model. In his own words, Marx’s model is a “black box”; (2) in reality, as opposed to worst-case hypotheticals, there has never been an HVL pipeline rupture in a high consequence area; and, (3) SPLP’s operational history, as reflected in the PHMSA database, demonstrates that SPLP’s operations are consistent with other operators and have not violated Section 1501.

Second, Complainants and aligned Intervenors allege that SPLP failed to comply with PHMSA’s integrity management, corrosion control, and cathodic protection requirements. The evidence demonstrates the exact opposite. Complainants and aligned Intervenors offered no evidence that SPLP’s integrity management program violates any regulatory requirement. On the contrary, SPLP’s nationally-recognized expert, John Zurcher, testified that SPLP’s integrity management program exceeds those regulatory requirements.

PUBLIC VERSION

Initially, Complainants and aligned Intervenors asserted, without any evidence, that SPLP failed to perform the quantitative risk assessment required by the integrity management regulations. At hearing, they abandoned this claim and agreed, on the record, that it was no longer part of their case. That left only the testimony of Dr. Zamanzadeh, Complainants' expert on corrosion control and cathodic protection. Significantly, during the course of the proceedings, Complainants conceded that they were no longer seeking to shut down ME1 or the 12-inch line based on Dr. Zamanzadeh's testimony. They were only seeking that SPLP perform a remaining-life study on the 12-inch line.¹

Complainants' concession was for good reason. All Dr. Zamanzadeh could testify to was that he needed more information to render an opinion about the state of the 12-inch line. Indeed, he testified clearly that his opinions on the 12-inch line were, at this point, "conjecture" and "speculation." On that basis, Dr. Zamanzadeh's testimony is not competent. It is not even a slender reed to rely on – it is no reed at all.

In the areas where Dr. Zamanzadeh provided specific critiques of SPLP's corrosion control or cathodic protection programs, Dr. Zamanzadeh was flat-out wrong. Where he said that he was not provided information by SPLP, he actually relied on exhibits that SPLP provided to him, which contained the very information that he claimed not to exist. And in every area where he asserted that SPLP's programs and standard operating procedures were inadequate or that SPLP did not follow them, SPLP's renowned experts John Zurcher and Kevin Garrity, and corrosion engineer John Field, demonstrated that Dr. Zamanzadeh was grossly mistaken.

Third, Complainants and aligned Intervenors assert that SPLP's public awareness program violates 49 C.F.R. § 195.440 and API RP 1162. Every SPLP witness, experts and those

¹ Complainants and aligned Intervenors conceded that the issue of a remaining life study for ME1 is moot because SPLP is already performing that study.

PUBLIC VERSION

internal to SPLP who are responsible for SPLP's public awareness program, testified that SPLP's public awareness program meets or exceeds all regulatory requirements. Significantly, Complainants and aligned Intervenors offered three experts on this issue: Timothy Boyce, William Turner, and Timothy Hubbard. Not one of them could or did offer an opinion that SPLP's public awareness plan violated Section 195.440 or RP 1162.

Again, for good reason. The evidence demonstrates overwhelmingly that SPLP's public awareness program is comprehensive and multi-faceted. It includes safety mailers to the affected public (at distances that have been substantially broadened for 2020 and forward), government and school officials, excavators and emergency responders containing all of the information required by the PHMSA regulations and as set forth on the PHMSA website. It offers pipeline safety information on social media (Instagram and Facebook), websites, billboards, and through radio advertising. It includes exhaustive emergency response training of police, fire, emergency responders, school and government officials, including training offered by Gregory Noll, who literally "wrote the book" on pipeline emergency response. As a result, the emergency responders and residents testified uniformly that they now know much more now about pipeline safety. The effectiveness of SPLP's program has been independently audited and that effectiveness was also confirmed in the evaluations submitted by those who attended the training sessions. As Complainants' and aligned Intervenors' own experts conceded, SPLP has provided more training, more emergency response equipment, and more pipeline safety information than any of the numerous pipeline operators in Chester and Delaware Counties.

Faced with this insurmountable evidence, Complainants were left with a grab bag of insubstantial, unsubstantiated, and legally unwarranted assertions: we don't know how to determine wind direction; we don't know how far to walk away in an emergency; we need an

PUBLIC VERSION

early mass warning system and an odorant added to the product in the pipelines, even though the Commission has already held that that relief can only be obtained through a rulemaking; and we need a matrix specifying how to respond to every possible scenario in every specific neighborhood, even though the testimony was uniform that emergency response is a dynamic process, not a list of specific scenarios. All of Complainants' and aligned Intervenors' questions have been addressed: in legal parlance they have been asked and answered.

In a final effort, Complainants assert a hodgepodge of allegedly unsafe conditions over which the Commission has no jurisdiction: (i) siting of pipelines; (ii) construction techniques; (iii) personal property issues (Fuller); and (iv) a variety of environmental issues (inadvertent returns, seeps, geology) that the Pennsylvania Department of Environmental Protection regulates, not the Commission. Although none of these issues bears on Section 1501, SPLP provided comprehensive expert testimony on each issue demonstrating that none of these assertions raises any safety concerns.

And finally, the injunctive relief that Complainants and aligned Intervenors seek is improper because the economic and other harm to SPLP, shippers, and the general public is significant, and the evidence of that harm is unrebutted and uncontroverted.

For all of these reasons, Complainants and aligned Intervenors' Complaints should be dismissed.

II. Statement of Issues Involved

Issue No. 1. Does SPLP's operation of the Mariner East pipelines in high consequence areas of Chester and Delaware Counties violate Section 1501 of the Public Utility Code?

Suggested Answer: No. The PHMSA regulations expressly authorize the location of HVL pipelines in high consequence areas and Complainants and aligned Intervenors did not

PUBLIC VERSION

meet their burden of proving that the Mariner East pipelines are unsafe or unreasonable, and the weight of the evidence is to the contrary. *See, infra* at Section V.A.

Issue No. 2. Does SPLP's Integrity Management Plan, including its corrosion control and cathodic protection, violate the PHMSA regulations?

Suggested Answer: No. Complainants and aligned Intervenors did not meet their burden of proving that SPLP violated the integrity management regulations, and the weight of the evidence demonstrated that SPLP in fact complies with these regulations. *See, infra* at Section V.B.

Issue No. 3. Does SPLP's public awareness program, including its emergency planning information and training, violate 49 C.F.R. § 195.440 and RP 1162?

Suggested Answer: No. Complainants and aligned Intervenors did not meet their burden of proving that SPLP's public awareness program violated Section 195.440 or RP 1162, and the weight of the evidence demonstrated that SPLP in fact complies with these regulations and RP 1162. *See, infra* at Section V.C.

Issue No. 4. Do the siting, construction and environmental issues presented by Complainants violate Section 1501 of the Public Utility Code?

Suggested Answer: No. The Commission has no jurisdiction over these siting and environmental issues, and to the extent that these issues are relevant, Complainants and aligned Intervenors have not met their burden of proving a violation of Section 1501, and the weight of the evidence is to the contrary. *See, infra* at Section V.D.

Issue No. 5. Did Complainants and aligned Intervenors meet their burden of proof to establish that the Commission should order SPLP to perform a remaining life study for the 8-inch ME1 pipeline and the 12-inch pipeline?

PUBLIC VERSION

Suggested answer: No. In view of the *Morgantown* Settlement Order, the request is moot as to the 8-inch ME1 pipeline. Complainants and aligned Intervenors have not met their heavy burden to establish that a remaining-life study is required for the 12-inch pipeline; a remaining-life study would not be appropriate in view of SPLP's integrity management program. *See infra* at Section V.B.3.-4.

Issue No. 6. Will an injunction shutting down ME1 and the 12-inch line damage SPLP, its shippers, and the public?

Suggested Answer: Yes. The evidence of significant harm to SPLP, its shippers, and the public from an injunction is uncontroverted. *See, infra* at Section V.E.

III. Statement of the Case and Procedural History

A. Flynn Complainants' Petition for Interim Emergency Relief

On November 19, 2018, Flynn Complainants filed a Petition for Interim Emergency Relief at Docket No. P-2018-3006117. On November 26, 2018, a Hearing Notice was issued scheduling hearings on November 29 and 30, 2018. On November 26, 2018, Andover Homeowner's Association, Inc. ("Andover HOA") filed a petition to intervene to be aligned with Flynn Complainants. On November 27, 2018, SPLP filed an Answer Opposing the Petition for Interim Emergency Relief; Range Resources Appalachia ("Range Resources") also petitioned to intervene on the same date to be aligned with SPLP. Hearings were held on November 29 and 30, 2018, as scheduled. At the November 29, 2018 hearing, Andover HOA and Range Resources Appalachia were granted intervenor status, and the Petition docket was also consolidated with the Flynn Complaint proceeding docket discussed below. (N.T. 14:10-25; N.T. 15:12-14.)

On December 11, 2018, Your Honor issued an Order Denying Petition for Emergency Interim Relief and Certifying Material Question to the Commission. On December 20, 2018, the

PUBLIC VERSION

Commission issued an order extending the time for consideration of the material question to the January 17, 2019 public meeting. On February 1, 2019, the Commission entered an Opinion and Order affirming the denial of interim injunctive relief and returning the matter for disposition of the Flynn Complaint.

B. The Flynn Complainants' Complaint

On November 19, 2018, in conjunction with their Petition for Interim Emergency Relief, Flynn Complainants filed their initial Complaint. On December 11, 2018, SPLP filed an Answer and New Matter as well as Preliminary Objections to the Complaint. On December 21, 2018, Flynn Complainants filed their First Amended Complaint. On January 7, 2019, SPLP filed an Answer and New Matter to Flynn Complainants' First Amended Complaint. On January 10, 2019, SPLP filed Preliminary Objections to Flynn Complainants' First Amended Complaint. On January 18, 2019, Flynn Complainants filed a Reply to New Matter and Response in Opposition to Preliminary Objections. By Order dated March 12, 2019 (Second Interim Order), SPLP's Preliminary Objections to the First Amended Complaint were granted in part and denied in part. Specifically, the Second Interim Order struck Paragraph 74 of the First Amended Complaint, which incorporated by reference the averments of the BI&E Complaint against SPLP at Docket No. C-2018-3006534.

On March 21, 2019, Flynn Complainants filed a Motion for Reconsideration of Second Interim Order seeking to be allowed to include the allegations of the BI&E Complaint at Docket No. C-2018-3006534 in their First Amended Complaint. On April 15, 2019, SPLP filed an Answer Opposing Complainants' Motion for Reconsideration of Second Interim Order. On April 17, 2019, Flynn Complainants filed a Reply Memo in Further Support of their Motion for Reconsideration. On May 16, 2019, SPLP filed a Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure. On May 29, 2019, Flynn Complainants

PUBLIC VERSION

filed an Answer to SPLP's Motion to Strike Filings. By Order dated June 6, 2019, Flynn Complainants' Motion for Reconsideration of Second Interim Order was granted in part and denied in part. Specifically, Flynn Complainants were precluded from including the allegations of the BI&E Complaint at Docket No. C-2018-3006534 in their Complaint but were granted leave to file a Second Amended Complaint.

On June 18, 2019, Flynn Complainants filed a Second Amended Complaint that included the allegations of the BI&E Complaint at Docket No. C-2018-3006534. On July 9, 2019, SPLP filed an Answer and New Matter and Preliminary Objections to the Second Amended Complaint. On July 10, a Reply to New Matter was filed. On July 15, 2019, a Response to Preliminary Objections was filed. By Order dated July 31, 2019, SPLP's Preliminary Objections to the Second Amended Complaint were granted and paragraphs 67-93 of the Second Amended Complaint containing the allegations of the BI&E Complaint at Docket No. C-2018-3006534 were stricken.

C. DiBernardino Complaint

On September 28, 2019, Melissa DiBernardino filed a Complaint against SPLP at Docket No. C-2018-3005025, which was served on October 1, 2018. SPLP filed Preliminary Objections and an Answer and New Matter on December 3, 2018. On December 18, 2018, DiBernardino filed an Answer to Preliminary Objections. By Order dated December 21, 2018 at Docket No. C-2018-3005025, SPLP's Preliminary Objections were granted in part and denied in part.

D. Britton Complaint

On January 2, 2019, Rebecca Britton filed a Complaint against SPLP at Docket No. C-2019-3006898, which was served on January 4, 2019. SPLP filed Preliminary Objections and an Answer and New Matter on January 24, 2019. SPLP's Preliminary Objections were denied by Order dated March 15, 2019 at Docket No. C-2019-3006898.

PUBLIC VERSION

E. Obenski Complaint

On January 2, 2019, Laura Obenski filed a Complaint against SPLP at Docket No. C-2019-3006905, which was served on January 4, 2019. SPLP filed Preliminary Objections and an Answer and New Matter on January 24, 2019. SPLP's Preliminary Objections were denied by Order dated March 15, 2019 at Docket No. C-2019-3006905.

F. Andover HOA Complaint

On July 24, 2018, Andover HOA filed a Complaint against SPLP at Docket No. C-2018-3003605, which was served on SPLP on July 26, 2018. On August 22, 2018, SPLP filed Preliminary Objections and an Answer and New Matter to the Complaint. On September 10, 2018, Andover HOA filed a Reply to Answer and New Matter and Preliminary Objections to SPLP's Answer. On September 17, 2018, Andover HOA filed an Answer to Preliminary Objections.

The Andover HOA Complaint was consolidated with Senator Dinniman's Complaint and Petition proceeding at Docket No. C-2018-3001451. That proceeding was stayed as directed by the Commonwealth Court of Pennsylvania at *Sunoco Pipeline L.P. v. Pennsylvania State Senator Andrew E. Dinniman and Public Utility Commission*, Docket No. 1169 C.D. 2018, Order entered September 27, 2018. On September 9, 2019, the Commonwealth Court entered an Opinion and Order reversing the Commission's June 15, 2019 Order in the *Dinniman* proceeding and remanding the matter to the Commission with instructions to dissolve the interim emergency injunction and dismiss the *Dinniman* Complaint. By Secretarial Letter issued on September 19, 2019, the Commission dissolved its interim emergency injunction of June 15, 2018, dismissed the *Dinniman* Complaint and Petition at Docket Nos. C-2018-3001451 and P-2018-3001453, and bifurcated and reassigned the Andover HOA Complaint at Docket No. C-2018-3003605 to the Office of ALJ for further proceedings.

PUBLIC VERSION

By Order dated October 21, 2019, SPLP's Preliminary Objections were granted in part and denied in part and paragraphs 39(h), (i), 51-62, 65, 68, and 80 were stricken from the Andover HOA Complaint.

G. Interventions

1. Interventions in the Flynn Complaint Proceeding

The following parties² filed a Petition to Intervene in the Flynn action, and SPLP filed responses to the Petitions as follows:

- Downingtown Area School District – January 16, 2019
 - SPLP Answer to Petition to Intervene – February 5, 2019
 - Downingtown's Response – February 25, 2019
 - SPLP Preliminary Objections – March 4, 2019
- Rose Tree Media School District – January 18, 2019
 - SPLP Answer to Petition to Intervene – February 7, 2019
 - Rose Tree Media School District Response – February 27, 2019
 - SPLP Preliminary Objections – March 4, 2019
- Twin Valley School District – January 22, 2019³
 - SPLP Answer to Petition to Intervene – February 7, 2019
- East Goshen Township – January 22, 2019
- West Whiteland Township – February 4, 2019
 - SPLP Answer to Petition to Intervene – February 25, 2019
- Uwchlan Township – February 13, 2019
 - SPLP's Answer to Petition to Intervene – March 4, 2019
- Middletown Township – February 21, 2019
- Delaware County – February 25, 2019
- West Chester Area School District – March 4, 2019
- Thornbury Township – March 12, 2019
- Chester County – March 14, 2019
- Edgmont Township March 14, 2019

² As discussed above, both Range Resources Appalachia and Andover HOA were granted intervention in the Flynn Complaint proceeding by intervention in the consolidated Petition for Interim Emergency Relief proceeding.

³ On the same day, Twin Valley School District filed a Corrected Petition to Intervene.

PUBLIC VERSION

- Senator Thomas Killion⁴ – March 20, 2019

On March 12, 2019, the Second Interim Order granted intervenor status to Downingtown Area School District; Rose Tree Media School District; Twin Valley School District; East Goshen Township; West Whiteland Township; Uwchlan Township; Middletown Township; and County of Delaware. The June 6, 2019 Procedural Order granted Senator Killion's intervention in his personal capacity but reserved judgement on legislative standing pending disposition in the case of *Sunoco Pipeline, L.P. v. Pennsylvania Public Utility Commission* at 1169 C.D. The June 6, 2019 Procedural Order also granted intervenor status to Thornbury Township; Chester County; Edgmont Township; and West Chester Area School District.

2. Interventions in the *DiBernardino* Complaint Proceeding

On December 19, 2019, Thomas Casey filed a Petition to Intervene in the *DiBernardino* action. On February 8, 2019, Virginia Marcille-Kerslake also filed a Petition to Intervene. By Order dated March 14, 2019 at Docket No. C-2018-3005025, Casey and Kerslake were granted intervenor status.

3. Intervention in the *Britton* Complaint Proceeding

On February 8, 2019, Josh Maxwell, filed a Petition to Intervene. Maxwell was granted intervenor status by Order dated March 15, 2019 at Docket No. C-2019-3006898. By Order dated September 25, 2020, Maxwell's intervention was rescinded because of his withdrawal from the case in his individual capacity because Maxwell was elected as a Commissioner of Chester County, which had already been granted status as an intervenor.

⁴ Senator Killion requested to intervene in his capacity as a legislator for Senate District No. 9 and in his individual capacity as a resident of Middletown Township, Delaware County.

PUBLIC VERSION

4. Intervention in the Andover HOA Complaint Proceeding

On September 24, 2018, the following individuals/entities filed petitions to intervene in the *Andover HOA* action: Rosemary Fuller, Clean Air Council, Melissa DiBernardino, and East Goshen Township. On October 9, 2019, SPLP filed an Answer opposing the petitions to intervene. By Order dated October 21, 2019, the Petitions to Intervene of Fuller, DiBernardino and East Goshen Township were denied as moot due to the consolidation of complaints listed below, and the Petition to Intervene of the Clean Air Council was granted.

H. Consolidation of Complaints

Complainant Laura Obenski at Docket No. C-2019-3006905 filed a motion to consolidate her Complaint with the Complaint filed by Flynn Complainants at Docket Nos. C-2018-3006116. On March 18, 2019, SPLP filed a Motion to Consolidate and Response to Obenski's Motion to Consolidate, requesting consolidation of the Flynn Complaint, Obenski Complaint, Britton Complaint, and DiBernardino Complaint. The June 6, 2019 Procedural Order granted consolidation. On October 10, 2019, SPLP moved to consolidate the Andover HOA Complaint with the consolidated complaint proceeding at Docket No. C-2018-3006116. By Order dated October 21, 2019, the Andover HOA Complaint was consolidated.

I. Protective Orders and Joint Stipulation

On November 27, 2018, SPLP moved for a Protective Order, which was granted by Order dated November 28, 2018. On April 17, 2019, SPLP moved for an Amended Protective Order, which was granted in part and denied in part by Order dated June 6, 2019. On December 30, 2019, Flynn Complainants and SPLP entered into a Joint Stipulation to the Amended Protective Order, which was admitted into the record by Order dated January 2, 2020.

J. Procedural Schedule and Evidentiary Hearings

The June 6, 2019 Procedural Order set the following procedural schedule:

PUBLIC VERSION

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October, 2019 (same day following a TBD site visit by ALJ Barnes)
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	June 15, 2020 (30 days from Surrebuttal)
Hearings	July 15, 2020-July 29, 2020 (30 days from Rejoinder outlines)
Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

By Order dated August 2, 2019, the in-person hearing for lay witnesses was scheduled for October 23 and 24, 2019 at the West Chester Historic Court House. Lay witnesses were given the option to testify in person at these hearings or to submit pre-filed written testimony. The hearings for the lay witnesses took place as scheduled, but an additional hearing day was required. By hearing notice dated October 29, 2019, an additional hearing day was scheduled for November 20, 2019 at the Commonwealth Keystone building. The hearing took place as scheduled.

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

On January 29, 2020, SPLP filed an Omnibus Order for Adherence to the Commission’s Regulations and Procedures, which was granted by Order dated February 11, 2020. The Order denied Flynn Complainants’ January 20, 2020 email request to file supplemental direct testimony.

PUBLIC VERSION

On March 18, 2020, SPLP filed a Partially Unopposed Motion to Stay Proceedings and Request for Expedited Response and Ruling for a 60-day stay of proceedings due to the unprecedented disruption of COVID-19, which was granted by Order dated March 26, 2020. The March 26, 2020 Order suspended the procedural schedule for 60 days and required SPLP to confer with the parties within 30 days and submit a status report that included a proposed procedural schedule.

On April 28, 2020, SPLP submitted the required status report containing a proposed procedural schedule to which no party objected. By Order dated May 28, 2020, the following procedural schedule was adopted:

Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	June 15, 2020
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	July 15, 2020
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	August 14, 2020
Hearings	September 29, 2020-October 9, 2020 and October 13, 2020-October 14, 2020
Transcripts	October 28, 2020

The Parties complied with the procedural schedule as set forth in the May 28, 2020 Order and the hearings took place as scheduled.

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

On July 28, 2020, SPLP filed a Motion for Partial Summary Judgment Regarding Integrity Management, Corrosion Control and Cathodic Protection. On July 29, 2020, SPLP filed a Motion for Partial Summary Judgment Regarding Consequence Without Probability. The

PUBLIC VERSION

Flynn Complainants, Andover HOA, and Complainants Britton, DiBernardino, and Obenski filed Answers in response to these motions.

On August 13, 2020, Flynn Complainants filed a Motion for Finding of Spoliation; however, on August 17, 2020, Flynn Complainants requested leave to withdraw that motion.

SPLP filed a Motion in Limine to Limit Testimony of Rosemary Fuller on August 14, 2020 and Exhibit E to the Motion was filed on August 17, 2020. Although Flynn Complainants served copies of their response to this motion on September 1, 2020, the response was not filed with the Commission and an electronic copy of it was not served upon the presiding officer until September 24, 2020,

SPLP filed two Motions to Consider Replies to Answers to its Motions for Partial Summary Judgment. Flynn Complainants filed responses to SPLP's Motions to Consider Replies on August 26, 2020.

On August 27, 2020, Flynn Complainants filed a Motion for Partial Summary Judgment. On September 1, 2020, Flynn Complainants filed an Amended Motion for Partial Summary Judgment.

On September 16, 2020, SPLP filed an Answer to the Flynn Complainants' Amended Motion for Partial Summary Judgment. On the same date, SPLP filed a Motion in Limine to Narrow Issues.

On September 22, 2020, Flynn Complainants filed a Motion to Submit Additional Evidence. On September 23, 2020, Flynn Complainants filed an Answer to SPLP's Motion in Limine. On September 24, 2020, Flynn Complainants filed a Reply to SPLP's Answer to Motion for Partial Summary Judgment.

PUBLIC VERSION

By Order dated September 25, 2020, all motions for partial summary judgment were denied, SPLP's Motion in Limine to Limit Testimony of Rosemary Fuller was denied, Flynn Complainants' Motion for Finding of Spoliation was deemed withdrawn, and SPLP's Motion in Limine to Narrow Issues was granted in part and denied in part, holding that "the relief requested of an independent consultant conducting a remaining life study on Mariner East 1 is stricken as moot."

SPLP filed its Answer Opposing Flynn Complainants' Motion to Submit Additional Evidence on Monday, September 28, 2020. The Motion was granted at hearing and SPLP was given until October 28, 2020 to submit responsive evidence, which ruling was set forth by Order dated October 23, 2020. SPLP filed its responsive evidence on October 28, 2020 as SPLP Exhibit No. 53, which was admitted into the record by Order dated November 16, 2020.

On December 14, 2020, Flynn Complainants, Clean Air Council, and Andover HOA filed a Joint Motion for Leave to Supplement Record. SPLP will answer this Motion pursuant to the Commission's regulations within twenty days.

IV. Burden of Proof and Legal Standards

A. Burden of Proof

As the proponent of a rule or order, Complainants have the burden of proof under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). To satisfy their burden of proof,

PUBLIC VERSION

Complainants must show that SPLP is responsible or accountable for the problem described in their Complaints. *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

Complainants must prove that SPLP violated the Public Utility Code, a Commission regulation or Order, or a Commission-approved tariff to obtain *any* relief.

We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require *any* action by the utility.”

West Penn Power Co. v. Pa. PUC, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (emphasis added); *see also Township of Spring v. Pennsylvania-American Water Co.*, Dkt. Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*). “The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff.” *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 6 (Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701) (“*Baker*”).

Moreover, the Commission’s adjudications must be supported by “substantial evidence” in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of New York v. National Labor Relations Board*, 305 U.S. 197, 229 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980) (*Norfolk*); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super.

PUBLIC VERSION

1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984). A legal decision must be based on real and credible evidence that is found in the record of the proceeding affording the utility the opportunity to respond. *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlth. 1993) (finding that the Commission violated the utility's due process rights "because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing."); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Cmwlth. 1986) (holding that the Commission violated the utility's due process rights because the utility was "not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced.").

Upon presentation of evidence sufficient to initially establish a *prima facie* case, the burden to rebut the complainant's evidence shifts to the respondent. If the evidence that the respondent presented is of co-equal weight, then the complainants have not satisfied their burden of proof. Complainants now must provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). In sum, Complainants always have the burden of proof in this proceeding.

B. Legal Standard for Pipeline Safety

The Commission regulations at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 C.F.R. Part

PUBLIC VERSION

195. Thus, the Commission’s regulations adopt federal safety standards for hazardous liquid facilities.

Whether a complainant or lay witness claims to feel safe or unsafe is not the evidentiary standard to be applied in adjudicating a complaint and cannot substitute for qualified expert testimony or science-based evidence about the safety of a utility facility or its compliance with the applicable regulatory standards. “Complainant’s assertions, regardless of how honest or strong, cannot form the basis of a finding . . . since assertions, personal opinions or perceptions do not constitute factual evidence.” *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Instead, to find that a pipeline is unsafe requires proof that it violates applicable regulatory standards that address pipeline safety at 49 C.F.R. Part 195. *See, e.g., Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, Docket No. C-2014-2421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebour, J.) (Final by Act 294, Dec. 30, 2014) (reasoning because there are safety regulations that apply to gas pipelines, but there was no federal or state regulation that prohibited the specific action of placing a gas line within close proximity to a home, there cannot be a violation since there was not a set standard finding a safety violation where Complainant failed to show violation of relevant portion of 49 C.F.R.); *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014) (“In the absence of any evidence that [UGI] failed to comply with these regulations [49 CFR 191-93, 195, 199], I cannot conclude that [UGI] acted unreasonably or violated any Commission regulation in failing to prevent the leaks that occurred at the Complainant's property.”).

PUBLIC VERSION

Moreover, the Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory changes occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications. Thus, to the extent that Complainants allege a violation as the result of actions that are not prohibited or inaction that is not required by current federal pipeline safety regulations, or by proposed standards that are the subject of the Commission's proposed rulemaking docket, these allegations cannot satisfy the requirement to demonstrate a violation of applicable law or regulation. *Baker* at 26 (reversing relief granted that is subject of proposed rulemaking) (citing *Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267 (Order entered Jun. 13, 2019)). What witnesses may think the law or regulations should require in terms of safety is not and cannot be the standard for adjudicating these Complaints.

C. Standards for Injunctive Relief

The Flynn Complainants seek the permanent cessation of operations of SPLP's 8-inch ME1, its 12-inch pipeline currently used as part of ME2 and ME2X, as well as a temporary cessation of those pipelines until a "remaining-life study) is completed. *See Flynn Compl. Counts I, II and III, ¶¶ 122, 126, 136 and 143.* In essence, Flynn Complainants seek mandatory injunctive relief that alters the status quo, i.e., the Mariner East pipelines currently transport NGLs across Pennsylvania and the Flynn Complainants seek a Commission Order requiring such transportation to cease.

To obtain permanent injunctive relief, a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002), *cert. denied*, 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003). Where a Complainant seeks temporary injunctive relief,

PUBLIC VERSION

however, they must also demonstrate that (1) the need for relief is immediate; and (2) injury would be irreparable if relief is not granted. *See Buffalo Twp.* 813 A.2d at 663 (citing *Soja v. Factoryville Sportsmen’s Club*, 522 A.2d 1129, 1131 (Pa. Super. 1987)). In addition, the Commission’s regulations contemplate a party seeking an injunction must also demonstrate that the requested relief is not injurious to the public interest. 52 Pa. Code § 3.6(b); *see also Peoples Natural Gas Co. v. Pa. PUC*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If any one of these essential pre-requisites is not proved by a complainant, the Commission will deny the relief requested. *See Crums Mill Assoc. v. Dauphin Consolidated Water Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993); *see also County of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988).

As both Administrative Law Judge Barnes and the Commission have recognized, injunctive relief is an extraordinary remedy that must be narrowly tailored to abate the harm complained of:

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018).

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Recommended Decision at 42 (Barnes, J.) (adopted in full by Commission by Order dated Oct. 1, 2018). *See also Baker* at 26 (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record keeping, and complete an audit of public awareness program by a third-party “were not justified on the basis of the finding of a

PUBLIC VERSION

violation of the duty to satisfy public awareness and outreach obligations under 49 C.F.R. § 195.440”).

Moreover, the Commonwealth Court has held that an injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and is often described as an extreme remedy. *Woodward Twp. v. Zerbe*, 6 A.3d 651 (Pa. Cmwlth. 2010) (citing *Big Bass Lake Community Association v. Warren*, 950 A.2d 1137, 1144 (Pa. Cmwlth. 2008)). The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145; *see also Crums Mill Assoc. v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)). Indeed, Pennsylvania courts have previously held that a party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *Allen*, 417 A.2d at 401.

D. Hearsay Evidentiary Standards

Your Honor correctly and succinctly set forth the evidentiary standards for hearsay evidence in complaint proceedings before the Commission:

Under the relaxed evidentiary standards applicable to administrative proceedings, see 2 Pa. C.S. § 505, it is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, generally may be received into evidence and considered during an administrative proceeding. *D’Alessandro v. Pennsylvania State Police*, 937 A.2d 404, 411, 594 Pa. 500, 512 (2007) (D’Alessandro).

However, whether simple hearsay may support a finding of an agency depends on whether the evidence meets the criteria of the *Walker/Chapman* rule. The *Walker/Chapman* rule provides that simple hearsay evidence may support an agency’s finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record. *See Walker v.*

PUBLIC VERSION

Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*) (citations omitted); see also *Chapman v. Unemployment Compensation Board of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011) (*Chapman*).

Under Pennsylvania’s *Walker/Chapman* Rule, it is well-established that “[h]earsay evidence, properly objected to, is not competent evidence to support a finding.” Even if hearsay evidence is “admitted without objection,” the ALJ must give the evidence “its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record,” as “a finding of fact based solely on hearsay will not stand.” *Walker* at 370 (citations omitted).

Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation, Docket No. C-2018-2644957, Initial Decision at 16-18 (Nov. 14, 2018) (Barnes, J.).

E. Evidentiary Standards on Expert Opinion and Lay Witness Testimony

1. Standards for Expert Qualifications

Pa. R.E. 702 sets forth the standard for the qualification of expert witnesses and provides that:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) the expert’s methodology is generally accepted in the relevant field.

Pa. R.E. 702; see *Randall v. PECO Energy Co.*, No. C-2016-2537666, 2019 WL 2250792, at *43 (Order entered May 9, 2019) (citing *Gibson v. WCAB*, 861 A.2d 938, 947 (Pa. 2004) (holding, in part, that notwithstanding the statutory maxim of 2 Pa. C.S. § 505, which mandates a relaxation

PUBLIC VERSION

of the strict rules of evidence in agency hearings and proceedings, the “evidentiary Rules 602, 701, and 702 are applicable to agency proceedings in general”).

To the extent that a witness is found to possess specialized knowledge to qualify as an expert on certain subject matters, *the witness’s expert testimony is limited to those issues within his or her specific expertise*. See *Bergdoll v. York Water Co.*, No. 2169 C.D. 2006, 2008 WL 9403180, at *8-9 (Pa. Cmwlth. 2008) (unreported) (prohibiting independent contractors from offering expert testimony on water source and cause of sewer blockage; while witnesses were qualified to offer certain testimony as to facts and the extent of damage at issue, the source of the water and cause of the sewer blockage at issue “was not within their expertise”); *see also*, *Application of Shenango Valley Water Co.*, No. A-212750F0002, 1994 WL 932364, at *19 (Jan. 25, 1994) (President of water company was “not qualified to provide expert testimony regarding the ratemaking value of utility property” when, notwithstanding his skills and expertise as to the operation of a public utility, he was “not a registered professional engineer and has never been a witness concerning valuation of utility property in any proceeding before the Commission . . . lacks knowledge regarding standard ratemaking conventions concerning capital stock as an item of rate base, cash working capital and the ratemaking requirements of Section 1311 of the Public Utility Code.”) (internal record citations omitted).

2. Expert testimony must be competent

An expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff’d*, 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied*, 859 A.2d 770 (Pa. 2004). As the Commission explained in *Vertis Group*:

An expert need not testify with absolute certainty or rule out all possible causes of a condition. *Mitzfelt v. Kamrin*, 526 Pa. 54, 584 A.2d 888 (1990). Likewise, the testimony need not be expressed in

PUBLIC VERSION

precisely the language used to enunciate the legal standard. *In re Jones*, 432 Pa. 44, 246 A.2d 1149 (1984). ***Rather, expert testimony must be viewed in its entirety to assess whether it expresses the requisite degree of certainty.*** *McCann v. Amy Joy Donut Shops*, 325 Pa. Superior Ct. 340, 472 A.2d 1149 (1984). ***Expert testimony based upon mere probability, however, e.g., “more probable than not”, that the alleged cause “possibly” or “could have” led to the result, that it “could very properly account” for the result, or even that it “was very highly probable” that it caused the result, lacks the requisite degree of certainty to be accepted as competent evidence.*** *Hoffman v. Brandywine Hospital*, 443 Pa. Superior Ct. 245, 661 A.2d 397 (1995).

Id. at Exception 20 (agreeing with ALJ that that expert opinions exhibiting equivocation and speculation based upon mere probabilities failed to rise to the level of scientific certainty required by law to accept expert opinion testimony) (emphasis added). *See also Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 61-62 (Order entered March 28, 2019); *aff’d in relevant part*, Dkt. No. 492 C.D. 2019, ___ A.3d. ___, 2020 WL 5949866 (Pa. Cmwlth. Oct. 8, 2020) (holding expert opinion fell below required standard and burden of proof and did not constitute competent evidence to support a finding of fact) (citing *Halaski v. Hilton Hotel*, 409 A.2d 367, 369, n.2 (Pa. 1979); *Menarde v. Philadelphia Transp. Co.*, 103 A.2d 681, 684 (Pa. 1954) (“[T]he expert has to testify, not that the condition of claimant might have, or even probably did, come from the cause alleged, but that in his professional opinion the result in question came from the cause alleged. A less direct expression of opinion falls below the required standard of proof and does not constitute legally competent evidence.”)).

3. Lay witness testimony is limited to direct personal knowledge

Lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. Pa. R.E. 701(c) (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”). Although the

PUBLIC VERSION

Pennsylvania Rules of Evidence are not strictly adhered to by the Commission, the Pennsylvania Supreme Court has recognized that any relaxation of the rules of evidence in administrative settings cannot permit lay witnesses to testify to technical matters “without personal knowledge or specialized training.” *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602 (personal knowledge), 701 (opinion testimony by lay witnesses) and 702 (testimony by expert witnesses) generally applicable in agency proceedings); *Nancy Manes*, Docket No. C-20015803, 2002 WL 34559041, at *1 (May 9, 2002) (the Commission abides by the Pennsylvania Supreme Court's standard “that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue”). Accordingly, the Commission has consistently held that a lay witness is not qualified to testify or offer exhibits related to any issues outside of his or her direct personal knowledge. *Lamagna v. Pa. Elec. Co.*, Docket No. C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (Final by Act 294, Dec. 21, 2018) (lay witness was “not qualified to testify or offer exhibits related to health and safety issues outside of her direct personal knowledge”). Moreover, to the extent that a lay witness offers references to reports or conclusions of others, they may not be considered as substantial evidence because a lay witness cannot rely on such information in reaching a conclusion. Rather, that is the role of a qualified expert witness. *Compare* Pa. R.E. 701 *with* Pa. R.E. 703.

While a factfinder may weigh the opinion testimony of a qualified expert, any such testimony of an unqualified lay witness must be excluded and should not be given any evidentiary weight. *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004); *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995). Accordingly, the Commission has consistently rejected lay witness testimony on technical issues such as health, safety, and the probability of

PUBLIC VERSION

structural failure as these necessarily “require expert evidence to be persuasive enough to support the proposing party's burden of proof.” *Application of PPL Elec. Utilities Corp.*, A-2009-2082652, 2010 WL 637063, at *11 (Feb. 12, 2010) (emphasis added); *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (ALJ “properly disregarded” testimony from thirteen lay witnesses related to concerns and personal opinions about damage to pipes, lead leaching, toxicity to fish and home filtration expenses because “the nature of these opinions ... was scientific and required an expert.”); *Lamagna v. Pa. Elec. Co.*, Docket No. C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (Final by Act 294, Dec. 21, 2018) (finding that lay witness testimony and exhibits regarding technical health and safety issues “carry no evidentiary weight and ... were properly objected to and excluded”).

Moreover, even when a lay witness possesses some level of knowledge and education in a related subject, that is not enough to make him or her an expert on specialized and technical matters such as geology, pipeline construction, pipeline safety, or emergency response, and such unqualified testimony is not credible evidence. *See* Opinion and Order, *Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket. No. P-2018-3001453 *et al.* (Order entered Jun. 14, 2018) (acknowledging lack of expert testimony regarding technical geological concerns, thereby necessarily rejecting testimony of lay witness on geological issues without regard for lay witness’s purportedly related education and experience.); *see also*, Joint Statement of Commissioners Coleman and Kennard, *Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket No. P-2018-3001453 *et al.* (Jun. 14, 2018) (acknowledging “no credible evidence of record to indicate that a clear and present danger exists with respect to the construction activities on ME2 and ME2X in West Whiteland Township” when hearing transcript was “devoid of any expert witness testimony that, to a reasonable degree

PUBLIC VERSION

of scientific certainty, there is a credible and immediate harm with the construction of these lines”).

V. Argument

A. SPLP’s operation of the Mariner East pipelines in high consequence areas of Chester and Delaware Counties does not violate Section 1501 of the Pennsylvania Public Utility Code.

1. The location of the Mariner East pipelines in high consequence areas is expressly authorized by law.

One of the central tenets of Complainants’ and aligned Intervenors’ arguments is that the mere location of the Mariner East pipelines and related equipment in Chester and Delaware Counties, near areas of dense population, residences, schools, hospitals, and other places of public congregation make the pipelines unsafe. *See e.g.*, Flynn Complainants Second Am. Compl. ¶ 24; Andover Compl. ¶¶ 75, 88; DiBernardino Compl. at 15; Britton Compl. at 4, 7, 8, 19, 24; Obenski Compl. at 7-9. Complainants and aligned Intervenors argue that the placement of the Mariner East pipelines in high consequence areas and the consequences of a hypothetical worst-case rupture prohibit their location in Chester and Delaware Counties and render the pipelines per se unsafe. This argument fails as a matter of fact and law.

It is undisputed that HVL pipelines are expressly authorized in high consequence areas. Indeed, PHMSA has specific regulatory requirements that govern pipelines located in high consequence areas, including heightened integrity management protocols and requirements. *See* 52 Pa. Code § 59.33(b) (incorporating 49 U.S.C.A. §§ 60101-60503 and 49 C.F.R. Part 195 regulations as safety standards for hazardous liquid public utilities); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.450 and 195.452; 49 C.F.R. § 195.450 (definition of high consequence area includes high population areas, i.e., urbanized areas, or other areas with concentrated populations); 49 C.F.R. § 195.452 (pipeline integrity management in high consequence areas);

PUBLIC VERSION

49 C.F.R. § 195.452(i)(1) (requirements for operator “to prevent and mitigate the consequences of a pipeline failure that could effect a high consequence area”). Complainants’ argument that simply locating the Mariner East pipelines in a high consequence area is unreasonable or unsafe under Section 1501 directly conflicts with pipeline safety regulations and the authorizations contained in 49 U.S.C. § 60109 and 49 C.F.R. § 195.452, and therefore fails as a matter of law.

Moreover, it is undisputed that thousands of miles of pipelines are located within high consequence areas, including specifically pipelines that carry HVLs. As John Zurcher testified, there are approximately 77,000 miles of pipelines that transport HVLs, and approximately one-third of all HVL pipelines either traverse a high population area or could affect a high population area. (SPLP St. No. 2, Zurcher Rebuttal Test. at 9:17-20; N.T. 4204:13-20.) The mere location of a pipeline in a high consequence area, therefore, is not evidence of a violation of Section 1501 and is not evidence of a safety violation. *See e.g., Williams Pipe Line Co. v. Mounds View*, 651 F.Supp. 544 (D. Minn. 1986) (Denying motion for preliminary injunction of pipeline operations based on citizens’ safety concerns, acknowledging that “[h]azardous liquid pipelines run through 21 states, and presumably through small and large plots of land belonging to vast numbers of persons. Were each of these landowners entitled to demand compliance with their own safety standards, the clear Congressional goal of a national standard for hazardous liquid pipeline safety would be thwarted.”).

2. Complainants have the burden to establish by a preponderance of the evidence that the operation of the Mariner East pipelines in Chester and Delaware Counties will cause harm.

Assuming that Complainants can assert a claim for a violation of Section 1501 based solely on the location of the Mariner East pipelines in a high consequence area, the facts fall woefully short of establishing a violation. Section 1501 provides, in pertinent part, that a public utility shall provide “adequate, efficient, safe and reasonable service”:

PUBLIC VERSION

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities

66 Pa C.S. § 1501.

To establish that the Mariner East pipelines are not “safe” within the meaning of Section 1501, Complainants are required to prove “by a preponderance of the evidence that the utility’s proposed conduct would create a ‘proven exposure to harm.’” *Povacz v. Pa. PUC*, Docket Nos. 492, 606, 607 CD 2019, 2020 W.L. 5949866, *10 (Pa. Cmwlth. Ct. Oct. 8, 2020). In *Povacz*, consumers of electricity filed a complaint against PECO Energy Company claiming that they are hypersensitive to emissions of radio frequency electromagnetic energy (“RF”). They challenged PECO’s placement of wireless smart electric meters in or on their homes, claiming that the so-called “smart meters” emitted RF and that exposure to RF placed them at risk of harm to their health.

