

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Meghan Flynn</b>	:	
<b>Rosemary Fuller</b>	:	
<b>Michael Walsh</b>	:	
<b>Nancy Harkins</b>	:	<b>C-2018-3006116</b>
<b>Gerald McMullen</b>	:	<b>P-2018-3006117</b>
<b>Caroline Hughes and</b>	:	
<b>Melissa Haines</b>	:	
	:	
<b>Andover Homeowners Association</b>	:	<b>C-2018-3003605</b>
	:	
<b>Melissa DiBernardino</b>	:	<b>C-2018-3005025</b>
	:	
<b>Rebecca Britton</b>	:	<b>C-2019-3006898</b>
	:	
<b>Laura Obenski</b>	:	<b>C-2019-3006905</b>
<i>Complainants</i>	:	
	:	
<b>West Chester Area School District</b>	:	
	:	
<b>Twin Valley School District</b>	:	
<i>Intervenor/Complainants</i>	:	
	:	
v.	:	
	:	
<b>Sunoco Pipeline, L.P.</b>	:	
<i>Respondents</i>	:	

**JOINT POST HEARING BRIEF OF  
WEST CHESTER AREA SCHOOL DISTRICT AND TWIN VALLEY SCHOOL  
DISTRICT, INTERVENORS**

Pursuant to 52 Pa. Code §§ 5.501 and the Briefing Order of October 23, 2020, the West Chester Area School District, Chester County, Pennsylvania (“West Chester” or “WCASD”) and the Twin Valley School District, Chester County, Pennsylvania, (“Twin Valley” or “TVSD”) Complainant/Intervenors, by and through their undersigned counsel, respectfully submit this Post Hearing Brief in support of their claims in the above-captioned proceeding.

## I. INTRODUCTION

This action began in November 2018 when Petitioners/Complainants, Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (collectively the “Flynn Complainants”) filed a Complaint against Respondent, Sunoco Pipeline, L.P. at docket number C-2018-3006116. The Flynn Complainants averred that their properties in Chester and Delaware Counties were in close proximity to the Mariner East 1 (“ME1”) Pipeline and/or a work-around 12-inch diameter pipeline that circumvents stopped construction on the Mariner East 2 (“ME2”) and Marnier East 2X (“ME2X”).<sup>1</sup>

The Flynn Complainants’ contend that the Marnier East Pipelines, which are carrying or intended to carry highly volatile liquids (“HVLs”), are inherently dangerous due to their locations, and, that they are being operated without an adequate public awareness program, emergency notification system, or credible emergency management plan in violation of 49 C.F.R. §195.440.

The Flynn Complainants’ seek relief from the Commission directing that Sunoco Pipeline, L.P., permanently cease operation of the ME1 Pipeline, the work-around pipeline, ME2 and ME2X; and other relief as set forth in their Amended Complaint for relief.

West Chester Area School District and Twin Valley School District operate elementary, middle and high school facilities in close proximity to the Mariner East Pipelines, and have intervened in the Flynn Complainants’ action. Joining in the Flynn Complainants’ request for relief, the School Districts further request that the Commission direct Sunoco to develop an enhanced notification system sufficient to provide direct, immediate notification to the School

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<sup>1</sup> ME1 is currently operational. ME2 and ME2X are not currently operational. The work around 12-inch diameter pipeline is a 1930’s era pipeline that had been carrying petroleum products, such as gasoline until Sunoco repurposed it to connect to ME2 in order to carry highly volatile liquids (“HVLs”).

Districts in the event of a leak or breach of the Marnier East Pipeline in proximity to any of the school facilities, and, that Sunoco work directly with the School Districts to develop a public awareness program that addresses the schools' unique concerns.

In the interest of brevity, West Chester Area School District and Twin Valley School District, Intervenor/Complainants in this consolidated action, incorporate by reference the Proposed Findings of Fact and Conclusions of Law submitted by the Flynn Complainants, and supplement those submissions with the following Proposed Findings of Fact, Conclusions of Law and Requested Order.

## **II. CONCISE STATEMENT OF THE CASE**

The School Districts incorporate by reference the Statement of the Case included by Flynn Complainants in their brief.

The School Districts' intervention in the action commenced by the Flynn Complainants is based on the School Districts' direct, substantial and immediate interest in these proceedings as a municipal entity obligated under the Pennsylvania Public School Code of 1949, 24 P.S. § 1-101 et seq. to promote the education, health, safety and welfare of their children and to assure the proper operation of the schools, including disaster prevention and response. No other party to this proceeding possesses an interest identical to that of TVSD or WCASD. The School Districts' petitions, dated January 18, 2019 and March 4, 2019 respectively, were granted by Judge Barnes and both School Districts were granted Intervenor status to allow for their participation in these proceedings as Intervenor Complainants.

At the October 24, 2019 hearing, the School Districts presented the testimony of their respective lay witnesses to illustrate to Judge Barnes and the Commission the need for the

requested relief and their concerns if such relief is not granted. WCASD presented the testimony of Dr. James Scanlon (“Dr. Scanlon”), who is the Superintendent of WCASD and Kevin Campbell (“Mr. Campbell”), who is the Director of Facilities and Operation for WCASD and is the school safety and security officer. TVSD presented the testimony of William Clements (“Mr. Clements”), the principal of Twin Valley High School, and a member of the TVSD’s safety committee. The substance of the School Districts’ witnesses’ testimony is detailed below in the Proposed Findings of Fact., below.

In filing this brief, the School Districts join in requesting the relief sought by the Flynn Complainants but seek additional relief specific to the needs and concerns of the School Districts. The specific relief sought by the School Districts includes the request that Sunoco be required to develop and install a mass early warning notification system to provide direct, immediate notification of any breach or leak in the pipelines to all potentially affected TVSD and WCASD school facilities. In addition, the School Districts request that Sunoco be required to develop public awareness and education plans tailored to the concerns of the School Districts.

**III. STATEMENT OF THE QUESTIONS INVOLVED**

A. Whether Sunoco’s current protocol for public notification of a pipeline breach or leak, which is limited to notification of emergency services and 911, violates 52 Pa. Code 59.33, 49 CFR 195.440 and API RP 1162?

Suggested Answer: Yes

B Whether Sunoco may be required to institute an enhanced public notification and emergency response plan which provides school districts with direct, immediate notification of any breach or leak in the Mariner East Pipeline facilities located in proximity to of any school district facility?

Suggested Answer: Yes

C. Whether Sunoco may be required to develop public awareness and education plans tailored to the concerns of school districts?

Suggested Answer: Yes

#### **IV. PROPOSED FINDINGS OF FACT**

##### **A. RISKS AND CONSEQUENCES OF A PIPELINE EVENT**

The School Districts incorporate by reference, and reproduce here, facts proposed by Flynn Complainants in their brief, including:

1. Jeff Marx is a process safety engineer with a Bachelor's and a Master's degree in mechanical engineering. His curriculum vitae was marked Exhibit Marx-1 (App. 630). (Marx Direct at 2, ll. 6-16).

2. In this case, he performed a consequence analysis study using proprietary software. (Marx Direct at 7, ll. 9-12). Consequence analysis is the evaluation of the potential hazards or impacts from, generally, hazardous chemicals or waste. (Marx Direct at 2, l. 2; at 3, l. 2).

3. The models he uses are based upon worst-case scenarios (N.T. 9/29/20 at 1845, l. 2). Over-prediction is by intent because under-prediction is not acceptable. (N.T. 9/29/20 at 1850, ll. 2-3).

4. ME1 is an eight-inch pipeline built in the 1930s that has been repurposed to transport HVLs. ME2, where it is unable to be built as planned, is connecting to a twelve-inch pipeline ("the workaround pipeline") also built in the 1930s. (Marx Direct at 10, ll. 2-10).

5. Marx's key findings, to a reasonable degree of professional certainty, were as follows:

- There exists sufficient publicly available information to generate reasonably accurate calculations of both hazards and risk from potential Mariner East pipeline releases.
- The worst hazard zones are realized in the first few minutes of an HVL pipeline accident due to loss of inventory and pressure decay.
- Predicted fatal impacts of accidental pipeline rupture events were found to extend up to greater than 2,000 feet from the pipelines or their associated equipment. Moderate holes could create hazard zones extending up to about 1,000 feet from the pipeline.
- In the event of a pipeline release, persons in the vicinity of the pipeline may have difficulty escaping unharmed.
- The maximum hazards following an HVL pipeline rupture will be realized before the operator can affect any meaningful measures to shut down the release.
- It is extremely unlikely that emergency response activities will be activated before the maximum hazards of an HVL pipeline rupture are realized.
- It is difficult to define the proper public response to a pipeline incident (*i.e.*, shelter in place or evacuate) due to the variability of the event magnitude and various possible hazards.

(Marx Direct at 44, l. 20 – 46, l. 4).

6. The chronology of an HVL pipeline rupture event is set out in detail by Marx, commencing with detection by remote operators and ending with local responders arriving ten to fifteen minutes after an explosion followed by a large fire. (Marx Direct at 43, l. 19-44, l. 171). The chronology of a lesser, two-inch hole puncture event is laid out as well. (Marx Direct at 44, l. 19-46, l. 3).

7. A large leak or a puncture or rupture at any location in Chester or Delaware Counties along the ME1 or the workaround pipeline has the potential to cause a fatality. (Marx Direct at 48, ll. 19-21).

8. Particularly vulnerable locations include the Andover neighborhood, the Hershey's Mill senior living center in West Chester, the Chester County Library in Exton, and Glenwood Elementary School in Delaware County. (Marx Direct at 49, ll. 1-22).

9. Mr. Marx visited a school site in Delaware County, the area surrounding the site, the Andover neighborhood, the Chester County public library, and other sites along the Mariner East route. (N.T. 9/29/20 at 1805, l. 22 - 1806, l.2).

10. If a release from a pipeline is ignited into a jet fire, there would be significant thermal radiation impacts at Glenwood, dependent on the size, orientation and weather, due to the close proximity. (N.T. 9/29/20 at 1807, l. 20 - 1808, l. 5).

11. The impact of a pipeline release would be similar for other schools within proximity given same relative distance. (N.T. 9/29/20 at 1828, ll. 14-16).