The consumers proffered expert testimony that emerging research showed that there are health risks associated with lower levels of RF exposure than allowed by federal regulations. The Commission concluded that the consumers, as complainants, were required to prove by a “preponderance of the evidence . . . that a utility’s service or facilities *will cause harm.*” *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 29 (Order entered March 28, 2019) (emphasis added). The Commission rejected the consumers’ position that they could meet their burden of proof by showing the “potential” for harm. Rather, the Commission held that, as complainants, the consumers had the burden to prove that the smart meters “will cause harm”:

Our concern with the Complainants’ “potential for harm” or “capable of causing harm” standard under Section 1501, ***which we reject***, is that it allows the mere demonstration by a preponderance of the evidence that a hazard exists in utility service to be sufficient to prevail under Section 1501

PUBLIC VERSION

The Complainants' standard rests upon a logical fallacy that equates any hazard with exposure to harm, and on that basis, according to Complainants, all hazards must be removed from utility service or facilities in order to be safe. However, even a lay person knows that public utility operations are not as a general matter, hazard free.

Id. at 30 (emphasis added). On appeal, the Commonwealth Court expressly affirmed the burden of proof standard that the Commission applied (*Povacz*, 2020 W.L. 5949866 at *11), while remanding to the Commission for further proceedings.

Here, Complainants appear to make four arguments to attempt to meet their burden under Section 1501 to show that the Mariner East pipelines are unsafe or unreasonable. Each falls short of satisfying Complainants' burden.

a. Evidence of consequence without the likelihood of the consequence occurring is insufficient to establish a violation of Section 1501.

The Flynn Complainants proffered testimony from Jeffrey Marx, who testified about the potential consequences if the Mariner East pipelines were to rupture. But Marx's testimony is insufficient to meet Complainants' burden of proof. Marx conceded that the evaluation of risk requires a consideration of two distinct things – likelihood and consequences. (N.T. 1831:22-24.) Marx further conceded that “likelihood,” which involves an evaluation of the probability or likelihood of an event occurring, can range anywhere from 0% to 100% (N.T. 1832:3-7; 1832:8-11.) Although Marx was capable of performing a “likelihood” analysis and has done so for other pipelines located in high consequences areas, Marx did not perform an analysis to opine on the likelihood that the consequences that he hypothesized would actually occur. (N.T. 1832:17-22; 1833:6-12; 1834:12-19; 1836:12-15.) Thus, Complainants proffered no evidence of the likelihood of the worst-case consequences that Marx hypothesized.

PUBLIC VERSION

Indeed, in a colloquy with Judge Barnes, counsel for the Flynn Complainants, who proffered Marx as an expert witness, admitted that there was no evidence on “likelihood,” which could be *zero*:

[BEGIN HC]

[REDACTED]

[END HC] (N.T. 4289:4-21.) (Emphasis added.)

Complainants’ failure to proffer any evidence of the likelihood of the hypothesized consequences stands in stark contrast to the unrebutted expert opinion of John Zurcher, who has devoted his professional life to pipeline safety. (N.T. 4366:5-4367:3; 4487:5-21.) Zurcher explained how PHMSA’s integrity management regulations require greater levels of protection for pipelines located in high consequence areas and that SPLP’s integrity management plan complies with PHMSA’s regulations. Zurcher provided the unchallenged and uncontradicted opinion that the risk of a pipeline rupture is “essentially zero” and that it is inappropriate to consider “consequence” without also evaluating the likelihood of the consequence occurring:

PUBLIC VERSION

Therefore, to maintain constant risk in both of those areas, as well as across the entire Mariner East pipelines, the likelihood of a pipeline rupture must be greatly reduced in a high consequence area to make the risk the same as a pipeline rupture with no population present, which is essentially zero. Greater levels of protection in terms of construction, testing, inspection, operation and maintenance are required in a high consequence area to make the risk the same as in a non-high consequence area. Therefore, it is my opinion to a reasonable degree of professional certainty that it is contrary to PHMSA's regulations to consider the consequence of an event only, without also considering the likelihood of that event occurring.

(SPLP St. No. 2, Zurcher Rebuttal Test. at 21:4-19.)

Thus, to the same extent that Complainants failed to meet their burden for interim emergency relief, Complainants' failure to proffer any evidence of "likelihood" together with Zurcher's opinion that likelihood is "essentially zero," Complainants have not met their burden to prove a violation of Section 1501.⁵

b. Complainants' "consequence" evidence was based on the use of a "black box" to model the consequences of worst-case assumptions that have never occurred in a high consequence area.

Complainants' "consequence" analysis is itself insufficient to prove a violation of Section 1501, even if consequence-only evidence could be sufficient. Complainants' "consequence" evidence consisted of Marx's analysis of the consequences of a pipeline rupture under a hypothetical set of worst-case assumptions. But Marx conceded that he made worst-case assumptions to make the consequences of his hypothetical rupture as bad as possible. (N.T. 1839:4-13; N.T. 1844:25-1845:2.) Marx then input his worst-case assumptions into a proprietary

⁵ The Flynn Complainants had asserted that the fact that SPLP had performed a risk assessment to comply with other regulatory requirements could be used as evidence that consequence alone could establish a violation of Section 1501. SPLP performed those assessments to determine whether the Mariner East pipelines "could affect" a high population area, and as a result of those assessments, have treated the entire length of the pipelines in Chester and Delaware counties as if they are located in high consequence areas. (HC Transcript N.T. 4298:16-4301:3.) Therefore, they have no relevance to the question whether the presence of the pipelines in a high consequence area violates Section 1501.

PUBLIC VERSION

model that admittedly overpredicts the consequences of the hypothesized rupture. (N.T. 1848:18-1849:9.) And the proprietary model that Marx used to model the consequences of his series of worst-case assumptions is admittedly and literally a “black box.” (N.T. 1851:5-20.) Thus, there is no way for the Commission or anyone else to evaluate the hypothetical consequences of Marx’s hypothetical worst-case assumptions. Indeed, applying these hypothetical worst-case assumptions would result in similar adverse consequences for all other pipelines located in a high consequence area as well as for other common activities. (N.T. 1860:8-1861:3.) Particularly when, as here, there is no evidence of these hypothetical consequences ever occurring on an HVL pipeline in a high consequence area, it is inappropriate to consider them to determine whether the Mariner East pipelines violate Section 1501. (N.T. 1861:8-25; 1862:2-21.)

c. The PHMSA database contains no evidence of a rupture of an HVL pipeline in a high consequence area and thus does not establish that the operation of HVL pipelines in Chester and Delaware Counties violates Section 1501.

Complainants argue that SPLP should not be trusted to operate the Mariner East pipelines in Chester and Delaware Counties, seeking to make the case that SPLP’s history of operations makes its operation of the Mariner East pipeline unsafe within the meaning of Section 1501. In support, Complainants look to PHMSA’s database of pipeline incidents and SPLP’s incident history operating the Mariner East and other pipelines. This evidence falls woefully short of establishing a violation of Section 1501.

Marx testified that the PHMSA database may be used to establish the likelihood of a release from a pipeline, although Marx did not do the analysis. (N.T. 1815:15-1816:20.) Marx conceded, however, that the PHMSA database does not identify a single rupture of an HVL pipeline in a high consequence area. (N.T. 1853:12-24.) Zurcher, who did analyze the PHMSA

PUBLIC VERSION

database, confirmed that there is no record of a rupture of an HVL pipeline in a high consequence area by *any* pipeline operator. (SPLP St. No. 2, Zurcher Rebuttal Test. at 19:21-23.) The incidents described in the PHMSA database of pipeline ruptures all involved pipeline operators other than SPLP and all of the pipeline ruptures occurred in non-high consequence areas. (SPLP St. No. 2, Zurcher Rebuttal Test. at 21:21-22:8.) Thus, the PHMSA database does not establish a violation of Section 1501 for SPLP's continuing operation of the Mariner East pipelines in Chester and Delaware Counties, which SPLP treats as a high consequence area for the entire length of the pipelines.

d. SPLP's operational history does not establish that SPLP's operation of the Mariner East Pipelines in Chester and Delaware Counties violates Section 1501.

Complainants appear to argue that evidence of SPLP's incident history is sufficient to establish that its operation of the Mariner East pipelines violates Section 1501. It does not. Marx himself acknowledged that there is insufficient information from this incident history to perform a risk analysis that is specific to SPLP or to the Mariner East pipelines. (N.T. 1815:24-1816:8; 1817:19-24, Marx Test.) Friedman's purported evaluation of SPLP's alleged incident history as presented in Exhibit Friedman-24 is not even information directly from the PHMSA database. (N.T. 4218:5-4219:4, Zurcher Test.) And an evaluation of incident information presented in the PHMSA database shows that SPLP is an average operator when it comes to the number of reported incidents per pipeline mile. But when evaluating the incidents reported in the actual PHMSA database, it is important to understand the reporting criteria. Only seven reported incidents were on HVL pipelines, and all involved leaks, not ruptures. (N.T. 4219:6-4223:6; 4392:12-21, Zurcher Test.)

Complainants expended a lot of energy and attention on the release on the 8-inch Mariner East 1 pipeline in Morgantown, Pennsylvania. That release involved a pinhole leak in a girth

PUBLIC VERSION

weld that was limited to the right-of-way. The release was reported by a member of the public – demonstrating the efficacy of SPLP’s public-awareness program – and was addressed. There is no risk that a pinhole leak will become a rupture (N.T. 4225.3-4229:4, Zurcher Test.) And like other pinhole leaks, it presented no risk or hazard to the public. (N.T. 4390:3-4391:6, Zurcher Test.)

But, remember, those small leaks are not things that are going to cause a concern to the general public or almost to anybody. They’re just a small leak on a pipeline. It’s a little drip coming out of it, and it’s not going to be a hazard. But we want to know about it, and we want to take care of it.

You know, 48 percent of the leaks that are reported are those tiny, tiny, little leaks, you know. But we want to get them taken care of. We want to know about them. We want to be able to fix it and stop it.

And part of the reason for that, too, you can imagine a system that had a lot of those going on all over the place, you know, what would people do? So, each one’s treated individually. It’s responded to almost immediately. It’s rectified within hours. And that’s what makes it so safe for the public.

(N.T. 4422:16-4423:8, Zurcher Test.) Complainants’ own witness, Jeffery Marx, agreed that a pinhole leak would not cause a significant hazard to the public: “a very small, pinhole type leak where you actually do release material but maybe the extent of the hazard is within the pipeline right-of-way.” (N.T. 1889:14-16.)

Thus, there is no evidence that SPLP’s operational history makes its operation of the Mariner East pipelines in Chester and Delaware Counties a violation of Section 1501.

B. There is no basis for any relief concerning the integrity management, cathodic protection, or corrosion control of the ME1 and 12-inch pipelines.

Complainants and aligned Intervenors next argue that SPLP did not comply with the regulatory requirements for integrity management, cathodic protection, or corrosion control for the ME1 and 12-inch pipelines. Complainants presented one witness on only the issues of

PUBLIC VERSION

corrosion and cathodic protection, Dr. Zamanzadeh. Dr. Zamanzadeh offered no testimony on integrity management other than agreeing that SPLP's integrity management plans and related procedures contain good engineering practices. Nor did any other witness on behalf of Complainants and aligned Intervenors. Dr. Zamanzadeh's testimony is so equivocal, admittedly speculative, and inconclusive on the issues he did address that it is neither credible nor competent evidence and, therefore, does not meet Complainants' and aligned Intervenors' burden of proof. As the Commission has held and the courts have affirmed, any such speculative testimony from an expert cannot form the basis of any finding of fact and must be given no weight. *Vertis Group, Inc.*, 2003 WL 1605744 (an expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence). Specifically, Dr. Zamanzadeh repeatedly testified that he could not form an opinion as to the condition of the ME1 or 12-inch pipeline. *Infra* Section V.B.3. Consequently, Dr. Zamanzadeh could not and did not conclude that either of these pipelines are unsafe and did not show a violation of any law, regulation, or order.

Apparently recognizing their lack of proof about the 12-inch pipeline, at hearing Flynn Complainants and Dr. Zamanzadeh asserted a new "twin pipeline theory." Specifically, Dr. Zamanzadeh testified that a pinhole leak on the ME1 pipeline in Morgantown can be used to *infer* that relief should be granted for the 12-inch pipeline. This theory is factually and legally untenable. Dr. Zamanzadeh admitted that he had come to no competent conclusion⁶ about the ME1 pipeline to make an inference as to the 12-inch pipeline. Complainants were therefore forced to assert that evidence regarding ME1 is circumstantial evidence that can be used to infer

⁶ Flynn Complainants St. No. 1, Dr. Zamanzadeh Direct Test. at 41:44-42:27.

PUBLIC VERSION

a finding of fact regarding the 12-inch pipeline.⁷ But Complainants clearly did not meet the legal standard for such inference: “In relying upon circumstantial evidence to reasonably infer a factual conclusion, ‘the evidence must be adequate to establish the conclusion sought and *must so preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith.*’” *Monaci*, 717 A.2d at 618 (quoting *Flagiello v. Crilly*, 187 A.2d 289, 290 (Pa. 1963) (emphasis added)). Dr. Zamanzadeh did no tests, analyses, or studies of the 12-inch pipeline, but instead he attempted to use information about a different pipeline to justify his unsupported, speculative allegation about the 12-inch line. And admittedly, Dr. Zamanzadeh’s opinion on this point was “conjecture.” (Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 16:29-30 (“I would conjecture that the 12-inch pipeline is probably in worse condition than the 8-inch pipeline.”))

Despite Complainants’ and aligned Intervenors’ failure to offer any credible expert testimony, SPLP offered expert science and industry-based testimony by three very experienced, credentialed, and credible witnesses, which refutes Dr. Zamanzadeh’s unproven and speculative allegations about corrosion control and cathodic protection. SPLP’s witnesses on this topic are:

- John Zurcher, who has vast experience with pipeline safety. (N.T. 4366:5-4367:3, 4487:5-21, Zurcher Test.) He has provided consulting services and expertise and served as a consultant to trade associations and research organizations regarding pipeline safety regulations, pipeline integrity management, and operations and maintenance procedures. (SPLP St. No. 2, Zurcher Rebuttal Test. at 1:10-21.) He has written integrity management programs for 60 major companies and has audited integrity management plans for another 80 major companies. (*Id.* at 6:6-7.) He has testified before Congress on integrity management and pipeline safety on two occasions. (*Id.* at 6:8-9.) Unlike Dr. Zamanzadeh, he is the only witness qualified to testify as an expert in integrity management. He is also a member of the National Association of Corrosion Engineers (NACE). (N.T. 4366:17-18, Zurcher Test.)

⁷ “Circumstantial evidence has been defined as “evidence of one fact, or of a set of facts, from which the existence of the fact to be determined may reasonably be inferred,” W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 39, at 242 (5th ed.1984), in contrast to direct evidence where there is direct eyewitness testimony of the ultimate fact to be determined.” *Monaci v. State Horse Racing Com’n*, 717 A.2d 612, 618 (Pa. Cmwlth. 1998).

PUBLIC VERSION

- Kevin Garrity is a renowned expert in pipeline corrosion including cathodic protection, stress-corrosion cracking, microbiologically-influenced corrosion, stray-current corrosion, protective coatings for pipelines, and corrosion mitigation. (N.T. 3888:10-18, Garrity Test.) Garrity has served on the board and executive committee of NACE. (N.T. 3887:1-4, Garrity Test.) He was president of NACE from 2012-2013. (N.T. 3887:13-15, Garrity Test.) He served as the chair of the NACE Committee, STG-05 on cathodic and anodic protection and the NACE Task Group on detection of microbiologically influenced corrosion. (N.T. 3887:5-12, Garrity Test.) He currently serves as president of the NACE Institute and was elected as a Fellow of NACE in 2015. (N.T. 3887:16-21, Garrity Test.) He has testified in matters regarding pipeline safety and corrosion before PHMSA and has led investigations into pipeline incidents involving external corrosion, internal corrosion, microbiologically-influenced corrosion, stray-current corrosion, and stress-corrosion cracking. (N.T. 3888:1-5, Garrity Test.)
- John Field is a corrosion engineer with SPLP. (SPLP St. No. 14, Field Rebuttal Test. at 1:1-2.) He has 28 years of professional experience in corrosion engineering. (*Id.* at 1:16-17.) He is a certified NACE International Cathodic Protection Specialist. (*Id.* at 1:17-18.)

Together, these witnesses proved:

- SPLP's prior and current integrity management plans and corrosion control and cathodic protection SOPs are comprehensive and compliant. There is no evidence to the contrary. *Infra* Section V.B.1.
- SPLP follows the integrity management plan and SOPS and followed the prior integrity management plan and SOPs when each was applicable. Dr. Zamanzadeh's assertions to the contrary are not based on substantial evidence and have been disproven. *Infra* Section V.B.2.
- SPLP's integrity management plan and corrosion control and cathodic protection SOPs ensure that the ME1 and 12-inch pipelines are safe. The issues that Dr. Zamanzadeh raises with:
 - corrosion generally,
 - Inline Inspection tools (ILIs),
 - microbiologically influenced corrosion (MIC),
 - stress corrosion cracking (SCC),
 - dig inspections and repairs,
 - implementation and measurement of cathodic protection,
 - PHMSA enforcement,
 - coatings, and
 - stray current interference

are baseless and incorrect. *Infra* Section V.B.3.

PUBLIC VERSION

In addition, Complainants and aligned Intervenors, without any basis, alleged that SPLP failed to perform risk assessments as part of its integrity management plan. Upon motion made by SPLP after demonstrating that SPLP had performed the very risk assessments required by the PHMSA regulations, Complainants and aligned Intervenors agreed that this issue was no longer part of the case and dismissed those portions of their Complaint. *Infra* Section V.B.4.

In sum, the evidence offered by Dr. Zamanzadeh and rebutted by SPLP's witnesses demonstrate there is no basis for any relief including the extreme injunctive relief of shutting down pipelines that Complainants and aligned Intervenors requested. Notably, as the case evolved and that evidence became apparent, the Flynn Complainants conceded they are not seeking this relief based on Dr. Zamanzadeh's testimony. *See* Flynn Complainants' Answer to SPLP Motion for Partial Summary Judgment on Integrity Management, Corrosion Control and Cathodic Protection at ¶ 21 (p.5) (filed August 13, 2020). Instead, Dr. Zamanzadeh recommended a remaining life study and associated testing for the ME1 and 12-inch pipelines. For ME1, Flynn Complainants have agreed, and Your Honor has already held, that the request for a remaining life study is moot. September 25, 2020 Order at ¶ 9. Therefore, the only remaining relief sought by the Flynn Complainants is a remaining life study for the 12-inch pipeline, a pipeline that Dr. Zamanzadeh admitted that he had not studied or tested. Indeed, Dr. Zamanzadeh's opinion about the 12-inch line is admittedly mere conjecture. (Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 16:29-30 ("I would conjecture that the 12-inch pipeline is probably in worse condition than the 8-inch pipeline."))

As SPLP details below, the weight of evidence that SPLP presented on these issues far outweighs the speculation and speculative opinion from Complainants' only witness.

PUBLIC VERSION

1. SPLP's integrity management plan and related standard operating procedures are robust, comprehensive, and comply with regulatory requirements.

Complainants and aligned Intervenors offered no expert testimony on SPLP's integrity management plan except as it relates to corrosion control and cathodic protection. (N.T. 2072:9-11). SPLP witness Zurcher, who was the only witness qualified as an expert in integrity management (N.T. 4195:13-23, Zurcher Test), concluded that SPLP's integrity management plan is comprehensive and compliant. (*See e.g.*, SPLP St. No. 2, Zurcher Rebuttal Test. at 24:1-6, "It is very much in conformance with the standards that I've described and the pipeline safety and integrity management regulations. It properly describes and establishes processes for the management of the integrity of both gas and liquid pipelines."; N.T. 4230:1-5, Zurcher Test.)

As to the SOPs related to the Integrity Management Plan concerning cathodic protection and corrosion control, Dr. Zamanzadeh concluded multiple times that the plan is "reasonably comprehensive and detailed." (Flynn Complaints St. No. 1, Zamanzadeh Direct Test. at 39:31-33.) Dr. Zamanzadeh also admitted and concluded that these are "good practices." (Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 4:24-25.) And SPLP witness Garrity concluded that these SOPs are "complete and technically sound." (SPLP St. No. 1, Garrity Rebuttal Test. at 9:5-7, "I conclude that the SPLP and Energy Transfer Integrity Management Plans and Energy Transfer SOPs (SPLP Exhibits JF-1, JF-2, JF-3) are complete and technically sound.")

There are two integrity management plans and two sets of SOPs entered into the record here – the "Energy Transfer" documents, effective as of May 2018 to the Mariner East pipelines and the "SPLP" documents, effective prior to May 2018 to the Mariner East pipelines:

- SPLP Exhibit JF-1, Energy Transfer Integrity Management Plan, effective for SPLP assets as of May 2018, which is classified as Extremely Sensitive Materials under the Amended Protective Order;

PUBLIC VERSION

- SPLP Exhibit JF-2, SPLP Integrity Management Plan, effective for SPLP assets prior to May 2018 which is classified as Extremely Sensitive Materials under the Amended Protective Order;
- SPLP Exhibit JF-3, Energy Transfer operating and engineering procedures and standards for hazardous liquid pipelines related to corrosion control which is classified as Highly Confidential under the Amended Protective Order;
- SPLP Exhibit JF-1RJ, SPLP Operation and Maintenance Manual corrosion control procedures applicable to SPLP assets prior to May 2018, which is classified as Highly Confidential under the Amended Protective Order.

(N.T. 4072:1-14, 4072:22-4073:2, Field Test.)

As shown above, all witnesses who testified on the subject agreed that the Integrity Management Plan and related SOPs currently in effect are comprehensive and compliant. Dr. Zamanzadeh incorrectly took issue with the *prior* Integrity Management Plan because he alleged that it did not contain specific enough procedures about cathodic protection and corrosion control, thus presuming that such procedures did not exist prior to the 2017 Morgantown Incident. (Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 4:25-26.) SPLP conclusively demonstrated that Dr. Zamanzadeh's allegations were incorrect when it introduced the corrosion control and cathodic protection procedures in place prior to 2018, which were issued between 1997 and 2002 and last revised in 2016, SPLP Exhibit JF-1RJ. As Field explained:

Q. And Dr. Zamanzadeh also alleges that Sunoco did not have and follow integrity and corrosion control assessment and management practices prior to the Morgantown incident. Is that allegation true?

A. It is not. We had a maintenance manual in place with corrosion control procedures and an integrity management plan that was in place prior to the incident at Morgantown in 2017.

Q. And is SPLP Exhibit JF-1RJ the operation and maintenance manual you were discussing?

PUBLIC VERSION

A. It is.

(N.T. 4075:3-13, Field Test.)

[BEGIN HC]

[REDACTED]

[END HC]

All of these procedures were thus in place *prior* to the 2017 Morgantown incident. Notably, Dr. Zamanzadeh did not take issue with the specific procedures in JF-1RJ.

Dr. Zamanzadeh also incorrectly speculated that SPLP adopted the current Integrity Management Plan and related procedures after the Morgantown incident because the prior procedures were inadequate. (Flynn Complainant St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 21:7-10, “Further, the fact that Sunoco later on saw fit to adopt standards that required an increased CP potential clearly indicates that Sunoco believed either that (a) the Morgantown leak was the result of insufficient cathodic protection, or (b) the company saw MIC in other locations of the pipe, or (c) both (a) and (b)”.) SPLP adopted its current Integrity Management Plan and SOPs due to the merger with Energy Transfer, which occurred *before* the Morgantown incident:

The new operating procedures were adopted in May of 2018 as a part of a rollover into Energy Transfer's operating procedures. They were not a result of anything to do with the Morgantown release. In fact, there were over 70 other procedures that were rolled over and changed in the same time frame that are non-related to corrosion control.

PUBLIC VERSION

(N.T. 4074:21-4075:2, Field Test.) Thus, the adoption of the new SOPs are not evidence that the prior Integrity Management Plan and SOPs were insufficient.

In sum, there is no evidence that SPLP's Integrity Management Plans and related SOPs are anything but comprehensive and compliant.

2. SPLP follows its integrity management plan and SOPs related to cathodic protection and corrosion control

Dr. Zamanzadeh's assertion that SPLP does not follow its Integrity Management Plan and SOPs related to cathodic protection and corrosion control (*e.g.*, Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal Test. at 4:26-34, 9:8-14, 12:1-2, 21:26-32), is admittedly both speculative and false. Dr. Zamanzadeh bases his speculation on both an alleged lack of data and misinterpretation of data that he did have. (*See, id.* at 4:27-28, "If there are data that reflect implementation of these practices in the Morgantown vicinity, those data have not been shared with Matergenics."; *id.* at 21:26-32, referencing Direct Testimony that allegedly showed examples that SPLP did not implement procedures.) (*See also* Flynn Complainants St. No. 1, Zamanzadeh Direct Test. at 39:37-40:2, alleging: not following procedures because Dr. Zamanzadeh did not have root cause analyses.)

Regarding lack of data claims generally, Dr. Zamanzadeh admitted that any lack of data was due to Flynn Complainants' own lack of diligence in discovery. (N.T. 2149:2-9, Zamanzadeh Test.) Dr. Zamanzadeh admitted that while he said in his direct testimony that he needed more information, he is not aware that any discovery requests were made to SPLP after his direct testimony. (N.T. 2176:21-24, Zamanzadeh Test.) No such discovery requests were made in the *seven* months that Flynn Complainants had between filing direct testimony and surrebuttal testimony. He did not point to a single instance where SPLP was required to provide responsive discovery, but failed to do so.

PUBLIC VERSION

Moreover, Dr. Zamanzadeh's review of the data is admittedly incomplete. Dr. Zamanzadeh says that he reviewed "a majority of SPLP's document production – "literally 10,000 pages or so." (N.T. 2150:17-2151:5, Zamanzadeh Test.) However, 10,000 pages or so is only about a third of the discovery that SPLP produced. *See* Joint Stipulation of Record at 1-2 (showing bates ranges of over 30,000 pages). Dr. Zamanzadeh admitted that the software that he used to scan the information left room for errors in identifying information:

Matergenics was able to obtain the Foxit Phantom PDF software and that software was used to look for key words in the 31,521 pages of materials. As with any such software, no one claims it has a 100% success rate ***and it is acknowledged, therefore, that relevant documents may not have been identified.***

(Flynn Complainants St. No. 1, Zamanzadeh Direct at 7:43-8:2) (emphasis added).

Dr. Zamanzadeh also misinterprets or misrepresents the data that he has. For example, Dr. Zamanzadeh alleges that SPLP failed to provide root cause analysis pursuant to its Integrity Management Plan. Although it is not clear, Dr. Zamanzadeh appears to believe that a root cause analysis is required for any integrity dig that shows any corrosion. That is not correct. A root cause analysis is required only for an event or incident that might result in a release of product or did result in a release of product – not for integrity digs. (N.T. 3919:17-3920:1, Garrity Test.) The only release on the Mariner pipelines related to corrosion was the Morgantown incident. For that event, SPLP entered into the record the DNV Report containing a root cause analysis, which was produced to Dr. Zamanzadeh. Therefore, Dr. Zamanzadeh in fact had the root cause analysis that SPLP performed consistent with its Integrity Management Plan. (SPLP Ex. JF-5.)

Dr. Zamanzadeh likewise inaccurately asserts that SPLP did not follow its Integrity Management Plans regarding Close Interval Potential Surveys ("CIPS"). The evidence demonstrates the exact opposite. As Field testified:

PUBLIC VERSION

SPLP has followed our corrosion control procedures both prior to and subsequent to the Morgantown incident. There's no evidence that Sunoco Pipeline has not done so. The Morgantown settlement, I&E agreed that Sunoco Pipeline had implemented its revised procedures and some of the data that Dr. Zamanzadeh has cited and even included in an exhibit, there were close interval survey data that showed cycled survey instant on and instant off data which is proof that we're following our procedures.

(N.T. 4076:4-13, Field Test.; SPLP St. No 14-RJ, Field Rejoinder Outline at 1-2.) Field was explaining that the current SPLP procedures adopted in May 2018 require for CIPS that SPLP collect instant “off” pipe-to-soil readings. (*Id.*) In Dr. Zamanzadeh Exhibit 9, the CIPS data for the 12-inch and ME1 pipelines from October 2018 done by Corrpro show that the new procedures were followed because they show the instant “off” readings. (Dr. Zamanzadeh Exhibit 9 at pdf pages 195-375 (ME1), 921-1052 (12-inch).) So, when Dr. Zamanzadeh alleges that SPLP did not follow its current Integrity Management Plan based on CIPS surveys, his own exhibit shows that he is wrong.

Dr. Zamanzadeh next alleges that SPLP did not follow its Integrity Management Plan and SOPs because SPLP failed to maintain “on” potential of greater than negative 850 MV.

Dr. Zamanzadeh misinterprets how these procedures and related regulations function. As Garrity testified:

Dr. [Zamanzadeh] appears to ignore two important facts: (1) alternative criteria exist for determining the efficacy of applied CP (49 C.F.R. § 195.571). If these alternative criteria have been met, CP is effective; and (2) the purpose of performing CP surveys is to permit the integration of CP and other data, such as from ILL, to determine if there are integrity concerns and to determine where criteria are satisfied and where remedial action is required (49 C.F.R. § 195.573(b)). ***The discovery of pipe-to-electrolyte readings that do not meet criteria is not a regulatory violation as long as appropriate remedial measures are implemented in the expected timeframe, usually before the next inspection cycle*** (49 C.F.R. § 18 195.573(e)).

PUBLIC VERSION

(SPLP St. No. 1, Garrity Rebuttal Test. at 7:10-19) (emphasis added). Thus, the criterion to determine whether the Integrity Management Plan is being followed is not whether every single reading strictly meets the “on” potential criteria of greater than negative 850 mv, but if they do not, the regulatory requirement is to monitor to see if additional remediation needs to be implemented to achieve the criteria. It is an iterative process. SPLP showed it is doing exactly that:

Well, we've conducted close interval potential surveys or CIP surveys in 2018, 2019, and we're getting ready to do a follow-up CIP survey in November. And we've also added some cathodic protection in response to our newly adopted criterion. And the close interval data shows that the cathodic protection along the entire length of the lines has vastly improved, and that's how we know that there's an area that is receiving effective cathodic protection, mainly from close interval potential surveys.

(N.T. 4080:15-24, Field Test.) Field further explained the upgrades to the CP systems for the ME1 and 12-inch pipelines in Chester and Delaware Counties, which demonstrate that SPLP is following its Integrity Management Plan:

The upgrades to the CP system on the eight-inch and 12-inch lines consist of adding cathodic protection systems. Basically, cathodic protection system is a rectifier which converts AC electricity to DC, and then pushes that DC current into the ground, and then the current flows through the ground and onto the pipeline and converges onto the pipeline, and that's what gives it its corrosion protection, is that DC current flowing onto the pipeline. There's a couple different methods and ways we can install these anode systems that are kind of the vehicle to push the current through the ground with the anode. There's a deep well anode system where you drill down into the ground and stack the anodes vertically, and basically that's a conductor that allows you to push current into the ground. There's a surface ground bed where, if you have a little bit of room to be offset from the pipeline, you can bury the anode bed horizontally anywhere from four to eight feet deep, sometimes deeper, and let the current disperse that way. In a lot of cases, what we've been doing with these lines is using what's called a linear anode, where the anode is a wire, a thin wire, thin long wire that is either trenched

PUBLIC VERSION

adjacent to the pipeline or sometimes plowed in or directionally drilled adjacent to the pipelines that have poor coating or no coating.

(N.T. 4082:17-4083:17, Field Test.) In sum, Dr. Zamanzadeh's speculation that SPLP is not following its Integrity Management Plan or SOPs is based on his unawareness of data or misinterpretation of the data that he reviewed. SPLP has shown that it complied with its Integrity Management Plans and SOPs.

3. The ME1 and 12-inch pipelines are safe and are being appropriately tested, monitored, and remediated to ensure continued safety.

Most significantly, Dr. Zamanzadeh repeatedly admitted that he does not have sufficient information to conclude that the ME1 and 12-inch pipeline are unsafe:

In closing, for an expert to be able to form an opinion as to the present, likely condition of the 12-inch and 8-inch lines, a good deal more information would be required than has been supplied to Matergenics to date.

(Flynn Complainants St. No. 1, Zamanzadeh Direct Test. at 41:44-42:27) (emphasis added).

I would conjecture that the 12-inch pipeline is probably in worse condition than the 8-inch pipeline. But this is speculation and we must rely on facts.

(Flynn Complainants St. No. 1-SR, Zamanzadeh Surrebuttal at 16:25-31) (emphasis added).

Dr. Zamanzadeh further affirmed at hearing that he has not formed an opinion as to the condition of either the ME1 or 12-inch pipeline, consistent with his Direct and Rebuttal Testimony. (N.T. 2173:3-25.) In essence, Dr. Zamanzadeh's sole opinion is that he needs more information to render an opinion. Dr. Zamanzadeh also admits that he performed no tests or studies to determine the condition of these pipelines or associated alleged risks. (N.T. 2163:18-19, 2163:10-12.) Your Honor need go no further to reject Dr. Zamanzadeh's testimony and Complainants' and aligned Intervenors' claims of a lack of pipeline safety. Simply having

PUBLIC VERSION

questions and a speculative opinion cannot sustain Complainants' and aligned Intervenors' burden of proof.

Unlike Dr. Zamanzadeh's speculation, SPLP has provided extensive expert opinion to show that its pipelines are being appropriately managed to ensure safety. As Zurcher testified, the entire point of an integrity management program, which includes related provisions on cathodic protection and corrosion control, is to inspect and monitor the pipelines on a cyclical basis, determine areas that need to be remediated, and implement those remediations to ensure the safety of the pipeline to operate. That is exactly what SPLP does:

Integrity management is a performance-based, process-oriented program to manage the safety and environmental risks associated with hazardous liquids and natural gas pipelines. The simplest way to look at integrity management is to identify the threats that may cause a pipeline to fail. There are nine separate threats to a pipeline's integrity, one example being corrosion. Once the threats to a pipeline are identified, the pipeline company focuses on the likelihood of each threat occurring for a given pipeline. Once we understand the likelihood of each threat to a pipeline occurring, the pipeline is assessed for those threats. This allows a company to better understand its system and to prioritize and manage risk in a systematic way. There is then a focus on high consequence areas, because this is where the potential consequences of a pipeline failure are greatest. The company then performs a risk assessment of its pipelines and develops assessment methods to detect defects or anomalies and repair them as appropriate. Examples of the assessment techniques include hydrostatic testing, in-line inspection of the pipeline with tools that detect anomalies and defects, and direct assessment through survey inspection for anomalies. Sunoco Pipeline has SOPs for these various things; I have reviewed them and they are consistent with the regulations and industry practice for the proper maintenance of the pipelines and to implement the integrity management program.

(SPLP St. No. 2, Zurcher Rebuttal Test. at 17:12-18:4.)

The threat to the pipeline that Dr. Zamanzadeh incorrectly alleges SPLP is not managing is various forms of corrosion, including generalized corrosion, microbiologically-influenced

PUBLIC VERSION

corrosion, and stress-corrosion cracking. However, SPLP does all appropriate tests and analyses for these issues, including ILI runs, hydrostatic testing, CP surveys, and digging up the pipelines when these tests show an issue that may need to be remediated, and then remediating as appropriate. This data is all integrated and used together to allow SPLP to know the condition of its pipelines and ensure they are safe to operate. (N.T. 4408:17-20, Zurcher Test.)

“SPLP’s integrity management program for the ME1 and 12-inch pipelines relies on the use of complementary tools to determine risk due to corrosion including the use of MFL ILI inspection tools, Annual CP surveys, Close-Interval CP surveys and Hydrostatic testing.” (SPLP St. No. 1, Garrity Rebuttal Test. at 13:15-18.) In Garrity’s expert opinion: “the totality of what [SPLP is] doing exceeds the regulatory expectations and places [SPLP] in a best-in-class position from the standpoint of integrity management.” (N.T. 3934:11-14, Garrity Test.)

Below, in subsection V.B.3.a., SPLP will first address corrosion generally. Next, SPLP will detail the various related tests and their analysis and show why Dr. Zamanzadeh’s allegations with respect to each are incorrect. *Infra* subsections VB.3.b.-c. Finally, in subsection V.B.3.d., SPLP explains that Dr. Zamanzadeh’s recommended remaining-life study will not provide additional useful information and is unnecessary.

a. Corrosion

As Garrity explained:

Corrosion as it relates to a pipeline is the electrochemical degradation of the metal as a result of the reaction with its environment. It's a naturally occurring process.

(N.T. 3894:10-13.) Garrity further discussed how corrosion is prevented for pipelines:

The two primary means of protection are protective coatings intended to provide a dielectric barrier between the pipe and the environment. There are four components that you need for a corrosion cell. One of those is an anode. That's a metal that sheds electrons and corrodes. One is a cathode. That's the metal that

PUBLIC VERSION

receives electrons and doesn't corrode. The anode and the cathode need to be in metallic contact with each other, and they need to be immersed in an electrolyte. And an electrolyte is nothing more than a solution that's capable of conducting electricity. So for our purposes, the soil around the pipe is determined to be an electrolyte. Water is an electrolyte. And so the coating is a barrier against that environment. And where the coating might be compromised, cathodic protection is used as a supplemental means of providing protection. Cathodic protection is also used to protect pipelines or structures that don't have any coating on them.

(N.T. 3895:1-19, Garrity Test.) Cathodic protection works in all soil environments as well as in concrete. (N.T. 3896:13-3897:7, Garrity Test.) Garrity then explained how corrosion is measured:

There are a handful of ways to do it. Obviously if you have access to the pipe surface, you can measure the depth of any corrosion by using a multitude of tools. Probably the most popular tool is a pit gauge, which can be a dial gauge, and if you place it in the center of the depth of the pit or the localized corrosion, it will record what the depth of it is and that will determine how deep it is. There are other ways, using ultrasonic pencil probes where you can measure the wall thickness of the pipe in an area where it has not sustained corrosion and then repeat that measurement in the area of corrosion, and if you obviously compare those two numbers, you'll know what the depth of corrosion is. Lastly, in-line inspection tools that are used for monitoring and integrity management can detect and are intended to detect wall loss, and so those tools actually do measure corrosion.

(N.T. 3895:21-3896:12, Garrity Test.)

Whether corrosion is active or inactive and the rate of corrosion growth for active corrosion is measurable through comparing ILI runs over time. (N.T. 3924:4-23, Garrity Test.) That comparison shows how and where the SPLP cathodic protection on ME1 and the 12-inch pipelines is effective, i.e., the corrosion is inactive and not growing. (N.T. 4079:8-21, Field Test.) Moreover, contrary to Dr. Zamanzadeh's assertions, just because corrosion exists, does not mean that a regulatory violation has occurred or that a perforation will occur. (N.T. 3924:4-

PUBLIC VERSION

23, Garrity Test.) It merely requires further investigation and potential remediation. As Zurcher explained, there is no correlation between pitting and the manifestation of a rupture. (N.T. 4228:25-4229:2, Zurcher Test.)

b. ILI Tools, Hydrostatic Tests, and Digs

ILI tools identify anomalies in the pipe wall that may be potentially injurious to the safe operation of the pipeline so that the operator has the opportunity to go in and mitigate that threat. (N.T. 3920:16-21, Garrity Test.) SPLP uses multiple different ILI tools, including a deformation tool to look for ovality or incidents of dents, a spiral magnetic flux leakage tool, low magnetism magnetic flux leakage tool, and an ultrascan crack detection tool. (N.T. 3933:19-25, Garrity Test.) In addition, SPLP uses hydrostatic testing to manage both external corrosion threats and stress-corrosion cracking. (N.T. 3922:11-14, Garrity Test.) SPLP employs the hydrostatic testing in the same or similar frequency to the in-line inspection tools. (N.T. 3934:3-5, Garrity Test.)

When anomalies above a certain threshold are found via ILI or hydrostatic test data, SPLP performs investigative digs, which means that SPLP literally goes out into the field, digs up the pipeline, and examines it and performs various tests, then documents the findings, observations, photographs, and the qualifications of the personnel completing the dig. (N.T. 3918:10-3919:2, Garrity Test.) If SPLP determines that active corrosion is present, it also performs mag particle testing, which looks for stress corrosion cracking, and performs a regimen of testing procedures and samples that look for bacteria that can lead to microbiologically-influenced corrosion. (N.T. 3934:6-10, Garrity Test.) SPLP also repairs or replaces as necessary any anomalies found and documents the repairs or replacements. (N.T. 4093:12-14, Field Test.) These are known as dig reports, which Dr. Zamanzadeh included in Exhibits MZ-2, MZ-6 and MZ-7. Regarding each of these specific dig reports, the anomalies were either repaired or the

PUBLIC VERSION

pipe was replaced. (N.T. 4093:12-14, Field Test.) To determine when an anomaly needs to be repaired or replaced, SPLP uses a more conservative approach than the 80% wall loss threshold required by PHMSA regulations. (N.T. 4084:15-18, Field Test.)

Dr. Zamanzadeh takes issue with these tests and analysis, but his allegations either ignore evidence, misinterpret evidence, seek to establish what amount to new regulations outside of a rulemaking process, or are wholly without basis. As shown below, Dr. Zamanzadeh's assertions about a lack of testing for Stress Corrosion Cracking (SCC), Microbiologically Influenced Corrosion (MIC) and lack of data regarding these issues is simply incorrect.

Dr. Zamanzadeh alleges that ILI runs are not enough because they do not detect SCC or MIC. But Dr. Zamanzadeh ignores the additional testing and analysis SPLP performs in concert with ILI runs to test for these issues. Regarding SCC, Dr. Zamanzadeh completely disregards that SPLP performs hydrotests, including spike tests, which are the "preferred mechanism for determining the existence of potentially injurious stress corrosion cracking." (N.T. 3908:9-19, Garrity Test.; N.T. 4087:14-20, Field Test.) Dr. Zamanzadeh also ignores that SPLP has implemented the practice of mag particle inspection at investigative digs to detect stress-corrosion cracking. (N.T. 3908:25-3909:23, Garrity Test.) Significantly, Dr. Zamanzadeh fails to acknowledge an important fact – that stress-corrosion cracking has *never* been observed or found in the history of the ME1 and 12-inch pipelines. (N.T. 3908:20-22, Garrity Test.; N.T. 4087:20-24, Field Test.) In Garrity's opinion, SPLP is "doing a very good job of assessing whether or not SCC is a threat. And so far, they haven't found any." (N.T. 3909:17-19, Garrity Test.)

With respect to MIC, Dr. Zamanzadeh makes several misstatements or material omissions of critical fact. First, Dr. Zamanzadeh speculates that because MIC might have been

PUBLIC VERSION

involved in the Morgantown incident, it must be present elsewhere on the ME1 pipeline and then speculates that it may also be present on the 12-inch pipeline. There is no evidence of that.