12. Since 2016, Timothy Boyce has been the Director of the Delaware County Department of Emergency Services. Mr. Boyce leads 130 employees who support public safety agencies, programs, and initiatives protecting Delaware County. Mr. Boyce oversees Delaware County's representation on the Southeast Pennsylvania Regional Terrorism Task Force, the Delaware County 911 center, emergency operations, search and rescue, and the hazardous materials response team. He also serves on the local Heroin Task Force and the Safe Schools Committee. (Boyce Direct 2, ll. 16-22; 3, ll. 1-3, 13-15).

13. Without a hazardous gas detector, the general public would not be likely able to identify a "safe distance" from an incident that would assure that a member of the public escaped death or injury. First responders or other public safety officials would not be able to make such a determination without instrumentation. (Boyce Direct at 13, ll. 3-7). Most first responders or large facility operators do not have such equipment. (Boyce Direct at 19, ll. 14-18). "If they

were unable to detect a vapor cloud, and unwittingly entered one, they could risk igniting it themselves.” (Boyce Direct at 13, ll. 3-7).

14. Buildings would not provide protection from a vapor cloud explosion or similar lethal overpressure event. (Boyce Direct at 14, ll. 4-6).

15. Sunoco’s suggestions to evacuate school children, the elderly or disabled persons were not feasible, at any time, with or without darkness or inclement weather. (Boyce Direct at 21, ll. 6-12).

16. Members of the general public would not necessarily be able to identify wind direction. Mr. Boyce’s department does not have the current capability to assist the public with this determination. (Boyce Direct at 22, ll. 18-22).

17. It may require between five and thirty minutes to mobilize and reach the area of an incident - and that is after local first responders are aware of the situation. It may take one or two minutes to begin shutdown, three or four minutes for the shutdown sequence to begin, and first responders may not arrive for ten or fifteen minutes. At arrival, first responders would set up a command post, evaluate secondary fires, and respond as may be possible. However, the first responders would in no way approach any jet fire. All of this is predicated upon the first responders knowing if there was an HVL event, which is not guaranteed. (Boyce Direct at 16, ll. 5-28).

18. Volunteer first responders may not have the resources to deal with HVL events (in spite of the claim by Mr. Noll and other Sunoco witnesses that the volunteer first responders would be just as able to manage such events as paid fire companies). (Boyce Direct at 20, ll. 1-4).

19. It may take up to fourteen hours to deplete the inventory of the pipeline, which would fuel the ongoing incident during that time. In the meantime, secondary fires and other events may occur from vapor cloud explosions, fires, or other secondary events to which first responders would respond. Full containment could take up to forty-eight hours. (Boyce Direct at 16, ll. 31-32).

20. It is unlikely that first responders would be able to help those caught in lethal breathing zones, overpressure zones, or fire zones during an incident. Evacuating senior living establishments or hospitals would cause casualties. (Boyce Direct at 18, ll. 9-23; at 19, ll. 1-5).

21. Witnesses for WCASD, Rose Tree Media School District, and TVSD all expressed confusion over the choice to shelter in place or evacuate. Although Sunoco recommends evacuation, WCASD and TVSD both propose to shelter in place in the immediate aftermath of a pipeline event. (N.T. 10/24/19 at 1243, ll. 11-12; at 1290, ll. 11-17; 10/24/19 at 1313, ll. 6-11). Rose Tree Media leadership has requested a decision tree from Sunoco, to clarify when evacuation is safe and appropriate. (N.T. 10/24/19 at 1290, l. 24 through 1291 at ll. 1-4).

## **B. SUNOCO'S PUBLIC AWARENESS CAMPAIGN**

22. Sunoco's public awareness program consists of boilerplate recommendations that will not serve all members of the community, including the elderly and young children, and are not workable in many conditions, such as if an emergency were to occur at night or in freezing temperatures. (N.T. 10/23/19 at 810, l. 19 - 811, l. 13).

23. Both the federal government and Sunoco warn not to use phones to call 9-1-1 in the case of a pipeline leak; the very system the public relies on for warning and to seek help could serve as an ignition source. (N.T. 10/23/19 at 813, ll. 5-14).

24. Witnesses from Rose Tree Media School District, WCASD, and TVSD all testified that they have not received clear messages from Sunoco as to whether cellphones can be used to coordinate during a pipeline emergency. (N.T. 10/24/19 at 1227, ll. 10-13; at 1293, ll. 11-17; at 1317, ll. 10-13).

25. If a leak occurs, the brochures tell affected persons to leave the area on foot; warn others to stay away; turn off electrical equipment; proceed to a safe distance, and call 911. Each individual must determine a “safe distance” on a case-by-case basis. (Zurcher Rebuttal at 13, ll. 7-19).

26. Sunoco cannot tell the public precisely what the brochures mean by the term “safe distance.” It is up to each individual to decide. (N.T. 10/9/20 at 4263, l. 2 - 4267, l. 3). Hence, the brochure gives advice that has no clear meaning and which Sunoco’s own expert cannot explain.

### **C. WEST CHESTER AREA SCHOOL DISTRICT**

27. WCASD is a school district constituted under the laws of the Commonwealth of Pennsylvania and is one of the largest geographically diverse school districts in Chester County and in Pennsylvania. (N.T. 10/24/19 at 1215, ll. 3-4).

28. WCASD operates three high schools, three middle schools and ten elementary schools. (N.T. 10/24/19 at 1215, ll. 18-19).

29. For the current school year, WCASD’s student enrollment is approximately 12,070 students. (N.T. 10/24/19 at 1215, ll. 4-5).

30. WCASD services the attendance areas of West Chester Borough and the surrounding townships of East Goshen Township, West Goshen Township, East Bradford

Township, Thornbury Township, West Whiteland Township, and Westtown Township. (N.T. 10/24/19 at 1215, ll. 20-23).

31. Pennwood Elementary School, Exton Elementary School, East Goshen Elementary School and WCASD' Office are all located in close proximity to the various Mariner East pipelines ("ME Pipelines"). (N.T. 10/24/19 at 1216, ll. 3-11).

32. Pennwood Elementary School is located approximately 1,700 feet from one of the ME Pipelines. (N.T. 10/24/19 at 1216, ll. 15-18).

33. Exton Elementary School is located approximately 1,500 feet from one of the ME Pipelines. (N.T. 10/24/19 at 1216, ll. 19-21).

34. East Goshen Elementary School is located approximately 1,700 feet from one of the ME Pipelines. (N.T. 10/24/19 at 1216, ll. 22-25).

35. Dr. James Scanlon ("Dr. Scanlon") is the Superintendent of WCASD. (N.T. 10/24/19 at 1214, ll. 17-18).

36. Dr. Scanlon and WCASD began seeking out information from Sunoco Pipeline LP in or around December 2016. (N.T. 10/24/19 at 1217, ll. 11-15).

37. Dr. Scanlon wrote a letter to Sunoco Logistics seeking out certain information as to the ME Pipelines including the distance of the pipelines from the schools, safety concerns, depths of the pipelines, location of shutoff valves, etc. (N.T. 10/24/19 at 1217, ll. 14-21).

38. WCASD sought this information due to its concerns regarding the safety issues of the ME Pipelines and the sufficiency of WCASD's emergency plans. (N.T. 10/24/19 at 1217-1218, ll. 24-25, 1-3).

39. In an effort to gather more information regarding the ME Pipelines, Dr. Scanlon met several times with first responders and other municipal government entities. (N.T. 10/24/19 at 1221-1222, ll. 15-25, 1-3).

40. The purpose of these meetings for WCASD was to create a hazardous materials safety plan for a possible breach in any pipeline and specifically, the response to any breach, coordination with the emergency management group, etc. (N.T. 10/24/19 at 1222, ll. 4-14).

41. In electing to intervene in this proceeding, WCASD sought certain relief from Commission that was applicable only to WCASD and other school districts. (N.T. 10/24/19 at 1223, ll. 4-9).

42. As part of its requested relief, WCASD requested Sunoco develop and install a mass early warning notification system at all potentially affected WCASD schools to allow for earlier notification of WCASD. (N.T. 10/24/19 at 1223, ll. 10-13).

43. Currently, the protocol is to notify emergency services and 911 and then WCASD would be informed of any breach by emergency services. (N.T. 10/24/19 at 1223, ll. 14-19).

44. WCASD is concerned that it could be three or four minutes from the time that there is a breach to when WCASD is notified and WCASD can evacuate an entire school in three minutes. (N.T. 10/24/19 at 1224, ll. 11-16).

45. WCASD has requested direct notification from Sunoco of any breach. (N.T. 10/24/19 at 1224-1225, ll. 20-25, 1-6).

46. WCASD requests that once a breach or leak occurs, that the pipeline be shut down until WCASD receives proof that it has been properly repaired. (N.T. 10/24/19 at 1227, ll. 2-5).

47. Dr. Scanlon and WCASD still require information as to the dangers of cell phone use once a breach or leak has occurred to better understand the proper way to communicate with the WCASD community. (N.T. 10/24/19 at 1227-1228, ll. 6-25. 1-7).

48. Kevin Campbell (“Mr. Campbell”) is the Director of Facilities and Operation for WCASD and is the school safety and security officer. (N.T. 10/24/19 at 1247, ll. 2-13).

49. Mr. Campbell needs additional information from Sunoco as to the blast zone for any ME Pipelines to ensure the sufficiency of its emergency plan. (N.T. 10/24/19 at 1249-1250, ll. 14-25, 1-7).

#### **D. TWIN VALLEY SCHOOL DISTRICT**

50. The Twin Valley School District is a rural district with schools located in Northern Berks County and Southern Chester County. (N.T. 10/24/19 at 1307, ll. 18-19).

51. The District has three elementary centers, with approximately 350 students each, one middle school, with approximately 1,030 students, and one high school, with approximately 1,050 students. (N.T. 10/24/19 at 1309, ll. 17-20).

52. Each elementary center is served by approximately fifty staff members; the middle and high schools have approximately one hundred staff members each. (N.T. 10/24/19 at 1309, ll. 23-25).

53. Twin Valley Elementary Center is located approximately 390 feet from the Mariner East Pipeline. (N.T. 10/24/19 at 309, line 11).

54. Twin Valley Middle School is located approximately 565 feet from the Mariner East Pipeline. (N.T. 10/24/19 at 1309, ll. 12-13).