Second, Dr. Zamanzadeh ignores SPLP's procedures for performing a regimen of testing product and sampling that look for bacteria that can lead to microbiologically-influenced corrosion, whenever SPLP determines that active corrosion is present. (N.T. 3934:6-10, Garrity Test.)

Third, Dr. Zamanzadeh fails to recognize and did not address the fact that SPLP in the area of the Morgantown incident implemented precisely the remedial measures that Dr. Zamanzadeh says should have been implemented - SPLP increased the cathodic protection for both the ME1 and 12-inch pipeline to a negative 0.95 instant off, as NACE recommends. (N.T. 4078:19-4079:7, Field Test.; N.T. 3925:15-3926:4, Garrity Test.)

Finally, Dr. Zamanzadeh incorrectly claims that he was not provided with SPLP's ILI runs and hydrostatic test results. In fact, Dr. Zamanzadeh included that very information in his own exhibits. Dr. Zamanzadeh's Exhibit 6, documents SPLP00008132, 8142, and 8145, are integrity summaries showing various details, results, and data of ILI runs and hydrostatic testing. (N.T. 4076:14-24, Field Test.)

In short, Dr. Zamanzadeh's speculation that MIC is present or a threat to pipelines is not based on facts or proof of a violation, and does not support the conclusion that SPLP will fail to identify and mitigate such threat if it were to exist. (N.T. 3934:22-24, Garrity Test.)

c. Cathodic Protection (CP) Testing and Monitoring

SPLP performs annual corrosion control surveys measuring the efficacy of cathodic protection through measurements at test points along the entire route of the pipeline at no wider than one-mile intervals. (N.T. 3922:15-20, Garrity Test.) SPLP also runs close interval surveys where people walk the entire pipeline and use a reference electrode to measure the output of the cathodic protection system. (N.T. 3922:21-3923:2, Garrity Test.) In other words, SPLP tests

PUBLIC VERSION

and monitors to ensure proper cathodic protection is flowing to the pipelines to mitigate corrosion and where cathodic protection needs to be upgraded, SPLP does just that, consistent with its procedures.

i. Cathodic Protection (CP) Criteria

Dr. Zamanzadeh asserts that SPLP does not know whether corrosion is being controlled by cathodic protection because “there may be sections where cathodic protection is quite good and there may be sections where it is quite bad.” On the contrary, Field testified that SPLP conducts close interval potential surveys, including in 2018, 2019 and November 2020, to determine the adequacy of cathodic protection. This data shows that cathodic protection along the entire length of the ME1 and 12-inch pipelines has vastly improved. (N.T. 4080:15-24, Field Test.) Moreover, SPLP has and continues to upgrade its cathodic protection system on these lines. (N.T. 4082:8-4083:17, Field Test.) Also contrary to Dr. Zamanzadeh’s assertions, Field testified that at the time of the Morgantown incident, SPLP was meeting cathodic protection criteria in that area and had the data to prove it. (N.T. 4084:19-4086:1, Field Test.)

ii. Close Interval Potential Surveys (CIPS)

Dr. Zamanzadeh also incorrectly speculates that because different CIPS procedures were followed for various surveys over the years, that means that there was no clarity on the standards for the surveys. To the contrary, as Field explained, over time, procedures for these surveys were improved and additional data were collected. (N.T. 4086:2-4087:4.) Dr. Zamanzadeh had this data available to him but chose to ignore it. (N.T. 4086:2-4087:4.) Dr. Zamanzadeh also falsely alleges that he did not have a portion of the data for the CIPS – side drain measurements. Again, Dr. Zamanzadeh had this data. (N.T. 4087:5-13, Field Test.). Finally, Dr. Zamanzadeh alleged that there are no records of SPLP performing CIPS on ME1 prior to 2017. Again, this is

PUBLIC VERSION

false. Dr. Zamanzadeh himself included the data in his own Exhibit No. 9. (N.T. 4092:25-4093:8, Field Test.)

iii. Notice of Proposed Violation (NOPV)

Dr. Zamanzadeh misconstrued a PHMSA NOPV and improperly characterizes allegations as facts and therefore, as a basis for challenging SPLP's ME1 cathodic protection system. (Flynn Complainants Ex. Z-3.) This NOPV only dealt with ME1 and came about due to a PHMSA audit in 2017-2018. (*Id.*) These allegations, which are just that – *allegations*, are not competent evidence against SPLP. Regardless, the NOPV did not allege that there was a problem with SPLP's cathodic protection system. (N.T. 4095:20-24, Field Test.) Instead, PHMSA was alleging: (1) a disagreement with the method SPLP was using to measure its cathodic protection system; and (2) an alleged lack of documentation showing SPLP's analysis as to how this measurement method complied with NACE standards. (*Id.*; N.T. 4094:16-4095:15, Field Test.) While SPLP chose not to contest this NOPV and instead complied with PHMSA's proposed compliance order, SPLP does not agree with and did not admit to these alleged violations. (N.T. 4095:25-4096:20, Field Test.) Notably, SPLP had been utilizing these same procedures for years and PHMSA had audited SPLP multiple times on this topic. PHMSA never raised an issue until 2017-2018. (N.T. 4095:16-19.)

Regardless, the topic of the NOPV is moot because SPLP complied and PHMSA agreed that SPLP is in compliance. Any alleged violation that may have existed has been addressed through SPLP's voluntary compliance with PHMSA. There is no relief that can be granted based on this NOPV.

iv. Coatings.

Dr. Zamanzadeh also alleged that the majority of the older coatings on the ME1 and 12-inch pipelines will shield cathodic protection if they become disbonded. Shielding means

PUBLIC VERSION

something is preventing the cathodic protection current from getting to the pipeline. (N.T. 3910:24-3911:1, Garrity Test.) Only certain types of coating will shield cathodic protection and only if they are in fact disbonded. (N.T. 3987:1-6, 3987:21-3988:3, Garrity Test.) The majority of the coatings on the ME1 and 12-inch pipelines are coal tar enamel, which does not cause shielding even when disbonded. (N.T. 3910:20-3911:10, Garrity Test.) Dr. Zamanzadeh presented no evidence that any coatings are disbonded, let alone will cause shielding, or that SPLP does not appropriately monitor for and mitigate this potential threat.

v. Stray Current Interference.

Dr. Zamanzadeh alleged that SPLP does not address stray current and potential interference from other cathodic protection systems near its pipelines that could negatively impact SPLP's cathodic protection system. As both Garrity and Field testified, consistent with its procedures, SPLP routinely does stray-current interference testing and monitors critical bonds with other pipeline operators to assure that nothing has changed that would put SPLP's cathodic protection system in a corrosive or "at risk" category. (N.T. 3923:3-7, Garrity Test.; N.T. 4088:25-4089:7, Field Test.) SPLP also participates and is actively involved in meetings with other operators to be aware of and mitigate the potential for harm to SPLP's cathodic protection system. (N.T. 4089:8-4090:6, Field Test.)

d. **Dr. Zamanzadeh's recommended remaining-life study for the 12-inch line is based on speculative concerns, lacks proven facts, is not based upon a violation of law or regulations, and is unnecessary given SPLP's integrity management and corrosion control and cathodic protection practices.**

Without meeting Complainants' burden to show proof of a violation of any statute, regulation or rule, Dr. Zamanzadeh next detours into a wish list of what amounts to regulations without going through the process for promulgating regulations. He recommends a multitude of additional testing associated with a proposed remaining-life study for the 12-inch pipeline. (*See*

PUBLIC VERSION

Flynn Complainants St. No. 1, Dr. Zamanzadeh Direct Test. at 8, 31-38.) He does this despite the fact that SPLP's Integrity Management Plan and SOPs already provide all of the necessary information and Dr. Zamanzadeh's recommendations are neither appropriate nor necessary.

(See, e.g., N.T. 3931:21-3932:6; Garrity Test; N.T. 4460:20-4461:25, Zurcher Test.) Dr.

Zamanzadeh recommends the following tests associated with his proposed remaining-life study:

External Corrosion Direct Assessment (ECDA), Internal Corrosion Direct Assessment (ICDA),

Stress Corrosion Cracking Direct Assessment (SCCDA), and various types of soil sampling.

(Flynn Complainants St. No. 1, Zamanzadeh Direct Test. at 8, 31-38.)

Garrity explained that these tests are unnecessary and will not provide useful information because SPLP, using its managerial discretion,⁸ is already doing tests and analyses that provide this information:

He has recommended many, many things that should be done in his opinion, and I don't agree with those. I don't agree with the notion that soil samples need to be collected throughout the state of Pennsylvania. I don't know what you would do with the information that would cause you to do something differently than what's already being done.

I don't feel ECDA or the things he recommended with respect to ECDA, ICDA and SCCDA are necessary, because we're already doing in-line inspection. We're already doing cathodic protection surveys. They are already doing hydrostatic testing.

(N.T. 3931:21-3932:6, Garrity Test.)

Zurcher also both explained the remaining-life study as proposed here is redundant of SPLP's Integrity Management Plan and not a useful tool for these pipelines.

What I would like to say, sir, is that remaining-life study is done every year by a pipeline company. It's part and parcel with an

⁸ Managerial discretion is the Commission and court-recognized legal principle that provides the Public Utility Code is performance-based and it is up to a utility's management to determine how and when to manage and maintain its facilities within the bounds of the Public Utility Code and the Commission's regulations. See *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981).

PUBLIC VERSION

integrity management program. So, as you're assessing the condition of the pipeline or determining the strength of the pipeline, that's a remaining-strength calculation. Okay. So, we're talking about that, it's ongoing.

So, I run the tool through the pipeline. I find some evidence of metal loss that's probably caused by corrosion or may be caused by corrosion. I'm going to go out there and I'm going to repair that and I'm going to bring it back to as-new condition, basically -- and I use that term a little bit loosely -- but I'm going to bring it back to a safe -- safe condition. And I predict into the future, for the next five years, is anything I didn't fix going to grow that it may be detrimental or it may cause a release. And then, I'm going to pick my next frequency for those assessments and inspections based on that information.

So, it is a remaining-life calculation that's done after every tool run and after every iteration of going through your integrity management program. So, it's done continually as required by regulations, they just don't call it remaining-life. They typically refer to it as, you know -- well, it's not called remaining life. It's just part and parcel to the program in order to, you know, look into the future and assure yourself that something isn't going to happen or something like a corrosion growth.

(N.T. 4460:20-4461:25, Zurcher Test.)

At its core, then, Dr. Zamanzadeh's testing wish list is an end-run around the Pennsylvania rulemaking process that is not cognizable in the context of a complaint case. Further, that SPLP agreed through a Commission-approved settlement in the Morgantown Proceeding to conduct a remaining life study with parameters agreed upon with BI&E is not and cannot be used as evidence that the remaining-life study that Dr. Zamanzadeh proposes here should be conducted. First, SPLP's agreement to this term of a settlement cannot be used against it per the Joint Petition at Paragraph 15 ("Settlement is without admission"), and Paragraph 22 ("by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. Nor may this settlement be used by any other person or entity as a concession or admission of

PUBLIC VERSION

fact or law”). These provisions were approved and adopted by Commission in its Order approving the settlement. *BI&E v. SPLP*, Docket No. C-2018-3006534 (Opinion and Order entered Aug. 19, 2020). Dr. Zamanzadeh and the Complainants’ invitation contradicts those provisions and should be declined.

Second, Flynn Complainants filed comments, including a report and affidavit from Dr. Zamanzadeh, contesting the remaining-life study in the settlement. (N.T. 2157:1-12; taking judicial notice of Flynn Complainants comments and Dr. Zamanzadeh’s report.) They wanted different provisions. (*Id.*) Your Honor and the Commission *rejected* Dr. Zamanzadeh’s proposed modifications, and he should not be permitted to collaterally attack that very same issue or issues here. *BI&E v. SPLP*, Docket No. C-2018-3006534 (Opinion and Order entered Aug. 19, 2020). SPLP’s agreement to do something on the ME1 pipeline as a term of a Settlement with BIE is not proof that Dr. Zamanzadeh’s proposed testing and remaining-life study should be ordered here for the 12-inch pipeline, which he admits he did not test and admits that his opinion is based on his speculation that certain conditions might be present.

4. SPLP performed risk assessments required by PHMSA’s regulations.

In Count IV of their Second Amended Formal Complaint, the Flynn Complainants allege that SPLP failed to perform risk assessments to evaluate the integrity of segments of the Mariner East pipelines that could affect high consequence areas. The Flynn Complainants requested that the Commission order a remaining-life study for the ME1 pipeline and for the 12-inch pipeline because of SPLP’s alleged failure to perform the risk assessments. There is no support for the claim alleged or the relief requested.

In fact, the evidence is undisputed that SPLP performed the required risk assessments, and both the Flynn Complainants and Andover HOA ultimately conceded that they were completed. None of the Complainants or aligned Intervenors produced any evidence that SPLP

PUBLIC VERSION

failed to perform the required risk assessments, which SPLP properly classified as Confidential Security Information under the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6, and its implementing regulations. To prevent public disclosure of these assessments during the hearing, SPLP made a motion after the conclusion of Complainants' and aligned Intervenors' evidence and the parties went on the highly-confidential record to discuss Complainants' and aligned Intervenors' failure of proof. Following a lengthy discussion of the issue on the highly-confidential record, which demonstrated that SPLP had, in fact, performed the risk assessments (N.T. 2733-2771), the parties stipulated on the public record that the Flynn Complainants' claim that SPLP failed to perform the required risk assessment as stated in Count IV of their Second Amended Formal Complaint "is no longer an issue in the case":

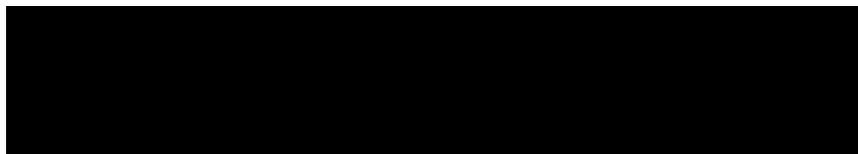
JUDGE BARNES: We are on the public record. This is Judge Barnes.

I listened to the motion made by counsel for Sunoco, Mr. Fox, and the response of Mr. Bomstein and Mr. Raiders. And this is my ruling on the motion: *Regarding count four of the Flynn complainants' amended complaint, the issue of whether Sunoco Pipeline, L.P., has failed to provide a risk analysis or risk assessment regarding pipelines located in Delaware and Chester County is no longer an issue in this case.*

(N.T. 2772:3-11.) (Emphasis added.)

The issue nevertheless arose again during the hearing and the Flynn Complainants and Andover HOA again agreed that the claim that SPLP failed to perform a risk assessment "was no longer an issue" and was "gone." "Period":

[BEGIN HC]



PUBLIC VERSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC]

As Your Honor reported previously, the claims with respect to the absence of a risk analysis and risk assessment by Sunoco were no longer in the case. One of the agreements we reached is that that is true for both the Flynn complainants and Andover Homeowners' Association. *That claim is no longer in the case. Period.* That was one issue.

(N.T. 4333:10-16.) (Emphasis added.)

SPLP's risk assessments were performed as part of its integrity management program to determine whether the Mariner East pipelines "could affect" high population areas. And if they do, then the pipelines are treated as if they are in a high consequence area and become a part of SPLP's integrity management program. All segments of the Mariner East pipelines located in Chester and Delaware Counties are treated as if they are located in a high consequence area and are subject to SPLP's integrity management program. As stated *supra* at Section V.B.3.d., once a pipeline is subject to the integrity management program, there is no need to do a remaining-life study. The integrity management program requires constant testing, maintenance, and repair of the pipelines to keep them in compliance with regulatory requirements, serving the functional equivalent to an ongoing remaining-life study.

Accordingly, Complainants and aligned Intervenors conceded that SPLP performed the required risk assessments. And it is undisputed that there is no basis to order SPLP to perform a

PUBLIC VERSION

remaining-life study when the segments of pipeline located in Chester and Delaware Counties are already subject to SPLP’s integrity management program.

C. SPLP’s Public Awareness Plan Complies with PHMSA’s regulations at 49 C.F.R. § 195.440

1. Complainants have the burden of proving by a preponderance of the evidence that SPLP’s public awareness programs fails to comply with 49 C.F.R. § 195.440 and Complainants have not met their burden.

As stated above, Complainants have the burden of proof pursuant to Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), and to prevail Complainants must prove that there was a “violation of the Public Utility Code, a Commission Regulation or Order or a violation of a Commission-approved tariff.” *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 6 (Order entered September 23, 2020) (citing 66 Pa. C.S. § 701). Here, Complainants allege that SPLP’s public awareness program violated 49 C.F.R. § 195.440. Complainants failed to meet their burden of proof. To the contrary, the evidence demonstrates that SPLP’s public awareness program not only meets but exceeds the requirements of Section 195.440 and provides more training, information, and equipment than the public awareness programs for the many other pipelines located in Chester and Delaware Counties.

The public awareness program requirements in Section 195.440 are as follows:

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3)

...

(d) The operator’s program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

- (1) Use of one-call notification system prior to excavation and other damage prevention activities;
- (2) Possible hazards associated with the unintended releases from a hazardous liquid or carbon dioxide pipeline facility;

PUBLIC VERSION

- (3) Physical indications that such a release may have occurred;
- (4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and
- (5) Procedures to report such an event . . .

49 C.F.R. §§ 195.440 (a) and (d).

API RP 1162 (“RP 1162”), (SPLP Ex. JP-1), contains baseline requirements that an operator must take, as well as supplemental activities that an operator may undertake if it determines that those activities are warranted. (SPLP No. 5 Perez Rebuttal Test. at 3.) RP 1162 provides a table identifying the baseline and supplemental public awareness activities for the affected public, emergency officials, public officials, and excavators. (*Id.* at 3-6; SPLP Ex. JP-1 at 11-12.) RP 1162 provides the pipeline operator with flexibility to select the “optimum” combination of message, delivery method and frequency that meets the needs of the intended audience.” (SPLP Ex. No. JP-1 at 19.)

Significantly, Complainants and aligned Intervenors offered the testimony of three experts on this topic: Timothy Boyce, Director of the Delaware County Department of Emergency Services; William Turner, Deputy Director of Emergency Management for the Chester County Department of Emergency Services; and Timothy Hubbard, Chief Security Officer of the Downingtown Area School District. All three experts conceded, on every central fact, that SPLP’s public awareness program complied with Section 195.440 and RP 1162.

First, and significantly, all of Complainants’ or aligned Intervenors’ expert witnesses on the topic of public awareness testified that they *did not* offer any opinion that SPLP failed to comply with Section 195.440 or RP 1162. (N.T. 1962, 1975, Boyce Test.; N.T. 2199, 2209, Turner Test.; N.T. 2338-39, 2341-42, Hubbard Test.)

Second, all three experts conceded that SPLP’s public awareness program contained each and every category of information required by the PHMSA regulations at 49 C.F.R.

PUBLIC VERSION

§ 195.440(d). (N.T. 1962-63, Boyce Test.; N.T. 2199-2202, 2206-7, Turner Test.; SPLPC Ex. 75 at 145-46, Hubbard Test.)

Third, PHMSA's website sets forth the text of public awareness information that satisfies criteria set forth in 49 C.F.R. § 195.440(d). (SPLP Ex. 26.) This information includes: (i) how to recognize where a pipeline is; (ii) how to recognize a pipeline release; (iii) what to do in the event of a suspected or detected release; (iv) what not to do in the event a leak were to occur; (v) what the pipeline company does in the event of a leak; and (vi) the pipeline company's communication on public awareness. (*Id.*) Again, all three of Complainants' and aligned Intervenor's experts conceded that SPLP's public awareness mailings sent to the affected public, emergency responders, excavators, and public officials are consistent with the information on PHMSA's website. (N.T. 1968, Boyce Test.; N.T. 2206-07, Turner Test.; SPLPC Ex. 75 at 147-148, Hubbard Test.)⁹

Fourth, Complainants and aligned Intervenor's concede that the municipalities and school districts have the legal obligation to create their own emergency response plans; SPLP does not have that obligation. (N.T. 1975, Boyce Test.; N.T. 2210, Turner Test.; N.T. 2352, Hubbard Test.) SPLP's only requirement is to provide sufficient information to allow the municipalities and schools to be able to develop those plans. (*Id.*) Complainants' and aligned Intervenor's experts uniformly admitted that SPLP provided a wealth of information for municipalities and schools to develop their own plans, including information on: (i) the location of the pipelines; (ii) the location of the valve stations; (iii) proximity to schools; (iv) the products in pipelines and their physical properties; (v) the hazards of those products; (vi) a rule of thumb for a safe

⁹ Boyce, the Director of the Delaware County Department of Emergency Services, testified that SPLP's mailers were also consistent with the information in Delaware County's Emergency Planning Guide, which is available to its residents and is on Delaware County's website. (SPLP-C Ex. 56; N.T. 1969-70, Boyce Test.)

PUBLIC VERSION

distance in the event of a significant release; (vii) the direction of flow of product in the pipelines; (viii) that in the event of a catastrophic release, the product between the corresponding valve sites will be released; (ix) information on plume modeling; (x) information on SPLP's integrity management, security and PHMSA compliance programs; and (xi) information on SPLP's remote monitoring center for leak detection. (N.T. 2228-29, Turner Test.; N.T. 1984-85, Boyce Test.; N.T. 2352-2354, Hubbard Test.) These witnesses further agreed that from all the training given by and information provided by SPLP, emergency responders have substantial knowledge about the Mariner East pipelines. (N.T. 1984, Boyce Test.; N.T. 2228, Turner Test.; N.T. 2352, Hubbard Test.) Hubbard described just how much knowledge he now has on this subject: "More than I ever imagined about pipelines and Mariner East Pipelines." (N.T. 2532:17-18, Hubbard Test.)

Similarly, after attending a training session for emergency responders and school officials held at Rose Tree Media School, the facilitator stated that there was a consensus among the group that "our community response groups have the training and the wherewithal to direct the school or anyone else towards safety." (N.T. 1996-1997, Boyce Test.) Boyce attended that session and testified that he agreed with that statement. (*Id.* at 1997, Boyce Test.) Recently, in his letter to SPLP dated April 16, 2020, Boyce stated: "I appreciate Energy Transfers commitment to public safety over the years." (SPLPC Ex. 58; N.T. 1997-1998, Boyce Test.)

In addition to these experts, the emergency response coordinator for East Goshen Township, Kevin Miller, testified that SPLP had provided sufficient information for emergency response officials to develop an emergency response plan. In a letter dated December 6, 2019 from Miller to Rick Smith, the East Goshen Township Manager, Miller stated that he attended a

PUBLIC VERSION

meeting at the Chester County Department of Emergency Services at which SPLP provided information on the Mariner East pipelines. (N.T. 1479.) Miller's letter stated that:

Based upon the information I received at the meeting as well as information I have received at previous Sunoco meetings that I have attended, I believe that the emergency operation plan and resources listed in the plan are sufficient in the event of an emergency at this time. SPLPC-18.

SPLP Ex. No. SPLPC-18. Miller reviewed the emergency plan again in 2019. (N.T. 1479.)

Miller testified that this was his opinion when he wrote the letter and it remains his opinion today. (N.T. 1480.)¹⁰

Fifth, in addition to their experts, Complainants and aligned Intervenors who are members of the affected public testified about their own awareness of information relating to the Mariner East pipelines in Delaware and Chester Counties. Uniformly, these witnesses testified that they had gained significant knowledge about the pipelines, including but not limited to where they were located, what products they contained, under what pressure they operate, how to detect and respond to a release, and the potential hazards of the pipelines. (N.T. 1609, DiBernardino Test.; N.T. 850-51, Friedman Test.; N.T. 1211, Harkins Test.; N.T. 1115, Hughes Test.; N.T. 1755, Marshall Test.; N.T. 1011, McDonald Test.; N.T. 988, McMullen Test.; N.T. 1523, Obenski Test.) Delaware and Chester Counties have combined populations in excess of one-million residents. Other than the testimony of the witnesses described above, all of whom now have extensive knowledge about these pipelines, Complainants and aligned Intervenors offered no testimony or evidence from any of the other one-million residents that SPLP's public awareness program provided insufficient information. Likewise, Complainants and aligned

¹⁰ Hubbard alone raised an issue as to his lack of access to plume modeling information. (N.T. 2334-35.) Hubbard conceded, however, that he did not even know if he had asked SPLP for that information and further conceded that plume modeling information is publicly available. (N.T. 2335-36.)

PUBLIC VERSION

Intervenors offered no evidence or testimony from excavators that SPLP's public awareness program provided insufficient information to those excavators.

Unlike Complainants' witnesses who could not and did not testify that SPLP failed to comply with Section 195.440 and RP 1162, SPLP's lay witnesses and experts, who are leaders in their fields, concluded affirmatively that SPLP's public awareness is compliant with, and in fact exceeds, the PHMSA regulations and RP 1162. (SPLP St. No. 5, Perez Rebuttal Test. at 17; SPLP St. No. 2, Zurcher Rebuttal Test. at 11-17; SPLP St. No. 4, Noll Rebuttal Test. at 26-28.) Noll's and Zurcher's expertise in this area is especially significant. Noll is a renowned expert in his field with over fifty years of experience in emergency response training, including for pipelines. Noll is a recipient of numerous awards and honors in this discipline, a member of many codes and standards committees for emergency response, and the author or co-author of ten textbooks on the subject matter, including the authoritative text entitled Hazardous Materials: Managing the Incident, which is now in its fourth edition and upon which the MERO training is based. (SPLP St. No. 4, Noll Rebuttal Test. at 1-4; SPLP Ex. GN-1; N.T. 3298.) Noll literally wrote the book on these issues. (SPLP St. No. 4, Noll Rebuttal Test. at 4.) Zurcher has reviewed and audited over one hundred public awareness plans and programs and worked on the original version of RP 1162. (N.T. 4233, Zurcher Test.)

In sum, the evidence is overwhelming that SPLP's public awareness program complies in all respects with Section 195.440 and RP 1162.

2. SPLP's public awareness program is comprehensive, multi-faceted and communicates the required information and training to the four stakeholder groups identified in Section 195.440 and RP 1162

As required by Section 195.440(a), SPLP has developed and implemented a public awareness plan. (SPLP Ex. JP-2, HLA-17 Public Awareness Program; SPLP Ex. JP-3, HLA .40, Public Awareness Plan – Communication; SPLP St. No. 5 at 6; SPLP Ex. No. JP-7, HLA 17

PUBLIC VERSION

Public Awareness Plan Revised (HC and Public Versions).) The public awareness plans and program must provide information to four stakeholder groups: the affected public, appropriate public officials (government and school officials), excavators, and emergency responders. 49 C.F.R. § 195.440(d); SPLP Exhibit JP-2 (RP 1162). SPLP’s public awareness program provides more than the required information and training to these four stakeholder groups.

a. SPLP’s public awareness program for the affected public.

Beginning in 2014, SPLP has sent two separate public awareness mailings for the Mariner East pipelines, one to the affected public, excavators and public officials, and one to emergency responders. (SPLP St. No. 5, Perez Rebuttal Test. at 6-8.) More recently, mailings were sent to the above-referenced stakeholders in 2018, 2019 and 2020. (SPLP Exs. JP-4, JP-5, JP-6, GG-1 and GG-2.) **[BEGIN HC].** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END HC].

In addition, since at least 2014, SPLP has developed websites dedicated to providing public awareness information about the Mariner East pipelines, including a website dedicated specifically to pipeline safety. (SPLP Ex. No. 45; N.T. 3204, McGinn Test.) The websites contain information and links to specific information about Delaware and Chester Counties. (N.T. 3206-3208, McGinn Test.) SPLP further disseminates public awareness and safety information about Mariner East pipelines, with specific information about Delaware and Chester

PUBLIC VERSION

Counties, through social media, including Instagram and Facebook pages. (SPLP Exs. 46 and 47; N.T. 3209-3210, McGinn Test.)

To reach an even wider audience outside the buffer distances for the mailers to the affected public, SPLP has since 2016 used billboards, radio and television advertising to provide public awareness information or directions on where to obtain that information. (N.T. 3211, McGinn Test.) In 2020, SPLP ran fifteen-second and thirty-second radio advertising in the entire Philadelphia and Harrisburg media markets, which provided public awareness information and directed listeners to SPLP's websites for additional information. (SPLP Exs. 43, 44; N.T. 3212, McGinn Test.)

As an additional supplemental activity for the affected public, SPLP held various open houses in Chester and Delaware Counties about construction of the Mariner East pipelines. (SPLP St. No. 5, Perez Rebuttal Test. at 9.) At each open house 20-30 company personnel attended and were available to answer questions. (*Id.* at 9-10.)

SPLP's public awareness program for excavators.

The baseline requirements of RP 1162 for excavators is for SPLP to send the mailers described above. SPLP does that. In fact, SPLP goes beyond the baseline requirements by including excavators in annual liaison CoRE training meetings. (SPLP St. No. 5, Perez Rebuttal Test. at 15.) Four hundred seventy-eight excavators attended that meeting in 2019. (*Id.*) In addition, SPLP is a sponsor of the annual Pennsylvania One Call System Safety Day conference for over 2,000 excavators and the Common Ground Alliance, which is committed to preventing damage to underground infrastructure. (*Id.* at 15.) Complainants and Intervenors offered no evidence or testimony from excavators that SPLP's public awareness program provided insufficient information.

PUBLIC VERSION

c. SPLP's public awareness program for schools and public officials.

The baseline public awareness program requirement for schools and public officials, as recommended by RP 1162, is for SPLP to send the mailers described above. SPLP does that. Indeed, SPLP goes beyond the baseline requirements for schools and public officials by providing robust supplemental information. SPLP engaged a consulting company that specializes in community planning and emergency preparedness and met with school districts and parochial schools in Delaware and Chester Counties. (SPLP St. No. 5, Perez Rebuttal Test. at 10.) SPLP also provided answers to follow-up questions that the schools asked, and where noted agreed to provide additional information containing confidential security information pursuant to a non-disclosure agreement (NDA). (*Id.*) Neither the PHMSA regulations nor RP 1162 require a pipeline operator to meet with public officials, schools or the affected public, although SPLP has done that. (SPLP St. No. 5, Perez Rebuttal Test. at 11.)

Certain school and public officials acknowledged that they had been provided with satisfactory information. (N.T. 1217-20, Dr. Scanlon Test.) As an example, Michelle Truitt, a Supervisor of Intervenor East Goshen Township, wrote in an email to SPLP after her tour of an SPLP pumping station:

The redundancies that are built into the system are many and gives both of us reassurance that [SPLP] is a first class operation with safety foremost in mind . . . Thanks again for a terrific site tour, the thorough explanations, answering our questions and being gracious hosts.

(SPLP Ex. MG-1-RJ.)¹¹

SPLP representatives also meet with Delaware and Chester Counties' local emergency response committees every other month. (N.T. 2856.) Further, SPLP participates in bi-weekly

¹¹ SPLP's public awareness program for emergency officials is described below at Section C.2.d.

PUBLIC VERSION

meetings with townships across Chester and Delaware Counties and regularly participates in the Chester County Association of Township Officials monthly meetings to provide project updates. (SPLP St. No. 6, McGinn Rebuttal Test. at 4-5.)

d. SPLP's public awareness and training program for emergency responders.

RP 1162 requires pipeline operators to provide information to emergency response officials as part of the operator's public awareness program. (SPLP Ex. JP-1 at 18-19.) RP 1162 states further that continuing liaison with emergency officials including training and periodic communication is important. (*Id.*)

SPLP has conducted Mariner Emergency Response Outreach (MERO) training two times each in Delaware and Chester Counties in 2017 and repeated that training in 2020. (SPLP St. No. 4, Noll Rebuttal Test. at 8-11; N.T. 3213-3214, McGinn Test.) The MERO training was conducted by Gregory Noll, SPLP's expert witness in emergency planning and emergency response training. (*Id.*)

The MERO training sessions each lasted approximately two-and-one-half hours and consisted of a 100-page PowerPoint presentation and questions and answers. (N.T. 3299-3300, Noll Test.; SPLP Ex. GN-2.) The MERO training emphasizes a risk-based approach that is a process that can be applied to any pipeline release, whether it is a puncture, a rupture or a leak. The risk-based approach is based upon an analysis of the problem, assessing the hazards, estimating potential consequences, and then determining courses of action based on facts, circumstances and science. (SPLP St. No. 4, Noll Rebuttal Test. at 10-11; SPLP Ex. GN-2 at slides 16-17; N.T. 3301-3302, Noll Test.) The risk-based approach emphasizes that you cannot have an emergency response plan for each potential incident or each potentially-affected neighborhood and that the incident commander on the emergency response team must apply the

PUBLIC VERSION

risk-based approach based on the facts unique to each incident. (SPLP St. No. 4, Noll Rebuttal Test. at 11-12.)

The MERO training provides a: (i) description of the nature of materials in the pipeline, (ii) the general properties and hazards associated with the HVLs, (iii) information and medical response to exposure to these HVLs, (iv) the direction of flow of the product in the Mariner East 2 pipelines, (iv) mapping resources regarding the location of the pipeline, (v) information on how to detect a release by sight, sound and smell, and (vi) emergency response procedures to follow for an ignition release and a non-ignition release. (SPLP St. No. 4, Noll Rebuttal Test. at 13-17; SPLP Ex. GN-2, *passim*.)

Over 500 people who attended the MERO training sessions in 2017 completed an evaluation of the program. In response to the question “do you have a better understanding of pipelines in your area,” 560 people responded “yes” and three responded “no.” In response to the question “did the presentation increase your knowledge about what to do in case of a pipeline emergency in your community,” 557 people said “yes” and six said “no.” And in response to the question “do you feel you have enough information to respond to an emergency involving our pipeline,” 547 people said “yes” and seven said “no.” (N.T. 3302-03.) Two of the three experts proffered by Complainants and aligned Intervenors were invited to the MERO training, but chose not to attend. (N.T. 1976, Boyce Test.; N.T. 2344, Hubbard Test.)

SPLP also participates annually in CoRE training for emergency responders offered by all of the pipeline operators in Chester and Delaware Counties. (SPLP St. No. 5, Perez Rebuttal Test. at 12.) Noll was retained by Intervenor Chester County to provide two tabletop emergency response exercises to emergency responders. (SPLP St. No. 4, Noll Rebuttal Test. at 24.) The evaluation scores for these exercises on average exceeded 4.6 on a scale of 1 to 5. (*Id.* at 25-26.)

PUBLIC VERSION

SPLP has written to all municipalities and school districts in Chester and Delaware Counties and offered to have Noll perform additional tabletop exercises and to meet with emergency responders to discuss “best in class” components to include in the emergency response plans required to be developed by the municipalities and school districts. (SPLP Exs. 48 and 49; N.T. 3214, McGinn Test.)

SPLP has also provided an exhaustive amount of additional emergency response training, tours, and exercises in Delaware and Chester counties, including:

- In June 2017, Boyce was given a tour of Sunoco’s pipeline control center located in Montello, Pennsylvania.
- On May 29, 2018, SPLP hosted training at the Marcus Hook Industrial Center (MHIC) for community fire companies.
- On June 6, 2018, the Chester County Hazmat team toured Sunoco’s pipeline control center located in Montello, Pennsylvania.
- On November 10, 2018, SPLP conducted an emergency functional training involving a hypothetical NGL pipeline incident at the Marcus Hook Tank Farm in Upper Chichester, Delaware County. This fundamental training exercise was in partnership with Delaware County Emergency Services as a support responder. That site is a Mariner East meter site with a flare, valves and other equipment. Boyce attended that training.
- On December 6, 2018, SPLP hosted a tabletop exercise at MHIC regarding a diesel spill. Larry Bak from Delaware County Emergency Services attended.
- On May 29, 2019, SPLP hosted a Corporate Incident Management Team tabletop exercise at MHIC on a worst-case crude oil spill. Boyce and Bak attended.
- On June 21, 2019, SPLP hosted the Chester County Association of Township’s on a tour of the Eagle Point Pump Station. Attendees included Bill Turner and Mike Murphy from Chester County EMS, Bud Turner and police department Chief Joe Catov from West Whiteland Township, Mike Lamm from Lionville Fire Company, Rick Smith from East Goshen Township, Shanna Lodge from Upper Uwchlan Township, Rob Pinger from Westtown Township, representatives from the offices of Rep. Kristine Howard, Rep. Tim Kearney and Rep. Carolyn Committa, and a representative from Downingtown Area School District.

PUBLIC VERSION

- On July 25, 2019, SPLP hosted a tabletop exercise for the Philadelphia zone on a diesel spill. Bak attended.
- On August 20, 2019, SPLP hosted a training session at MHIC for community fire departments.
- In September 2019, SPLP hosted training at MHIC for community police departments.
- On September 17, 2019, SPLP hosted a tabletop training exercise at Twin Oaks on a diesel spill from a tank.
- On August 5, 2020, SPLP conducted a tour of Mariner East facilities, including a pump station, with representatives of East Goshen Township.
- SPLP presented a plume modeling review at the Delaware County Department of Emergency Service building on January 27, 2017. Boyce and Bak participated.
- SPLP presented a plume modeling review at the Chester County Department of Emergency Service building in West Chester on November 30, 2017.
- SPLP presented a plume modeling review, Integrity Management Program, Environmental Compliance Program and Security Program review at the Chester County Training Center on July 30, 2019.

(SPLP Statement No. 13-RJ, Gordon Rejoinder Outline; N.T. 2851-2858, Gordon Test.)

SPLP has also made substantial equipment purchases for municipalities within Chester and Delaware counties to enhance their emergency response capabilities. Between 2016 and 2019, SPLP provided first responder grants totaling \$625,394.15, of which \$172,794.60 went to Chester County emergency services and various police and fire departments and \$452,599.55 went to similar organizations in Delaware County. (SPLP St. No. 6, McGinn Rebuttal Test. at 5-6.) Additional grants will be provided in 2020. (*Id.*) In addition, as part of a negotiated easement agreement, SPLP provided funding to Middletown Township for emergency response training in Oklahoma. (*Id.* at 6.) To put a fine point on this issue, experts from Chester and Delaware Counties testified that the amount of training and funding for equipment provided by

PUBLIC VERSION

SPLP is greater than that of any other NGL pipeline operator in those counties. (N.T. 1977, Boyce Test.; N.T. 2233, 2235-2236, 2253, Turner Test.)

e. **SPLP’s Public Awareness Program has been independently audited and found to be effective.**

SPLP’s public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey (“PAPERS”). PAPERS is a national program developed and supported by API to provide operators with meaningful, comparative, consistent insight into whether a pipeline operator’s public awareness program meets RP 1162. (SPLP St. No. 5, Perez Rebuttal Test. at 16.)

SPLP’s public awareness program was part of the 2019 PAPERS audit. SPLP’s program was evaluated individually and in comparison to eighteen other pipeline operator programs. The PAPERS study concluded that SPLP’s program was effective in achieving program objectives and comparable to the other operators’ programs. (*Id.*; N.T. 3121-3122, Perez Test.; N.T. 3272-73, McGinn Test.; N.T. 4351-52, Zurcher Test.) PHMSA is aware of the PAPERS study protocol, SPLP’s participation in the study and PHMSA has provided no adverse comments on the PAPERS study as a means of independently evaluating the effectiveness of SPLP’s public awareness program. (N.T. 3272-73, McGinn Test.)

3. **Complainants’ and aligned Intervenors’ claimed deficiencies in SPLP’s public awareness program lack merit.**

Absent any credible evidence or expert opinions on the inadequacy of SPLP’s public awareness program, Complainants and aligned Intervenors resort to a series of meritless assertions: we don’t know you can be burned or suffer a fatality in an explosion; we don’t know how to tell which way the wind blows; we don’t know in every conceivable potential pipeline release scenarios, for every specific neighborhood, how far to walk away to be at a safe distance. There simply is nothing to these assertions.

PUBLIC VERSION

As a result of the lack of any evidence to support their claims, Complainants and aligned Intervenor default to the following argument. They argue that because a handful of the 1.2 million residents in Chester and Delaware Counties, some school officials and some municipalities have complained about the sufficiency of information SPLP has provided, SPLP's public awareness program must be insufficient. But, complaints and allegations are not evidence. The actual evidence demonstrates the exact opposite. Indeed, Complainants and aligned Intervenor failed to establish any deficiency in the information provided to stakeholders in SPLP's public awareness program. None of their respective witnesses, when asked, could identify a single piece of specific information that they needed, that is required by the PHMSA regulations or recommended by RP 1162, that SPLP has not provided. Responses to each of Complainants' and aligned Intervenor's unsupported assertions are detailed below.

a. Determining what is a "safe distance" to evacuate in the event of a pipeline release

Complainants and aligned Intervenor allege that SPLP has not provided sufficient information to identify the "safe distance" to which a resident should evacuate. SPLP's mailers state that a resident should "leave the area immediately, on foot, if possible" and "follow the direction of local emergency response agencies." Then, "from a safe location, call 911 . . .". (SPLP Exs. GG-1 and GG-2.) SPLP has stated that residents must use sight, sound and smell to determine what is a safe location distance (SPLP St. No. 4, Noll Rebuttal Test. at 19; N.T. 3307, Noll Test.; N.T. 4264, Zurcher Test.; SPLP Exs. GG-1 and GG-2), and that there is no one size fits all safe distance or location; it is dependent on each event and guidance from emergency responders. (SPLP St. No. 4, Noll Rebuttal Test. at 19-20; N.T. 4264-67, Zurcher Test.)

Complainants' and aligned Intervenor's experts agree there is no one size fits all "safe distance" and that the ultimate guidance on that issue comes from emergency responders. (N.T.

PUBLIC VERSION

1968, Boyce Test.; N.T. 2208, Turner Test.; SPLPC Ex. 75 at 125.) Both Noll and Zurcher explained this very clearly. Noll testified: “Keep moving until you feel safe.” (N.T. 3391, 3308, Noll Test.) Zurcher echoed that principle: “Keep going until you don’t see it anymore and go a little farther.” (N.T. 4264, Zurcher Test.) Complainants’ and aligned Intervenors’ experts and lay witnesses also testified that there is sufficient information in the public domain, obtained by signing an NDA, or obtained in plume modeling workshops presented by SPLP, to determine a rule of thumb of one-half mile for a safe distance to evacuate to in the event of a significant release (N.T. 1973, 1981, Boyce Test.; N.T. 2359, Hubbard Test.; N.T. 1311, 1478, Miller Test.; N.T. 2857, Gordon Test.; N.T. 1225-26, Dr. Scanlon Test.)

b. Disclosure of SPLP’s emergency response plan.

Complainants’ and aligned Intervenors’ allege that SPLP’s insistence on execution of an NDA to obtain access to SPLP’s emergency response plans limits the effectiveness of SPLP’s public awareness program. Newly enacted House Bill 2293 signed by Governor Wolf on November 30, 2020 is consistent with SPLP’s prior practice and renders this issue moot. House Bill 2293 adds 66 Pa. C. Stat. Ann § 1512, requires pipeline operators in high consequence areas to make available, upon written request, the pipeline operator’s emergency response plan to the emergency response coordinator of each county. If the plan contains confidential security information, the recipient must comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act and “enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements. . .” This is the procedure SPLP has followed to date with public officials and schools. It provides the information in a manner that emergency responders may use to develop an emergency response plan.

PUBLIC VERSION

c. Use of cell phones.

Complainants and aligned Intervenors allege that SPLP's information on use of cell phones has been inconsistent. SPLP's mailers and messaging has been consistent and mirrors PHMSA's messaging: cell phones should not be used until a resident is at a safe location. (SPLP Exs. GG-1 and GG-2; SPLP St. No. 4, Noll Rebuttal Test. at 26.) In fact, the only inconsistent information on cell phone use came from Intervenors' expert Turner, who stated to school and public officials and the public, that there is a greater risk in not using a cell phone in the event of a pipeline release. (N.T. 2220-21.) Because cell phones have not been certified as intrinsically safe, the only advice is not to use them unless at a safe distance from a pipeline release, even though there is no evidence that a cell phone has not ignited a pipeline release. (N.T. 4338:12-4340:1, Zurcher Test.)

d. Determining wind direction

Complainants and aligned Intervenors allege that an average person cannot determine wind direction. Noll stated that determining wind direction is "pretty straightforward." (SPLP St. No. 4, Noll Rebuttal Test. at 22; N.T. 3309.) It can be done by the physical sensation of a breeze, looking at clouds, flags or other indicators. (*Id.*) Moreover, the 911 control centers in Delaware and Chester Counties chart wind direction, and certain schools have weather stations. (N.T. 1263-1264, Campbell Test.)

e. Conflict between moving away from pipeline and moving upwind.

Complainants and aligned Intervenors allege that they have not been informed what to do in the event of a release if moving away from the pipeline and moving upwind are in conflict. Noll testified that the default is always to move away from the pipeline. (N.T. 3308-3309.)

PUBLIC VERSION

f. Evacuate or shelter in place.

Complainants and aligned Intervenors allege that they have not been provided information on who decides whether to shelter in place or evacuate. A wealth of information has been provided on this issue. SPLP's MERO training states that sheltering in place may be an alternative on a case-by-case basis to be determined by the emergency responder. (SPLP St. No. 4, Noll Rebuttal Test. at 20; SPLP Ex. GN-2 at 83, 93.) Delaware County has an entire section of its Emergency Response Plan which explains the considerations to be used in determining whether to evacuate or shelter in place. (N.T. 1970, Boyce Test.) Complainants' and aligned Intervenors' experts agree that the decision to evacuate or shelter in place is made on a case-by-case basis. (N.T. 1970, Boyce Test.; N.T. 2220, Turner Test.; SPLPC Ex. 75 at 125-26, Hubbard Test.)

g. Evacuating those with physical or mental limitations

Complainants and aligned Intervenors allege that SPLP has not provided sufficient information as to how to evacuate individuals with physical or mental limitations. Noll testified that this is a challenge in response to any emergency, whether it be a tornado, fire, active shooter, plane crash or pipeline release. (SPLP St. No. 4, Noll Rebuttal Test. at 21.) These allegations are not unique to one specific hazard but are more reflective of the type of physical or mental limitation or facility to evacuated. Complainants' expert agreed. (N.T. 1983, Boyce Test.)¹²

h. Notice of potential death or burns from a pipeline release

Complainants and aligned Intervenors allege that SPLP is required to notify the public in its mailers that one consequence of a pipeline is potential burns or death. Such notice is neither necessary or required. All experts, for all parties, agreed that it is common knowledge that the

¹² Dr. Scanlon further testified that his schools can and do efficiently evacuate those with physical and mental limitations. (N.T. 1242.)

PUBLIC VERSION

potential exists of a fatality or burns if an explosion or fire occurs from a pipeline release. (N.T. 3309, Noll Test.; N.T. 1964, 2002, Boyce Test.; N.T. 2200, Turner Test.) Therefore, no additional notice is needed to achieve public awareness.

Moreover, the PHMSA regulations themselves do not require information on consequences as part of a public awareness program. The PHMSA regulations speak only about potential “hazards.” 49 C.F.R. § 195.440(d). Consistent with the PHMSA regulations, RP 1162 states repeatedly that the pipeline operator’s baseline message to the affected public, emergency officials and public officials must describe the “awareness of hazards.” (SPLP Ex. JP-1, Tables 2-1.1, 2-1.2, 2-1.3 and 2-1.4, pp. 11-12.) Those tables do not mention consequences. (*Id.*) In describing what the pipeline operator must message about the products transported, RP 1162 identifies “potential hazards posed by hazardous liquids.” (*Id.* at 4.3.1 p. 19.)

Even if a conflict did exist between the PHMSA public awareness regulations at 40 C.F.R. § 195.440 and RP-1162, the regulations preempt the general recommendations in RP 1162. (N.T. 4240, Zurcher Test.) The one isolated reference in RP 1162 to identifying potential consequences of a hazard does not state that it is required as part of the (i) baseline activities, (ii) to the public as opposed to emergency officials, or (iii) as part of a mailer, as opposed to in other forms of messaging. (*Id.* at 19.) In fact, that sole reference to consequences in RP 1162 states that the message should be more detailed for the emergency responder audience than for other audiences. (*Id.*) John Zurcher, SPLP’s expert witness, testified that in the hundreds of public awareness programs he has audited, he has never seen a pipeline operator’s mailer for the affected public containing information on consequences, including the potential for fatalities or burns. (N.T. 4233, 4239-42.) Zurcher testified that pursuant to PHMSA requirements, “we talk about the hazards, but not the consequences.” (*Id.*) Consistent

PUBLIC VERSION

with PHMSA's requirements, SPLP's mailers contain information on the hazards of the pipeline products. (SPLP Exs. JP-4, JP-5, JP-6, GG-1 and GG-2.)

The veracity of all of these assertions made by Complainants and aligned Intervenors is further belied by Complainants failure to request any of the information they seek from SPLP from the operator of the Enterprise NGL pipeline that traverses Chester and Delaware counties, in some cases even closer than the Mariner East pipelines to the very schools and residents who have made these assertions. (N.T. 1991-92, Boyce Test.; N.T. 2234-39, Turner Test.; SPLPC Ex. 75 at 130-34, Hubbard Test.)

4. Complainants' and aligned Intervenors' demands are neither required by regulation or necessity.

Without any supporting evidence, Complainants and aligned Intervenors requested three items of relief: a mass early warning system; an addition of an odorant to the products in the Mariner East pipelines; and direct notice of a release to schools and municipalities instead of notice to 911 only. None of these demands are required or necessary.

There are technological issues in early warning systems that would result in a number of false positives. (SPLP St. No. 4, Noll Rebuttal Test. at 23.) As Zurcher also testified, it is impracticable:

I don't know how a company could implement something like that. It would have to be a government agency that would require it. You can't just have an alarm. A company can't just set out a huge alarm out there -- ... without approval from all kinds of people There would have to be reasons for it and there would have to be approvals.

(N.T. 442-443.) Noll is not aware of an early warning system being used in any pipeline right of way. (*Id.*) [BEGIN HC]

[REDACTED]

[REDACTED]

PUBLIC VERSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC] As Gordon testified, he is only aware of one release on a ME pipeline Chester and Delaware Counties and that release was detected by SPLP’s leak detection system and SPLP responded. (N.T. 2866:7-15.) The evidence shows that SPLP’s leak detection system is complaint, safe, and adequate.

And most importantly, Complainants and aligned Intervenors concede that an early warning system is not required by the PHMSA regulations. (N.T. 2201, Turner Test.) The Commission and Your Honor have already held that relief of an early warning system is legally unavailable via a complaint proceeding. *Baker* at 11, Ordering Paragraph 2 (upholding ALJ Barnes’ rejection of request for early warning alarm system for residents because “such matters should be vetted through a rulemaking proceeding at docket number L-2019-3010267 in order to not deprive the pipeline operator and other interest groups their due process rights”). So too here – this is a subject for the regulatory rulemaking process, not relief that can be obtained via adjudication of these Complaints.

Complainants and aligned Intervenors likewise concede that adding an odorant to the product in the Mariner East pipelines is not required by the PHMSA regulations. (N.T. 1964, Boyce Test.; N.T. 2201, Turner Test.) Like an early mass warning system, any requirement to add odorants must be done by regulation and is outside the authority of the Commission to order in a Complaint proceeding.

PUBLIC VERSION

With respect to the demand to provide notice of a pipeline release directly to schools and municipalities, Noll testified that it would be counter-productive. Noll testified that such direct notice can actually delay emergency response as the precise location of the incident may not be known. In addition, direct notice provides an opportunity for delayed or conflicting emergency response. (SPLP St. No. 4, Noll Rebuttal Test. at 23-24.) Noll further testified that the proper way to provide notice of a release is through 911, because “the best source of information is those closest to the problem,” and 911 has the existing contacts, experience, system, knowledge of the players and communication channels. (N.T. 3369-70.)

In sum, Complainants have not met their burden of proving that SPLP’s public awareness program is insufficient in any respect let alone their burden of proof to impose mandatory injunctive relief shutting down the pipelines. The overwhelming evidence is contrary.

D. Siting, construction and environmental issues presented by Complainants and aligned Intervenors are beyond the scope of the Commission’s jurisdiction and regardless are not a violation of Section 1501.

1. The Commission has no jurisdiction over the siting and location of public utilities.

It is undisputed that the Commission lacks jurisdiction over the siting and location of public utilities, including pipelines and related appurtenant equipment, such as valve stations. In fact, the Commission has in recent decisions recognized its lack of statutory authority to require specific location of valves:

As such, we find it important to note, as we did in our prior Orders in this proceeding, that with the exception of high voltage electric transmission lines, the Commission’s authority regarding the siting of public utility facilities is limited. The Commission’s authority stems from Section 10619 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10619, which provides that the Commission is authorized to determine, upon petition by such public utility and after notice and opportunity for a hearing, whether a building proposed by a public utility is “reasonably necessary for the convenience or welfare of the public.” See 53 P.S. § 10619

PUBLIC VERSION

(emphasis added). The effect of such a determination would be to exempt the proposed public utility building from the local township or municipality's zoning authority under the MPC. It is not clear that the Commission has the authority to provide such an exemption in the context of the instant proceeding or to otherwise direct a valve location on a specific tract of land.

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018) (original emphasis omitted).

Recent proposed rulemaking before the Commission also reflects that the Commission currently lacks jurisdiction over the siting of pipelines and related equipment, including valve spacing and location, demonstrating that Complainants' and aligned Intervenors' requested relief is not proper or available through this action. While this action was pending, on June 13, 2019 the Commission issued an Advanced Notice of Proposed Rulemaking to seek comments from hazardous liquids public utilities and the public on amendments and enhancements to Chapter 59 of the Commission's regulations to "more comprehensively regulate the design, construction, operations and maintenance of public utilities transporting petroleum products and other hazardous liquids under the commission of the Jurisdiction." *Advanced Notice of Proposed Rulemaking Order Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267, Order at 4 (June 13, 2019) (the "Rulemaking"). The Rulemaking describes subject areas for potential new or enhanced regulations in the subject areas of construction, operations and maintenance, and a list of other subject areas for public comment, including, in particular, the location of valves and valve spacing for HVL pipelines. *See id.* at 9. Multiple parties to this proceeding have submitted comments to that Rulemaking, requesting that the Commission adopt new or enhanced rules and regulations to address a number of the alleged concerns they are attempting to address through this proceeding. *See, e.g.*, Docket No. L-2019-3010267, Senator Killion (August 1, 2019), at 2 (comment asking "PUC to

PUBLIC VERSION

adopt a new rule requiring public utilities acquire approval from the PUC regarding siting of new pipeline construction”); Comments of Clean Air Council (Aug. 28, 2019), at 7-10 (acknowledging that “the Commission does not current exercise its authority to determine siting for pipelines. . .”); Comments of Middletown Township (Sept. 11, 2019) at 1 (requesting Commission consider placement/alignment of pipelines and infrastructure as part of issuance of certificate of public convenience); Comments of Chester County (Sept. 11, 2019) at 1 (recommending that “the Commission require routing and siting of pipelines at a specific minimum distance from residences, schools, health care facilities . . .”); Comments of Complainant Rebecca Britton (Sept. 11, 2019) at 3 (comment on pipeline siting); Comments of Virginia Kerslake (Sept. 11, 2019) (noting and requesting Commission to establish “permitting process that includes review and approval of pipeline siting . . .”).

Thus, there is no basis for Complainants and aligned Intervenors to challenge the location or siting of the Mariner East pipelines and related equipment through this proceeding.

2. The evidence demonstrates that SPLP’s Mariner East pipelines in Chester and Delaware Counties, including the location of valve sites, complies with all state and federal regulatory requirements.

The ME1 and the 12-inch pipelines are pre-existing pipelines that have been operating in Chester and Delaware Counties since the 1930s. (SPLP St. No. 1, Garrity Rebuttal Test. at 4.) The ME2/2X pipelines are two parallel pipelines in the same right-of-way across 17 counties in Pennsylvania, approximately 80% of which is co-located with existing utilities, 230 miles of which is co-located with the existing ME1 pipeline – including in Chester and Delaware Counties. SPLP St. No. 13, Gordon Rebuttal Test. at 2). The valve stations for the ME2/2X pipelines were generally co-located with existing valve locations. (N.T. 2976.) And for valve stations in Chester and Delaware Counties, SPLP implemented various safety precautions, including fencing around the valve sites, physical locks on equipment, safety bollards or jersey

PUBLIC VERSION

barriers to separate the valve site from the roadway, remote monitoring, and monitoring of pressure, temperature and wind direction. (SPLP St. No. 13, Gordon Rebuttal Test. at 12.) As explained by Gordon, Senior Director of Liquid Pipeline Operations, the company evaluates potential risks to valve stations and other pipeline equipment and facilities, and “then we put other mitigating factors in place with that consideration in mind” which “is a standard condition or practice that you can use to harden a facility.” (N.T. 2903:1-11.) All of these measures meet or exceed the PHMSA regulatory requirements for valve sites, found at 49 C.F.R. §§ 195.258 and 195.260.

Furthermore, contrary to Complainants and aligned Intervenors’ assertions, valve sites serve important safety roles for pipeline operations. As Gordon explained, “[t]he valve is a safety device, and it can enhance safety. . . it can segment the line and reduce the impacts” of a release. (N.T. 2899:25-2900:2.) Indeed, PHMSA requires that valve stations be placed “at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas.” 49 C.F.R. § 195.260. As Gordon explained, a valve site in a given location is actually a risk minimization measure, because “a valve, as I mentioned earlier, is used to segment the line, in the event of an emergency. It’s also used for maintenance purposes. So it can actually reduce the consequence of a release.” (N.T. 2901:13-17.)

None of the Complainants and aligned Intervenors presented any expert testimony on the issue of the proper siting of pipelines or related equipment, including valve sites. The only expert witness from Complainants or aligned Intervenors that even mentioned the topic of pipeline construction was Steve Hurt, a witness for intervenor Chester County. But Hurt’s testimony was only accepted for the very limited purpose of environmental issues regarding the

PUBLIC VERSION

planning and construction of pipelines – he did not testify regarding any pipeline engineering, pipeline construction, or pipeline design related topics, nor would he have been qualified to do so. (See N.T. 2260-67, 2269-2273.) Thus, Complainants and aligned Intervenors have not and cannot meet their burden of proving that the location and siting of Mariner East pipelines, including any related equipment, such as valve sites, violates Section 1501.

3. There is no evidence that the construction of the Mariner East 2/2X pipelines violates Section 1501's safety standards.

Complainants and aligned Intervenors made general allegations that incidents during the construction of the Mariner East 2/2X pipelines present a safety risk to the public. But none of these allegations were supported by any competent expert testimony, much less the substantial evidence necessary to carry Complainant's burden of proof that SPLP has violated Section 1501 of the Commission's regulations, or otherwise demonstrates that the Mariner East pipelines are unsafe. See e.g., *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)), "Complainant's assertions, regardless of how honest or strong, cannot form the basis of a finding...since assertions, personal opinions or perceptions to not constitute factual evidence.") Complainants have the clear burden of proving by a preponderance of the evidence that the means and methods used to construct the ME2/2X pipelines somehow render the pipelines unsafe once they are in operation. See e.g., 66 Pa. C.S. § 332(a); *Lansberry, Inc.*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery*, 70 A.2d 854 (Pa. 1950). Thus, Complainants must demonstrate that something about the construction of the ME2/2X pipelines violates the Public Utility Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. See *Baker*, Opinion and Order at 6 (Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701). Complainants must show that the construction of

PUBLIC VERSION

ME2/2X caused a safety violation that is tied to a violation of the applicable regulatory standards, here, 49 C.F.R. Part 195. *See 66 Pa. C.S. § 1501* (requiring hazardous liquid utilities to have minimum safety standards consistent with PHMSA Part 195 regulations). Complainants simply have failed to present any evidence that the construction of the ME2/2X pipelines failed to comply with any applicable safety standard.

The uncontroverted evidence established by SPLP's fact and expert witnesses demonstrate that SPLP follows all applicable federal and state requirements and regulations for the construction of the ME2/2X pipelines – and in fact goes above and beyond the standard requirements to increase the safety of the pipelines once they are fully-installed. (SPLP St. No. 13, Gordon Rebuttal Test. at 2-3.) For example, SPLP uses enhanced design and construction practices to enhance the overall safety of the pipelines, including: purchasing pipe grade that exceeds the thickness and design factors of the minimum PHMSA requirements; meeting the American Petroleum Institute 5L's more stringent PSL-2 standards; and requiring the pipelines to be installed with an additional 12-inches of cover in excess of the minimum 36-inches required by the PHMSA regulations. (*Id.* at 2-3.) SPLP also follows PHMSA's standards by utilizing fusion-bonded epoxy coating on all of its pipe, that has an extra layer of abrasion resistance overcoat that withstands any minor scratching or scraping that might occur during the construction process. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 12.)

SPLP has also utilized horizontal directional drilling (HDD) to install the ME2/2X pipelines in numerous locations throughout Chester and Delaware and County, a process that installs the pipelines much deeper than the standard open trench construction method, further ensuring that the pipelines are less susceptible to third-party damage. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10; N.T. 3852-54.) While complainant DiBernardino raised

PUBLIC VERSION

generalized concerns regarding the safety of construction by HDD, including observations of scratches on the pipelines and concerns with the dual-pipe installation method – she did not present any expert testimony to support her allegations and concerns with HDD.

In contrast, SPLP presented the testimony of Dr. Samuel Ariaratnam, an expert in the field of HDD engineering, design, construction, and best-management practices, and who is co-author of the Horizontal Directional Drilling Practices Guideline manual, which has been adopted by Pennsylvania's One Call Law, 73 P.S. § 176 et seq., as the standard for HDD construction in the Commonwealth. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 1, N.T. 3774:17-25, 3813-14.) Dr. Ariaratnam reviewed SPLP's HDD construction standards and specifications, and opined that SPLP uses HDD best industry practices for the ME2/2X pipelines, and in fact goes above and beyond industry standards in Chester and Delaware Counties, by adopting proactive measures such as grouting HDD entry /exit points and using casing when appropriate to further ensure that the pipelines are installed safely. (SPLP St. No. 3, Ariaratnam Test. at 9.) Dr. Ariaratnam also reviewed SPLP's procedures for the dual-pipe HDD installation method, which is common and a safe construction practice, and found SPLP's specifications and standard were appropriate. (SPLP St. No. 3, Ariaratnam Test. at 14; N.T. 3797.) Dr. Ariaratnam explained and opined that using HDD to construct pipelines in urban and suburban environments like Chester and Delaware Counties is safe and appropriate, and that the HDD process reduces the risk of striking any pre-existing utilities during construction – which is the number one threat to the integrity of an operating pipeline. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10; N.T. 3852-54).

Any issues that could arise during construction that could arguably affect the integrity or safety of the ME2/2X pipelines would be detected and corrected before the pipelines are

PUBLIC VERSION

commissioned and placed into service. As the regulations require, SPLP performs a battery of post-construction testing of the pipelines to ensure they are properly installed and safe to place in-service. SPLP performs a series of tests on the pipelines once they are constructed, including: resistivity testing, which ensures the coating has been properly applied and to determine the levels of cathodic protection required; caliper tool runs, which ensure there is no physical damage to the installed pipeline; and hydrostatic testing, which ensures welding connections are tight and there are no leaks, which SPLP performs for at least 8 hours at 125% of the pipelines maximum operating pressure, which exceeds PHMSA's requirements of 4 hour test at 110% MOP. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 3, 13-14; N.T. 3824-25; SPLP St. No. 13, Gordon Rebuttal Test at 3.) Once installed, the pipeline right-of way is inspected weekly, both through "boots on the ground" and also via aerial survey. (SPLP St. No. 13, Gorton Rebuttal Test. at 3-4; N.T at 2908:4-6.). The Commission and PHMSA have also repeatedly inspected the construction of ME2/2X and will continue to inspect the pipelines once they are fully installed. (SPLP St. No. 13, Gordon Rebuttal Test. at 4; N.T. 2912:16-18.) Once the pipeline is fully installed and goes through the series of post-construction integrity testing described above, the pipelines are determined to be safe and fit to put into service. As John Zurcher explained: "Once it's in the ground, I'm not going to see a failure due to construction. It's stable" (N.T. 4397:3-6.); (*see also* N.T. 1818:6-15, Marx testifying that he lacked information to proffer an opinion of the likelihood of any failure of a pipeline installed by HDD.)

Complainants' request for injunctive relief will not abate any alleged harms or concerns related to the construction of the ME2/2X pipelines. Once the ME2/2X pipelines are fully-constructed, it is uncontroverted that they are subjected to a robust series of tests and procedures to ensure that the pipelines are safe and fit to service. Thus, even if one could argue that a

PUBLIC VERSION

construction-related concern or defect existed, which it does not, that defect or concern would be detected and repaired before the ME2/2X pipelines are placed into service, such that there is no harm to abate by way of the issuance of any of the Complainants' and aligned Intervenors requested injunctive relief in this action.

Thus, none of Complainants' alleged concerns regarding construction of the ME2/2X pipelines were supported with substantial and sufficient evidence necessary to meet their burden of proving that the construction presented a violation of Section 1501 of the Commission's regulations. To the contrary, the overwhelming weight of the evidence presented by SPLP reflects that SPLP has implemented appropriate construction protocols, specifications, and procedures, and that the pipelines once fully constructed and tested, will safely operate in accordance with federal and state law.

4. The Commission also lacks jurisdiction to address environmental issues related to the construction of ME/2X, as PADEP is the agency delegated with responsibility and authority to address such matters.

The Commission lacks authority to enforce environmental laws, as the General Assembly has delegated that authority to the Pennsylvania Department of Environmental Protection (PADEP), the agency with expertise and competency in environmental matters within the Commonwealth. "As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code." *Pickford v. Public Utility Com'n*, 4 A.3d 707, 713 (Cmwlth. Ct. 2010). Indeed in *Pickford*, the Commonwealth Court confirmed the Commission's ruling and determination that a complainant who framed their challenge to the use of chloramines in a public water supply as a challenge to safety of the utility service under Section 1501 in fact "were obvious challenges to the health effects of chloramines under the permits issued by the DEP." *Id.* As the Commonwealth Court noted, the "actions filed by Petitioners are a collateral attack on the DEP permitting process. The Commission did not err in

PUBLIC VERSION

refusing to re-litigate and second guess the DEP's determinations regarding water quality." *Id.* at 714. Furthermore, the petitioners in *Pickford* had the opportunity to challenge PADEP's permitting decisions to the proper agency, the Pennsylvania Environmental Hearing Board, but did not do so in a timely manner. *Id.* "To allow the actions to go forward would overturn the Legislature's policy choice to entrust such matters to the DEP." *See also Roving v. Pa. Public Utility Com'n*, 502 A.2d 785 (Pa. Cmwlth. 1986) (complaint regarding water quality fluoridation issue for PADEP, not the Commission, even though the matter dealt with a public water supplier subject to the Commission's jurisdiction); *Country Place Waste Treatment Co., Inc. v. Pa. Public Utility Com'n*, 654 A.2d 72, 74-75 (Pa. Cmwlth. 1995) (dismissing landowners' complaint about odor/air quality concerns from sewage treatment plant as beyond the jurisdiction of Commission, holding that "just as water *quality* is regulated by DEP or EPA, and not this Commission, so too is air quality," and noting that the "Commission has no standards, staff, or equipment to regulate odors in the air".) (emphasis original).

In fact, just last week Your Honor acknowledged the boundaries of the Commission's jurisdiction over environmental issues related to the construction of ME2/2X and that such matters fall under the regulatory scope and authority of the PADEP – including specifically issues with inadvertent returns of drilling mud that may occur during HDD construction and alleged water well impacts,. *See Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169, Initial Decision (Dec. 8, 2020), at 8-9. In the *Baker and Blume* case, complainants requested the Commission to "stop IRs," alleging that IRs may potentially be a violation of the Clean Streams Law, P.L. 1987, Act 394 of 1937, as amended (35 P.S. § 961.1 et seq.). As Your Honor acknowledged in dismissing the complaint, it is PADEP, not the Commission that addresses environmental matters in the Commonwealth:

PUBLIC VERSION

However, the Commission has no authority to enforce provisions of this Act. Act 394 specifies that the Department of Environmental Resources [n/k/a PADEP], the Environmental Quality Board, or the Environmental Hearing Board carry out the provisions of the Act. The General Assembly expressly intended these governmental entities/agencies to be preeminent in jurisdictional authority to enforce environmental regulations concerning the permitting of construction/drilling practices. *Del. Riverkeeper Network v. Sunoco Pipeline, L.P.*, 179 A.3d 670, 694 (Pa. Cmwlth. 2018) (citing *Dep't of General Servs. v. Ogontz Area Neighbors Ass'n*, 483 A.2d 448 (Pa. 1984))

Id. at 8. Your Honor further explained that the Commission also does not regulate the environmental permitting associated with the construction of ME2/2X pipelines, which again is a matter for PADEP:

The Commission does not permit or regulate the environmental permitting process for SPLP's construction. Those permits are sought, obtained, modified, and enforced by the Department of Environmental Protection (DEP). Therefore, the Commission lacks jurisdiction over such matters, and this portion of the Complaint shall be dismissed pursuant to 52 Pa. Code § 5.1010(a)(1).

Id. at 11.

So too here. Complainants and aligned intervenors raise concerns regarding earth features at various locations, a groundwater seep near the Shoen Road HDD, IRs, and alleged impacts to Rosemary Fuller's water well. Each of these issues is subject to existing permits issued by PADEP that govern the construction of the ME2/2X pipelines, and that have specific provisions to address, respond to, and mitigate earth features, groundwater surfacing, and water supply concerns that could potentially occur during the construction of the pipelines. It is undisputed that PADEP is actively monitoring and enforcing SPLP's permits for the ME2/2X project on each of these issues – including at the specific sites that complaints raised in this litigation. The Commission should not, and need not, step outside the boundaries of its jurisdiction to address these alleged environmental issues, which do not present a safety violation

PUBLIC VERSION

of Section 1501, and rather allow PADEP to continue to directly address all of these alleged issues.

To the extent that these issues are relevant, and they are not, Complainants and aligned Intervenor have failed to meet their burden of proof on any of these environmental issues.

a. Earth features that have developed during the construction of the Mariner East 2/2X pipelines, did not and do not, present any safety risk for the operating Mariner East pipelines.

Complainants and aligned Intervenor have raised general concerns regarding earth features, such as subsidence, that occurred during the installation of the ME2/2X pipelines, particularly for locations where the pipelines were constructed using HDD. But none presented any expert testimony from a geologist or engineer, or any other scientific or technical testimony to support their alleged concerns, or any other evidence sufficient to satisfy their burden of proving that any of these earth features violate Section 1501 or make the pipelines unsafe. All that Complainants presented was generalized concerns and grievances, which are insufficient as a matter of law. *See e.g., Herring*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3.

In contrast, SPLP presented the unrebutted expert testimony of Dr. Timothy Bechtel of RETTEW, an expert in the fields of geophysics, geology, and hydrogeology. (SPLP St. No. 7, Bechtel Rebuttal Test.; SPLP Ex. TB-1; N.T. 3594:4-14.) Dr. Bechtel and his team have performed geophysical surveys at more than 31 sites in Chester and Delaware Counties that were locations with known or suspected potential subsidence concerns. (SPLP St. No. 7 at 3-4; N.T. 3591.) This work included all forms of geotechnical and geophysical analysis, including microgravity testing, seismic refraction, multispectral analysis of surface waves (MASW), electrical resistivity imaging (REI), and ground penetrating radar (GPR). (SPLP St. No. 7 at 4-6.) These evaluations were used to identify and determine subsurface conditions and any anomalies that could potentially create inadvertent returns or subsidence, or to evaluate earth

PUBLIC VERSION

features after they develop. (SPLP St. No. 7 at 6-9.) HDD expert Dr. Ariaratnam testified that SPLP's geological and geophysical investigations in Chester and Delaware Counties go above and beyond what is considered standard industry practice for pipeline and HDD construction. (SPLP St. No. 3 at 16.)

As a result of these geological and geophysical investigations, SPLP takes preventative and mitigative measures when and where appropriate at particular locations, including installing casing and grouting at HDD locations. (SPLP St. No. 7 at 6-9.) SPLP is also performing additional proactive work immediately following the completion of HDD construction in Chester and Delaware Counties, including performing geophysical surveys to determine whether there are any issues of concern. (SPLP St. No. 7 at 10.) Dr. Bechtel's opinion was that at the various locations in Chester and Delaware Counties where there may have been concerns regarding earth features, SPLP performed appropriate and adequate geophysical testing and that SPLP's actions mitigate the risk of any subsidence, and that this "proactive work at sites within Delaware and Chester County allows for the operation of the Mariner East [pipeline] in a manner that is efficient, safe and reasonable." (SPLP St. No. 7, Bechtel Rebuttal Test. at 9, 10, 11.) As Dr. Bechtel explained, "the work we were doing to monitor the installation of the pipelines is providing the best possible warning of problems and, therefore, preserving the safety of the Mariner East pipeline." (N.T. 3677:23-3678:1.)

Geotechnical engineering expert James McKelvey agreed, and opined that SPLP's geophysical work is a good practice to "further mitigate the risk of a future subsidence after HDD construction has occurred," and that "the installed pipes can operate safely if a subsidence were to occur near an installed pipeline, and that the ground is more than competent to provide support for the pipelines and allow for their operation in an efficient, safe and reasonable

PUBLIC VERSION

manner.” (SPLP St. No. 9, McKelvey Rebuttal Test. at 6-7.) McKelvey found that SPLP had performed “geophysical investigations were sufficient to characterize the sites and determined whether the overburden soils or bedrock provides adequate support for the pipelines.” (SPLP St. No. 8, McKelvey Rebuttal Test. at 5.)

Furthermore, if and when any earth feature might develop, SPLP has specific plans and procedures to investigate and respond to the earth feature, as Gordon explained – “we bring in experts to review situations as they arise, and we use their expertise to render and follow proper procedures in accordance with what our company policies and procedures are.” (N.T. 2878:12-16; N.T. 2878:24-2879:1.) These plans and procedures include the use of grout or flowable fill as appropriate to restore and improve the subsurface conditions, which Dr. Bechtel explained “can mechanically restore [subsurface] conditions . . . [r]estores or even makes more stable. So it goes beyond just restoration.” (N.T. 3661:13-24.); *see also* N.T.2395:1-20, Kirchgasser Test., “Sunoco’s response was to immediately grout and fill the hole with flowable fill,” “the immediate response by Sunoco was to respond and stabilize the subsidence with flowable fill or grout.”))

Geotechnical engineering expert James McKelvey agreed that at locations where earth features developed, SPLP properly responded and remediated those features, and that the remediation provided adequate support for the pipelines:

The remediation of overburden at each location was performed by filling voids with flowable concrete fill or injected grout, resulting in significant shear strength improvement of the overburden within the affected areas. Based on review of the available geotechnical data, the geophysical investigations performed, development and implementation of corrective actions, my opinion is that the overburden and bedrock at these locations are more than adequate to provide support for the pipelines.

PUBLIC VERSION

(SPLP St. No. 9, McKelvey Rebuttal Test. at 5-6.) And because the pipeline corridors are subject to continual inspection and maintenance, “there are protocols in place to assess any maintenance issues that would be needed to keep the pipelines safe,” “if some unforeseen subsidence were to develop, it would provide engineering the ability to preclude a catastrophic-type problem . . . that would damage property and pose a hazard to health and safety.” (N.T. 3729:2-4, 3745:7-13.) SPLP also has specific protocols for its operating pipelines to address any subsidence or earth feature: “[t]here are plans to mitigate any unforeseen problems along the pipeline . . . Sunoco’s actually got a detailed protocol on how to address such a problem.” (N.T. 3747:12-24.) Furthermore, any alleged concerns regarding a subsidence event causing one of the Mariner East pipelines to be unsupported is unfounded, because as McKelvey explained – “These particular pipes here are capable of spanning over 30 feet unsupported. The likelihood of a 30-foot void opening up underneath a pipeline that’s unsupported in this region, I haven’t seen it.” (N.T. 3751:12-16.)

One of the specific locations that Complainants and aligned Intervenors have raised as concerns is Lisa Drive in Chester County. This location has been the subject of prior litigation before the Commission, and as Dr. Bechtel explained – “is the most intensely geophysically investigated real estate of which I am aware” (SPLP St. No. 7, Bechtel Test. at 8), and that it is “the most geophysical studied parcel on the planet” (N.T. 3601:5-7.) Lisa Drive has been completely remediated, and the future pipeline installation at this location will be completed as open trench, rather than HDD. (SPLP St. No. 7 at 8-9). Dr. Bechtel explained that SPLP’s actions at Lisa Drive, including a series of grouting work and geophysical analyses, “were able to document ground improvement at Lisa Drive,” so that there is no evidence of any lack of stability for the pipelines at that location. (N.T. 3712:5-10.) Geotechnical engineer James

PUBLIC VERSION

McKelvey agreed, that SPLP's work at Lisa drive was "an improvement on the underlying material," and that "the grout would have acted to increase the overall strength of the mass." (N.T. 3726:1-6.) Most importantly, SPLP installed strain gauges on the ME1 pipeline at Lisa Drive, which provide real-time data regarding whether there is any impact on the pipeline and there is not. (N.T. 3770-71.)

While Complainants and aligned intervenors have failed to present any expert testimony to support any of their allegations that earth features are a violation of Section 1501, SPLP has presented substantial evidence to demonstrate that it has properly assessed any earth features that developed, that SPLP has appropriate protocols and procedures in place to address any subsidence events when they occur, and that regardless, that none of these events have effected the safety or integrity of the pipelines.

b. The Shoen Road seep is not a violation of 1501 and does not present a safety concern for the operating pipelines.

Another specific work location that complainants and aligned Intervenor have raised was the HDD at Shoen Road in Chester County, including alleged impacts to residential wells and a groundwater seep located along Shoen Road adjacent to the residence of pro se intervenor Virginia Kerslake. Again, Complainants failed to present any expert testimony to support their allegations that the events or conditions at Shoen Road are a violation of Section 1501 or otherwise present a safety concern for the Mariner East pipelines.

First, as Dr. Bechtel explained, any impact to the residential wells in the area of Shoen Road was temporary and has been fully addressed – all the residents in the area were connected to public water. (SPLP St. No. 7, Bechtel Rebuttal Test. at 11-12; N.T. 3591.) Second, the seep along Shoen Road is caused by a "naturally shallow water table and water flowing along natural underground fractures near the HDD entry/exit is evidence by a very old (possibly colonial)

PUBLIC VERSION

spring house nearby (just on the Kerslake eastern property boundary).” (SPLP St. No. 7 at 12.) Most importantly, Dr. Bechtel’s opinion is that the seep does not create any safety concern regarding the operation of the pipelines in that area, because the geology is not karst – “[t]here’s no evidence of karst there” and therefore “[t]here won’t be subsidence – changing groundwater flow patterns in non-karst does not lead to enhanced risk of subsidence.” (N.T. 3701:3-7, 3703:24-3704:2.) Nor is the seep infiltrating into the ground such that it could cause subsurface erosion. (N.T. 3711:15-21.) As Dr. Bechtel simply explained – “there’s no reason to expect that water flow is going to cause any problems, because that water’s been flowing all along . . . I promise you that it’s been flowing under there for thousands and thousands of years.” (N.T. 3704:14-23.)

Complainants have failed to present evidence, much less sufficient evidence necessary to sustain their burden of proving that the seep at Shoen Road is a violation of Section 1501 or creates a safety concern for the Mariner East pipelines.

c. Inadvertent returns of drilling mud during the HDD process are not a violation of Section 1501 and are fully addressed by PADEP’s plans and permits for the ME2/2X pipeline construction.

Complainants have also raised alleged concerns with inadvertent returns (“IRs”) that occur during the HDD process. No Complainant or aligned Intervenor has presented any expert testimony on IRs. Furthermore, Your Honor has already acknowledged that issues relating to IRs are within the scope of the PADEP-issued permits for the ME2/2X project, which are outside the scope of the Commission’s jurisdiction. *See Baker and Blume* at 8, 11.

IRs are an anticipated part of the HDD construction process and are subject to a detailed and comprehensive mitigation and remediation plan, which SPLP has as part of its permits with PADEP. (SPLP St. No. 3, Ariaratnam Test. at 11.) SPLP’s PADEP-approved plans and

PUBLIC VERSION

procedures require the contractor to immediately address and cleanup an IR regardless of size of the IR or location. (N.T. 3855:56, 3858-59.) Furthermore, IRs do not pose any long-term impact to the environment, or any impact on human health because the materials used in the HDD process are non-toxic. (SPLP St. No. 3, Ariaratnam Test. at 11; N.T. 3532:14-19, Magee Test.) As toxicologist and human risk assessor expert affirmed, the bentonite products used in the HDD process are non-toxic, “approved as a food additive by the U.S. Food and Drug Administration and the World Health [Organization],” that PADEP approves bentonite for the HDD process, and that it is also approved by NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects). (N.T. 3532:14-19, 3534:21-3535:17, 3535-36.)

As Complainants have not presented any expert testimony on the issue of IRs, which are fully addressed by SPLP’s permits for the ME2/2X pipeline construction issued by PADEP, and regardless IRs are temporary and cause no impact to human health, complainants have not, and cannot satisfy their burden of proving that IRs violate Section 1501.

d. Complainant Rosemary Fuller’s water well concerns fall within the jurisdiction of PADEP and relate to a private property claims that the Commission cannot address.

Complainant Rosemary Fuller alleges that HDD construction near her home has impacted her water well and that she has been exposed to bentonite products in her home and in the community. But Complainants did not present any expert testimony related to any of the alleged issues that Fuller has with her water well. Rather, the only testimony presented on these issues was that of Rosemary Fuller herself, a lay witness who admitted she has no background in chemistry, lab analysis, assessment of groundwater contamination, hydrogeology, geology, toxicology, or risk assessment. (N.T. 2456.)

First and foremost, Fuller’s alleged concerns with her water well do not relate to water service regulated by the Commission, but rather relate to private water quality concerns, which

PUBLIC VERSION

are regulated exclusively by the PADEP. Indeed, the explicit terms of SPLP's PADEP permits and related plans govern what the company must do to investigate and report any alleged impact to a private water supply, and what reasonable repair or remediation efforts SPLP must undertake if a water supply is impacted. (*See e.g.*, SPLP Cross Ex. 76 at 2, summarizing PADEP permit conditions.) PADEP has been directly and actively involved in reviewing Fuller's complaints, and confirmed that SPLP had made reasonable offers to Fuller, which she has refused to accept: "Considering the information that we have and the results of our investigation, the Department believes that Sunoco has made reasonable offers of accommodation, and, as such, we will be closing our part in this dispute." (SPLP Cross Ex. 76 at 2.) Fuller has not appealed or challenged PADEP's determination and admitted that PADEP's position is that SPLP made reasonable offers to address her concerns, and that even so, it might not satisfy all her personal demands. (N.T. 2460:7-12, 2460:22, 2457-60; SPLP Cross Ex. 77 at 1.)

SPLP presented expert testimony on Fuller's water well concerns by both a hydrogeologist, Richard King, and a toxicologist and human health risk assessor, Dr. Brian Magee. King's analysis and opinion is that the total amount of bentonite present in the Fuller well was minute and of a short temporal duration, and that the presence of bentonite "is not considered to be contamination under any applicable environmental regulatory standard and cannot be construed as 'major contamination' as Fuller has alleged in her testimony." (SPLP St. No. 9, King Rebuttal Test. at 4, 6-11; *see also* N.T. 3425:25.) There were only two dates that bentonite was observed in the well samples – July 1, 2019 at 0.0005% of the total water sampled, and July 19, 2019 at 0.000086% of the total water sampled. (SPLP St. No. 9-RJ, King Rejoinder Test. Outline at 2; N.T. 3422, 3424, King Test.; SPLP St. No. 15-RJ, Magee Rejoinder Test.

PUBLIC VERSION

Outline at 1; N.T. 3531, Magee Test.) Moreover, bentonite is not considered to be a contaminant by any state or federal regulatory standard. (N.T. 3408:6-19.)

Likewise, Dr. Brian Magee opined that based on the very minor amounts of bentonite present in well samples at the Fuller property on two dates in July 2019, that the bentonite “would not present any harm to humans drinking that water.” (N.T. 3531:15-16.) Dr. Magee explained that bentonite and the products used in the HDD process are non-toxic and approved by PADEP and other national and international authorities. (N.T. 3532:14-19, 3534:21-3535:17, 3535-3536, 3532:22-3533:16.) Dr. Magee’s opinion was that the water from the Fuller well “it is safe to drink to within a reasonable degree of scientific certainty.” (N.T. 3564:3-11.)

Nor were Fuller’s alleged concerns with bathing in the water from her home supported by evidence, as Dr. Magee opined there is no dermal risk from exposure to bentonite products (N.T. 3546:4-5), or exposure from breathing in any of the extremely low levels of quartz or silica that could hypothetically be present in shower water – as the dose would be “more than 70,000 times lower than the Federal Permissible Exposure Level” set by OSHA. (N.T. 3544-45; SPLP St. No. 15-RJ, Magee Rejoinder Test. Outline at 4.) Nor is there any risk to a member of the general public walking by an HDD construction site where bentonite is used, as Dr. Magee stated – “it would not cause harm, did not cause harm, and cannot cause harm.” (N.T. 3543:12-21; *see also* N.T. 3537:19-21, 3534:23-3534:12, 3541:5-10, 3541:18-25.)