55. Twin Valley High School is located approximately 435 feet from the Mariner East Pipeline. N.T. 10/24/19 at 1309, ll. 12-13).

56. William Clements is the principal of Twin Valley High School, and a member of the School District's safety committee. ( N.T. 10/24/19 at 1307, line 24; at 1308, ll. 3-4).

57. The safety committee develops plans for responding to emergencies in the District, including a pipeline-related emergency event. (N.T. 10/24/19 at 1312, ll. 1-6).

58. Sunoco did send a representative to work with the safety committee on planning in 2017; since that time, however, Mr. Clements has had no contact with Sunoco representatives at all. (N.T. 10/24/19 at 1312, line 13 through 1313, line 1).

59. Local first responders have advised the safety committee that, in the event of a pipeline emergency, Twin Valley students and staff should first shelter in place, closing all air intake into school buildings. (N.T. 10/24/19 at 1313, ll. 6-11).

60. Twin Valley schools would not receive any notice of a pipeline emergency directly from Sunoco; instead, their first notice would come in the form of the "fire department... driving past our school." (N.T. 10/24/19 at 1313, line 23 through 1314, line 5).

61. Mr. Clements has no means to detect or respond to a pipeline emergency, beyond waiting for notification from the fire department. (N.T. 10/24/19 at p. 1317, ll. 20-25).

62. The Twin Valley fire department is a volunteer department. (N.T. 10/24/19 at 1313, ll. 10-11).

63. Ten to twelve minutes will pass before the Twin Valley fire department arrives at a Twin Valley school in response to any emergency. (N.T. 10/24/19 at p. 1314, ll. 14-18).

64. The fire department would then determine whether students and staff needed to evacuate school buildings. (N.T. 10/24/19 at p. 1315, ll. 3-4).

65. Three to five minutes are required to fully evacuate a Twin Valley school building. (N.T. 10/24/19 at 1319, ll. 24-25).

66. Mr. Clements estimated that students and staff could travel half a mile in ten minutes. (N.T. 10/24/19 at 1320, ll. 1-5).

67. In the event of an emergency, evacuees from Twin Valley Middle School or High School can only safely proceed downhill, as the schools are bounded by the pipeline itself and two dead-end roads. (N.T. 10/24/19 at p. 1315, ll. 19-25).

68. In the event of an emergency, evacuees from Twin Valley Elementary Center must cross Route 401, as flight in any other direction would put them in the path of the pipeline itself or emergency vehicles. (N.T. 10/24/19 at p. 1316, ll. 10-16).

69. Mr. Clements has been advised that staff members may not use cellphones during a pipeline emergency, as the devices may ignite. (N.T. 10/24/19 at p. 1317, ll 10-13).

## **V. PROPOSED CONCLUSIONS OF LAW**

Intervenors, WCASD and TVSD, incorporate herein by reference the Proposed Conclusions of Law of Flynn Complainants' Post-Hearing Brief, supplemented as follows:

1. The Pennsylvania Public Utility Commission has jurisdiction to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101- 60503 and as implemented at 49 CFR Parts 191-193, 195 and 199.

2. A public utility transporting hazardous liquids may be subject to the civil penalties provided under Federal pipeline safety laws at 49 U.S.C.A. §§ 60122(a)(1) and 60118(a), as adjusted annually for inflation.

3. Complainant must prove SPLP violated a law or regulation to obtain any relief. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

4. In order for the Commission to sustain a complaint brought under 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 Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *Township of Spring et al. v. Pennsylvania-American Water Company*, Docket Nos. C-20054919 et al, 2007 WL 2198196 at \*6 (Order entered Jul. 27, 2007).

5. Complainant has the burden of proof. 66 Pa. C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 529 Pa. 654, 602 A.2d 863 (1992); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

6. As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a).

7. A showing to satisfy the burden of proof must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, than that presented by the Respondent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

8. Upon the presentation by the Complainant of evidence sufficient to initially establish a prima facie case, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his or her burden of proof. The Complainant now must provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

9. To find a safety violation regarding pipelines, there must be a violation of the applicable regulatory standards (here 49 C.F.R. Part 195). See, e.g., *Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, No. C-2014-2421019, 2014 WL 6807073 (Pa. PUC Oct. 24, 2014).

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

11. American Petroleum Institute (API) Recommended Practice (RP) 1162 provides that a transmission line operator should tailor its communications coverage area (buffer) to fit its particular pipeline, location and potential impact consequences and where circumstances suggest, should expand its coverage area accordingly. API RP 1162 at 6.1(considerations for supplemental enhancements for the baseline program).

12. The API RP 1162 at 6.1 warns that a “one-size-fits-all” public awareness program across all pipeline systems is not the most effective approach and recommends: 1) increased frequency to stakeholder audiences on a more frequent basis (shorter interval); 2) enhanced

message content and delivery/media efforts to reach intended audience; 3) broadened coverage areas along the pipeline route; and 4) consideration of other relevant factors including high consequence areas, environmental consideration, farming activity, results from previous public awareness program evaluations, etc. API RP 1162 at 6.1 – 6.3.

13. API RP 1162 at 8.3 provides that the operator should complete an annual audit or review of whether its public awareness plan has been developed and implemented according to the guidelines.

14. Intervenor/Complainants WCASD and TVSD have met their burden of establishing that Sunoco's public awareness and emergency response procedures fail to meet the applicable regulations and standards with regard to Intervenor's school facilities located in proximity to the Mariner East Pipeline.

15. The School District Facilities of Intervenor, WCASD and TVSD are all located in high consequence areas as defined by 49 C.F.R. §195.440.

16. 49 C.F.R. §195.440 provides in pertinent part that "Each pipeline operator must develop and implement a written continuing publication program that follows the guidance provided by the American Petroleum Institute's (API) recommended practice (RP) 1162 . . . .". See, also 52 Pa. Code §59.33(b).

17. Sunoco's public awareness plan and emergency notification procedures have violated and continue to violate 49 C.F.R. §195.440, 66 Pa. C.S. §1501, and 52 Pa. Code §59.33.

18. The Commission has the authority to impose such remedies as may be reasonable and appropriate in light of the circumstances of this case.

## **VI. SUMMARY OF ARGUMENT**

Under federal and Pennsylvania law, Sunoco is required to protect and educate the public in communities impacted by its pipelines. Statutes require Sunoco to take reasonable measures to ensure public safety, and to inform appropriate government officials of steps to take in the event of a pipeline emergency. 52 Pa. Code § 59.33; 49 CFR § 195.440. The intervening School Districts have established that Sunoco’s current notification and education systems are insufficient.

Under the current system, Sunoco does not contact School Districts directly with news related to pipeline emergencies. District officials have no means to anticipate a pipeline emergency, and no direct notice when one has occurred. Instead, School Districts receive information from first responders, after significant delay. As a result, School Districts lose valuable response time during an emergency.

Testimony in this case also exposed gaps in Sunoco’s public awareness campaign. Engaged school officials—entrusted with developing District-wide all-hazards plans—receive contradictory advice regarding what to do in the event of a pipeline emergency. It is unclear how far school officials must evacuate in order to keep students safe. It is unknown whether officials corralling thousands of children can safely communicate by cellphone. Although Sunoco is specifically required to reach out to “appropriate government organizations” with “steps that should be taken” in the event of an emergency, it has failed to provide adequate guidance to the leaders of schools located within a few hundred feet of Mariner East. 49 CFR § 195.440(d)(4).

The Commission has the plenary power to correct these problems by ordering the relief requested: direct notice of pipeline emergencies; and an enhanced public awareness campaign tailored to the concerns of school districts.

## VII. ARGUMENT

### A. **Applicable Statutes and Regulations Authorize the Commission to Require Direct, Immediate Notification to School Districts of any Leak or Breach**

The Commission has jurisdictional authority over safety issues concerning all of Pennsylvania's intrastate facilities, including hazardous liquids and underground natural gas storage facilities. Pipeline transportation services are defined as public utility services under Section 102 of the Code, 66 Pa. C.S. § 102. Specifically, Commission regulations at 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199.

The statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 Pa. PUC 662 (1993).

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 CFR Parts 191-193, 195 and 199. The Commission regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans. 49 CFR § 195.440 (relating to public awareness). A pipeline operator utility should use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a).

Complainants have alleged that Sunoco has violated 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, which require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199 by operating ME 1 and constructing ME 2 and ME 2X of its Mariner East pipeline project in a manner not consistent with the Code of Federal Regulations, Public Utility Code or Commission's regulations. Here, the School Districts request Sunoco develop and install a mass early warning notification system to provide direct, immediate notification to all potentially affected WCASD and Twin Valley school facilities any breach or leak in the pipelines.

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), "the proponent of a rule or order has the burden of proof." It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing

a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain his or her burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).

The School District’s request for relief seeks emergency preparedness and public awareness measures which, upon proper proof, are authorized by the Code of Federal Regulations, Part 195.440 which provides:

**§ 195.440 Public awareness.**

- (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).
- (b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.
- (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.
- (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 a one-call notification system prior to excavation and other damage prevention activities;
  - (2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;
  - (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.
- (e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.
- (f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid or carbon dioxide.
- (g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.
- (h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. Upon request, operators must submit

their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

- (i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

49 CFR § 195.440.

The Pipeline Safety Improvement Act of 2002 (PSIA) requires each owner or operator of a gas or hazardous liquid pipeline system to implement a continuous public education program on the use of one-call notification systems and other damage prevention activities, the indications of and hazards of an unintended release of product from a pipeline, the public safety steps required after a release, and how to report pipeline product releases. Operators are strongly encouraged to document their compliance with PSIA by completing formal self-assessments of their public education program by comparing against guidelines in API RP 1162.

Finally, the Pennsylvania Code articulates every utility's most basic responsibility to its community:

Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

52 Pa. Code § 59.33.

The foregoing statutes and regulations provide the Commission with authority to issue the relief sought by WCASD and Twin Valley. Indeed, the recent decision in *Wilmer Baker v. Sunoco Pipeline L.P.* Docket No. C-2018-3004294 (Dec. 18, 2019) (Barnes, ALJ), granted similar relief on this basis.