Last, to the extent that Fuller’s concerns and demands could be seen as a request for the Commission to grant her relief regarding her private property claims, the Commission lacks jurisdiction to grant that relief. As Your Honor acknowledged just last week in the *Baker and Blume* matter, which requested that SPLP drill complainant Rolfe Blume a new water well on his property, such “injunctive relief is also outside the jurisdiction of the Commission and would be

PUBLIC VERSION

more properly brought before a Court of Common Pleas.” *Baker and Blume*, at 11. Indeed, the “Commission has determined that it is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction. *Baker and Blume*, at 11; *see also id.* Ordering Paragraph 3 (citing *Lasko v. Windstream Pa., LLC*, Dkt. NO. C-2010-2217869 (Final Order dated Apr. 1, 2011); *Perrige v. Metro Edison Co.*, Dkt. No. C-0004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Dkt. No. C-00971088 (Order entered Sept. 15, 1999)). Thus, as Your Honor explained in *Blume and Baker*, Fuller’s alleged concerns regarding her water well, home plumbing, and other matters are issues for which the Commission cannot grant her relief – “whether SPLP has obligations under an easement to dig a well, restore a property to former condition or pay compensation/damages to an aggrieved landowner are issues that the Commission does not have jurisdiction to hear.” *Baker and Blume*, at 11-12.

Because Fuller’s claims regarding her water well are matters that are already addressed by the PADEP, are not supported by any evidence sufficient to satisfy her burden of proof, and otherwise appear to seek relief regarding private property claims that the Commission cannot grant, Complainant’s claims related to the Fuller property fail and do not reflect a violation of Section 1501.

E. The economic benefits of the Mariner East pipelines are wide-ranging and uncontroverted.

SPLP is a Commission-certificated public utility transporting or conveying, *inter alia*, butane, propane, and ethane for interstate and intrastate use under the Commission’s governing statutes. *See* 66 Pa. C.S. § 102 - Definitions (“**Public Utility** (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: ... (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products,

PUBLIC VERSION

materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.”). The Commission, by issuing SPLP a Certificate of Public Convenience, held that SPLP’s public utility service is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

As Your Honor correctly explained at the hearing:

The company is a transportation carrier. They have the tariffed rate that they charge shippers. Shippers are the ones who contract with Sunoco to ship their product The fact that they ship between two points within the state makes it an intrastate carrier or pipeline operator or utility, and that's why they have to come here for a Certificate of Public Convenience in order to operate.

(N.T. 2623:4-20.) Your Honor further correctly explained SPLP’s public utility operations and its shipper (i.e. customer) relations while providing utility service:

Whether they then ship it overseas after they pick it up at a terminal, they take the broken out product, put it in barrels, put it on a liner, and ship it overseas, that's not necessarily Sunoco doing that. That's its customer.

(N.T. 2624:21-25.)

The Complainants here seek to shut down SPLP’s public utility service. The Commission has already recognized that shutting down SPLP’s public utility service comes at a significant cost to the public interest:

[T]he Commission is cognizant of the economic effect of ordering the suspension of ME 1 service. Natural gas liquid pipelines play a vital role in many industries given that these petroleum products serve as industrial feedstocks as well as additives to gasoline. The Commission understands that shippers that utilize ME 1 as customers, and users of products transported by ME 1 either have had to suspend operations or look elsewhere for supplies due to the ME 1 closure.

Petition of the Bureau of Investigation and enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Part Emergency Order, Docket No. P-2018-3000281, Order

PUBLIC VERSION

at 10 (Order entered May 3, 2018). The Commission further explained that ME1 plays a “vital role” and thus its operation is in the public interest, as shown by the fact that SPLP holds a certificate of public convenience. *See* 66 Pa. C.S. § 1103(a). Your Honor has also previously denied injunctive relief to the *Flynn* Complainants on a variety of grounds, including an injunction’s significant negative economic impact:

Shutting down service on ME1 and enjoining the commencement of ME2 will directly and significantly negatively impact Sunoco and its shippers, including Range Resources. N.T. 518-534, 557-583. Additionally, some job losses and/or layoffs to steamfitters and other workers during the holiday season in the Marcus Hook Facility may occur. N.T. 544-567. For these reasons, I find in favor of Sunoco on this issue.

Meghan Flynn et al. v. Sunoco Pipeline, L.P., Docket No. P-2018-3006117, Order Denying Petition for Emergency Interim Relief and Certifying Material Question at 15 (Order entered December 11, 2018) (*affirmed* by Commission Opinion and Order February 1, 2019).

Complainant’s request to shut down SPLP’s public utility service should be denied for the additional reason that granting such relief would destroy SPLP’s necessary and proper public utility service and negatively impact SPLP, its shippers, and the public. In contrast, Complainants and aligned Intervenors presented no evidence to dispute or contradict the economic benefits of SPLP’s continued public utility operations or the significant economic and other impacts that a shutdown of construction or operations would cause. To justify the need for a permanent injunction, Complainants must demonstrate that “greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006). Here, granting an injunction that shuts down the construction and/or operation of the Mariner East pipelines would result in significant injury to

PUBLIC VERSION

SPLP, its shippers, and the public, which would be far greater than any speculative injury claimed, but not proven.

1. Enjoining the operation and construction of the Mariner East Pipelines will damage SPLP, its shippers, and the public.

As established by the uncontradicted testimony of Richard Billman, Peter Angelides, Alan Enberg, and James Snell, the Mariner East pipelines provide significant economic and societal benefits to the Commonwealth and others. Enjoining the operation and/or construction of the Mariner East pipelines would have adverse economic and societal impacts.

First, Richard Billman, Vice President of Business Development for Energy Transfer Partners LP, who oversees commercial and strategic growth of SPLP's assets as well as manages contracts with shippers, testified to the impact that a forced shutdown of the Mariner East pipelines would have on SPLP and the public. (SPLP St. No. 10 at 10; SPLP Ex. No. RJB-1). Billman described how the Mariner East pipelines directly benefit Pennsylvania by, for example, transporting propane supply to the southeastern part of Pennsylvania and at many off-loading racks for propane distribution throughout the state, through the direct supply of butane for gasoline blending, and for the supply of ethane as a source of electricity production in Cambria County. (SPLP St. No. 10 at 10-11). Billman further identified the commodities shipped on the Mariner East pipelines and the societal benefits that butane, propane, and ethane bring to Pennsylvania as they are ultimately used in a wide range of products necessary to everyday life and many industrial processes. (SPLP St. No. 10 at 13-20). Indeed, many of the end products necessary to combatting the COVID-19 pandemic are processed from the commodities shipped on the Mariner East pipelines. (SPLP St. No. 10 at 10).

Billman also described SPLP's new developments and downstream impact. Billman identified SPLP's recent Tariff Supplement No. 9 for its intrastate rates for butane transportation,

PUBLIC VERSION

SPLP HC Ex. No. RJB-2). SPLP would lose these daily revenues and would not be able to recapture those revenues at a future time given the physical characteristics of pipeline capacity. (SPLP St. No. 10 at 3). SPLP will also suffer other losses if the Mariner East pipeline operations and construction were to be shut down, including mobilization and demobilization, standby charges, risk of losing contracts, equipment fees and more, which collectively amount to [BEGIN HC] [REDACTED] [END HC].

Next, Dr. Peter Angelides, Principal of the Econsult Solutions, Inc., an expert on identifying the economic impacts from development and infrastructure projects, performed an economic impacts analysis of the monetary investments of the Mariner East Project using the IMPLAN model. (SPLP St. No. 12 at 5). Dr. Angelides opined that the financial expenditures of the Mariner East pipeline project:

lead to a substantial amount of employment, which consists of construction and other jobs that last for the length of the construction project as well as jobs to operate and maintain the pipelines after they have been constructed.

(SPLP St. No. 12 at 5). As discussed by Dr. Angelides, the IMPLAN model is a static model and cannot account for additional economic benefits:

IMPLAN is a static model, which means that it does not account for the underlying change in the economy from an infrastructure investment. In this case, there is the potential for additional economic impact because the pipelines and Marcus Hook Industrial Complex bring substantial additional natural gas liquids supply to the Southeastern Pennsylvania region. The surety of supply can and likely will attract additional industries to the region. Those would be additional economic benefits that are not included in the IMPLAN model.

(SPLP St. No. 12 at 6). The projected benefits from the IMPLAN model of the project prior to construction was projected to be a total of \$6.14 billion expenditure as a one-time construction impact and a total of 42,630 full-time job equivalents for one year. (SPLP St. No. 12 at 6). Some

PUBLIC VERSION

of these benefits are still to be realized as constructions is completed. (*Id.*). The remaining financial footprint of the construction projection's economic impact is roughly \$0.9 billion, with approximately 5,705 full-time job equivalents, and with a remaining fiscal construction impact on Pennsylvania projected to be \$14.1 million. (N.T. 3080:24-3081:2). From construction alone, Dr. Angelides projected that the Commonwealth would receive tax revenues of approximately \$97 million with approximately two-thirds from personal income tax and the remainder from sales-and-use taxes and business taxes. (SPLP St. No. 12 at 7). Finally, Dr. Angelides opined that after construction is completed, the recurring annual tax revenues for the Commonwealth from the operations of the Mariner East pipelines are projected to be between \$1.4 and \$2.1 million per year with an additional \$4.8 million annual in property taxes paid as a result of Marcus Hook facility expansions. (SPLP St. No. 12 at 7).

Dr. Angelides opined that even a temporary shutdown of the Mariner East pipelines would mean that benefits of operations are lost forever as “there is no opportunity to recover that lost benefit and economic activity in the future.” (SPLP St. No 12 at 6). Dr. Angelides explained that if the Mariner East pipelines were to be shut down, like a commercial airplane that flies with empty seats, that revenue cannot be recovered:

... there's no revenue being generated. If a particular gas molecule is not shipped.... it's still able to be shipped in six months, ... but the current transportation, if it's empty, it's empty and there no recovering

(N.T. 3075:3-8.)

Third, Alan Enberg, Vice President of Liquids Marketing for Range Resources Corporation (“Range”) testified to the economic impact that a shutdown would have on Range as a transportation customer of SPLP that relies upon ME1 and ME2 to transport its NGL products. (Range St. No. 1-R at 3). Range transports 20,000 BPD of ethane on ME1, 30,000 BPD propane

PUBLIC VERSION

and 10,000 BPD of normal butane on ME2, and an additional 10,000 BPD of a combination of propane and normal butane on ME2. (Range St. No. 1-R at 5). In total, Range directly and indirectly transports 70,000 BPD of natural gas liquids on SPLP's ME1 and ME2 pipelines. (*Id.*).

Range's transportation needs could not be met by other modes of transportation, such as railcars or trucks. (Range St. No. 1-R at 8). If ME1 and ME2 were to be shut down, Range would be forced to shut-in production resulting in significant economic impacts to the entire supply chain. (Range St. No. 1-R at 9). Range has experienced significant financial harm from prior shutdowns of ME1, including [BEGIN HC] [REDACTED]

[REDACTED] [END HC] Range's royalty owners would also be impacted by shut-ins if ME1 and ME2 were to be shut down. (Range St. No. 1-R at 14). Range would also be forced to lay off employees, contractors, and subcontractors if ME1 and ME2 were to be shut down (Range St. No. 1-R at 15). Lastly, a shutdown of ME1 and ME2 would negatively affect the impact fees that Range pays to the Commonwealth. (Range St. No. 1-R at 16).

Finally, James Snell, the business manager of Steamfitters Local Union 420, testified to his union's work and continued projects related to the Mariner East pipelines. (SPLP St. No. 11 at 2). Union 420's members employed on the Mariner East pipelines include welders, pipefitters, and helpers that install or maintain pipes, valves, control valves, pneumatics, and other facilities for the Mariner East pipelines. (*Id.*). The Mariner East pipelines directly employ Union 420 members and have created approximately 1,000 or more Union 420 jobs and about 3,000 additional jobs for workers of other unions and trades due to downstream expansions at the Marcus Hook hub facilities as a result of the Mariner East project. (*Id.*) Many of these jobs are long-term projects (*Id.*). Many of Union 420's workers live in Delaware and Chester Counties

PUBLIC VERSION

and are actively working on the Mariner East Pipelines. (N.T. 2646:10-12). If the Mariner East pipelines were to be shut down, Union 420's members would be idled without the ability to find additional projects, which would impact members and their families as the loss of work during any shutdown cannot be recovered. (SPLP St. No. 11 at 4).

The evidence shows that a shutdown of SPLP's Commission-certificated public utility service would have significant financial impacts as well as societal impacts. In sum, SPLP has presented uncontradicted and unrebutted evidence of the financial harm that the relief requested would cause, negatively impacting SPLP, its customers, and the public.

2. Complainants presented no competent evidence on any of the public utility benefits and economic considerations of the Mariner East pipelines to rebut the need for SPLP's Commission-approved public utility service.

Complainants and aligned Intervenors presented no evidence to challenge the economic benefits of the Mariner East pipeline operations and construction, the supply benefits of the transported commodities that the Mariner East pipelines bring, the project's economic impacts to the Commonwealth, the economic harm that SPLP, its customers, Union 420's members, and the public would face if the pipelines' construction and/or operation were to be shut down.

At most, Complainants and aligned Intervenors made passing, unsubstantiated lay witness comments revolving around their incorrect belief that the Mariner East pipelines do not benefit them or Pennsylvania. (See N.T. 747:3-14; N.T. 749:6-9; N.T. 1078:1-4; N.T. 1367:19-1368:3; and N.T. 1381:15-1382:2.) Regarding these assertions, Complainants further appear to mis-understand what SPLP's public utility service is, which required Your Honor to explain to the Complainants at hearing what SPLP's certificated public utility operations are. (N.T. 2623-2624.) SPLP, as a pipeline utility, transports butane, propane, and ethane, *inter alia*, at tariffed rates for shippers in both interstate and intrastate service. At no point does SPLP own the

PUBLIC VERSION

commodities shipped from point A to point B. SPLP further does not direct where the commodities come from or where they end up. Those decisions belong to the entities shipping product on SPLP's Mariner East pipelines. Nonetheless, as SPLP's witnesses explained, the transportation of commodities by SPLP benefits Pennsylvania through both the direct and indirect effects that delivering the products to market brings to both the economy and society.

The testimony of SPLP's and Range's credible expert and fact witnesses more than rebuts the lay assertions and belief that the Mariner East pipelines do not benefit the public. Further, the Complainants presented no evidence to overcome the Commission's approval of SPLP's necessary and proper public utility operations to warrant a shutdown of the Mariner East pipelines. Therefore, consistent with prior rulings on multiple occasions, the negative economic impact of ordering the shutdown of SPLP's public utility operations and construction would be detrimental to the public interest.

VI. Conclusion

SPLP respectfully requests that Your Honor conclude that each of the Complainants and aligned Intervenors failed to meet their respective burden of proof to show that SPLP violated laws or regulations in regard to the operation or construction of the Mariner East pipelines. Without proof that SPLP violated the law or regulations, each of the Complainants and Intervenors have not and cannot satisfy the heavy burden necessary for Your Honor and the Commission to order the injunctive relief of shutting down any of the Mariner East pipelines, requiring SPLP to perform a remaining-life study on its pipelines, mandating enhancements to its public awareness program or emergency response protocols and training, or to require SPLP to install any additional equipment or implement any additional safety measures above and beyond

PUBLIC VERSION

the comprehensive measures the company already employs and that is required by the existing regulations.

Respectfully submitted,

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Dated: December 16, 2020

APPENDIX A

SUNOCO PIPELINE L.P.’S
PROPOSED FINDINGS OF FACT

In accordance with Commission Rules 5.501 and 5.502, 52 Pa. Code §§ 5.501-5.502, and Your Honor’s October 23, 2020 Briefing Order, Respondent Sunoco Pipeline L.P. (“SPLP”) respectfully submits the following proposed findings of fact. Due to length of this Appendix, a hyperlinked Table of Contents is included.

TABLE OF CONTENTS

I. [SPLP’s operation of the Mariner East pipelines in Chester and Delaware Counties does not violate Section 1501 of the Pennsylvania Public Utility Code.](#) 1

A. [Pipelines are present throughout the United States and throughout the Commonwealth of Pennsylvania and are the safest method to transport HVLs.](#)..... 1

B. [To determine safety and reasonableness, it is inappropriate to consider only the potential consequences of a hypothetical release from a pipeline without also considering the likelihood of a release occurring.](#) 2

C. [Testimony of the hypothetical worst-case consequence of a pipeline rupture is insufficient to establish that the Mariner East pipelines are unsafe or unreasonable.](#) 6

D. [Information from the PHMSA database does not establish that SPLP’s operation of the Mariner East pipelines is unsafe.](#)..... 7

E. [SPLP performed quantitative risk assessments as required by the applicable regulations, which provides no evidence that the Mariner East pipelines are unsafe.](#) 11

II. [SPLP’s Integrity Management Program, Corrosion Control, and Cathodic Protection.](#)..... 12

III. [Public Awareness Requirements.](#)..... 20

A. [Regulatory Requirements for a Pipeline Operator’s Public Awareness Plan and Program](#) 20

B. [Description of SPLP’s Public Awareness Program](#) 22

C. [Complainants’ and Aligned Intervenors’ Claimed Deficiencies in SPLP’s Public Awareness Program Lack Merit](#) 28

PUBLIC VERSION

- 1. Determining a “safe distance” to evacuate in the event of a pipeline release..... 28
- 2. Disclosure of SPLP’s emergency response plan..... 29
- 3. Use of cell phones 30
- 4. Determining wind direction 30
- 5. Purported conflict between moving away from the pipeline and moving upwind and uphill. 31
- 6. Evacuate or shelter in place 31
- 7. Evacuating those with physical or mental limitations 32
- 8. Notice of potential death or burns from a pipeline release 32
- D. Complainants’ and Aligned Intervenors’ Demands..... 34
- IV. Emergency Response Information and Training 35
 - A. Regulatory requirements for a pipeline operator’s emergency response information and training. 35
 - B. SPLP’s Emergency Response Information and Training 35
- V. Construction of the Mariner East 2/2X pipelines 43
 - A. Construction by HDD 44
 - B. Coatings 47
 - C. Post-Construction Testing of Pipeline 48
 - D. Location and Siting of the Mariner East pipelines and Related Equipment..... 49
 - E. Steven Hurt 50
- VI. Environmental Issues Related to Mariner East 2/2X Construction 51
 - A. Geophysical Concerns – Earth Features and Groundwater Seep..... 52
 - B. Lisa Drive and Shoen Road 56
 - 1. Lisa Drive..... 56
 - 2. Shoen Road 57
 - C. Inadvertent Returns..... 58
 - D. Rosemary Fuller’s Well 60
 - 1. Richard King..... 60
 - 2. Dr. Brian Magee..... 64
 - 3. PADEP’s Conclusion on the Fuller Well..... 67

PUBLIC VERSION

VII. The Mariner East pipeline project provides significant economic benefits to the Commonwealth, and if construction and/or operation of the pipelines were to be shut down, it would cause significant harm to the Commonwealth and others. 68

 A. Product Benefits..... 68

 B. Construction and operation benefits 70

 C. Economic losses resulting from an ordered shutdown. 72

VIII. Credibility of Witnesses..... 74

I. SPLP's operation of the Mariner East pipelines in Chester and Delaware Counties does not violate Section 1501 of the Pennsylvania Public Utility Code.

A. Pipelines are present throughout the United States and throughout the Commonwealth of Pennsylvania and are the safest method to transport HVLs.

1. There are more than 2.5 million miles of pipelines in the United States that transport natural gas and hazardous liquids. The pipelines can be classified into three types – (1) transmission pipelines; (2) distribution pipelines; and, (3) gathering and production pipelines. Of the total mileage of all types of pipelines, there are over 500,000 miles of transmission pipelines in the United States, approximately 210,000 miles of which transport hazardous liquids and approximately 300,000 miles of which transport natural gas. There are approximately 1.4 million miles of distribution pipelines in the United States for natural gas. There are approximately 500,000 to 600,000 miles of gathering and production pipelines. (SPLP St. No. 2, Zurcher Rebuttal Test. at 9:1-8.)

2. Approximately 90% of the population in the United States lives near a pipeline, that is, within 660 feet as defined by pipeline safety regulations. (SPLP St. No. 2, Zurcher Rebuttal Test. at 9:13-15; N.T. 4203:10-14, Zurcher Test.)

3. Approximately 77,000 miles of pipelines that transport HVLs either traverse an area characterized as a high consequences area characterized because of its high population or do not traverse a high consequence area but could affect a high population area. Approximately one-half of those, or approximately 35,000 to 40,000 miles of pipelines that transport HVLs, traverse a high consequence area. So approximately one-third of all HVL pipelines either traverse a high population area or could affect a high population area. (SPLP St. No. 2, Zurcher Rebuttal Test. at 9:17-20; N.T. 4204:13-20, Zurcher Test.)

PUBLIC VERSION

4. Within the Commonwealth of Pennsylvania, there are approximately 10,000 miles of natural gas transmission pipelines, 2,000 miles of refined products pipelines, 1,500 miles of HVL pipelines, 48,000 miles of distribution mains, and 35,000 miles of distribution services pipelines. (N.T. 4206:8-20, Zurcher Test.)

5. Pipelines are the safest mode to transport HVLs. Transportation by rail is twenty-five times less safe than transportation by pipeline. Transportation by tanker on the highways is seventy-three times less safe than transportation by pipeline. (SPLP St. No. 2, Zurcher Rebuttal Test. at 20:2-6.)

B. To determine safety and reasonableness, it is inappropriate to consider only the potential consequences of a hypothetical release from a pipeline without also considering the likelihood of a release occurring.

6. Risk involves an analysis of two distinct things – consequences and likelihood. (N.T. 1831:22-24, Marx Test.; N.T. 4208:15-4210:8, Zurcher Test.)

7. Likelihood, which is part of an evaluation of risk, involves an evaluation of the probability or likelihood of various events occurring. (N.T. 1832:3-7, Marx Test.)

8. The likelihood or probability of an event occurring can range anywhere from 0% to 100%. (N.T. 1382:8-11, Marx Test.)

9. The only expert witness that any of the Complainants or aligned Intervenors proffered to testify about risk analysis was Jeffrey Marx, who did not provide any testimony and did not proffer any opinion on the likelihood or probability of a pipeline release or on the likelihood of a release from the Mariner East pipelines. (N.T. 1832:17-22, 1833:6-12, Marx Test.)

10. Although Marx is capable of performing an evaluation of the likelihood or probability of a release from the Mariner East pipelines, he did not perform that analysis. (N.T. 1834:12-19, Marx Test.) It can be inferred from Marx's failure to perform an evaluation of

likelihood or probability that if he had performed that analysis, it would not have supported the Flynn Complainants' allegations.

11. Marx has performed risk analyses for pipelines located in high consequence areas, which have been so characterized because of their high population, and those pipelines continue to operate. (N.T. 1836:12-15, Marx Test.) It can be inferred that Marx has determined in those circumstances that pipelines are safe to be operated in high consequence areas.

12. The Flynn Complainants and the Andover Homeowners Association conceded that they provided no testimony or other evidence of the likelihood or probability of a release from the Mariner East pipelines.

[BEGIN HC]

[REDACTED]

[END HC] (N.T. 4289:4-21.) (Emphasis added.)

The other is that Mr. Friedman, when he testified -- he's Mr. Raiders' client -- testified as to certain other reports, and that Mr. Raiders will not be relying upon those reports as evidence of either quantitative risk assessment or qualitative risk assessment. He's free to rely on other evidence, as are any of the other parties, but not those documents.

(N.T. 4333:17-24, Stipulation.)

13. Because risk is defined as the mathematical product of likelihood times consequence, when evaluating the safety or reasonableness of a pipeline, there is no benefit to looking only at the consequence of a worst-case scenario without also evaluating the likelihood of that consequence occurring. If one evaluated the safety or reasonableness of infrastructure by looking at consequence only, that is, without also evaluating likelihood, there would be no infrastructure in place—no electrical lines, no highways, no pipelines, no airports, etc. (N.T. 4208:21 – 4210:7, Zucher Test.)

14. In evaluating whether any activity is safe and reasonable, including the transportation of HVLs by pipeline in a high consequence area, it is necessary to evaluate both the potential consequences of engaging in the activity and the likelihood of those consequences occurring. (N.T. 1861:8-25, Marx Test.; N.T. 1862:2-21, Marx Test.)

It is inappropriate to consider the consequence of an event without also considering the likelihood of an event occurring. The whole concept underlying PHMSA's integrity management regulations is that risk is the mathematical product of (1) the consequence of a pipeline failure multiplied by (2) the likelihood of a pipeline failure. Although the risk is very small, PHMSA's regulations require risk to remain constant across the entire pipeline. As the population near a pipeline increases, as it may -- and often does -- in a high consequence area, the consequences of a pipeline failure necessarily increase. The consequences of a pipeline rupture in an unpopulated area is very different than the consequences of a pipeline rupture in a highly-populated area. Therefore, to maintain constant risk in both of those areas, as well as across the entire Mariner East pipelines, the likelihood of a pipeline rupture must be greatly reduced in a high consequence area to make the risk the same as a pipeline rupture with no population present, which is essentially zero. Greater levels of protection in terms of construction, testing, inspection, operation and maintenance are required in a high consequence area to make the risk the same as in a non-high consequence area. Therefore, it is my opinion to a reasonable degree of professional certainty that it is contrary to PHMSA's regulations to consider the consequence of an event only, without also considering the likelihood of that event occurring.

(SPLP St. No. 2, Zurcher Rebuttal Test. at 21:4-19.)

15. Implementation of SPLP's integrity management program assures that the risk associated with a pipeline failure remains steady across the pipeline, including in high consequence areas.

The regulations and standards recognize that with the transportation of hazardous liquids, there is a risk, which is the mathematical product of the consequence of a pipeline failure times the likelihood of a pipeline failure. The risk is very small, and it remains steady irrespective of the population near a pipeline.

Risk under the regulations is an important concept to understand and it underlies the management of all pipeline assets. In my view, the Complainants misperceive this, by focusing solely on the consequence of a pipeline failure without considering the likelihood of a pipeline failure. Discussing consequence without also discussing likelihood is meaningless when addressing risk. As the consequence of a pipeline failure increases – as it would here in a high consequence area – the likelihood of that pipeline failing must be reduced to maintain the same risk across the entire pipeline. Therefore, to maintain the same risk across the entire pipeline, the regulations and integrity management program require that additional measures be taken to reduce the likelihood of a pipeline failure in areas of high population.

Consequence for pipelines is mainly a function of population. By definition, the larger the population near a pipeline, the greater the consequence of a pipeline failure, and the regulations and integrity management plan expressly recognize and address this. To begin the consequence analysis, the regulations start with four categories called Class Location. A greater safety factor is used in the design of a pipeline as the population near a pipeline increases. In addition, a greater safety factor for the testing of the pipeline is required. And stricter operations requirements and stricter and more frequent maintenance requirements are also required as the population near a pipeline increases.

For a high consequence area, as is present here, pipeline operators are required to determine any threats to the integrity of the pipeline and assess the pipeline by one or more means to determine its integrity. Any length of the pipeline that does not meet the acceptance criteria must be repaired or replaced. After repair or replacement and determination that the integrity of the pipeline is

acceptable, the operator employs additional measures for prevention and mitigation to manage the integrity into the future.

So in sum, the regulations and integrity management require the risk in a high consequence area to be the same as in every other area, so that the risk is uniform across the pipeline. That means that the likelihood of a pipeline failure, by definition, is much, much lower in a high consequence area than in areas where there is low or no population, precisely because the regulations recognize that the potential consequence of a pipeline failure in a high consequence area is much greater. This is why Complainants experts do not focus on the likelihood of a pipeline failure and focus solely on its consequence. They can't focus on likelihood. Necessarily, the likelihood is much, much lower in a high consequence area in order to achieve a uniform risk precisely because the consequence of a pipeline failure is much greater. That is also why it is inappropriate to consider pipeline failures from the PHMSA data base that occurred in areas that were not high consequence areas.

(SPLP St. No. 2, Zurcher Rebuttal Test. at 18:5-19:19.)

C. Testimony of the hypothetical worst-case consequence of a pipeline rupture is insufficient to establish that the Mariner East pipelines are unsafe or unreasonable.

16. Complainants provided no evidence of the consequences of a leak or puncture from the Mariner East pipelines. (N.T. 1854:3-11, Marx Test.; 4331:15-19, Stipulation.)

17. The only evidence that Complainants introduced of the consequence of a release from the Mariner East pipelines was the consequence of a rupture utilizing a number of worst-case assumptions to make the consequences of the rupture as severe as possible. (N.T. 1839:4-13, Marx Test.; N.T. 1844:25-1845:2, Marx Test.)

18. When evaluating the various ways in which a release from a pipeline may occur (leak, puncture, and rupture), a rupture of a pipeline is the least likely to occur. (N.T. 1854:19-22, Marx Test.)

19. All pipelines have the potential to have some impact on the public and would also have an impact zone, similarly as hypothesized by Marx, if one applied a similar set of assumptions to hypothesize a worst-case scenario. (N.T. 4207:2-18, Zurcher Test.)

20. Marx used worst-case assumptions in a proprietary model that overstates the predicted consequences of a hypothetical rupture of the Mariner East pipelines. (N.T. 1848:18-1849:9, Marx Test.)

21. The proprietary model that Marx used to overstate the predicted consequences of a hypothetical rupture of the Mariner East pipelines is admittedly a “black box.” Thus, the Commission is unable to determine how the model works and how it operates to overstate the predicted consequences of a hypothetical worst-case rupture of the Mariner East pipelines. (N.T. 1851:5-20, Marx Test.)

22. If one were to make similar worst-case assumptions to hypothesize the potential consequences of an activity, many common activities—such as driving a car, flying in an airplane, being a passenger on a train, putting your child or grandchild on a school bus, and riding an elevator—have similar fatal consequences as the hypothesized rupture of the Mariner East pipelines. (N.T. 1860:8-1861:3, Marx Test)

23. It is inappropriate to consider a hypothetical rupture of the Mariner East pipelines in evaluating whether they are safe and reasonable to operate in a high consequence area. (N.T. 1861:8-25, Marx Test.; N.T. 1862:2-21, Marx Test; N.T. 4208:11-4210:8, Zurcher Test.)

D. Information from the PHMSA database does not establish that SPLP’s operation of the Mariner East pipelines is unsafe.

24. Data from the PHMSA database may be used to project the likelihood of a release from a pipeline. (N.T. 1815:15-1816:17, Marx Test.)

PUBLIC VERSION

25. PHMSA's database does not identify a rupture of an HVL pipeline ever occurring in a high consequence area. (N.T. 1853:12-24, Marx Test.; SPLP St. No. 2, Zurcher Rebuttal Test. at 19:21-23.) Therefore, it is unlikely that an HVL pipeline will rupture in a high consequence area and it is unlikely that the Mariner East pipelines will rupture in Chester and Delaware Counties.

26. According to the PHMSA database, the segments of the pipelines involved in the November 2007 incident near Carmichael, Mississippi, the August 1996 incident near Lively, Texas, and the December 1970 incident in Franklin County, Missouri were all located in areas that are not high consequence areas. (SPLP St. No. 2, Zurcher Rebuttal Test. at 21:21-22:8.)

27. Because the integrity management program does not apply to segments of a pipeline that are not located in a high consequence area, it is inappropriate to consider releases that occurred on segments of pipelines that are not located in a high consequence area—such as the incidents in Carmichael, Mississippi, Lively, Texas, and Franklin County, Missouri—to evaluate the risk of a release on segments of pipelines that are located in a high consequence area.

Because if I'm in a rural area and not in a high consequence area, I don't have to do those additional tests and inspections, so I can't really compare the data back and forth. It's just not relevant, if that was your question.

(N.T. 4310:5-9, Zurcher Test.)

28. It is inappropriate to consider incidents from the PHMSA database that occurred on segments of pipelines that were not located in high consequence areas when evaluating the likelihood of such an incident occurring on the Mariner East pipelines located in high consequence areas.

As already stated, consequence without likelihood is meaningless when evaluating risk. Risk is a function of consequence times

PUBLIC VERSION

likelihood. If the consequence of an event is grave but the likelihood of that event occurring is extremely low, then the risk associated with the activity that may produce the event is extremely small as well. That is why we fly in commercial airplanes – the consequence of a crash is grave, but the likelihood of a commercial airline crash is very small. So because of integrity management procedures and in compliance with PHMSA’s regulations, the likelihood of the events from those historical accidents occurring in a high consequence area is so remote that it is inappropriate to consider them here. No such event has ever occurred in a high consequence area. As described earlier, there are as many as 40,000 miles of transmission pipelines located in high consequence areas. PHMSA regulations expressly allow it. If that type of analysis were appropriate, then there would be no HVL transmission pipeline located in a highly-populated area, and PHMSA’s regulations would not allow for it.

(SPLP St. No. 2, Zurcher Rebuttal Test. at 22:11-22.)

29. There is insufficient information available in the PHMSA database or elsewhere for Complainants to perform a risk analysis specific to SPLP or to the Mariner East pipelines to determine the probability or likelihood of an incident occurring, such as a hypothetical rupture of the pipeline, that would be applicable to SPLP’s operation of the Mainer East pipelines. (N.T. 1815:24-1816:8, Marx Test.; 1817:19-24, Marx Test.)

30. When evaluating the PHMSA database to identify the number of reported releases from a pipeline, it is inappropriate to compare the number of reported releases from pipelines transporting natural gas to the number of reported releases from pipelines transporting HVLs. The reporting requirement for releases from pipelines transporting HVLs is five gallons. To put a five-gallon leak in perspective, one drip per second over a twenty-four-hour period will be a release of five gallons. For propane, which is an HVL, a five-gallon release is approximately 180 cubic feet. In contrast, the reporting requirement for a release from a pipeline transporting natural gas is three-million cubic feet, which is enough natural gas for fifty households over a one-year period. (N.T. 4216:12-4218:2, Zurcher Test.)

PUBLIC VERSION

31. Complainants and aligned Intervenors failed to come forward with evidence to demonstrate that SPLP is not a competent operator of HVL pipelines, including specifically, the Mariner East pipelines. The incident history for SPLP reported in the PHMSA database is average as compared to other pipeline operators. For SPLP, the vast majority of releases reported in the PHMSA database since 2010 were on pipelines carrying crude, thirty-one were on pipelines carrying refined products, and only seven of the reported releases were on HVL pipelines. Of the seven reported incidents, one was a leak in Morgantown, Pennsylvania, two were small leaks in pump seals, two were in Texas, and two were in Ohio (although it appears that the PHMSA database identified each of the incidents in Texas and Ohio as two separate incidents when they were each supplemental reports of the same incident). (N.T. 4218:10-4223:6, Zurcher Test.; 4392:12-21, Zurcher Test.)

32. The release in Morgantown, Pennsylvania involved a pinhole leak in a girth weld that was reported by a member of the public. A pinhole leak will not manifest itself into a rupture. (N.T. 4225:3-4229:4, Zurcher Test.)

33. The release in Morgantown, Pennsylvania, like other pinhole leaks, presented no risk of hazard to the public. (N.T. 4390:3-4391: 6, Zurcher Test; N.T. 1889:14-16, Marx Test.)

But, remember, those small leaks are not things that are going to cause a concern to the general public or almost to anybody. They're just a small leak on a pipeline. It's a little drip coming out of it, and it's not going to be a hazard. But we want to know about it, and we want to take care of it.

You know, 48 percent of the leaks that are reported are those tiny, tiny, little leaks, you know. But we want to get them taken care of. We want to know about them. We want to be able to fix it and stop it.

And part of the reason for that, too, you can imagine a system that had a lot of those going on all over the place, you know, what would people do? So, each one's treated individually. It's responded to

almost immediately. It's rectified within hours. And that's what makes it so safe for the public.

(N.T. 4422:16-4423:8, Zurcher Test.)

34. There is no evidence in the PHMSA database or elsewhere that SPLP is a substandard operator of HVL pipelines.

E. SPLP performed quantitative risk assessments as required by the applicable regulations, which provides no evidence that the Mariner East pipelines are unsafe.

35. The fact that SPLP performed quantitative risk assessments is not evidence that the consequence of a pipeline rupture makes the pipeline unsafe. SPLP performed the quantitative risk assessments as required by the applicable regulations to determine whether a pipeline "could affect" a high consequence area for purposes of determining whether SPLP's integrity management program would apply to that segment of the pipeline. (N.T. 4298:16-4301:3, Zurcher Test.; 4305:19-4306:21, Zurcher Test.)

36. SPLP performed analyses of the consequences of a rupture to determine whether the Mariner East pipelines have the potential to impact a high consequence area. If they do, then the pipelines are placed into the integrity management program and treated in the same way as pipelines that traverse a high consequence area. (N.T. 4298:16-4301:3, Zurcher Test.)

37. SPLP has performed a risk analysis as required by 49 C.F.R. § 195.452(c).

My ruling was, and I thought it was agreed, that because Sunoco produced evidence of a quantitative risk analysis and risk assessment for Delaware and Chester counties, that *the issue in count four of the Flynn complainants' complaint*, basically asserting that they didn't -- the company didn't have one, *was moot*. And it -- *so that that was no longer an issue*.

(N.T. 4284:4-15, Zurcher Test.) (Emphasis added.)

I mean, I will concede the point that there was a quantitative risk assessment, and as Your Honor said earlier, no one's arguing that

that assessment, for whatever it was, is inaccurate because that's not part of the case. That ruling's gone.

(N.T. 4323:7-11, Stipulation.)

As Your Honor reported previously, the claims with respect to the absence of a risk analysis and risk assessment by Sunoco were no longer in the case. One of the agreements we reached is that that is true for both the Flynn complainants and Andover Homeowners' Association. That claim is no longer in the case. Period. That was one issue.

(N.T. 4333:10-16, Stipulation.)

II. SPLP's Integrity Management Program, Corrosion Control, and Cathodic Protection

38. SPLP Exhibit JF-1 is the Energy Transfer Integrity Management Plan, effective for SPLP assets as of May 2018, which is classified as Extremely Sensitive Materials under the Amended Protective Order.

39. SPLP Exhibit JF-2 is the SPLP Integrity Management Plan, effective for SPLP assets prior to May 2018, which is classified as Extremely Sensitive Materials under the Amended Protective Order.

40. SPLP Exhibit JF-3 are the Energy Transfer operating and engineering procedures and standards for hazardous liquid pipelines related to corrosion control, which is classified as Highly Confidential under the Amended Protective Order.

41. SPLP Exhibit JF-1RJ are the SPLP Operation and Maintenance Manual corrosion control procedures applicable to SPLP assets prior to May 2018, which are classified as Highly Confidential under the Amended Protective Order.

42. SPLP's Integrity Management Plans, SPLP Exhibits JF-1 and JF-2, are comprehensive and robust. (SPLP St. No. 2, Zurcher Rebuttal Test. at 24:1-6, "It is very much in conformance with the standards that I've described and the pipeline safety and integrity

management regulations. It properly describes and establishes processes for the management of the integrity of both gas and liquid pipelines.”); N.T. 4230:1-5, Zurcher Test.; SPLP St. No. 1, Garrity Rebuttal Test. at 9:5-7, “I conclude that the SPLP and Energy Transfer Integrity Management Plans and Energy Transfer SOPs (SPLP Exhibits JF-1, JF-2, JF-3) are complete and technically sound.”; Flynn Complainants St. No. 1, Dr. Zamanzadeh Direct Test. at 39:31-33.)

43. SPLP’s corrosion control and cathodic protection SOPs, SPLP Exhibits JF-3 and JF-1RJ, are comprehensive and robust. (SPLP St. No. 1, Garrity Rebuttal Test. at 9:5-7, “I conclude that the SPLP and Energy Transfer Integrity Management Plans and Energy Transfer SOPs (SPLP Exhibits JF-1, JF-2, JF-3) are complete and technically sound.”; Flynn Complainants St. No. 1-SR, Dr. Zamanzadeh Surrebuttal Test. at 4:24-25.)

44. SPLP’s current Integrity Management Plan and corrosion control and cathodic protection SOPs were adopted as effective for SPLP assets in May of 2018 due to the SPLP merger with Energy Transfer. (N.T. 4074:21-4075:2, Field Test.)

45. SPLP had corrosion control and cathodic protection SOPs in place prior to the Morgantown incident. (SPLP Ex. JF-1RJ; N.T. 4075:3-13, Field Test.)

46. SPLP has followed and follows the applicable Integrity Management Plan and corrosion control and cathodic protections SOPs. (N.T. 4076:4-13; SPLP St. No 14-RJ, Field Rejoinder Outline at 1-2; SPLP St. No. 1, Garrity Rebuttal Test. at 7:10-19; N.T. 4080:15-24, Field Test.; N.T. 3934:11-14, Garrity Test., “the totality of what [SPLP is] doing exceeds the regulatory expectations and places [SPLP] in a best-in-class position from the standpoint of integrity management.”)

47. Dr. Zamanzadeh did not make a conclusion as to the condition of the ME1 or 12-inch pipeline. (Flynn Complainants St. No. 1, Dr. Zamanzadeh Direct Test. at 41:44-42:27;

Flynn Complainants St. No. 1-SR, Dr. Zamanzadeh Surrebuttal Test. at 16:25-31; N.T. 2173:3-25, Zamanzadeh Test.)

48. Dr. Zamanzadeh performed no tests or studies to determine the condition of ME1 and 12-inch pipeline or associated alleged risks. (N.T. 2163:18-19, 2163:10-12.)

49. SPLP's ME1 and 12-inch pipelines are being appropriately managed to ensure they are safe to operate. (SPLP St. No. 2, Zurcher Rebuttal Test. at 17:12-18:4, 19:3-8; N.T. 3934:11-14, Garrity Test., "the totality of what [SPLP] is doing exceeds the regulatory expectations and places [SPLP] in a best-in-class position from the standpoint of integrity management."; N.T. 4408:17-20, Zurcher Test.)

50. SPLP's integrity management program for the ME1 and 12-inch pipelines relies on the use of complementary tools to determine risk due to corrosion, including the use of MFL ILI inspection tools, Annual CP surveys, Close-Interval CP surveys and Hydrostatic testing. (SPLP St. No. 1, Garrity Rebuttal Test. at 13:15-18.)

51. Corrosion as it relates to a pipeline is the electrochemical degradation of the metal as a result of the reaction with its environment. It is a naturally-occurring process. (N.T. 3894:10-13, Garrity Test.)

52. Corrosion on pipelines is prevented by two primary means – protective coatings and cathodic protection. (N.T. 3895:1-19, Garrity Test.)

53. Cathodic protection works in all soil environments as well as in concrete. (N.T. 3896:13-3897:7.)

54. Corrosion can be measured in a variety of ways, such as a pit gauge or in-line inspection tools. (N.T. 3895:21-3896:12, Garrity Test.)

PUBLIC VERSION

55. Whether corrosion is active or inactive and the rate of corrosion growth for active corrosion is measurable through comparing ILI runs over time. (N.T. 3924:4-23, Garrity Test.) Comparing these measurements is how SPLP knows that most of the corrosion on the ME1 and 12-inch pipelines is inactive and that cathodic protection is effective – the corrosion is not growing. (N.T. 4079:8-21, Field Test.)

56. There is no correlation between pitting and the manifestation of a rupture. (N.T. 4228:25-4229:2, Zurcher Test.) A pinhole leak that develops by corrosion will not manifest into a rupture. (N.T. 4225:3-4229:4, Zurcher Test.)

57. ILI tools identify anomalies in the pipe wall that may be potentially injurious to the operation of the pipeline so that the operator has the opportunity mitigate that threat before it becomes injurious. (N.T. 3920:16-21, Garrity Test.)

58. SPLP uses multiple different ILI tools, including a deformation tool to look for ovality or incidents of dents, a spiral magnetic flux leakage tool, low magnetism magnetic flux leakage tool, and an ultrascan crack detection tool. (N.T. 3933:19-25, Garrity Test.)

59. Hydrostatic testing is used to manage both external corrosion threats and stress corrosion cracking. (N.T. 3922:11-14, Garrity Test.) The hydrostatic testing is being done in the same or similar frequency to the in-line inspection tools. (N.T. 3934:3-5, Garrity Test.)

60. When anomalies above a certain threshold are found via ILI or hydrostatic test data, SPLP performs investigative digs, which means SPLP goes out into the field, digs up the pipeline and examines it and performs various tests, then documents the findings, observations, photographs, and the qualifications of the personnel completing the dig. (N.T. 3918:10-3919:2, Garrity Test.)

PUBLIC VERSION

61. The SPLP dig reports in Dr. Zamanzadeh's Exhibits MZ-2, MZ-6 and MZ-7 show pipeline anomalies where SPLP either repaired the anomaly or replaced the portion of pipe.

(N.T. 4093:12-14, Field Test.)

62. If SPLP determines that active corrosion is present, it also performs a regimen of testing procedures and samples that look for bacteria that can lead to microbiologically-influenced corrosion. (N.T. 3934:6-10, Garrity Test.)

63. SPLP also repairs or replaces, as necessary, any anomalies found and documents the repairs or replacements. (N.T. 4093:12-14, Field Test.)

64. To determine when an anomaly needs to be repaired or replaced, SPLP uses a more conservative approach than the 80% wall loss threshold required by PHMSA regulations. (N.T. 4084:15-18, Field Test.)

65. SPLP performs testing for Stress Corrosion Cracking, including hydrostatic spike tests, which are the preferred mechanism to determine the existence of potentially-injurious stress-corrosion cracking. (N.T. 3908:9-19, Garrity Test.; N.T. 4087:14-20, Field Test.) SPLP has also implemented the practice of mag particle inspection at investigative digs to detect stress-corrosion cracking. (N.T. 3908:25-3909:23, Garrity Test.)

66. Stress-corrosion cracking has never been observed or found in the histories of the ME1 and 12-inch pipelines. (N.T. 3908:20-22, 3909:17-19, Garrity Test.; N.T. 4087:20-24, Field Test.)

67. SPLP is "doing a very good job of assessing whether or not [stress-corrosion cracking] is a threat." (N.T. 3909:17-19, Garrity Test.)

PUBLIC VERSION

68. There is no evidence to show that microbiologically-influenced corrosion is an unmonitored or uncontrolled threat to the ME1 and 12-inch pipelines. (N.T. 3934:22-24, Garrity Test.)

69. SPLP implemented a regimen of testing procedures and sampling when active corrosion is found to test for microbiologically-influenced corrosion (MIC). (N.T. 3934:6-10, Garrity Test.)

70. In the area of the Morgantown incident, SPLP increased the cathodic protection for both the ME1 and 12-inch pipeline to a negative 0.95 instant off, as NACE recommends for MIC. (N.T. 4078:19-4079:7, Field Test.; N.T. 3925:15-3926:4, Garrity Test.)

71. Dr. Zamanzadeh's Exhibit 6, documents SPLP00008132, 8142, and 8145, consist of integrity summaries showing various details, results, and data of ILI runs and hydrostatic testing. (N.T. 4076:14-24, Field Test.)

72. SPLP utilizes annual corrosion-control surveys, which involve measuring the efficacy of cell cathodic protection through measurements at test points along the entire route of the pipeline at no wider than one-mile intervals. (N.T. 3922:15-20, Garrity Test.)

73. SPLP also runs close-interval surveys where people walk the entire pipeline and use a reference electrode to measure the output of the cathodic-protection system. (N.T. 3922:21-3923:2, Garrity Test.)

74. SPLP conducts close-interval-potential surveys, including in 2018, 2019 and November 2020, to determine the adequacy of cathodic protection and this data shows that the cathodic protection along the entire length of the ME1 and 12-inch pipelines has vastly improved. (N.T. 4080:15-24, Field Test.)

PUBLIC VERSION

75. SPLP has and continues to upgrade its cathodic-protection system on the ME1 and 12-inch pipelines. (N.T. 4082:8-4083:17, Field Test.)

76. SPLP's procedures for conducting close-interval-potential surveys improved and collected additional data over time. (N.T. 4086:2-4087:4, Field Test.)

77. Flynn Complainants' Exhibit Z-3 is a PHMSA Notice of Proposed Violation containing allegations concerning the method SPLP used to measure cathodic protection and a lack of documentation showing SPLP's analysis as to how this measurement method complied with NACE standards. (*Id.*; N.T. 4094:16-4095:15, Field Test.)

78. While SPLP did not contest this NOPV and instead complied with PHMSA's proposed compliance order, SPLP does not agree with and did not admit to these alleged violations. (N.T. 4095:25-4096:20, Field Test.)

79. SPLP had been utilizing these same procedures for years and PHMSA had audited SPLP multiple times on this topic, but PHMSA never raised an issue until 2017-2018. (N.T. 4095:16-19, Field Test.)

80. Because SPLP complied with PHMSA's proposed compliance order, any issue that PHMSA raised has already been remedied. (N.T. 4095:25-4096:20, Field Test.)

81. Cathodic-protection shielding means that something is preventing the cathodic-protection current from getting to the pipeline. (N.T. 3910:24-3911:1, Garrity Test.) Only certain types of pipeline coating will shield cathodic protection and then, only if the pipeline coatings are in fact disbonded. (N.T. 3987:1-6, 3987:21-3988:3, Garrity Test.)

82. The majority of the coatings on the ME1 and 12-inch pipelines are coal tar enamel. Coal tar enamel does not shield cathodic protection even when it is disbonded. (N.T. 3910:20-3911:10, Garrity Test.)

83. Dr. Zamanzadeh presented no evidence that coatings are disbonded, let alone will cause shielding, or that SPLP does not appropriately monitor for and mitigate this potential threat.

84. Consistent with its procedures, SPLP routinely does stray-current-interference testing and monitors critical bonds with other foreign pipeline operators to assure that nothing has changed that would put the cathodic-protection system in a corrosive or at-risk category. (N.T. 3923:3-7, Garrity Test.; N.T. 4088:25-4089:7, Field Test.) SPLP also participates and is actively involved in meetings with other pipeline operators to be aware of and mitigate the potential for harm to SPLP's cathodic-protection system. (N.T. 4089:8-4090:6, Field Test.)

85. The remaining-life study that Dr. Zamanzadeh proposes is redundant of SPLP's Integrity Management Plan and not a useful tool for these pipelines. (N.T. 4460:20-4461:25, Zurcher Test.)

86. Because of the integrity management programs that pipelines located in high consequence areas are required to follow, there is no need to perform a remaining-life study for a pipeline. Through the integrity management program, pipelines are constantly evaluated and brought back to their original strength and useful life. By constantly evaluating data through the integrity management program, including the use of smart tools that look for cracks, dents, and corrosion, repairs are made, as necessary, to bring the pipeline up to the requirements of the pipeline safety regulations. From a technical perspective, there is no remaining life for a pipeline. (N.T. 4211:25 – 4214: 10, Zurcher Test.)

What I would like to say, sir, is that remaining-life study is done every year by a pipeline company. It's part and parcel with an integrity management program. So, as you are assessing the condition of the pipeline or determining the strength of the pipeline, that's a remaining-strength calculation. Okay. So, we're talking about that, it's ongoing.

So, I run the tool through the pipeline. I find some evidence of metal loss that's probably caused by corrosion or may be caused by corrosion. I'm going to go out there and I'm going to repair that and I'm going to bring it back to as-new condition, basically -- and I use that term a little bit loosely -- but I'm going to bring it back to a safe -- safe condition. And I predict into the future, for the next five years, is anything I didn't fix going to grow that it may be detrimental or it may cause a release. And then, I'm going to pick my next frequency for those assessments and inspections based on that information.

So, it is a remaining-life calculation that's done after every tool run and after every iteration of going through your integrity management program. So, it's done continually as required by regulations, they just don't call it remaining-life.

(N.T.4460:20-4461:22, Zurcher Test.)

87. The testing that Dr. Zamanzadeh recommends—External Corrosion Direct Assessment (ECDA), Internal Corrosion Direct Assessment (ICDA), Stress Corrosion Cracking Direct Assessment (SCCDA), and various types of soil sampling—are unnecessary and will not provide useful information that would cause SPLP to do something differently than what is already being done. (N.T. 3931:21-3932:6, Garrity Test.)

III. Public Awareness Requirements

A. Regulatory Requirements for a Pipeline Operator's Public Awareness Plan and Program

88. The requirements for a public awareness program are provided in 49 C.F.R. § 195.440. (SPLP St. No. 5, Perez Rebuttal Test.)

89. Pursuant to Section 195.440(a), each pipeline operator “must develop and implement a written continuing education program” 40 C.F.R. § 195.440(a).

90. SPLP has a public awareness plan and has developed and implemented a public awareness program consistent with its plan. (SPLP Ex. No. JP-2, HLA.17 Public Awareness Plan; SPLP Ex. No. JP-3, HLA.40, Public Awareness Plan – Communication; SPLP St. No. 5,

PUBLIC VERSION

Perez Rebuttal Test. at 6; SPLP Ex. No. JP-7, HLA.17 Public Awareness Plan Revised (Highly Confidential and Public Versions).)

91. The public awareness program must include provisions to educate the affected public (residents), appropriate government organizations (including municipalities, schools and emergency officials), and persons engaged in excavation. 49 C.F.R. § 195.440(d).

92. The public awareness program must include information on: (i) use of one-call notification prior to excavation; (ii) possible “hazards” associated with unintended releases from a hazardous liquids pipeline; (iii) physical indications that such a release may have occurred; (iv) steps to be taken in the event of a release; and (v) procedures to report such an event. 49 C.F.R. § 195.440(d). The program must be in English and, for communities like Chester and Delaware Counties, in Spanish. *Id.*

93. The PHMSA regulations expressly require that the public awareness program identify the hazards of the products in the pipeline but does not require it to identify the consequences of those hazards (e.g., hazards of the product being flammability, while a consequence of flammability being a burn or fatality). 49 C.F.R. § 195.440(d)(2) (*See also*, N.T. 4234, 4237, Zurcher Test.)

94. The PHMSA regulations also provide that the public awareness program must follow the general recommendations of API RP 1162 (Public Awareness Programs for Pipeline Operators) (“RP 1162”). 49 C.F.R. §§ 195.440(b) and (c).

95. RP 1162, SPLP Exhibit No. JP-1, contains certain baseline requirements that an operator must undertake as well as supplemental activities that an operator may undertake if it determines that those activities are warranted. (SPLP St. No. 5, Perez Rebuttal Test. at 3.)

96. RP 1162 includes a table identifying the baseline and supplemental activities for the affected public, emergency officials, public officials, and excavators. (*Id.* at 3-6; SPLP Ex. No. JP-1 at 11-12.)

97. RP 1162 provides the pipeline operator with flexibility to select “the optimum combination of message, delivery method and frequency that meets the needs of the intended audience.” (SPLP Ex. No. JP-1 at 19.)

B. Description of SPLP’s Public Awareness Program

98. SPLP’s public awareness program is comprehensive, multi-faceted, and effective in communicating the required information to all stakeholders.

99. Beginning in 2014, SPLP has sent separate public awareness mailings for the Mariner East pipelines – one to the affected public, excavators and public officials, and one to emergency responders. (SPLP St. No. 5, Perez Rebuttal Test. at 6-8.) Additional mailings were sent to the above-referenced stakeholders in 2018, 2019, and 2020. (SPLP Exs. JP-4, JP-5, JP-6, GG-1 and GG-2.)

100. [BEGIN HC]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC].

PUBLIC VERSION

103. PHMSA's website contains public awareness information about pipelines for stakeholders. (SPLP Exhibit No. 26.) The website contains public awareness information that satisfies the criteria set forth in 49 C.F.R. § 195.440(d). This information includes (i) how to recognize where a pipeline is; (ii) how to recognize a pipeline release; (iii) what to do in the event of a suspected or detected release; (iv) what not to do in the event that a leak were to occur; (v) what the pipeline company does in the event of a leak; and (vi) the pipeline company's communication on public awareness. *Id.*

104. All three of the experts on public awareness and emergency response proffered by Complainants and aligned Intervenors – Hubbard, Boyce, and Turner – conceded that SPLP's public awareness mailers are consistent with the information on PHMSA's website. (N.T. 1968, Boyce Test.; N.T. 2206-07, Turner Test.; SPLP-C Ex. No. 75 at 147-148, Hubbard Test.)

105. Timothy Boyce, the Director of the Delaware County Department of Emergency Services, testified that SPLP's public awareness mailers were also consistent with the information in Delaware County's Emergency Planning Guide, which is sent to Delaware County residents and is on Delaware County's website. (SPLP-C Ex. 56; N.T. 1969-70, Boyce Test.)

106. In addition, since at least 2014, SPLP has developed websites dedicated to providing public awareness information about the Mariner East pipelines, including a website dedicated specifically to pipeline safety. (SPLP Ex. No. 45; N.T. 3204, McGinn Test.) The websites contain information and links to specific information relevant to Delaware and Chester Counties. (N.T. 3206-3208 McGinn Test.).

107. SPLP further disseminates public awareness and safety information about Mariner East pipelines, with specific information about Delaware and Chester Counties, through social

PUBLIC VERSION

media, including Instagram and Facebook pages. (SPLP Exs. 46 and 47; N.T. 3209-3210, McGinn Test.)

108. To reach an even wider audience outside the buffer distances for the mailers to the affected public, SPLP has since 2016 used billboards, radio advertising, and television advertising to provide public awareness information or directions on where to obtain that information. (N.T. 3211, McGinn Test.) In 2020, SPLP ran fifteen-second and thirty-second radio advertising in the entire Philadelphia and Harrisburg media markets, which provided public awareness information and also directed listeners to SPLP's websites for additional information. (SPLP Ex. Nos. 43, 44; N.T. 3212, McGinn Test.).

109. As an additional supplemental activity for the affected public, SPLP held various open houses in Chester and Delaware Counties to provide information about the construction of the Mariner East pipelines. (SPLP St. No. 5, Perez Rebuttal Test. at 9). At each open house, twenty to thirty company personnel attended and were available to answer questions from attendees. (*Id.* at 9-10.)

110. Complainants and aligned Intervenors who are members of the affected public testified about their awareness of information relating to the Mariner East pipelines in Delaware and Chester Counties. Uniformly, these witnesses testified that they had gained significant knowledge about the pipelines, including, but not limited to, where they were located, what products they contain, under what pressure they operate, how to detect and respond to a release, and the potential hazards of the pipelines. (N.T. 1609, DiBernardino Test.; N.T. 850-51, Friedman Test.; N.T. 1211, Harkins Test.; N.T. 1115, Hughes Test.; N.T. 1755, Marshall Test.; N.T. 1011, McDonald Test.; N.T. 988, McMullen Test.; N.T. 1523, Obenski Test.)

PUBLIC VERSION

111. Delaware and Chester Counties have combined populations of more than one-million residents. Other than the testimony of the witnesses identified above, all of whom now have extensive knowledge about these pipelines and their potential hazards, Complainants and aligned Intervenors offered no testimony or evidence from any of the other one-million residents that SPLP's public awareness program provided insufficient information.

112. Likewise, Complainants and aligned Intervenors offered no evidence or testimony from excavators that SPLP's public awareness program provided insufficient information.

113. In fact, in addition to the baseline requirements of RP 1162 for excavators (the mailings described above), SPLP includes excavators in annual liaison CORE training meetings. (SPLP St. No. 5, Perez Rebuttal Test. at 15.) Four hundred seventy-eight excavators attended that meeting in 2019. (*Id.*) In addition, SPLP is a sponsor of the annual Pennsylvania One Call System Safety Day conference for over 2,000 excavators and the Common Ground Alliance, which is committed to preventing damage to underground infrastructure. (*Id.* at 15.)

114. SPLP also goes beyond the baseline requirements (mailers) for schools by providing robust supplemental information. SPLP engaged a consulting company that specializes in community planning and emergency preparedness and met with school districts and parochial schools in Delaware and Chester Counties. (SPLP St. No. 5, Perez Rebuttal Test. at 10.) SPLP also provided answers to follow-up questions that representatives of the schools asked, and where noted, agreed to provide information containing confidential security information pursuant to a non-disclosure agreement ("NDA") to protect the confidentiality of that information under Pennsylvania law. (*Id.*)

115. Neither the PHMSA regulations nor RP 1162 requires a pipeline operator to meet with public officials, representatives of schools, or the affected public; nevertheless, SPLP has

met and has offered to meet with public officials, representatives of schools, and members of the affected public. (SPLP St. No. 5, Perez Rebuttal Test. at 11.)

116. Certain school and public officials acknowledged that they had been provided with satisfactory information. (N.T. 1217-20, Dr. Scanlon Test.) As an example, Michelle Truitt, a Supervisor of Intervenor East Goshen Township, wrote in an email to SPLP after her tour of an SPLP pumping station:

The redundancies that are built into the system are many and gives both of us reassurance that [SPLP] is a first class operation with safety foremost in mind Thanks again for a terrific site tour, the thorough explanations, answering our questions and being gracious hosts.

(SPLP Ex. MG-1-RJ.)¹

117. SPLP's public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey ("PAPERS"). PAPERS is a national program developed and supported by API to provide pipeline operators with meaningful, comparative, consistent insight into whether a pipeline operator's public awareness program meets the requirements of RP 1162. (SPLP St. No. 5, Perez Rebuttal Test. at 16.)

118. SPLP's public awareness program was one of the programs that was included as part of the 2019 PAPERS audit. SPLP's program was evaluated individually and in comparison to eighteen other pipeline operators' programs. The PAPERS study concluded that SPLP's public awareness program was effective in achieving program objectives and was comparable to the other pipeline operators' programs. (*Id.*; N.T. 3121-3122, Perez Test.; N.T. 3272-73, McGinn Test.; N.T. 4351-52 Zurcher Test.)

¹ SPLP's public awareness program for emergency officials is described below at Section IV.

PUBLIC VERSION

119. PHMSA is aware of the PAPERS study protocol and SPLP's participation in the PAPERS study. PHMSA has not provided any adverse comments on the PAPERS study as a means of evaluating the effectiveness of SPLP's public awareness program. (N.T. 3272-73, McGinn Test.)

120. SPLP's witnesses, including Perez and SPLP's expert witnesses Zurcher and Noll, concluded that SPLP's public awareness program is compliant with, and in fact exceeds, the requirements of the PHMSA regulations and RP 1162. (SPLP St. No. 5, Perez Rebuttal Test. at 17; SPLP St. No. 2, Zurcher Rebuttal Test. at 11-17; SPLP St. No. 4, Noll Rebuttal Test. at 26-28.)

121. Zurcher's expertise in this area is especially significant. Zurcher has reviewed and audited hundreds of public awareness plans and programs and worked on the original version of RP 1162. (N.T. 4233.)

122. All of Complainants' and aligned Intervenors' experts on this topic confirmed that SPLP's public awareness program contained each and every component required by the PHMSA regulations at 49 C.F.R. § 195.440(d). (N.T. 1962-63, Boyce Test.; N.T. 2199-202, 2206-07 Turner Test.; SPLP-C Ex. 75 at 145-146 Hubbard Test.)²

123. All of the Complainants' or aligned Intervenors' expert witnesses on the topic of public awareness testified that none offered any opinion that SPLP failed to comply with the PHMSA public awareness regulation or RP 1162. (N.T. 1962, 1975, Boyce Test.; N.T. 2199, 2209, Turner Test.; N.T. 2338-39, 2341-42, Hubbard Test.)

² Although not offered as an expert, Kevin Miller, East Goshen Township's emergency response coordinator, also testified that SPLP has provided the basic information that the Township needs for its emergency operating plan. (N.T. 1448.)

124. SPLP's public awareness program complies with the PHMSA regulation and RP 1162 and adequately informs the various constituencies about the Mariner East pipelines.

C. Complainants' and Aligned Intervenors' Claimed Deficiencies in SPLP's Public Awareness Program Lack Merit

1. Determining a "safe distance" to evacuate in the event of a pipeline release.

125. Complainants and aligned Intervenors allege that SPLP has not provided sufficient information as to the "safe distance" to which a resident should evacuate in the event of a release from the Mariner East pipelines. SPLP's mailers state that a resident should "leave the area immediately, on foot, if possible" and "follow the direction of local emergency response agencies." Then, "from a safe location, call 911" (SPLP Ex. Nos. GG-1 and GG-2.)

126. SPLP has stated that residents must use sight, sound, and smell to determine a safe distance to which to evacuate. (SPLP St. No. 4, Noll Rebuttal Test. at 19; N.T. 3307, Noll Test.; N.T. 4264, Zurcher Test.; SPLP Ex. Nos. GG-1 and GG-2.)

127. There is no one size fits all safe distance or location to which to evacuate. A "safe distance" is dependent on the facts and circumstances of each event and, where applicable, on guidance from emergency responders. (SPLP St. No. 4, Noll Rebuttal Test. at 19-20; N.T. 4264-67, Zurcher Test.) Complainants' and aligned Intervenors' experts agree there is no one size fits all "safe distance" and that guidance comes from emergency responders. (N.T. 1968, Boyce Test.; N.T. 2208 Turner Test.; SPLP-C Ex. 75 at 125.)

128. Both Noll and Zurcher explained this very clearly. Noll testified: "Keep moving until you feel safe." (N.T. 3391, 3308.) Zurcher echoed that principle: "Keep going until you don't see it anymore and go a little farther." (N.T. 4264.)

129. Complainants' and aligned Intervenors' experts and lay witnesses also testified that there is sufficient information in the public domain, obtained by signing an NDA, or

obtained in plume modeling workshops presented by SPLP, to determine a rule of thumb of one-half mile for a safe distance to evacuate to in the event of a significant release (N.T. 1973, 1981 Boyce Test.; N.T. 2359, Hubbard Test.; N.T. 1311, 1478, Miller Test.; N.T. 2857, Gordon Test.; N.T. 1225-26, Dr. Scanlon Test.)

130. SPLP has provided appropriate information in compliance with the PHMSA regulations and RP 1162 about evacuation to a safe distance in the event of a pipeline release.

2. Disclosure of SPLP's emergency response plan

131. Complainants and aligned Intervenors allege that SPLP's insistence on execution of an NDA to obtain access to SPLP's emergency response plans limits the effectiveness of SPLP's public awareness program.

132. Newly-enacted House Bill 2293 signed by Governor Wolf on November 30, 2020 is consistent with SPLP's prior practice and renders this issue moot.

133. House Bill 2293 adds 66 Pa. C.S.A. § 1512, which requires pipeline operators in high consequence areas to make available, upon written request, the pipeline operator's emergency response plan to the emergency response coordinator of each county. If the plan contains confidential security information, the recipient must comply with all requirements of the Public Utility Confidential Security Information Disclosure Protection Act and "enter into a notarized agreement with the public utility for the purpose of maintaining the confidentiality requirements" This is the exact procedure that SPLP has followed to date.

134. SPLP has complied with the PHMSA regulations and RP 1162 by its willingness to disclose its emergency response plans subject to the execution of an NDA to protect the confidentiality of the information contained in the plans.

3. Use of cell phones

135. Complainants and aligned Intervenors allege that SPLP's information on use of cell phones has been inconsistent.

136. SPLP's mailers and messaging has been consistent and mirrors PHMSA's messaging: cell phones should not be used until a resident is at a safe location. (SPLP Exs. GG-1 and GG-2; SPLP St. No. 4, Noll Rebuttal Test. at 26.)

137. In fact, the only inconsistent information on cell phone use came from Intervenors' expert Turner, who stated that there is a greater risk in not using a cell phone in the event of a pipeline release. (N.T. 2220-21.)

138. SPLP has complied with the PHMSA regulations and RP 1162 on the use of cell phones.

4. Determining wind direction

139. Complainants and aligned Intervenors allege that an average person cannot determine wind direction.

140. Noll stated that determining wind direction is "pretty straightforward." (SPLP St. No. 4, Noll Rebuttal Test. at 22; N.T. 3309.) It can be done by the physical sensation of a breeze, looking at clouds, flags or other indicators. (*Id.*)

141. Moreover, the 911 control centers in Delaware and Chester Counties chart wind direction, and certain schools have weather stations. (N.T. 1263-1264, Campbell Test.)

142. SPLP has complied with the PHMSA regulations and RP 1162 on determining wind direction.

5. Purported conflict between moving away from the pipeline and moving upwind and uphill.

143. Complainants and aligned Intervenors allege that they have not been informed what to do in the event of a release if moving away from the pipeline and moving upwind and uphill are in conflict.

144. Noll testified that the default is always to move away from the pipeline. (N.T. 3308-3309.)

145. SPLP has complied with the PHMSA regulations and RP 1162 on what to do in the event of a pipeline release.

6. Evacuate or shelter in place

146. Complainants and aligned Intervenors allege that they have not been provided information on who decides whether to shelter in place or evacuate.

147. A wealth of information has been provided on this issue.

148. SPLP's Mariner Emergency Responder Outreach (MERO) training states that sheltering in place may be an alternative on a case-by-case basis to be determined by the emergency responder. (SPLP St. No. 4, Noll Rebuttal Test. at 20; SPLP Ex. GN-2 at 83, 93.)

149. Delaware County has an entire section of its Emergency Response Plan that explains the considerations to be used in determining whether to evacuate or shelter in place. (N.T. 1970, Boyce Test.)

150. Complainants' and aligned Intervenors' experts agree that the decision to evacuate or shelter in place is made on a case-by-case basis. (N.T. 1970, Boyce Test.; N.T. 2220 Turner Test.; SPLP-C Ex. 75 at 125-26, Hubbard Test.)

151. SPLP has complied with the PHMSA regulations and RP 1162 on informing members of the affected public to evacuate in the event of a pipeline release.

7. Evacuating those with physical or mental limitations

152. Complainants and aligned Intervenors allege that SPLP has not provided sufficient information on how to evacuate individuals with physical or mental limitations.

153. Noll testified that this is a challenge in response to any emergency, whether it be a tornado, fire, active shooter, plane crash or pipeline release. (SPLP St. No. 4, Noll Rebuttal Test. at 21.) These allegations are not unique to one specific hazard but are more reflective of the type of physical or mental limitation or facility to evacuated. Complainants' expert agreed. (N.T. 1983, Boyce Test.)³

154. SPLP has complied with the PHMSA regulations and RP 1162 in terms of providing sufficient information to evacuate.

8. Notice of potential death or burns from a pipeline release

155. Complainants and aligned Intervenors allege that SPLP is required to notify the public in its mailers that one consequence of a pipeline is potential burns or death.

156. Such notice is neither necessary nor required.

157. All experts, for all parties, agreed that it is common knowledge that the potential exists of a fatality or burns if an explosion or fire occurs from a pipeline release. (N.T. 3309 Noll Test.; N.T. 1964, 2002, Boyce Test.; N.T. 2200, Turner Test.) Therefore, no additional notice is needed to achieve public awareness.

158. Moreover, the PHMSA regulations themselves do not require information on consequences as part of a public awareness program. The PHMSA regulations speak only about providing information on the potential "hazards." 49 C.F.R. § 195.440(d).

³ Dr. Scanlon further testified that his schools can and do efficiently evacuate those with physical and mental limitations. N.T. 1242.

PUBLIC VERSION

159. Consistent with the PHMSA regulations, RP 1162 states repeatedly that the pipeline operator's baseline message to the affected public, emergency officials, and public officials must describe the "awareness of hazards." (SPLP Ex. JP-1, Tables 2-1.1, 2-1.2, 2-1.3 and 2-1.4, pp. 11-12.) Those tables do not mention consequences. (*Id.*)

160. In describing the topics on which a pipeline operator must message concerning the products transported, RP 1162 identifies "potential hazards posed by hazardous liquids." (*Id.* at 4.3.1 p. 19.)

161. Even if a conflict did exist between the PHMSA public awareness regulations at 40 C.F.R. § 195.440 and RP-1162, the regulations control over the general recommendations in RP 1162. (N.T. 4240, Zurcher Test.)

162. The one isolated reference in RP 1162 to identifying potential consequences of a hazard does not state that it is required as part of the (i) baseline activities, (ii) to the public as opposed to emergency officials, or (iii) as part of a mailer, as opposed to in other forms of messaging. (SPLP Ex. JP-1, at 19.)

163. In fact, that sole reference to consequences in RP 1162 states that the message should be more detailed for the emergency responder audience than for other audiences. (*Id.*)

164. John Zurcher, SPLP's expert witness on public awareness, integrity management, and regulatory compliance, testified that in the hundreds of public awareness programs that he has audited, he has never seen a pipeline operator's brochure for the affected public containing information on consequences. (N.T. 4233, 4241-42.) Zurcher testified that in accordance with PHMSA requirements, "we talk about the hazards, but not the consequences." (*Id.*)

165. Consistent with PHMSA's requirements, SPLP's mailers contain information on the hazards of the pipeline products. (SPLP Ex. Nos. JP-4, JP-5, JP-6, GG-1 and GG-2.)

D. Complainants' and Aligned Intervenors' Demands

166. Complainants and aligned Intervenors failed to establish any deficiency in the information provided to stakeholders in SPLP's public awareness program. None of their respective witnesses, when asked, could identify a single piece of specific information that they needed, that is required by the PHMSA regulations, or that is recommended by RP 1162, and which SPLP has not provided.

167. Instead, Complainants and aligned Intervenors requested three items of relief: an early warning system; addition of an odorant to the products in the Mariner East pipelines; and direct notice of a release to schools and municipalities instead of notice to 911 only.

168. There are technological issues in early warning systems that would result in a number of false positives. (SPLP St. No. 4, Noll Rebuttal Test. at 23.) Noll is not aware of an early warning system being used in any pipeline right of way. (*Id.*)

169. [BEGIN HC]. [REDACTED]

[END HC].

170. Complainants and aligned Intervenors concede that an early warning system is not required by the PHMSA regulations. (N.T. 2201, Turner Test.)

171. Complainants and aligned Intervenors likewise concede that adding an odorant to the product in the Mariner East pipelines is not required by the PHMSA regulations. (N.T. 1964 Boyce Test.; N.T. 2201, Turner Test.)

172. The Public Utility Commission has held in *Baker v. Sunoco Pipeline, L.P.* that any requirement to add odorants or to employ an early warning system must be done by regulation and is outside the authority of the Commission to order in a Complaint proceeding. *Baker* at 11, Ordering Paragraph 2.

173. With respect to the demand to provide notice of a pipeline release directly to schools and municipalities, Noll testified that it would be counter-productive. Noll testified that such notice can actually delay emergency response because the precise location of the incident may not be known. In addition, direct notice provides an opportunity for delayed or conflicting response. (SPLP St. No. 4, Noll Rebuttal Test. at 23-24.)

174. Noll further testified that the proper way to provide notice of a release is through 911, because “the best source of information is those closest to the problem,” and 911 has the existing contracts, experience, system, knowledge of the players and communication channels. (N.T. 3369-70.)

IV. Emergency Response Information and Training

A. Regulatory requirements for a pipeline operator’s emergency response information and training.

175. RP 1162 requires pipeline operators to provide information to emergency response officials as part of the operator’s public awareness program. (SPLP Ex. JP-1 at 18-19.)

176. RP 1162 states further that it is important to continue a liaison with emergency officials, including through training and periodic communication. (*Id.*)

B. SPLP’s Emergency Response Information and Training

177. SPLP has conducted MERO training two times each in Delaware and Chester Counties in 2017 and repeated that training in 2020. (SPLP St. No. 4, Noll Test. at 8-11; N.T. 3213-3214, McGinn Test.)

178. The MERO training was conducted by Gregory Noll, SPLP’s expert witness in emergency planning and emergency response training. (*Id.*)

179. Noll is a renowned expert in his field with over fifty years of experience in emergency response training, including for pipelines, the recipient of numerous awards and

honors in this discipline, a member of many codes and standards committees for emergency response, and an author or co-author of ten textbooks on the subject matter, including the authoritative text entitled Hazardous Materials: Managing the Incident, which is now in its fourth edition and upon which the MERO training is based. (SPLP St. No. 4, Noll Rebuttal Test. at 1-4; SPLP Ex. GN-1; N.T. 3298.)

180. Noll literally wrote the book on these issues. (SPLP St. No. 4, Noll Rebuttal Test. at 4.)

181. The MERO training sessions each lasted approximately two and one-half hours and consisted of a 100-page PowerPoint presentation and questions and answers. (N.T. 3299-300, Noll Test.; SPLP RJ Ex. GN-2.)

182. The MERO training emphasizes a risk-based approach that is a process that can be applied to any pipeline release, whether it is a puncture, a rupture or a leak. The risk-based approach is based upon analyzing the problem, assessing the hazards, estimating potential consequences, and then determining courses of action based on facts, circumstances, and science. (SPLP St. No. 4, Noll Rebuttal Test. at 10-11; SPLP Ex. GN-2 at slides 16-17; N.T. 3301-02, Noll Test.)

183. The risk-based approach emphasizes that you cannot have an emergency response plan for each potential incident or each potentially-affected neighborhood and that the incident commander on the emergency response team must apply the risk-based approach based on the facts specific to each incident. (SPLP St. No. 4, Noll Rebuttal Test. at 11-12.)

184. The MERO training provided a (i) description of the nature of materials in the pipeline, (ii) the general properties and hazards associated with HVLs, (iii) information and medical response to exposure to these HVLs, (iv) the direction of flow of the product in the

PUBLIC VERSION

Mariner East 2 pipelines, (iv) mapping resources regarding the location of the pipelines, (v) information on how to detect a release by sight, sound, and smell, and (vi) emergency response procedures to follow for an ignition release and a non-ignition release. (SPLP St. No 4, Rebuttal Test. at 13-17; SPLP Exhibit GN-2, *passim*.)

185. Over 500 people who attended the MERO training sessions in 2017 completed an evaluation of the program. In response to the question “do you have a better understanding of pipelines in your area,” 560 people responded “yes” and three responded “no.” In response to the question “did the presentation increase your knowledge about what to do in case of a pipeline emergency in your community,” 557 people said “yes” and six said “no.” And in response to the question “do you feel you have enough information to respond to an emergency involving our pipeline,” 547 people said “yes” and seven said “no.” (N.T. 3302-03.)

186. Two of the three experts proffered by Complainants and aligned Intervenors were invited to the MERO training but chose not to attend. (N.T. 1976, Boyce Test.; N.T. 2344, Hubbard Test.)

187. SPLP also participates annually in CORE training for emergency responders offered by all of the pipeline operators in Chester and Delaware Counties. (SPLP St. No 5, Perez Rebuttal Test. at 12.)

188. Noll was retained by Intervenor Chester County to provide two tabletop emergency response exercises to emergency responders. (SPLP St. No. 4, Noll Rebuttal Test. at 24.) The evaluation scores for these exercises on average exceeded 4.6 on a scale of 1 to 5. (*Id.* at 25-26.)

189. SPLP has written to all municipalities and school districts in Chester and Delaware Counties and offered to have Noll perform additional tabletop exercises and to meet

PUBLIC VERSION

with emergency responders to discuss “best in class” components to include in the emergency response plans required to be developed by the municipalities and school districts. (SPLP Exs. 48 and 49; N.T. 3214 McGinn Test.)

190. SPLP has provided an exhaustive amount of additional emergency response training, tours, and exercises in Delaware and Chester Counties, including:

- In June 2017, Boyce was given a tour of SPLP’s pipeline control center located in Montello, Pennsylvania.
- On May 29, 2018, SPLP hosted training at the Marcus Hook Industrial Center (“MHIC”) for community fire companies.
- On June 6, 2018, the Chester County Hazmat team toured SPLP’s pipeline control center located in Montello, Pennsylvania.
- On November 10, 2018, SPLP conducted an emergency functional training involving a hypothetical NGL pipeline incident at the Marcus Hook Tank Farm in Upper Chichester, Delaware County. This fundamental training exercise was in partnership with Delaware County Emergency Services as a support responder. That site is a Mariner East meter site with a flare, valves and other equipment. Boyce attended that training.
- On December 6, 2018, SPLP hosted a tabletop exercise at MHIC regarding a diesel spill. Larry Bak from Delaware County Emergency Services attended.
- On May 29, 2019, SPLP hosted a Corporate Incident Management Team tabletop exercise at MHIC on a worst-case crude oil spill. Delaware County’s Boyce and Bak attended.
- On June 21, 2019, SPLP hosted the Chester County Association of Townships on a tour of the Eagle Point Pump Station. Attendees included Bill Turner and Mike Murphy from Chester County EMS, Bud Turner and police department Chief Joe Catov from West Whiteland Township, Mike Lamm from Lionville Fire Company, Rick Smith from East Goshen Township, Shanna Lodge from Upper Uwchlan Township, Rob Pinger from Westtown Township, representatives from the offices of Rep. Kristine Howard, Rep. Tim Kearney and Rep. Carolyn Committa, and a representative from Downingtown Area School District.
- On July 25, 2019, SPLP hosted a tabletop exercise for the Philadelphia zone on a diesel spill. Bak attended.

PUBLIC VERSION

- On August 20, 2019, SPLP hosted a training session at MHIC for community fire departments.
- In September 2019, SPLP hosted training at MHIC for community police departments.
- On September 17, 2019, SPLP hosted a tabletop training exercise at Twin Oaks on a diesel spill from a tank.
- On August 5, 2020, SPLP conducted a tour of Mariner East facilities, including a pump station, with representatives of East Goshen Township.
- SPLP presented a plume modeling review at the Delaware County Department of Emergency Service building on January 27, 2017. Boyce and Bak participated.
- SPLP presented a plume modeling review at the Chester County Department of Emergency Service building in West Chester on November 30, 2017.
- SPLP presented a plume modeling review, Integrity Management Program, Environmental Compliance Program and Security Program review at the Chester County Training Center on July 30, 2019.

(SPLP St. No. 13-RJ, Gordon Rejoinder Test. Outline; N.T. 2851-58, Gordon Test.)

191. SPLP representatives meet with Delaware and Chester Counties' local emergency response committees every other month. (N.T. 2856.)

192. SPLP participates in bi-weekly meetings with townships across Chester and Delaware Counties and regularly participates in the Chester County Association of Township Officials' monthly meetings to provide project updates. (SPLP St. No. 6, McGinn Rebuttal Test. at 4-5.)

193. SPLP has made substantial equipment purchases for municipalities within Chester and Delaware Counties to enhance their emergency response capabilities. Between 2016 and 2019, SPLP provided first responder grants totaling \$625,394.15, of which \$172,794.60 went to Chester County emergency services and various police and fire departments and \$452,599.55

went to similar organizations in Delaware County. (SPLP St. No. 6, McGinn Rebuttal Test. at 5-6.) Additional grants will be provided in 2020. (*Id.*)

194. In addition, as part of a negotiated easement agreement, SPLP provided funding to Middletown Township for emergency response training to be conducted in Oklahoma. (*Id.* at 6.)

195. Experts from Chester and Delaware Counties testified that the amount of training and funding for equipment provided by SPLP is greater than any other NGL pipeline operator in those counties. (N.T. 2233, 2235-2236, 2253, Turner Test.); N.T. 1977, Turner Test.)

196. In fact, Complainants' and aligned Intervenors' expert acknowledged that the Enterprise (or TEPPCO) NGL pipeline runs through Delaware and Chester Counties, in some locations closer to schools, but none of those experts or schools have asked TEPPCO for any additional information to develop emergency response plans, have not asked TEPPCO for an early warning system or odorant in their products, and have received information in TEPPCO's mailers that is consistent with the information contained in SPLP's mailers. (N.T. 1991-92, Boyce Test.; N.T. 2234-39, Turner Test.; SPLP Ex. C-75 at 130-34.)

197. Complainants and aligned Intervenors concede that the municipalities and school districts have the legal obligation to create their own emergency response plans; SPLP does not have that obligation. (N.T. 1975, Boyce Test; N.T. 2210, Turner Test.; N.T. 2352, Hubbard Test.)

198. SPLP's only requirement is to provide sufficient information to allow the municipalities and schools to be able to develop those plans. (*Id.*) The information provided by SPLP to emergency responders is sufficient for emergency responders working on behalf of

municipalities and schools to respond and develop their plans. (SPLP St. No. 4, Noll Rebuttal Test. at 28.)

199. Complainants' and aligned Intervenors' experts uniformly admit that SPLP has provided a wealth of information for municipalities and schools to develop their own plans: information on (i) the location of the pipelines; (ii) the location of the valve stations; (iii) proximity to schools; (iv) the products in pipelines and their physical properties; (v) the hazards of those products; (vi) a rule of thumb for a safe distance in the event of a significant release; (vii) the direction of flow of product in the pipelines; (viii) that in the event of a catastrophic release the product between the corresponding valve sites will be released; (ix) information on plume modeling; (x) information on SPLP's integrity management, security and PHMSA compliance programs; and (xi) information on SPLP's remote monitoring center for leak detection. (N.T. 2228-29, Turner Test.; N.T. 1984-85, Boyce Test.; N.T. 2352-2354, Hubbard Test.)

200. These witnesses further agree that from all the training given by and information provided by SPLP, emergency responders have substantial knowledge about the Mariner East pipelines. (N.T. 1984, Boyce Test.; N.T. 2228, Turner Test.; N.T. 2352, Hubbard Test.) Hubbard described the substantial knowledge that he now has on this subject: "More than I ever imagined about pipelines in general and Mariner East pipeline, yes sir." (N.T. 232:17-19, Hubbard Test.)

201. Indeed, after attending a training session for emergency responders and school officials held at Rose Tree Media School, the facilitator stated that there was a consensus among the group that "our community response groups have the training and the wherewithal to direct

the school or anyone else towards safety.” (N.T. 1996-1997.) Boyce attended that session and testified that he agreed with that statement. (*Id.* at 1997.)

202. Recently, in his letter to SPLP dated April 16, 2020, Boyce stated: “I appreciate Energy Transfers commitment to public safety over the years.” (Ex, SPLPC-58; N.T. 1997-98.)

203. In addition, the emergency response coordinator for East Goshen Township, Kevin Miller, testified that SPLP had provided sufficient information for emergency response officials to develop an emergency response plan.