**B. The School Districts' Testimony establishes a basis for relief, including enhanced emergency notifications and an improved public education plan.**

1. *Sunoco should contact School Districts directly in the event of a pipeline emergency.*

The School District's witnesses testified that Sunoco's public awareness program and emergency response training is insufficient. Currently, the protocol is to notify emergency services and 911 and then WCASD would be informed of any breach by emergency services. (N.T. 10/24/19 at p. 1223, ll. 14-19). WCASD requested Sunoco develop and install a mass early warning notification system at all potentially affected WCASD schools to allow for earlier notification of WCASD. (N.T. 10/24/19 at p. 1223, ll. 10-13). WCASD also requested direct notification from Sunoco of any breach. (N.T. 10/24/19 at p. 1224-1225, ll. 20-25, 1-6). Sunoco has failed to honor any of WCASD's requests. WCASD is concerned that it could be three or four minutes from the time that there is a breach to when WCASD is notified and WCASD can evacuate an entire school in three minutes. (N.T. 10/24/19 at p. 1224, ll. 11-16).

Twin Valley schools, also, would not receive any notice of a pipeline emergency directly from Sunoco; instead, their first notice would come in the form of the "fire department... driving past our school." (N.T. 10/24/19 at 1313, line 23 through 1314, line 5). William Clements, Principal of Twin Valley High School, and a member of the School District's safety committee, testified that he has no means to detect or respond to a pipeline emergency, beyond waiting for notification from the fire department. (N.T. 10/24/19 at 1317, ll. 20-25). Ten to twelve minutes will pass before the Twin Valley fire department arrives at a Twin Valley school in response to any emergency. (N.T. 10/24/19 at 1314, ll. 14-18). The fire department would then determine whether students and staff needed to evacuate school buildings. (N.T. 10/24/19 at 1315, ll. 3-4). Three to five minutes are required to fully evacuate a Twin Valley school building. (N.T. 10/24/19 at 1319, ll. 24-25). Mr. Clements estimated that students and staff could travel half a mile in ten minutes. (N.T. 10/24/19 at 1320, ll. 1-5).

The danger and increased risk resulting from any delay in notification to the school districts cannot be overstated. The testimony of Jeff Marx, process safety engineer with a Bachelor's and a Master's degree in mechanical engineering, supports the need for more immediate notification to facilities where large-scale evacuation is a possible response to a breach or leak. Mr. Marx concluded, *inter alia*, that:

- The worst hazard zones are realized in the first few minutes of an HVL pipeline accident due to loss of inventory and pressure decay.
- Predicted fatal impacts of accidental pipeline rupture events were found to extend up to greater than 2,000 feet from the pipelines or their associated equipment.
- In the event of a pipeline release, persons in the vicinity of the pipeline may have difficulty escaping unharmed.
- The maximum hazards following an HVL pipeline rupture will be realized before the operator can affect any meaningful measures to shut down the release.
- It is extremely unlikely that emergency response activities will be activated before the maximum hazards of an HVL pipeline rupture are realized.
- It is difficult to define the proper public response to a pipeline incident (*i.e.*, shelter in place or evacuate) due to the variability of the event magnitude and various possible hazards.

(Marx Direct at 44, l. 20 – 46, l. 4). The record clearly supports the need for emergency response measures by Sunoco that will maximize the timeliness and effectiveness of the school districts' response at each of their facilities. To meet its most basic obligation as a Pennsylvania utility—namely, to take reasonable steps to protect the public from danger—direct notification to schools and school districts is necessary. 52 Pa. Code § 59.33. Under the current system, schools lose valuable time in an emergency waiting for instructions from local fire departments. Until this problem is corrected, and until Sunoco includes school districts in its emergency notification

system, Sunoco cannot claim to “use every reasonable effort” to safeguard the public. 52 Pa. Code § 59.33.

Measured against the requirements of the Code of Federal Regulations, Sunoco’s notifications system in the event of a pipeline breach or leak in the vicinity of a school facility is insufficient to protect the students attending school facilities, in proximity to MEI and ME2.

Section 195.440 requires, in pertinent part:

**§ 195.440 Public awareness.**

- ...(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.
- (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 a one-call notification system prior to excavation and other damage prevention activities;
  - (2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;
  - (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.
- (e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

...

49 CFR § 195.440.

In addition, the Pipeline Safety Improvement Act of 2002 (PSIA) requires each owner or operator of a gas or hazardous liquid pipeline system to implement a continuous public education program on the use of one-call notification systems and other damage prevention activities, the indications of and hazards of an unintended release of product from a pipeline, the public safety steps required after a release, and how to report pipeline product releases. Operators are strongly

encouraged to document their compliance with PSIA by completing formal self-assessments of their public education program by comparing against guidelines in API RP 1162.