204. In a letter dated December 6, 2019 from Miller to Rick Smith, the East Goshen Township Manager, Miller stated that he attended a meeting at the Chester County Department of Emergency Services at which SPLP provided information on the Mariner East pipelines. (N.T. 1479.)

205. Miller’s letter stated that:

Based upon the information I received at the meeting as well as information I have received at previous Sunoco meetings that I have attended, I believe that the emergency operation plan and resources listed in the plan are sufficient in the event of an emergency at this time.

Ex. SPLP C-18.

206. Miller reviewed the emergency plan again in 2019. (N.T. 1479.)

207. Miller testified that this was his opinion when he wrote the letter and it remains his opinion today. (N.T. 1480.)

208. Hubbard alone raised an issue as to his lack of access to plume modeling information. N.T. 2334-35. Hubbard conceded, however, that he did not even know if he had asked SPLP for that information and that plume modeling information is publicly available. (N.T. 2335-36.)

V. Construction of the Mariner East 2/2X pipelines

209. The 20” ME2 and 16” ME2X pipelines are currently in the final stages of construction in Chester and Delaware Counties. [BEGIN HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC].

210. SPLP follows all applicable federal and state safety and construction regulations and goes above and beyond the regulatory requirements in several important respects to make it more resistant to third-party damage, ground movement, shipping damage, and overall pipe body cleanliness and weldability. (SPLP St. No. 13, Gordon Rebuttal Test. at 2-3; *see also* SPLP MG-2, Mariner East 2 Pipeline Project Safety Practices and Design; *see also* SPLP MG-3 through MG-10, Construction Protocols and Standard Operating Procedures).

211. For example, ME2/2X will have 12-inches of additional cover over top of the pipelines in industrial, commercial, and residential areas, for a total depth of cover of 48 inches, rather than the 36 inches of cover that is required by 49 C.F.R. Part 195 PHMSA regulations. (SPLP St. No. 13, Gordon Rebuttal Test. at 2-3.)

212. The pipe grade purchased for ME2/2X was a minimum of 0.38-inch thickness with a 0.6 design factor, which exceeds the PHMSA requirements of 0.316-inch thickness and

0.72 design factor. This heightened design increases resistance to damage and improves the structural integrity of the pipelines. (SPLP St. No. 13, Gordon Rebuttal Test. at 3).

213. The pipe used for ME2/2X is also specified to meet the American Petroleum Institute 5L's more stringent PSL-2 standard, which has stricter requirements for metallurgy, testing frequencies, factory inspections, and record retention. (SPLP St. No. 13, Gordon Rebuttal Test. at 3.)

214. Any concerns alleged by Complainants and aligned Intervenors related to incidents that may have occurred during the construction of ME2/2X do not present a safety risk. As Zurcher explained: "Once it's in the ground, I'm not going to see a failure due to construction. It's stable" (N.T. 4397-3-6.); *see also* N.T. 1818:6-15, Marx testifying that he lacked information to proffer an opinion of the likelihood of any failure of a pipeline installed by HDD.)

A. Construction by HDD

215. Construction of the pipelines is by two primary methods—(1) open cut/trenched construction, where the surface is excavated down to a designated depth to create a trench in which to install the product pipeline; or (2) trenchless construction methods that utilize various types of boring machinery, including a horizontal directional drill ("HDD"). (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 6-7.)

216. Dr. Samuel T. Ariaratnam of Arizona State University is an expert in the field of HDD engineering, HDD design, HDD best management practices, HDD construction, and civil engineering. (N.T. 3774:17-25, Ariaratnam Test.)

217. Dr. Ariaratnam is the co-author of the Horizontal Directional Drilling Practices Guidelines manual, published by the North American Society for Trenchless Technology, a member of the HDD Consortium, which has been adopted by Pennsylvania's Underground Utility Line Protection law (a/k/a the "One Call Law, 73 P.S. § 176, *et seq.*) as the standard for

HDD construction in the Commonwealth. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 1; N.T. 3813-14, Ariaratnam Test.)

218. The HDD process is performed in three stages. First, the pilot bore, where the drill is launched from the surface downward at an angle until reaching a required depth and then drilled horizontally until the designated exit point where the drill bit returns to the surface along a curved bore path. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7; N.T. 3819-22, Ariaratnam Test.) Second, the ream phase, where the bore path is increased in diameter using a reaming drill bit to enlarge the hole to 1.5 times the outside diameter of the product pipeline. Third, the swabbing phase, where a swabbing pass is performed to clean out the entire length of the borehole. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8; N.T. 3819-22, Ariaratnam Test.) The product pipeline is then pulled back through the fully-constructed borehole, a certain footage is cut off the end of the pipe, and the remaining pipe is “tied-in” by welding the pipe to the next segment of pipeline. (*See* SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8.)

219. The HDD process utilizes drilling fluid that is comprised primarily of bentonite clay and fresh water that is placed under pressure within the drilling annulus. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 8.) From time to time as operational conditions require, the HDD process also uses PADEP-approved additives that are certified by NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects). (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8; *see also* N.T. 3779, Ariaratnam Test.; *see also* N.T. 3534-3536, Magee Test.)

220. As toxicologist and human risk assessor Dr. Magee explained, the products used in the HDD process are non-toxic. “Bentonite is not considered toxic It is approved as a food additive by the U.S. Food and Drug Administration and the World Health [Organization].” (N.T. 3532:14-19, Magee Test.)

PUBLIC VERSION

221. The drilling fluid is used in the HDD process to lubricate and cool the drill bit, carry soil and rock cuttings back to the drill pit, and to stabilize the borehole. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 7-8.)

222. A variation on the HDD construction process is the “dual pipe” installation method, where the HDD contractor installs two or more pipelines simultaneously into a single drilled borehole, often through a casing. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 14.)

223. SPLP has used the dual pipe installation method at certain locations in Chester and Delaware Counties utilizing appropriate engineering standards. (*Id.*) Dr. Ariaratnam reviewed SPLP’s standards and specifications for dual pipeline installations, including the use of dielectric spacers and composite wraps, and found them to be appropriate, and opined that the dual pipe installation method is a common and safe practice for HDD construction. (SPLP. St. No. 3, Ariaratnam Rebuttal Test. at 14; N.T. 3797, Ariaratnam Test.)

224. SPLP uses best industry practices in the HDD installation process for the Mariner East 2/2X pipelines, and in fact goes beyond standard industry practices in Chester and Delaware Counties for HDD construction, including using proactive measures such as grouting HDD entry/exit points and using casings where appropriate that further ensure that the pipeline is installed safely. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 9.)

225. HDD is a safe and appropriate method to construct pipelines, particularly in an urban and suburban environment like portions of Chester and Delaware Counties. Th HDD process reduces the risk of striking pre-existing utilities in the construction area. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10).

226. As Dr. Ariaratnam explained, the use of HDD to install pipelines in urban areas, like Chester and Delaware Counties, is particularly appropriate because of the depth that the

pipeline is installed makes is much less susceptible to third party damage, thereby increasing the overall safety of the pipeline. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10; N.T. 3852-54, Ariaratnam Test.)

B. Coatings

227. The pipelines that are being constructed for the Mariner East 2/2X project have coatings installed on the steel pipe that assist with post-installation integrity. A fusion-bonded epoxy coating was applied to the pipe by the manufacturing mill, with an additional layer of abrasion overcoat on top as an added protection. SPLP follows PHMSA standards for coating application on its pipelines. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 12.)

228. This additional layer of abrasion overcoat is designed to withstand minor surficial scaping that might occur during the HDD pullback process, and any scraping of this overcoat does not affect the integrity of the pipeline. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 12.)

229. As Dr. Ariaratnam explained, the additional layer of abrasion resistance overcoat functions like a clear coat over paint on a car, which protects the paint and if scratched does not damage the paint or the metal body of the car. Like here, the fusion epoxy coating over the steel pipeline protects the underlying coating and steel of the pipe—it is “insurance, as an added layer of protection to ensure that those pipelines are of high integrity.” (N.T. 3825, 3826:5-7, Ariaratnam Test.)

230. Moreover, the HDD process through pilot, reaming, swabbing, and pullback phases all utilize drilling fluid that ensures there is sufficient space in the HDD annulus such that any rocks or obstructions are cleared from the borehole so that when pipeline pullback is performed there is “very minimal chance of [the pipeline] being damaged” during the pullback process. (N.T. 3830:14-15, 3835-36, Ariaratnam Test.)

C. Post-Construction Testing of Pipeline

231. Once the pipelines are fully-constructed, SPLP uses industry best practices to ensure that the pipelines are safe and fit for service. SPLP performs resistivity testing on the pipeline to ensure that the coating has been properly applied and to also determine the levels of cathodic protection that is required. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 13; N.T. 3824-25, Ariaratnam Test.)

232. SPLP also uses a caliper tool that is run through the pipe to ensure there is no physical damage to the installed pipeline. SPLP also performs a hydrostatic test on the pipeline, where water is placed into the entire length of a pipeline segment under pressure to ensure that the connections are tight and there are no leaks in the pipeline. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 13-14; N.T. 3824-25, Ariaratnam Test.)

233. ME2/2X is hydrostatically pressure tested for at least 8 hours to pressure equal to 125% of Maximum Operating Pressure (MOP), exceeding PHMSA requirements (testing for only 4 hours at 125% MOP and 4 hours at 110% MOP). This increased testing will confirm there are no leaks, deleterious material, or construction flaws with the ME2/2X pipelines. (SPLP St. No. 13, Gordon Rebuttal Test. at 3.)

234. After it is fully-installed, the ME2/2X right-of-way will be inspected once every seven days, not to exceed ten days (weather permitting). This exceeds PHMSA's required inspection of twenty-six times per year, not to exceed three weeks between inspections. (SPLP St. No. 13, Gordon Rebuttal Test. at 3-4.) This inspection includes aerial fly-overs of the right-of-way as well as "people, boots on the ground, responding to One Calls, and they are out at the line every day." (N.T. 2908:4-6, Gordon Test.)

235. In addition, the Commission and PHMSA have repeatedly inspected the construction of ME2/2X. From 2017-2020, the Commission's Pipeline Safety Section spent 150

days inspecting the ME2/2X construction project and continue to inspect on at least a weekly basis. (SPLP St. No. 13, Gordon Rebuttal Test. at 4.). As Gordon testified, to “[the Commission] do inspect us at – the best of my recollection, almost every year for the last six years” for SPLP’s operating pipelines. (N.T. 2912:16-18, Gordon Test.)

D. Location and Siting of the Mariner East pipelines and Related Equipment

236. Complainants and aligned Intervenors generally assert that the location of the ME2/2X pipelines and related equipment, including valve sites, make the pipelines unsafe.

237. The ME1 pipeline and the 12-inch pipeline are pre-existing pipelines that have been operating in Chester and Delaware Counties since the 1930s. (SPLP St. No. 1, Garrity Rebuttal Test. at 4-5.)

238. The ME2/2X pipelines are two parallel pipelines in the same right-of-way across seventeen counties in Pennsylvania, approximately 80% of which is co-located with existing utility corridors, 230 miles of which are co-located with the existing ME1 pipeline. (SPLP St. No. 13, Gordon Rebuttal Test. at 2.)

239. Valve stations for the ME2/2X pipeline were generally co-located at existing locations. (N.T. 2976, Gordon Test.)

240. For valve stations located in Chester and Delaware Counties, SPLP has implemented various safety precautions, which include fencing around the valve site, physical locks on the equipment, safety bollards or jersey barriers to separate the valve site from the roadway, remote monitoring, and monitoring for pressure, temperature, and wind direction. (SPLP. St. No. 13, Gordon Rebuttal Test. at 12.).

241. As explained by Matthew Gordon, Senior Director of Liquid Pipeline Operations, SPLP evaluates potential risks to valve stations and other pipeline-related equipment and facilities “and then we put other mitigating factors in place with that consideration in mind, such

as safety bollards or jersey barriers, something of that nature,” which “is a standard condition or practice that you can use to harden a facility.” (N.T. 2903:1-11.)

242. Among other purposes, a valve site is a component of the pipeline system that can minimize damage or pollution from accidental releases because the valve can be used to shut down a section of the pipeline. As Gordon explained, “[t]he valve is a safety device, and it can enhance safety . . . it can segment the line and reduce the impacts,” of a release. (N.T. 2899:25-2900:2, Gordon Test.; *see also* 49 C.F.R. § 195.260 (Valves: Location) at (c) (“On each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas.”)) Explaining further the purposes and uses of valve sites, Gordon explained: “So, a valve, as I mentioned earlier, is used to segment the line, in the event of an emergency. It’s also used for maintenance purposes. So, it can actually reduce the consequence of a release.” (N.T. 2901:13-17, Gordon Test.).

E. Steven Hurt

243. None of the Complainants or aligned Intervenor offered any testimony by a qualified expert to support any claimed safety concern related to the construction of the Mariner East 2/2X pipelines.

244. The only expert witness presented on this topic was Steven Hurt for Intervenor Chester County. Hurt’s pre-filed written testimony consisted of only four bullet point statements on general issues with pipeline construction. (*See* Chester County St. No. 2, Test. of Steven Hurt.)

245. While Chester County attempted to proffer Hurt as an expert in the field of “pipeline planning, construction and compliance,” Hurt is a biologist, not an engineer, and voir dire revealed that Hurt had no qualifications, training, or experience from which he could

provide any engineering or construction related opinions. (N.T. 2260-67, 2269-2273, Hurt Test..)

246. Hurt was therefore only accepted narrowly as an expert in “environmental issues regarding the planning and construction of pipelines.” (N.T. 2269:24-25.)

247. As a result of this limited expertise, two of the four bullet points in Hurt’s pre-filed testimony were stricken and excluded. (N.T. 2270-2273:23; *see also* Chester County St. No. 2 at 3:23-4:4, redline revision deleting bullet points 1 and 2.) Hurt’s testimony was limited to two recommendations to enhance safety of the pipelines—(1) that pipeline markers be placed on either side of water crossings and at valve locations; and, (2) that valve stations be installed at either side of water crossings designated as exceptional value or high quality or that are used as a public water supply. (Chester County St. No. 2, Hurt Test. at 4:7-15.)

248. And even on those two narrow and limited issues, cross examination reflected Hurt’s lack of knowledge about the specifics of the Mariner East 2/2X pipeline project and that SPLP meets or exceeds applicable regulatory requirements for pipeline construction. For example, Hurt was unaware that SPLP exceeds the regulatory requirements by installing pipeline markers at all road crossings, valve sites, pump stations, and significant water bodies. (N.T. 2276, Hurt Test.)

249. Hurt agreed that SPLP follows PHMSA regulatory requirements for valve site spacing and locations (N.T. 2276-77, Hurt Test.), and that PHMSA regulations already require pipeline markers to be installed at water bodies of significant size. (N.T. 2277, Hurt Test.)

VI. Environmental Issues Related to Mariner East 2/2X Construction

250. Complainants and aligned Intervenors asserted several generalized concerns about the construction of ME2/2X that that relate to environmental issues—which are within the primary regulatory scope and jurisdiction of PADEP.

251. Complainants and aligned Intervenors did not present any expert testimony on these issues, but rather only presented lay testimony of residents who expressed their concerns.

252. In contrast, SPLP presented the testimony of several expert witnesses, including Dr. Timothy Bechtel; James McKelvey; Richard King, P.G.; Dr. Brian Magee; and Dr. Samuel Ariaratnam.

A. Geophysical Concerns – Earth Features and Groundwater Seep

253. Complainants and aligned Intervenors raised general concerns about earth features, including subsidence events, that have arisen during the construction of the Mariner East 2/2X pipelines, but did not present any expert testimony on geology or any other scientific basis to support these allegations.

254. In contrast, SPLP presented the testimony of Dr. Timothy Bechtel of RETTEW, who was accepted as an expert in the fields of geophysics, geology, and hydrogeology. (*See* SPLP St. No. 7, Rebuttal Test. of Timothy D. Bechtel, Ph.D., P.G.; SPLP Ex. TB-1; N.T. 3594:4-14, Bechtel Test.)

255. Dr. Bechtel and his team at RETTEW performed geophysical surveys at more than thirty-one sites in Chester and Delaware Counties, which were locations “with known or suspected potential for subsidence as part of the construction of the Mariner East Project and the use of HDDs,” which included certain sites where earth features and subsidences were investigated. (SPLP St. No. 7, Bechtel Rebuttal Test. at 3-4; N.T. 3591, Bechtel Test.) This included a combination of all types of geotechnical and geophysical testing, including microgravity testing, seismic refraction, multi-spectral analysis of surface waves (MASW), electrical resistivity imaging (REI), and ground penetrating radar (GPR). (SPLP St. No. 7, Bechtel Rebuttal Test. at 4-6.)

PUBLIC VERSION

256. In summary, these geophysical evaluations are used to identify and evaluate subsurface geophysical conditions and any anomalies that could potentially cause inadvertent returns or subsidence during the HDD construction, or to evaluate any earth features after it developed during construction. (SPLP St. No. 7, Bechtel Rebuttal Test. at 6-9.)

257. As a result of the geophysical evaluations, SPLP has taken preventative and mitigative measures, where appropriate, including by installing casing and grouting for HDDs. (SPLP St. No. 7, Bechtel Rebuttal Test. at 6-9.)

258. SPLP is also performing additional proactive work. “[SPLP] is performing geophysical surveys (microgravity, seismic refraction, MASW, and ERI) immediately following pipe pull for every HDD in Chester and Delaware Counties.” (SPLP St. No. 7, Bechtel Rebuttal Test. at 10.)

259. Dr. Bechtel’s opinion was that at the various locations in Chester and Delaware Counties where there were concerns about earth features, “that each site Sunoco has performed more than adequate geophysical testing,” and that SPLP’s plans mitigate the risk of subsidence at HDD sites. (SPLP St. No. 7, Bechtel Rebuttal Test. at 9, 10.)

260. Dr. Ariaratnam explained that the geological and geophysical investigations that SPLP has performed in Chester and Delaware Counties are above and beyond what is considered standard industry practice for HDD construction. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 16.)

261. Dr. Bechtel’s opinion was that “the geophysical testing and proactive work at sites within Delaware and Chester County allows for the operation of the Mariner East [pipeline] in a manner that is efficient, safe and reasonable.” (SPLP St. No. 7, Bechtel Rebuttal Test. at 11.) As Dr. Bechtel further explained, “the work we were doing to monitor the installation of the

pipelines is providing the best possible warning of problems and, therefore, preserving the safety of the Mariner East pipeline.” (N.T. 3677:23-3678:1, Bechtel Test.)

262. James McKelvey agreed that these “geophysical surveys are a good practice to further mitigate the risk of a future subsidence after HDD construction has occurred and the pipe is pulled at these locations.” (SPLP St. No. 8, Rebuttal Test. of James A. McKelvey, III, P.E. at 6.) McKelvey’s opinion was that SPLP’s:

The plans are sound to further minimize the risk of subsidence in the future and to address a subsidence if it were to occur, the installed pipes can operate safely if a subsidence were to occur near an installed pipeline, and the ground is more than competent to provide support for the pipelines and allow for their operation in an efficient, safe and reasonable manner.

(SPLP St. No. 8, McKelvey Rebuttal Test. at 6-7.)

263. Moreover, as Gordon explained, if and when any earth feature develops either as part of the ME2/2X construction or in general occurs near any of SPLP’s pipelines, SPLP has procedures to investigate and respond to an earth feature, and “we bring in experts to review situations as they arise, and we use their expertise to render and follow proper procedures in accordance with what our company policies and procedures are.” (N.T. 2878:12-16, Gordon Test.; N.T. 2878:24-2879:1, Gordon Test.)

264. For any earth features that have developed during the construction of ME2/2X, SPLP has used grout and flowable fill to address the condition. As Dr. Bechtel explained, grout/flowable fill “it can mechanically restore [subsurface] conditions . . . [r]estores or even makes more stable. So it goes beyond just restoration.” (N.T. 3661:13-24, Bechtel Test.)

265. One of the witnesses for aligned Intervenors, Middletown Township Council Chairman Mark Kirchgasser, also testified that when subsidence events occurred within his township, that “Sunoco’s response was to immediately grout and fill the hole with flowable fill.”

(N.T. 2395:1-2, Kirchgasser Test.; *see also* N.T. 2395:19-20, Kirchgasser Test. “Sunoco moved to stabilize the pipe with flowable fill.”; N.T. 2397:4-6, Kirchgasser Test. “the immediate response by Sunoco was to respond and stabilize the subsidence with flowable fill or grout.”)

266. SPLP also presented the expert testimony of James McKelvey, III, P.E., Director, Geotechnical Design Division of Earth Engineering Incorporated. (SPLP St. No. 8, McKelvey Rebuttal Test. at 1-4; SPLP Ex. JMCK-1.) McKelvey was accepted as an expert in geotechnical engineering. (SPLP St. No. 8, McKelvey Rebuttal Test. at 4; N.T. 3717:2-3, McKelvey Test.)

267. McKelvey likewise found that SPLP had performed “significant geophysical investigation” and that the “geophysical investigations were sufficient to characterize the sites and determine whether the overburden soils or bedrock provides adequate support for the [ME1, ME2, and ME2X] pipelines.” (SPLP St. No. 8, McKelvey Rebuttal Test. at 5.)

268. Further, McKelvey also found that at HDD locations where earth features developed, that SPLP properly responded and that the remediation provided adequate support for the pipelines:

The remediation of overburden at each location was performed by filling voids with flowable concrete fill or injected grout, resulting in significant shear strength improvement of the overburden within the affected areas. Based on review of the available geotechnical data, the geophysical investigations performed, development and implementation of corrective actions, my opinion is that the overburden and bedrock at these locations are more than adequate to provide support for the pipelines.

(SPLP St. No. 8, McKelvey Rebuttal Test. at 5-6.)

269. Further, as McKelvey explained, to the extent there were any future concerns regarding a subsidence or earth feature were to develop near one of the Mariner East pipelines, “the pipeline corridor is going to be subject to continual maintenance. So, accordingly, if some unforeseen subsidence were to develop, it would provide engineering the ability to preclude a

catastrophic-type problem . . . that would damage property and pose a hazard to health and safety.” (N.T. 3745:7-13, McKelvey Test.; *see also* N.T. 3729:2-4, McKelvey Test. “there are protocols in place to assess any maintenance issues that would be needed to keep the pipelines safe.”) As McKelvey stated, any concerns with future subsidence are already addressed by SPLP’s plans and protocols for its operating pipelines: “[t]here are plans to mitigate any unforeseen problems along the pipeline . . . Sunoco’s actually got a detailed protocol on how to address such a problem.” (N.T. 3747:12-24, McKelvey Test.)

270. Further, any concerns about subsidence or other earth feature causing a segment of the pipeline to be at risk is unfounded. As McKelvey explained:

These particular pipes here are capable of spanning over 30 feet unsupported. The likelihood of a 30-foot void opening up underneath a pipeline that’s unsupported in this region, I haven’t seen it.

(N.T. 3751:12-16, McKelvey Test.)

B. Lisa Drive and Shoen Road

1. Lisa Drive

271. One specific location that Complainants and aligned Intervenors raised as a concern was Lisa Drive in Chester County. As Dr. Bechtel explained, “[t]he Lisa Drive segment of HDD 400 is the most intensely geophysically investigated real estate of which I am aware” (SPLP St. No. 7, Bechtel Rebuttal Test. at 8), and that “we’ve looked very carefully at the Lisa Drive Site. It’s probably the most geophysically studied parcel on the planet.” (N.T. 3601:5-7, Bechtel Test.)

272. Further, Dr. Bechtel testified that the “HDD has been thoroughly remediated at this site, and future pipeline installation will be done as an open trench, not HDD.” (SPLP St. No. 7, Bechtel Rebuttal Test. at 8, 9.)

273. The area has been completely grouted and remediated, and Dr. Bechtel's geophysical analyses "were able to document ground improvement at Lisa Drive," such that there is no evidence of any lack of stability for the ME1 pipeline at that location. (N.T. 3712:5-10, Bechtel Test.)

274. James McKelvey agreed, that the grouting at Lisa Drive was "an improvement on the underlying material" in the geology, "the grout would have acted to increase the overall strength of the mass." (N.T. 3726:1-6., McKelvey Test.)

275. Moreover, SPLP installed strain gauges on the ME1 pipeline in the area of Lisa Drive, which provide real-time data to show that there was no adverse impact to the existing pipeline from construction. (N.T. 3770-71, McKelvey Test.)

2. Shoen Road

276. Another specific location raised by Complainants and aligned Intervenors was the HDD at Shoen Road in Chester County, including alleged impacts on residential wells and a groundwater seep located along Shoen Road adjacent to the residence of pro se Intervenor Virginia Kerslake.

277. As Dr. Bechtel explained, any impact to the residential wells in the area of Shoen Road was temporary and fully addressed, and all the residences in the area are on public water. (SPLP St. No. 7, Bechtel Rebuttal Test. at 11-12; *see also* N.T. 3591, Bechtel Test.)

278. Dr. Bechtel also explained that the seep adjacent to the Kerslake property is caused by a "naturally shallow water table and water flowing along natural underground fractures near the HDD entry/exit is evidenced by a very old (possibly colonial) spring house nearby (just on the Kerslake eastern property boundary). The HDD may have created new connections between fractures, and plugging of the end of the bore may have created some version of the groundwater mound modeled by GES. This may have shifted the natural

groundwater flow to the old spring to a new position at the seeps.” (SPLP St. No. 7, Bechtel Rebuttal Test. at 12.)

279. The seep near Shoen Road does not create any safety concern regarding the operation of the existing ME1 pipeline in that area. (SPLP St. No. 7, Bechtel Rebuttal Test. at 14.) That is because the geology in the area is not karst – “[t]here’s no evidence of karst there” (N.T. 3701:3-7, Bechtel Test.), and “[t]here won’t be subsidence – changing groundwater flow patterns in non-karst does not lead to enhanced risk of subsidence.” (N.T. 3703:24-3704:2, Bechtel Test.)

280. Further, the water in the seep is not infiltrating into the ground such that it could cause subsurface erosion: “You’re missing two of the necessary things for subsurface erosion in this location . . . Here there aren’t going to be cavities, and the water isn’t infiltrating. It’s actually coming out.” (N.T. 3711:15-21, Bechtel Test.) As Dr. Bechtel put it – “there’s no reason to expect that water flow is going to cause any problems, because that water’s been flowing all along . . . I promise you that it’s been flowing under there for thousands and thousands of years.” (N.T. 3704:14-23, Bechtel Test.)

C. Inadvertent Returns

281. The HDD process can result in an inadvertent return (“IR”), which occurs when the drilling fluid follows the path of least resistance through a fracture in the geology and where the drilling fluid then discharges onto the surface of the ground or waterbody, rather than the anticipated pathway through the HDD borehole. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 10-11.)

282. IRs are not uncommon and are an anticipated part of HDD construction, and therefore are planned for typically through a detailed and comprehensive plan, which SPLP has

for the Mariner East 2/2X pipeline project as part of its permits with PADEP. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 11.)

283. SPLP's IR plan requires the contractor to immediately address and clean up the IR, regardless of the size of the IR. (N.T. 3855-56, 3858-59, Ariaratnam Test.)

284. IRs do not pose any long-term impact on the environment, or any impact on human health because the materials utilized by SPLP in the HDD process are non-toxic. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 11; *see also* N.T. 3532:14-19, Magee Test.)

285. As Dr. Ariaratnam explained on cross examination – “The Pennsylvania DEP would never approve whatever composition of the drilling fluid without it being safe for drinking water, and it is. It's NSF approved. So if it were to get into drinking water, it wouldn't be an environmental hazard.” (N.T. 3785:11-16, Ariaratnam Test.)

286. Likewise, as Richard King explained:

Bentonite is a clay mineral, typically montmorillonite . . . Bentonite is used in grout for sealing water supply wells and groundwater quality monitoring wells, and in the construction industry for sealing and grouting. Bentonite is used in grout for sealing water supply wells and groundwater quality monitoring wells, and in the construction industry for sealing and grouting. Bentonite is also used as a skin care product (mud packs, clay masks). Bentonite is used for decolorizing various mineral, vegetable, and animal oils. It is also used for clarifying wine, liquor, cider, beer, mead, and vinegar. Bentonite is used in a variety of pet care items such as cat litter. It is also used to absorb oils and grease. Bentonite it is also used as a base for many dermatologic formulas and is being studied for use in battlefield wound dressings. In summary, bentonite is not recognized as a contaminant under any applicable environmental regulatory standard, and is used extensively in medications, food stuffs and cosmetics.

(SPLP St. No. 9, Rebuttal Test. of Richard King, P.G. at 8-9.)

287. Dr. Magee also confirmed that the bentonite products used in HDD construction are non-toxic, “approved as a food additive by the U.S. Food and Drug Administration and the

World Health [Organization],” that PADEP approves bentonite for the HDD process, and that it is also approved by NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects). (N.T. 3532:14-19, 3534:21-3535:17, 3535-36, Magee Test.)

D. Rosemary Fuller’s Well

288. Complainant Rosemary Fuller alleges that SPLP’s construction using HDD near her home impacted her private water well, introducing bentonite, e-coli, fecal coliform, and an “unknown contaminant” into the water supply. (*See e.g.*, Fuller Direct Test. and Fuller Surrebuttal Test.)

289. Complainants did not present any expert witness testimony related to any of the allegations about Ms. Fuller’s water well. Rather, the only testimony presented by Flynn Complainants was from Ms. Fuller.

290. Ms. Fuller is a lay witness who admittedly has no background in chemistry, lab analysis, assessment of groundwater contamination, hydrogeology, geology, toxicology, or risk assessment. (N.T. 2456, Fuller Test.)

291. In contrast, SPLP presented two expert witnesses to testify about Ms. Fuller’s allegations – professional geologist Richard King of Applied Testing & Geosciences, LLC and toxicologist and human risk assessor Dr. Brian Magee of Arcadis.

1. Richard King

292. Richard King is as an expert in the fields of geology and hydrogeology, including the investigation and remediation of groundwater contamination, and groundwater supply and water quality evaluation. (N.T. 3400-3401, King Test.)

293. King evaluated Ms. Fuller’s claims, including evaluating all geotechnical and geophysical information near the Fuller residence and all sampling results for the Fuller property.

(See SPLP St. No. 9, King Rebuttal Test.; SPLP Exs. RK-1 through RK-7, SPLP St. No. 9-RJ, King Rejoinder.)

294. King’s analysis determined that the “minute amount of bentonite detected in the water at the Fuller residence well is not considered to be contamination under any applicable environmental regulatory standard and cannot be construed as ‘major contamination’ as Fuller has alleged in her testimony.” (SPLP St. No. 9, King Rebuttal Test. at 4., 6-11.)

295. The total amount of bentonite observed in the well samples taken from the Fuller property on two dates – July 1 and July 19, 2019 – “were both very small amounts.” (N.T. 3425:25, King Test.)

296. King calculated the amount of bentonite present in the water samples on those two dates – based on the total amount of suspended solids in the well sample, and the x-ray diffraction analysis of the mineral content of the sediment – the July 1, 2019 sample reflected bentonite present at only 0.5 mg/L or 0.00005% of the total water sampled; the July 19, 2019 sample was 0.86 mg/L or 0.000086% of the water sample. (SPLP St. No. 9-RJ, King Rejoinder at 2; N.T. 3422, 3424, King Test.; *see also* SPLP St. No. 15-RJ, Dr. Brian Magee Rejoinder at 1; N.T. 3531, Magee Test. (same).)

297. Further, the observations of bentonite in the well were limited to two dates – July 1 and July 19, 2019 – and no longer detected on the next sampling date on October 11, 2019, reflecting that “the occurrence of bentonite in the well was a short-term event and decreased to undetectable levels quickly.” (SPLP St. No. 9, King Rebuttal Test. at 10); (*see also* N.T. 3431-3432, “That’s roughly a period of, what 80-some days? That doesn’t strike me as a long duration event.”)

298. More importantly, King explained that bentonite is not considered to be a contaminant by any state or federal regulatory standard:

Q: . . . In your experience is bentonite considered to be a contaminant under any state or federal regulatory standards?

A: No. I've never seen any standards set for bentonite. Bentonite is typically viewed as nontoxic. It's a clay in the same sense that the clay that children play with is clay. It's used in – it's an additive. It classifies as a clay that potters use on potters' wheels. It's used in industry. It's used in food stuffs. It's used in kitty litter. It's used in the mining industry, the drilling industry, civil engineering. It's used for medicinal purposes as a detoxifier where it's taken orally. It's been used for thousands of years. It's well known.

(N.T. 3408:6-19.)

299. Further, based on a review of scientific literature, King determined that it was possible that the bentonite presence in the Fuller well was not related to pipeline construction from the drilling mud used in the HDD, but could potentially be from weathering of the bedrock in the area of the Fuller property, because “[c]learly it is possible for hornblende to weather montmorillonite (bentonite).” (SPLP St. No. 9, King Rebuttal Test. at 11.)

300. King further expanded this research and analysis during the hearing, where he explained that an additional scientific research paper revealed that soil samples taken throughout Pennsylvania – including in Delaware County where the Fuller home is located – reflected that “in soils derived from Baltimore Gneiss . . . that it contained montmorillonite which is euphemistically known as bentonite.” (N.T. 3403:10-13; *see also* N.T. 3433-3434, “There is clear evidence that the Baltimore Gneiss can weather to produce soils and that those soils contain montmorillonite. We have factual information regarding this.”) Thus, as King explained on cross examination, the bentonite observed in the Fuller well had two possible causes, the underlying weathered geology in the area of the Fuller residence or the drilling mud from the HDD process. (N.T. 3466-67.)

PUBLIC VERSION

301. King also reviewed the overall chemistry of the well and determined that “I saw literally no change in the quality of water from before construction all the way through October the 10th,” i.e., the last water sample taken at the Fuller property that King reviewed. (N.T. 3469:15-17; *see also* SPLP St. No. 9, King Rebuttal Test. at 13-14; SPLP Ex. RK-7.) “There are no indications whatsoever of ‘major contamination’ in the Fuller well as alleged.” (SPLP St. No. 9 at 14; *see also* N.T. 3470:1-4, “All the information that I have is that we have very stable conditions at the Fuller well over a period of two years.”); (N.T. 3472:17-22, “I see very little change from before construction all the way through construction or up until the 10th of October.”)

302. Further, King testified that Ms. Fuller’s assertion that her well was impacted by an “unknown contaminant” is incorrect. King opined that “[b]ased on the x-ray diffraction testing, it is my opinion that the ‘unidentified contaminant’ is very likely to be a naturally occurring mineral of the amphibole family,” that the “bedrock in the region around the property is an amphibolite gneiss,” and that therefore the “detection of a naturally occurring mineral of the amphibole family is from the bedrock in which the Fuller residence well is located, and therefore is not a contaminant, unknown or otherwise.” (SPLP St. No. 9, King Rebuttal Test. at 4; *see also* N.T. 3468.)

303. King also observed the presence of iron and manganese in the water at the Fuller residence, which reflected broader potential issues for the Fuller well and water treatment system that are unrelated to HDD construction because “[a]nother thing that I know is iron and manganese are not used in the drilling process. So, if iron and manganese are impacting the well, I would not suspect the HDD of causing that because they don’t use that. It’s not part of the bentonite drilling mud.” (N.T. 3475:4-8.)

304. King further determined that the observation of e-coli and fecal coliform in a “one sample taken in July 2019 at the kitchen tap in the Fuller residence is not related to pipeline construction” (SPLP St. No. 9, King Rebuttal Test. at 4-5), and that it was his opinion that the e. coli and fecal coliform were not introduced into any internal drinking water system either by HDD construction or by the sampling itself” (SPLP St. No. 9, King Rebuttal Test. at 17-18), but rather:

Given that no E. Coli and fecal coliform were detected in the well source outside the home or at the pressure tank spigot (the first location where the water enters from the well into the home), it is my opinion to a reasonable degree of scientific certainty that the most likely candidate for the occurrence of these parameters is at the kitchen tap nozzle itself, which is unrelated to HDD construction activities or the GES sampling event in July 2019.

(SPLP St. No. 9, King Rebuttal Test. at 18.)

2. Dr. Brian Magee

305. SPLP also presented expert testimony from Dr. Brian Magee, who was accepted as an expert in the fields of human health toxicologist and risk assessment. (N.T. 3529-30; *see also* SPLP St. No. 15-RJ, Rejoinder Testimony Outline of Brian Magee, Ph.D.)

306. Based on the very minor amounts of bentonite present in the Fuller well samples on two dates in July 2019, Dr. Magee’s opinion was that the bentonite “would not present any harm to humans in drinking that water.” (N.T. 3531:15-16.)

307. Dr. Magee also confirmed that the products used in the HDD process, that “Bentonite is not considered toxic,” “[i]t is approved as a food additive by the U.S. Food and Drug Administration and the World Health [Organization].” (N.T. 3532:14-19.) PADEP also specifically approves bentonite for the HDD process, including the specific product used at the HDD near the Fuller property – Cetco Super Gel X. (N.T. 3534:21-3535:17.) And it is

approved by the NSF/ANSI Standard 60 (Drinking Water Treatment Chemicals – Health Effects)
(N.T. 3535-36.)

308. As Dr. Magee explained, bentonite is common and used for water treatment and is present in consumer and household products:

Bentonite is not only approved additive for drilling such as in this case, but it's an approved substance for the construction of home potable drinking water wells. And it's also used in drinking water treatment plants to help purify the water that then . . . comes to our homes. . . Bentonite is added to animal feed for their good health, for beneficial uses. It's used in pet litter as we know. It's used medicinally. It has antimicrobial activity. It's used as fabric softener, as a beer and wine clarifying agent. It has many different uses. . . It's added specifically to fruit juices, wines, and beers; and its also added directly to the water at the water treatment plant where the water is being prepared for distribution to consumers.

(N.T. 3532:22-3533:16.)

309. Thus, Dr. Magee's ultimate opinion is that the water from the Fuller well "it is safe to drink to within a reasonable degree of scientific certainty." (N.T. 3564:3-11.)

310. Fuller also presented alleged concerns about the presence of crystalline silica in the bentonite products used in the HDD process as a potential inhalation hazard or carcinogenic risk. (*See Fuller Surrebuttal Test. at 7-8.*) Fuller did not present any expert testimony on this point, but merely lay testimony from various articles she read on the internet and a Safety Data Sheet for the bentonite products. In contrast, SPLP presented Dr. Magee, who testified in his expert opinion that there is no risk to human health from the exposure to bentonite observed in the Fuller well.

311. Dr. Magee explained that the warnings contained on a Safety Data Sheet for a product are not intended to be warnings for the general public. Rather, they are "aimed specifically to workers who might be dealing with large quantities of the material day after day for their whole working lifetime." (N.T. 3537:19-21.)

PUBLIC VERSION

312. Dr. Magee further explained that there are no inhalation risks from bentonite products related to Ms. Fuller’s concerns regarding alleged exposure through her well water. As Dr. Magee explained, the federal “Occupational Safety and Health Administration [OSHA] excludes bentonite products from their crystalline silica standard. . . because the evidence shows that the crystalline silica that’s present in small amounts in bentonite clay is occluded . . . [which] means coated” which is not the “crystalline silica that can cause concerns from inhalation is “the type you would get if you’re a hard rock miner, that dust has the sharp edges to the crystals and it can cause harm in the lungs.” (N.T. 3534:23-3534:12.) “Bentonite itself is not [carcinogenic],” nor have the products used in the HDD process been shown to be carcinogenic. (N.T. 3541:5-10.)

313. Therefore, contrary to Fuller’s allegation, there is no “carcinogenic dust” that Fuller, or any member of the general public, should be concerned about related to HDD construction sites:

A: Well, it should not be called carcinogenic dust because bentonite itself has not been classified as carcinogenic; and OSHA has specifically reviewed all of that information about the hard rock miners as well as bentonite miners, and they find that what they see with the hard rock miners does not apply to bentonite because it’s different. It’s got the crystalline silica bound up and occluded. So it’s not carcinogenic.

...

Q: . . .do you have an opinion regarding whether a resident who walks by an HDD construction site or lives by it has been exposed to the level of crystalline silica in these bentonite products at a level that can cause harm to that person?

...

A: And that is it would not cause harm, did not cause harm, and cannot cause harm.

(N.T. 3541:18-25, 3543:12-21.)

314. Likewise, Dr. Magee opined that there also is no risk to human health from showering in water that might contain bentonite, as Ms. Fuller alleged. Crystalline silica is not a

solid and not a volatile organic compound, such that there is no human health concern or exposure pathway; moreover, the levels of bentonite present in the samples at the Fuller residence were incredibly low:

Q: . . . Do you have an opinion whether there's a risk to human health of inhaling any silica that could be present from the bentonite in any amount in the shower water at the Fuller home?

. . .

A: That it would cause no harm because the levels are just incredibly low. They are tens of thousands of times lower than any level of concern.

(N.T. 3544-45.) Dr. Magee calculated that “the maximum potential quartz content in the shower water was 0.000005%,” and that even assuming the “quartz was of respirable sized, less than 10 microns in diameter” – which there is no evidence to suggest it was – “the concentration of quartz in the aerosol droplets would be 0.0007 ug quartz/m³ of air.” (SPLP St. No. 15-RJ, Magee Rejoinder at 4.). “Such a dose is more than **70,000 times lower** than the Federal Permissible Exposure Level for respirable crystalline silica set by [OSHA].” (SPLP St. No. 15-RJ, Magee Rejoinder at 4.)

315. Nor is there or could there be any health risk from dermal exposure to bentonite, “because its inorganic solid substance that cannot go through the skin.” (N.T. 3546:4-5.)

3. PADEP's Conclusion on the Fuller Well

316. Moreover, the allegations about Ms. Fuller's well are matters that have already been specifically addressed by and subject to existing permits issued by PADEP, which require SPLP to investigate all water supply complaints and address any adverse impacts that occurred. (See e.g., SPLP Cross Ex. 76 at 2, summarizing PADEP permit condition.)

317. In an email to Ms. Fuller regarding her water complaint, John Hohenstein, Environmental Program Manager for the Waterways and Wetlands Program at PADEP Southeast Regional Office, confirmed that SPLP had made reasonable offers to Ms. Fuller,

which she has not accepted: “Considering the information that we have and the results of our investigation, the Department believes that Sunoco has made reasonable offers of accommodation, and, as such, we will be closing our part in this dispute.” (SPLP Cross Ex. 76 at 2.) Ms. Fuller did not appeal the Department’s determination and conclusion that SPLP had made reasonable efforts to address her water supply concerns. (N.T. 2460:7-12; N.T. 2460:22 (“I haven’t challenged it, no. . . .”))

318. PADEP’s Hohenstein previously cautioned Ms. Fuller that a reasonable offer of accommodation of Ms. Fuller’s well complaint would not necessarily satisfy all of her demands – “Please be advised that ascertaining whether “satisfaction of the homeowners” has occurred includes a reasonableness component and the Department may consider issues to be satisfied even though all of the homeowner’s demands have not been met.” (SPLP Cross Ex. 77 at 1.)

319. Ms. Fuller admitted that PADEP informed her that it has completed its investigation of her complaints, and that PADEP’s position is that SPLP had made reasonable offers to accommodate and address Ms. Fuller’s water complaints, and further acknowledged that a reasonable offer might not satisfy all of her demands. (N.T. 2457-60).

320. Richard King agreed with PADEP’s assessment, that SPLP’s attempts to satisfy Ms. Fuller’s concerns “[t]hey appear reasonable to me, yes.” (N.T. 3442:19.)

VII. The Mariner East pipeline project provides significant economic benefits to the Commonwealth, and if construction and/or operation of the pipelines were to be shut down, it would cause significant harm to the Commonwealth and others.

A. Product Benefits

321. SPLP is a Commission-certificated public utility transporting or conveying, *inter alia*, butane, propane and ethane for interstate and intrastate use. (SPLP St. No. 10, Billman Rebuttal Test. at 10).

PUBLIC VERSION

322. Richard Billman, Vice President of Business Development for Energy Transfer Partners LP, has worked with the company since 1999 and specifically worked with Business Development since 2009. (SPLP Ex. No. RJB-1). Billman oversees commercial and strategic growth of SPLP's assets and manages the contracts with shippers associated with SPLP's northeast assets for generating revenue, new projects, and optimization. (N.T. 2583, Billman Test.)

323. The Mariner East pipelines directly benefit Pennsylvania by, for example, transporting propane supply to the southeastern part of Pennsylvania and at many off-loading racks for propane distribution throughout the state, through the direct supply of butane for gasoline blending, and for the supply of ethane as a source of electricity production in Cambria County, Pennsylvania. (SPLP St. No. 10, Billman Rebuttal Test. at 10-11).

324. The butane, propane, and ethane transported on the Mariner East pipelines further benefit Pennsylvania because they are used in a wide range of products necessary to everyday life and many industrial processes. (SPLP St. No. 10, Billman Rebuttal Test. at 13-20).

325. Many of the end products necessary to combat the COVID-19 pandemic are processed from the types of commodities shipped on the Mariner East pipelines. (SPLP St. No. 10, Billman Rebuttal Test. at 10).

326. SPLP recently filed Tariff Supplement No. 9 for its intrastate rates for butane transportation to allow new local connections for butane distribution terminals across the Commonwealth as a blend stock for gasoline. (SPLP St. No. 10, Billman Rebuttal Test. at 11).

327. The Mariner East pipelines contribute to industrial development of facilities in Marcus Hook, creating both increased industry operations and construction jobs for

Pennsylvanians. (SPLP St. No. 10, Billman Rebuttal Test. at 11; SPLP St. No. 11, Snell Rebuttal Test. at 2)

328. The Mariner East pipelines and the volume of product they transport cannot be fully supplemented by other transportation means, including rail or truck. (N.T. 2636:10-2637:5; N.T. 2827-2829).

B. Construction and operation benefits

329. [BEGIN HC] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HC]

330. James Snell, the business manager of Steamfitters Local Union 420, represents union members who have been and continue to work on the Mariner East pipelines. (SPLP St. No. 11, Snell Rebuttal Test. at 2). Members of this union employed on the Mariner East pipelines include welders, pipefitters, and helpers that install or maintain pipes, valves, control valves, pneumatics, and other facilities for the Mariner East pipelines. (*Id.*)

331. The Mariner East pipelines directly employ Union 420 members and have created approximately 1,000 or more jobs for members of this union and about 3,000 additional jobs for workers of other unions and trades due to downstream expansions at the Marcus Hook hub facilities as a result of the Mariner East Project. (*Id.*) Many of these jobs are for long-term projects. (*Id.*)

332. Many of Union 420's workers live in Delaware and Chester Counties and are actively working on the Mariner East pipelines. (N.T. 2646:10-12.)

333. Dr. Peter Angelides, Principal of Econsult Solutions, Inc., is an expert on the economic impacts from development and infrastructure projects. (SPLP St. No. 12, Angelides Rebuttal Test. at 1; SPLP Ex. No. PA-1; N.T. 2984).

334. Dr. Angelides performed a financial analysis of the economic impacts of the Mariner East Pipeline project using the standard program called IMPLAN from the Minnesota IMPLAN Group, which is the industry standard approach to assess the economic and job-creation impacts of economic development projects. (SPLP St. No 12, Angelides Rebuttal Test. at 5).

335. The financial expenditures of the Mariner East Pipeline project “lead to a substantial amount of employment, which consists of construction and other jobs that last for the length of the construction project as well as jobs to operate and maintain the pipelines after they have been constructed.” (SPLP St. No. 12, Angelides Rebuttal Test. at 5).

336. The projected benefits of the Mariner East Pipeline project prior to construction was projected to be a total of \$6.14 billion expenditure as a one-time construction impact and a total of 42,630 full-time job equivalents for one year. (SPLP St. No. 12, Angelides Rebuttal Test. at 6). Some of these benefits are still to be realized as construction is completed. (*Id.*).

337. The remaining financial footprint of the construction projection’s economic impact is roughly \$0.9 billion, with approximately 5,705 full-time job equivalents, and with a remaining fiscal impact within the Commonwealth projected to be \$14.1 million. (N.T. 3080:24-3081:2).

338. As a result of the Mariner East Pipeline project, it is projected that the Commonwealth would receive tax revenues from construction alone of approximately \$97 million with approximately two-thirds of those tax revenues coming from personal income tax

and the remainder from sales-and-use taxes and business taxes. (SPLP St. No. 12, Angelides Rebuttal Test. at 7).

339. After construction is completed, the recurring annual tax revenues for the Commonwealth from the operations of the Mariner East pipelines are projected to be between \$1.4 and \$2.1 million per year with an additional \$4.8 million annual in property taxes paid as a result of Marcus Hook facility expansions. (SPLP St. No. 12, Angelides Rebuttal Test. at 7).

340. In addition to the projected financial impacts that benefit the Commonwealth, there are additional anticipated impacts resulting from the Mariner East Pipeline project that are more difficult to quantify. The project creates the “potential for additional economic impact because the pipelines and Marcus Hook Industrial Complex bring substantial additional natural gas liquids supply to the Southeastern Pennsylvania region. The surety of supply can and likely will attract additional industries to the region. Those would be additional economic benefits that are not included in the IMPLAN model.” (SPLP St. No. 12, Angelides Rebuttal Test. at 6).

C. Economic losses resulting from an ordered shutdown.

341. The projected revenue associated with ME1 operations is approximately [BEGIN HC] [REDACTED] [END HC] (SPLP St. No. 10, Billman Rebuttal Test. at 2; SPLP HC Ex. No. RJB-2).

342. The projected revenue associated with SPLP contracts for ME2 is approximately [BEGIN HC] [REDACTED] [END HC] Similarly, the projected incremental daily revenue, once the ME2X pipeline is available, ranges from [BEGIN HC] [REDACTED] [REDACTED] [REDACTED] [END HC]. (SPLP St. No. 10, Billman Test. at 3; SPLP HC Ex. No. RJB-2).

PUBLIC VERSION

343. The total projected revenue loss per day if the entire Mariner East pipelines are enjoined ranges between [BEGIN HC] [REDACTED] [END HC].

(SPLP St. No. 10, Billman Test. at 5; SPLP HC Ex. No. RJB-2).

344. SPLP would lose these daily revenues and not be able to recapture those revenues at a future time given the physical characteristics of pipeline capacity. (SPLP St. No. 10, Billman Test. at 3).

345. SPLP will also suffer other losses if it is enjoined from operating and completing construction, including mobilization and demobilization, standby charges, risk of losing contracts, equipment fees and more, which collectively amount to [BEGIN HC] [REDACTED] [REDACTED] [END HC]

346. If the construction and/or operation of the Mariner East pipelines were to be enjoined, Union 420's members would be idled without the ability to find additional projects, which would impact members and their families as the loss of work during any shutdown cannot be recovered. (SPLP St. No. 11, Snell Rebuttal Test. at 4).

347. A temporary shutdown of the Mariner East pipelines would mean that benefits of operations are lost forever as "there is no opportunity to recover that lost benefit and economic activity in the future." (SPLP St. No 12, Angelides Rebuttal Test. at 6).

348. If the Marine East pipelines are shut down for any reason, "... there's no revenue being generated. If a particular gas molecule is not shipped.... it's still able to be shipped in six months ... but the current transportation, if it's empty, it's empty and there no recovering" the lost revenue. (N.T. 3075:3-8).

349. Intervenor Range Resources Corporation (“Range”) is a transportation customer of SPLP that relies upon ME1 and ME2 to transport its NGL products. (Range St. No. 1-R, Engberg Rebuttal Test. at 3).

350. Range transports 20,000 BPD of ethane on ME1, 30,000 BPD propane and 10,000 BPD of normal butane on ME2, and an additional 10,000 BPD of a combination of propane and normal butane on ME2. (Range St. No. 1-R, Engberg Rebuttal Test. at 5). In total, Range directly and indirectly transports 70,000 BPD of NGLs on SPLP’s ME1 and ME2. (*Id.*)

351. Range’s transportation needs cannot be met by other modes of transportation such as railcars or trucks. (Range Statement 1-R at 8). If ME1 and ME2 were to be shut down, Range would be forced to shut-in production, resulting in significant economic impacts to the entire supply chain. (Range St. No. 1-R, Engberg Rebuttal Test. at 9).

352. Range has experienced significant financial harm from prior shutdowns of ME1, including [BEGIN HC] [REDACTED]

[REDACTED]

[REDACTED] [END HC]

353. Range’s royalty owners would also be impacted by shut-ins if ME1 and ME2 were to be shut down. (Range St. No. 1-R, Engberg Test. at 14). Range would also be forced to lay off employees, contractors, and subcontractors if ME1 and ME2 were to be shut down. (*Id.* at 15). A shutdown of ME1 and ME2 would also negatively affect the impact fees paid to the Commonwealth. (*Id.* at 16).

VIII. Credibility of Witnesses

354. SPLP presented the following highly-credentialed experts with substantial expertise and experience in their respective fields. Each of these witnesses’ testimony is credible.

PUBLIC VERSION

- a. John Zurcher was accepted as an expert in public awareness, integrity management, and regulatory compliance for pipelines, including HVL transmission pipelines. (N.T. 4195:12-23). He has provided consulting services and expertise and served as a consultant to trade associations and research organizations regarding pipeline design, construction, integrity management, security, emergency response, operations and maintenance procedures and standards, and pipeline safety regulations. (SPLP St. No. 2, Zurcher Rebuttal Test. at 1:10-21.) He has written integrity management programs for 60 major companies and has audited integrity management plans for another 80 major companies. (*Id.* at 6:6-7.) He has testified before Congress on integrity management and pipeline safety on two occasions. (*Id.* at 6:8-9.) Zurcher has reviewed and audited hundreds of public awareness plans and programs and worked on the original version of RP 1162. (N.T. 4233.) He is also a member of the National Association of Corrosion Engineers (NACE). (N.T. 4366:17-18; SPLP Exhibit JSZ-1.)
- b. Kevin Garrity was accepted as an expert in pipeline corrosion, including cathodic protection, stress-corrosion cracking, microbiologically-influenced corrosion, stray-current interference, protective coatings for pipelines, and corrosion mitigation. (N.T. 3888:10-18.) Garrity has served on the board and executive committee of NACE. (N.T. 3887:1-4.) He was president of NACE from 2012-2013. (N.T. 3887:13-15.) He served as the chair of the NACE Committee, STG-05 on cathodic and anodic protection and the NACE Task Group on detection of microbiologically-influenced corrosion. (N.T. 3887:5-12.) He currently serves as president of the NACE Institute and was elected as a Fellow of NACE in 2015. (N.T. 3887:16-21.) He has testified in matters regarding pipeline safety and corrosion before PHMSA and has led investigations into pipeline incidents involving external corrosion, internal corrosion, microbiologically-influenced corrosion, stray-current corrosion and stress-corrosion cracking. (N.T. 3888:1-5; SPLP Ex. KG-1.)
- c. Gregory Noll was accepted as an expert in emergency planning, emergency response, emergency response and planning training, including as the relate to pipelines, hazardous materials, hazardous volatile liquids, and natural gas liquids. (N.T. 3292:23-3293:7.) Noll is a renowned expert in his field with over 50 year of experience in emergency response training, including for pipelines. Noll is a recipient of numerous awards and honors in this discipline, a member of many codes and standards committees for emergency response, and the author or co-author of ten textbooks on the subject matter, including the authoritative text entitled Hazardous Materials: Managing the Incident, which is now in its fourth edition and upon which the MERO training is based. (SPLP St. No. 4, Noll Rebuttal Test. at 1-4; SPLP Ex. GN-1; N.T. 3298.) Noll literally wrote the book on these issues. (SPLP St. No. 4, Noll Rebuttal Test. at 4.)
- d. Dr. Timothy Bechtel was accepted as an expert in geophysics, geology, and hydrogeology. (N.T. 3594:4-14). He has a Masters in Geology and Ph.D. from Brown University in Geophysics. He is a registered geologist in Pennsylvania and

PUBLIC VERSION

many other states and a member of many professional societies relating to geology and geophysics. He is currently a professor on these topics and Franklin and Marshall College and has previously been a professor on these topics at the University of Pennsylvania. He has experience with karst formations and HDD and has been qualified in an expert in these fields on at least two dozen occasions. (N.T. 3592-3593; SPLP Ex. TB-1.)

- e. Dr. Samuel Ariaratnam was accepted as an expert in HDD engineering, HDD design, HDD best management practices, and HDD construction. (N.T. 3774:17-25.) He is a Professor and Construction Engineering Program Chair in the Ira A. Fulton Schools of Engineering at Arizona State University in Tempe, Arizona. He has a Ph.D. in Civil Engineering, with a specialization in construction engineering and management. He divides his time between teaching, research, and service to the profession related to trenchless underground construction and the main focus of his research is on underground construction with an emphasis on HDD. He teaches numerous courses to people working in the industry on “HDD Good Practices.” He provides training courses for various stakeholders in the HDD industry, including training for contractors, engineers, suppliers, manufacturers, utility operators, and government agency personnel. He has served in leadership positions with: the American Society of Civil Engineers Pipelines Division (Chairman); the International Society for Trenchless Technology (Chairman); and the Distribution Contractors Association (HDD Committee). He is a co-author of the “Horizontal Directional Drilling Good Practices Guidelines”, which was originally published in 2001, and had its 4th Edition released in March 2017. (SPLP St. No. 2, Ariaratnam Rebuttal Test. at 1-2; SPLP Ex. SA-1.)
- f. Richard King was accepted as an expert in geology, hydrogeology including the investigation and remediation of groundwater contamination and groundwater supply and water quality evaluation. (N.T. 2400:21-3401:12.) He is President and Principal of Applied Testing & Geosciences, LLC. Where he is responsible for the application of geologic and engineering principles to groundwater contamination, water resources, environmental, mining and geotechnical problem solving. He is a registered professional geologist in the Commonwealth of Pennsylvania. He has over fifty years of experience in applying geologic and engineering principles to groundwater water resources (private, municipal and industrial supplies), groundwater impact evaluations to water supplies, environmental contamination projects and design of remedial systems, mining, and geotechnical matters. He has worked on hundreds of projects in Pennsylvania, New Jersey, Delaware, Maryland, New York, and Virginia related to groundwater supply, contamination and water quality. (SPLP St. No. 9, King Rebuttal Test. at 1-3; SPLP Ex. RK-1.)
- g. Dr. Brian Magee was accepted as an expert in the filed of human health toxicology and risk assessment. (N.T. 3529:9-3530:2.) He is a Senior Vice President and Principal Toxicologist with Arcadis U.S., Inc. He has over 35 years’ experience in the fields of toxicology and risk assessment. He has a Ph.D. in Toxicology from

PUBLIC VERSION

the Massachusetts Institute of Technology, Cambridge, Massachusetts. (SPLP St. No. 15-RJ, Magee Rejoinder Outline at 1; SPLP Ex. BM-1RJ.)

- h. James McKelvey was accepted as an expert in geotechnical engineering. (N.T. 3717:1-3). He is the Director, Geotechnical Design Division of Earth Engineering, Inc. He is currently a candidate for a Ph.D. in Geotechnical Engineering at Drexel University. He is a Registered Professional Engineer in ten states, including Pennsylvania. He is a past Chairman of the Delaware Valley Geo-Institute, a Diplomat of the Academy of Geo-Professionals, a Member of the International Geosynthetics Society, a Fellow of the American Society of Civil Engineers, for which he is also a Member of Technical Committees on Embankment, Dams and Slopes and Earth Retaining Structures, Region 2 Local Involvement Committee, and he is a Voting Member of the American Society for Testing and Materials, for he also serves on two separate technical committees and the Editorial Board for its Geotechnical Testing Journal. (SPLP St. No. 9, McKelvey Rebuttal Test. at 1-4; SPLP Ex. JAM-1.)
- i. Dr. Peter Angelides was accepted as an expert in the economic impacts of development and infrastructure projects. (N.T. 2981:14-2984:5.) He is a Principal of the Econsult Solutions, Inc. located in Philadelphia, Pennsylvania, where he concentrates on real estate development, transportation, economic development, economic and fiscal impacts, and financial modelling. He is also a Lecturer at the University of Pennsylvania, Fels Institute of Government in the Department of City and Regional Planning since 2004. He has a Master of Science in Economics and a Doctor of Philosophy in Economics from the University of Minnesota. He performed an analysis for the Legislative Budget and Finance Committee of the Commonwealth of Pennsylvania to assess the state of the casino industry in Pennsylvania, to forecast future revenue for the Commonwealth in the face of increasing competition from other states, and estimated the value of potential additional forms of gaming. For the Philadelphia Growth Coalition, he modeled impacts on Philadelphia employment, real estate values, and tax revenues from proposed changes in Philadelphia's tax structure. For SEPTA, he valued the economic impact of SEPTA's expenditures and its importance to the region's productivity. (SPLP St. No. 12, Angelides Rebuttal Test. at 1-3; SPLP Ex. PA-1.)

355. SPLP presented the following company employee witnesses with substantial experience in their respective subject matter areas. Each of these witnesses' testimony is credible.

- a. John Field is a corrosion engineer with SPLP. (SPLP St. No. 14, Field Rebuttal Test. at 1:1-2.) He has 28 years of professional experience in corrosion engineering. (*Id.* at 1:16-17.) He is a certified NACE International Cathodic Protection Specialist. (*Id.* at 1:17-18.)

PUBLIC VERSION

- b. Joseph McGinn is the Vice President of Public & Government Affairs. He has worked for or with SPLP since 2004. In his current position which he has held since 2019, he leads public and government affairs efforts for the East Coast and Midwest operation areas, including community relations, local and state government outreach. From 2013-2017, he led public affairs activities, including community affairs, media relations, and local government outreach, and after the 2017 merger, he led government affairs for Pennsylvania and the general Mid-Atlantic region. From 2017-2019, he was a consultant supporting government and public affairs outreach in Pennsylvania. He served on the Governor's Pipeline Task Force from 2015-2016. (SPLP St. No. 6, McGinn Rebuttal Test. at 1-2; SPLP Ex. JM-1.)
- c. Joseph Perez is Senior Vice President and was previously Vice President, Technical Services for Operations and Engineering with SPLP. He previously testified before the Commission regarding SPLP's Public Awareness Program. (SPLP St. No. 5, Perez Rebuttal Test. at 1).
- d. Matthew Gordon is the Senior Director of Liquid Pipeline Operations, where he manages a team of directors and managers executing operations, maintenance, and compliance of liquid pipeline assets across eight states in the eastern United States. From April 2017 to April 2018, he was Director of Special Projects, where he managed a team of thirteen project managers on multi-year, large capital projects consisting of new pipelines, pump stations, meter sites, and valve stations. From October 2012 to April 2017, he was principal engineer and project manager for the ME2 pipeline project for SPLP, where he oversaw the design, permitting, land acquisition and construction of ME2 in accordance with federal, state and local law and company policies and procedures. He was also project director for the Mariner East 1 pipeline project. (SPLP St. No. 13, Gordon Rebuttal at 1-2; SPLP Ex. MG-1.)
- e. Richard Billman is the Vice President of Business Development, where he oversees commercial and strategic growth of SPLP's assets as well as manages contracts with shippers. He has worked with the company for over twenty years and his daily job responsibilities include projections relative to revenues and the contracts the company has in place. He previously testified in this proceeding. (N.T. 2583:4-10; SPLP St. No. 10, Billman Rebuttal Test. at 1; SPLP Ex. RB-1.)

PUBLIC VERSION

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PUBLIC VERSION

APPENDIX B

**SUNOCO PIPELINE L.P.'S
PROPOSED CONCLUSIONS OF LAW**

In accordance with Commission Rules 5.501 and 5.502, 52 Pa. Code §§ 5.501-5.502, and Your Honor's October 23, 2020 Briefing Order, Respondent Sunoco Pipeline L.P. ("SPLP") respectfully submits the following proposed conclusions of law:

I. Burden of Proof

1. As the proponent of a rule or order, Complainants have the burden under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992).

2. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. To satisfy their burden of proof, Complainants must show that SPLP is responsible or accountable for the problems alleged in their Complaints. *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). "The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff." *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 6 (Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701) (*Baker*).

4. The Commission's adjudications must be supported by "substantial evidence" in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. "Substantial evidence" is such relevant

PUBLIC VERSION

evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of New York v. National Labor Relations Board*, 305 U.S. 197, 229 (1938).

5. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980) (*Norfolk*); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

6. A legal decision must be based on real and credible evidence that is found in the record of the proceeding. *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlt. 1993); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Cmwlt. 1986).

7. Upon presentation of evidence sufficient to initially establish a *prima facie* case, the burden to rebut the complainant's evidence shifts to the respondent. If the evidence that the respondent presented is of co-equal weight, then the complainants have not satisfied their burden of proof. Complainants now must provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlt. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

8. While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on Complainants as the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

II. Legal Standard for Pipeline Safety

9. The Commission regulations at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49

PUBLIC VERSION

C.F.R. Part 195. The Commission’s regulations adopt federal safety standards for hazardous liquid facilities.

10. Under Section 1501 of the Code, “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . .” 66 Pa. C.S. § 1501.

11. To find that a pipeline is unsafe requires proof that it violates applicable regulatory standards that address pipeline safety. *See, e.g., Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, No. C-2014-2421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebeur, J.) (Final by Act 294, Dec. 30, 2014); *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014).

12. Here, to find that the Mariner East pipelines are unsafe, Complainants must prove by a preponderance of the evidence that SPLP violated an applicable regulatory standard in 49 C.F.R. Part 195, which is the set of federal regulations that govern hazardous liquid pipelines.

13. “Complainant’s assertions, regardless of how honest or strong, cannot form the basis of a finding . . . since assertions, personal opinions or perceptions do not constitute factual evidence.” *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

14. The Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory changes occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications. *Baker* at 26 (citing *Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards* at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267 (Order entered Jun. 13, 2019)).

PUBLIC VERSION

III. Standards for Injunctive Relief

15. “[I]n order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require *any* action by the utility.” *West Penn Power Co. v. Pa PUC*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (*emphasis added*); *see also Township of Spring. v. Pennsylvania-American Water Co.*, Dkt. Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*); *Baker* at 6.

16. “Injunctive relief must be narrowly tailored to abate the harm complained of.” *Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No C-2017-2589346, Recommended Decision at 42 (Barnes, J.) (adopted in full by Commission by Order dated Oct. 1, 2018). *See also Baker* at 26.

17. An injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and is often described as an extreme remedy. *Woodward Twp. v. Zerbe*, 6 A.3d 651 (Pa. Cmwlth. 2010) (citing *Big Bass Lake Community Association v. Warren*, 950 A.2d 1137, 1144 (Pa. Cmwlth. 2008)). The case for a

PUBLIC VERSION

mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145.

18. To justify the need for a permanent injunction, the moving party must demonstrate that “greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006).

IV. Evidentiary Standards for Expert Opinions and Lay Witness Testimony

19. Pennsylvania Rule of Evidence 702 establishes the standard for the admission of expert testimony, as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) the expert’s methodology is generally accepted in the relevant field.

Pa. R.E. 702

20. The Pennsylvania Rules of Evidence, including Rule 702, are applied by the Commission in its administrative hearings and proceedings. *See Randall v. PECO Energy Co.*, No. C-2016-2537666, 2019 WL 2250792, at *43 (Order entered May 9, 2019) (citing *Gibson v. WCAB*, 861 A.2d 938, 947 (Pa. 2004) (holding, in part, that notwithstanding the statutory maximum of 2 Pa. C.S. § 505, which mandates a relaxation of the strict rules of evidence in agency hearings and proceedings, the “evidentiary Rules 602, 701, and 702 are applicable to agency proceedings in general”).

PUBLIC VERSION

21. To the extent that a witness is found to possess specialized knowledge to qualify as an expert on certain subject matters, the witness's expert testimony is limited to those issues within his or her specific expertise. *See Bergdoll v. York Water Co.*, No. 2169 C.D. 2006, 2008 WL 9403180, at *8–9 (Pa. Cmwlth. 2008) (unreported); *see also, Application of Shenango Valley Water Co.*, No. A-212750F0002, 1994 WL 932364, at *19 (Jan. 25, 1994) (internal record citations omitted).

22. An expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff'd*, 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied*, 859 A.2d 770 (Pa. 2004). *See also Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 61-62 (Order entered March 28, 2019), *aff'd in relevant part*, Dkt. No. 492 C.D. 2019, ___ A.3d ___, 2020 WL 5949866 (Pa. Cmwlth. Oct. 8, 2020).

23. Lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. Pa. R.E. 701(c) (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”).

24. A lay witness is not qualified to testify or offer exhibits related to any issues outside of direct personal knowledge. *Lamagna v. Pa. Elec. Co.*, Docket No. C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (final by Act 294, Dec. 21, 2018) (lay witness was “not qualified to testify or offer exhibits related to health and safety issues outside of her direct personal knowledge”).

25. To the extent that a lay witness offers references to reports or conclusions of others, these may not be considered as substantial evidence because a lay witness cannot rely on

PUBLIC VERSION

such information in reaching a conclusion; rather, that is the role of a qualified expert witness. Compare Pa. R.E. 701 with Pa. R.E. 703.

26. While a factfinder may weigh the opinion testimony of a qualified expert, any such testimony of an unqualified lay witness must be excluded and should not be given any evidentiary weight. *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004); *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995).

27. Lay witness testimony on technical issues such as health, safety, and the probability of structural failure should be rejected as these necessarily “require expert evidence to be persuasive enough to support the proposing party's burden of proof.” *Application of PPL Elec. Utilities Corp.*, Docket No. A-2009-2082652, 2010 WL 637063, at *11 (Feb. 12, 2010) (emphasis added); *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010); *Lamagna v. Pa. Elec. Co.*, C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018).

28. If a party is relying upon circumstantial evidence to reasonably infer a factual conclusion, “the evidence must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith.” *Monaci v. State Horse Racing Com'n*, 717 A.2d 612, 618 (Pa. Cmwlth. 1998), 717 A.2d at 618 (quoting *Flagiello v. Crilly*, 187 A.2d 289, 290 (Pa. 1963)).

29. Circumstantial evidence has been defined as “evidence of one fact, or of a set of facts, from which the existence of the fact to be determined may reasonably be inferred,” W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 39, at 242 (5th ed.1984), in contrast to direct evidence where there is direct eyewitness testimony of the ultimate fact to be determined.” *Monaci*, 717 A.2d at 618.

PUBLIC VERSION

V. **Complainants have not satisfied their burden of demonstrating that SPLP violated Section 1501 of the Pennsylvania Public Utility Code.**

A. **Consequence Analysis, Risk Assessment, and Operational History**

30. Complainants have not met their burden of establishing that the operation of the Mariner East pipelines in Chester and Delaware Counties in high consequence areas violates any law or regulation over which the Commission has jurisdiction or Commission Order and are thus cannot obtain any relief. *West Penn*, 478 A.2d at 949 (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.”); *Baker* at 6.

31. HVL pipelines are authorized in high consequence areas. 52 Pa. Code § 59.35 (incorporating 49 U.S.C. §§ 6010-6053 and 49 C.F.R. Part 195); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.1(a)(1), 195.450, and 195.452.

32. The PHMSA database of pipeline incidents is not evidence of the likelihood of a pipeline rupture because it does not identify a single rupture of an HVL pipeline in a high-consequence area and involved all operators, not just SPLP. *Monaci*, 717 A.2d at 618 (“In relying upon circumstantial evidence to reasonably infer a factual conclusion, ‘the evidence must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion so as to outweigh ... any other evidence and reasonable inferences therefrom which are inconsistent therewith.’”).

33. Complainants’ consequence only analysis is not sufficient to prove a violation of 66 Pa. C.S. § 1501 or any regulation over which the Commission has jurisdiction. *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 29-30 (Order entered

PUBLIC VERSION

March 28, 2019) (holding for a complainant to sustain burden of proof a preponderance of the evidence must show “that a utility’s service of facilities *will cause harm*”), *aff’d in relevant part, Povacz v. Pa. PUC*, Dkt. Nos. 492, 606, 607 CD 2019, 2020 W.L. 5949866, *10-11 (Pa. Cmwlth. Ct. Oct. 8, 2020) (affirming burden of proof standard).

34. Complainants have not met their burden of proof to establish that the potential consequences of SPLP operating HVL pipelines in Chester and Delaware Counties is a violation of Section 1501 of the Code.

35. SPLP’s operation of HVL pipeline in Chester and Delaware Counties does not violate Section 1501 of the Code.

B. Integrity Management, Corrosion Control, and Cathodic Protection

36. Complainants have not met their burden to show a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order with respect to Integrity Management, Corrosion Control, and Cathodic Protection and thus cannot obtain any relief. *West Penn*, 478 A.2d at 949 (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.”); *Baker* at 6.

37. Dr. Zamanzadeh’s testimony is not competent evidence because it is equivocal and speculative and does not express the requisite degree of certainty. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff’d* 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied*, 859 A.2d 770 (Pa. 2004).

38. The relief requested of a remaining life study for the ME1 pipeline is moot. September 25, 2020 Order at ¶ 9.

PUBLIC VERSION

39. Evidence regarding the ME1 pipeline is circumstantial evidence that cannot be used to infer a factual conclusion regarding the 12-inch pipeline because such evidence does not outweigh the direct evidence presented regarding the 12-inch pipeline. *Monaci v. State Horse Racing Com'n*, 717 A.2d 612, 618 (Pa. Cmwlth. 1998) (“In relying upon circumstantial evidence to reasonably infer a factual conclusion, ‘the evidence must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith.’”).

40. SPLP’s Integrity Management Plans comply with applicable regulations. 49 C.F.R. § 195.452.

41. SPLP has complied with integrity management regulations. 49 C.F.R. § 195.452.

42. SPLP’s corrosion control and cathodic protection SOPs comply with applicable regulations. 49 C.F.R. 195 Subpart H.

43. SPLP has complied with corrosion control and cathodic protection regulations. 49 C.F.R. 195 Subpart H; 49 C.F.R. § 195.573(e).

44. A remaining life study is redundant of required integrity management practices. 49 C.F.R. § 195.452; (N.T. 4460:20-4461:25.)

45. Flynn Complainants Exhibit Z-3 is a PHMSA Notice of Proposed Violation containing allegations and SPLP already complied with PHMSA’s proposed compliance order, meaning this issue has been remedied and these allegations do not entitle Complainants to any relief. (*Id.*; N.T. 4094:16-4095:15, 4095:25-4096:20, Field Test.); *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (assertions do not constituted factual evidence) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No C-2017-2589346, Recommended Decision at 42 (Barnes, J.) (adopted in full by Commission by

PUBLIC VERSION

Order dated Oct. 1, 2018) (injunctive relief must be narrowly tailored to abate harm complained of). *See also Baker* at 26 (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record keeping, and complete an audit of public awareness program by a third-party “were not justified on the basis of the finding of a violation of the duty to satisfy public awareness and outreach obligations under 49 C.F.R. § 195.440).

46. That SPLP agreed through a Commission-approved settlement in the Morgantown proceeding to conduct a remaining life study with parameters agreed upon with BI&E is not and cannot be used as evidence to conduct a remaining life study for the 12-inch pipeline. *BI&E v. SPLP*, Docket No. C-2018-3006534 (Opinion and Order entered Aug. 19, 2020); Joint Petition for Settlement at Paragraphs 15 (“Settlement is without admission”), 22 (“by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law”).

47. SPLP complied with requirements for performing risk assessments and Flynn Complainants’ counsel conceded and this is no longer an issue in the case. 49 C.F.R. § 195.452(i)(1)-(2); (N.T. 2733-2771, 4284:4-18, 4323:7-11, 4333:10-16.)

C. SPLP’s Public Awareness Program

48. Complainants failed to meet their burden of proving that SPLP’s public awareness program violated 49 C.F.R. § 195.440, or any law or regulation over which the Commission has jurisdiction or any Commission Order and thus cannot obtain any relief. *West Penn*, 478 A.2d at 949 (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section.

PUBLIC VERSION

Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.”); *Baker* at 6.

49. SPLP’s public awareness program meets and exceeds the requirements of 49 C.F.R. § 195.440 and API RP 1162.

50. Complainants have not met their burden of proving that SPLP’s public awareness program failed to inform of the key required components of 49 C.F.R. § 195.440 and API RP 1162, including: use of the one-call notification system; possible hazards associated with the unintended release from a hazardous liquid pipeline; physical indications that a release may have occurred; steps that should be taken for public safety in the event of a hazardous liquid pipeline release; and procedures to report such an event. 49 C.F.R. §§ 195.440 (a) and (d).

51. The counties, municipalities and school districts have the legal obligation to create their own emergency response plans; SPLP does not have that obligation.

52. Complainants and aligned intervenors have failed to meet their factual or legal burden of proving that SPLP has not provided counties, municipalities, or school districts with the information that is necessary for them to develop their own emergency response plans.

53. SPLP has provided all information to counties, municipalities, and school districts necessary for each of them to develop an emergency response plan.

54. The requested relief of an “early warning” system is not available as a form of relief in this complaint proceeding, but rather is a subject for the regulatory rulemaking process. *Baker* at 11, Ordering Paragraph 2.

55. Complainants have not established that an “early warning” system is necessary or appropriate for public safety. *See e.g., Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

PUBLIC VERSION

56. Complainants did not meet their burden of proving that SPLP's existing leak detection systems and equipment are in violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

57. SPLP's leak detection systems and equipment comply with the applicable PHMSA regulations. 49 C.F.R. § 195.444.

58. The requested relief of adding odorant to the products in the ME pipelines is not available as a form of relief in this complaint proceeding, but rather is a subject for the regulatory rulemaking process. *Baker* at 11, Ordering Paragraph 2.

59. Complainants have not established that adding odorant is necessary or appropriate for public safety. *See e.g., Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

D. Siting, Construction, and Environmental Issues

60. Locating the Mariner East pipelines in Chester and Delaware Counties in high consequence areas are permitted as a matter of law. *See* 52 Pa. Code § 59.33(b) (incorporating 49 U.S.C.A. §§ 60101-60503 and 49 C.F.R. Part 195 regulations as safety standards for hazardous liquid public utilities); 49 U.S.C. § 60109; 49 C.F.R. §§ 195.450 and 195.452; 49 C.F.R. § 195.450 (definition of high consequence area includes high population areas, i.e., urbanized areas, or other areas with concentrated populations); 49 C.F.R. § 195.452 (Pipeline integrity management in high consequence areas); 49 C.F.R. § 195.452(i)(1) (requirements for operator "to prevent and mitigate the consequences of a pipeline failure that could effect a high consequence area.)

61. The Commission lacks jurisdiction over the siting and location of public utilities, including pipelines and related equipment, such as valve stations. *See West Goshen Township v.*

PUBLIC VERSION

Sunoco Pipeline L.P., Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018).

62. The issue of pipeline siting is the subject to current proposed rulemaking pending before the Commission, which seeks comments from hazardous liquids public utilities and the public on amendments and enhancements to Chapter 59 of the Commission’s regulations to “more comprehensively regulate the design, construction, operations and maintenance of public utilities transporting petroleum products and other hazardous liquids under the commission of the Jurisdiction.” *Advanced Notice of Proposed Rulemaking Order Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267, Order at 4 (June 13, 2019).

63. Complainants have failed to satisfy their burden of demonstrating that the location of the Mariner East pipelines and related equipment, including valve sites, did not meet all state and federal regulatory requirements, or otherwise present a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

64. Complainants have not met their factual or legal burden of proving that any incident that occurred during the construction of the Mariner East 2/2X is a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

65. None of Complainants’ allegations regarding issues with construction of the Mariner East 2/2X pipelines was supported by expert testimony that was necessary for complainants to satisfy their burden of proof.

66. SPLP meets or exceeds all applicable federal and state requirements and regulations for the construction of the ME2/2X pipelines.

PUBLIC VERSION

67. Complainants have not satisfied their factual or legal burden of showing how any incident related to pipeline construction would affect the integrity or safety of the Mariner East 2/2X pipelines when they are in operation.

68. Complainants' requested injunctive relief will not abate any issues associated with the construction of the Mariner East 2/2X pipelines, which are in the past, and because it is uncontroverted that once the pipelines are fully-constructed, they are subject to comprehensive tests and procedures to ensure the pipelines are fit for service, rendering any injunctive relief moot.

69. The Commission does not enforce compliance with environmental laws, as the General Assembly has delegated that authority to the Pennsylvania Department of Environmental Protection (PADEP), the agency with expertise and competency in environmental matters within the Commonwealth. "As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code." *Pickford v. Public Utility Com'n*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010).

70. The Commission does not have authority commensurate with PADEP over issues relating to inadvertent returns of drilling mud, earth features, or alleged water supply impacts that may occur during the construction of the Mariner East 2/2X pipelines – issues that are each encompassed in SPLP's PADEP-issued permits for the project. *See Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169, Initial Decision (Dec. 8, 2020), at 8-9.

71. "The Commission does not permit or regulate the environmental permitting process for SPLP's construction. Those permits are sought, obtained, modified, and enforced by PADEP. Therefore, the Commission lacks jurisdiction over such matters, and this portion of the Complaint shall be dismissed pursuant to 52 Pa. Code § 5.1010(a)(1)." *Baker and Blume*, at 11.

PUBLIC VERSION

72. Complainants have failed to meet their burden of proving that any earth feature or subsidence that developed during the construction of the Mariner East 2/2X pipelines was a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

73. SPLP presented uncontroverted expert testimony and substantial evidence that demonstrates it properly assessed any earth feature that developed, takes appropriate remedial measures when an event occurs, and also engages in preventative and mitigative measures to prevent future concerns from developing that could affect the pipelines.

74. SPLP presented substantial and uncontroverted expert testimony that none of the earth features that developed during the construction of Mariner East 2/2X pipelines effected the safety or integrity of the pipelines.

75. Complainants have not met their burden of demonstrating that the seep at Shoen Road are a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

76. Complainants have not satisfied their burden of proving that inadvertent returns of drilling mud are a violation of any law or regulation over which the Commission has jurisdiction or any Commission Order.

77. The alleged issues with Complainant Rosemary Fuller's water well are within the jurisdiction of PADEP and relate to private property claims that the Commission cannot address with any relief in this action.

78. Complainant Rosemary Fuller has not satisfied her burden of proving that her water well concerns or concerns with the use of bentonite products in the HDD process in general, violates of any law or regulation over which the Commission has jurisdiction or any Commission Order. The weight of the evidence reflects that bentonite is safe and appropriate for

PUBLIC VERSION

HDD construction, approved by PADEP and other federal and international certifying entities and agencies, and poses no human health risk.

79. SPLP's construction of the ME2/2X pipelines in Chester and Delaware Counties does not violate Section 1501 of the Code.

VI. Economic benefits of the Mariner East pipelines

80. SPLP is a Commission-certificated public utility transporting or conveying, *inter alia*, butane, propane, and ethane for interstate and intrastate use under the Commission's governing statutes. *See* 66 Pa. C.S. § 102 - Definitions ("Public Utility (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: ... (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.").

81. The Commission, by issuing SPLP a Certificate of Public Convenience, held that SPLP's public utility service is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a).

82. The Commission has determined that shutting down SPLP's public utility service comes at a significant cost to the public interest. *Petition of the Bureau of Investigation and enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Part Emergency Order*, Docket No. P-2018-3000281, Order at 10 (Order entered May 3, 2018).

83. Shutting down the Mariner East pipeline system would cause significant economic harm. *Flynn v. Sunoco Pipeline, L.P.*, Docket No. P-2018-3006117, Order Denying Petition for Emergency Interim Relief and Certifying Material Question at 15 (Order entered December 11, 2018) (*affirmed* by Commission Opinion and Order February 1, 2019).

PUBLIC VERSION

84. Complainants have not presented any evidence, much less substantial evidence to challenge any of the economic or societal benefits of the Mariner East pipelines, and therefore failed to satisfy their burden of demonstrating that enjoining the operation and/or construction of the Mariner East pipelines will not cause adverse economic and societal impacts.

85. A shutdown of the Mariner East pipeline operations or construction would be detrimental to the public interest.

Respectfully submitted,

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Dated: December 16, 2020

PUBLIC VERSION

APPENDIX C

**SUNOCO PIPELINE L.P.'S
PROPOSED ORDERING PARAGRAPHS**

In accordance with Commission Rules 5.501 and 5.502, 52 Pa. Code §§ 5.501-5.502, and Your Honor's October 23, 2020 Briefing Order, Respondent Sunoco Pipeline L.P. respectfully submits the following proposed ordering paragraphs:

THEREFORE,

IT IS ORDERED:

1. That the Complaint, First Amended Complaint, and Second Amended Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (the "Flynn Complainants") at Docket No. C-2018-3006116 against Sunoco Pipeline L.P. is dismissed with prejudice.
2. That Docket No. C-2018-3006116 be marked closed.
3. That the Complaint of Melissa DiBernardino at Docket No. C-2018-3005025 against Sunoco Pipeline L.P. is dismissed with prejudice.
4. That Docket No. C-2018-3005025 be marked closed.
5. That the Complaint of Rebecca Britton at Docket No. C-2019-3006898 against Sunoco Pipeline L.P. is dismissed with prejudice.
6. That Docket No. C-2019-3006898 be marked closed.
7. That the Complaint of Laura Obenski at Docket No. C-2019-3006905 against Sunoco Pipeline L.P. is dismissed with prejudice.
8. That Docket No. C-2019-3006905 be marked closed.
9. That the Complaint of Andover Homeowners Association Inc. at Docket No. C-2018-3003605 against Sunoco Pipeline L.P. is dismissed with prejudice.

PUBLIC VERSION

10. That Docket No. C-2018-3003605 be marked closed.

Respectfully submitted,

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