WCASD and Twin Valley have clearly met their burden to establish that Sunoco's current notification protocols violate its obligations under the public awareness and emergency responder regulations cited above. See *Wilmer Baker v. Sunoco Pipeline L.P.* Docket No. C-2018-3004294 (Dec. 18, 2019) (Barnes, ALJ)(Conclusions of Law 12-14, p. 57). The development of an enhanced notification system by Sunoco, sufficient to provide direct, immediate notification to the school districts is the appropriate remedy for such violation. *Id.*

2. *Sunoco should work directly with School Districts on a public awareness program that addresses schools' unique concerns.*

In its petition to intervene, Twin Valley requested a public education plan tailored to the needs school districts. Sunoco's obligation to provide a plan is well-established, as it has a duty to reach "appropriate government organizations" with a public awareness plan under Section 195.440(d)(4). In communities like those served by Twin Valley, where emergency responders are volunteers and not government officials, Sunoco must meet its statutory public awareness obligations by preparing school leaders to respond to emergency events. (N.T. 10/24/19 at 1313, ll. 10-11).

The insufficiency of Sunoco's current public awareness program, particularly as it applies to schools, is obvious. Witnesses from multiple school districts—including personnel responsible for emergency planning and preparedness—expressed confusion over first steps in a pipeline emergency. (N.T. 10/24/19 at 1290, l. 24 through 1291 at ll 1-4). West Chester and Twin Valley both plan to have students shelter in place until further notice from emergency responders. (N.T.

10/24/19 at 1243, ll. 11-12; at 1290, ll. 11-17; 10/24/19 at 1313, ll. 6-11). These plans contravene Sunoco's apparent recommendation to evacuate the scene of a pipeline emergency, on foot, immediately. Moreover, Sunoco does not provide schools with any guidance on how far a safe distance for evacuation may be. (N.T. 10/9/20 at 4263, l. 2 - 4267, l. 3).

Schools face logistical challenges that render the advice in Sunoco's simplistic public awareness campaign inoperable. Schools are required to move thousands of children. In places like Twin Valley, students' escape routes are limited by heavily trafficked roads, or the pipeline itself. (N.T. 10/24/19 at p. 1315, ll. 19-25). In addition, witnesses from multiple school districts testified that they were not certain whether they could use cellphones to coordinate an evacuation. N.T. 10/24/19 at 1227, ll. 10-13; at 1293, ll. 11-17; at 1317, ll. 10-13).

If multiple school districts cannot articulate emergency plans that are in concert with Sunoco's recommendations, or that account for basic communication between parties, then Sunoco's public awareness campaign has failed. West Chester Area School District and Twin Valley School District ask the Commission to order Sunoco to work in collaboration with School Districts to develop emergency plans that work.

### **VIII. CONCLUSION AND PROPOSED RELIEF**

Intervenors, West Chester Area School District and Twin Valley School District, respectfully requests that this Court grant the relief requested in their respective Petitions to Intervene, and enter an Order directing, in addition to the relief separately requested by the Flynn Complainants in their Post-Hearing Brief, the following:

1. That Sunoco Pipeline, L.P. is directed to contact the West Chester Area School District and Twin Valley School Districts within thirty (30) days of the date of entry of a final

order for the purpose of scheduling a public awareness/education meeting(s) to be held in each School District;

2. That absent exigent circumstances, Sunoco Pipeline, L.P. is directed to appear at the scheduled meeting referenced in Ordering Paragraph No. 1, and discuss additional communications and training (including establishment of procedures for immediate, direct notifications to school districts of any leak or breach of the Mariner East Pipelines) and that Sunoco is directed to provide such training as requested by those parties and institute such emergency notification procedures;

3. That within ninety (90) days of the Final Order in this proceeding, Sunoco Pipeline, L.P. shall submit to the Commission for review a written plan to enhance its public awareness and emergency notification plans, including but not limited to addressing: 1) direct notifications to School Districts in high consequence areas of any leak, breach or other pipeline emergency; 2) supplemental program enhancements to emergency training programs; 3) internal or external audits to evaluate the effectiveness of its programs; and 4) corrective action plans to address any insufficiencies or weaknesses revealed through its evaluations and audits;

4. That included as part of its plan referenced in Ordering Paragraph No. 3, Sunoco Pipeline, L.P. shall at minimum complete or plan to complete in a timely manner an audit or review of its public awareness program and shall ultimately submit to the Commission within six (6) months from the date of entry of a final order a baseline evaluation of its public awareness program through either an internal self-assessment using an internal working group or through third-party auditors where the evaluation is undertaken by a third-party engaged at Sunoco Pipeline, L.P.'s cost;

5. That the plan referenced in Ordering Paragraph No. 3 shall also be served upon the Commission's Bureau of Technical Utility Services, which shall review the plan and issue a staff determination Secretarial Letter within ninety (90) days of the filing of the plan indicating if the plan is in compliance with the directives in Ordering Paragraph Nos. 3 and 4;

6. That within one hundred twenty (120) days of the entry of a Final Order in this proceeding, Sunoco Pipeline, L.P. shall file a report with the Commission's Bureau of Technical Utility Services providing evidence of Sunoco Pipeline, L.P.'s compliance with Ordering Paragraph Nos. 3, 4, and 5;

7. That a copy of this decision shall be served upon the Commission's Bureau of Investigation and Enforcement, Law Bureau, and Bureau of Technical Utility Services; and

8. That the Pennsylvania Public Utility Commission retains jurisdiction over any enforcement issues arising from noncompliance with Ordering Paragraphs Nos. 3,4 and 5

Respectfully submitted,

UNRUH, TURNER, BURKE & FREES

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