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January 19, 2021

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. Reply Brief;
PUBLIC VERSION

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (PUC) is Sunoco Pipeline L.P.'s Reply Brief with Appendix A (Public Version). The Highly Confidential Versions of Sunoco Pipeline L.P.'s Reply Brief with Appendix A 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,

Diana A. Silva

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: January 19, 2021

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 REPLY BRIEF

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Dated: January 19, 2021

PUBLIC VERSION

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I. Introduction

The main brief of Sunoco Pipeline L.P. ("SPLP")[1] accurately predicted that Complainants and aligned Intervenors would not cite to evidence from the record, but instead would rely on allegations, complaints, concerns and speculation, which is not competent evidence. Complainants and aligned Intervenors are unabashed in their endorsement of this approach. They argue that because there are many of them who complain, their complaints must have merit. But of course, allegations and complaints are not proof. Complainants and aligned Intervenors failed to come forward with the substantial evidence required to meet their burden of proof.

The brief submitted by Chester County confirms that this is the fundamental basis of Complainants' and aligned Intervenors' arguments:

> As the list of parties to this action attests, residents, municipalities, school districts, principals, and first responders, among others, consistently complain that they do not have the information that they need to prepare and to properly protect themselves and their constituents in the event of a pipeline leak. They are concerned, confused and worried . . . The number of parties and participants in the instant action pleading for more information from Sunoco is evidence in and of itself of the failures of Sunoco's awareness programs.

Chester County Br. at 1, 7. Neither the number of people who complain, nor the complaints themselves, absent factual support in the record, constitute evidence sufficient to satisfy Complainants' and aligned Intervenors' burden of proof.

The thirteen briefs submitted by Complainants and aligned Intervenors focus on three claimed deficiencies: (1) inadequate public awareness; (2) potential corrosion issues; and (3) the consequences of a hypothetical catastrophic release, albeit with the admitted lack of evidence of

[1] For brevity and ease of reference herein, each party's "Main Brief" will be identified by the party's name and the abbreviation "Br.," and each party's proposed findings of fact will be identified by the party name and the abbreviation "FoF." To the extent a post-hearing brief was submitted on behalf of multiple parties, SPLP will refer to the first party listed on the brief.

the likelihood of that release occurring. As to these claimed deficiencies, where the thirteen briefs purport to rely on evidence, rather than bare unsupported allegations, those attempts in actuality contain repeated: (i) assertions directly contradicted by the testimony of their own witnesses; (ii) misrepresentations of the testimony and exhibits; (iii) assertions that rely on inadmissible evidence; (iv) reliance on hypotheticals and admitted speculation; and, (v) most egregiously, in one case, an assertion that relies on an exhibit that was expressly excluded from the record. Set forth below are some examples (others are identified throughout this Reply Brief) that highlight the absence of evidentiary support for Complainants' and aligned Intervenors' assertions, and consequently, their failure to meet their burden of proof.

A. Complainants' and aligned Intervenors' assertions are directly contradicted by the testimony of their own witnesses.

Complainants' and aligned Intervenors' primary assertion about public awareness is that SPLP has not provided emergency responders with enough information. Despite the comprehensive MERO training[2] and the extensive additional training and outreach provided by SPLP to emergency responders, Complainants and aligned Intervenors claim that they still lack the following information:

> Mr. Turner needs to know the type of product, maximum operating pressures, hazards of the product, location of valve stations, and flow direction of materials in the pipelines.

Chester County Br. at 17, citing N.T. 2233-34 (Turner).

[2] Complainants' and aligned Intervenors' characterization of the MERO training provides an insight into how they distort the factual record. Two of their three experts did not even attend the MERO training, and the one who did falsely claimed that it was "maybe" an hour and one-half long PowerPoint presentation and nothing more, where SPLP "buys pizza or dessert" for the fire company. (N.T. at 2243, Turner Test.). That is far from accurate. As Gregory Noll, the expert who provided the MERO training, testified, each MERO session lasted between two and two and one-half hours, MERO training was given to Chester and Delaware Counties on four separate occasions spanning 2017 to 2020, and the training went well beyond the information on the written PowerPoint materials provided at those sessions. (N.T. at 3299-3301, Noll Test.). Noll is the very same expert whom Chester County independently hired to train its own emergency responders. (N.T. at 2230, Turner Test.)

But that is exactly the information that Turner himself testified that SPLP provided to him. Turner testified that he had "obtained quite a bit of knowledge specifically about Mariner East pipelines" including: (i) where they are located; (ii) where the valve stations are located; (iii) where the schools nearest the pipelines are located; (iv) the products in the pipelines; (v) the physical characteristics of these products; (vi) the hazards of those products; (vii) how SPLP's release monitoring system works; (viii) the plume modeling in the event of a release; (ix) SPLP's integrity management, security and compliance programs; and (x) the content of SPLP's emergency response plan. (N.T. at 2228-29, Turner Test.)[3] On this critical issue, the testimony of Complainants' and aligned Intervenors' own experts contradicts the assertion that SPLP has not provided adequate information to emergency responders.

B. Complainants' and aligned Intervenors' misrepresentation of testimony and exhibits.

1. Maximum operating pressure of the Mariner East pipelines.

Flynn Complainants propose as a finding of fact that SPLP increased the maximum operating pressure on the new Mariner East pipelines to 2100 psi. Flynn Br. at 22 (FoF ¶ 87). Based on this assertion, the Flynn Complainants imply that the consequences of a release from the Mariner East 2 pipelines will be significantly greater. SPLP's Matthew Gordon was asked about this exact issue and specifically testified that this was inaccurate. (N.T. at 2953-54, Gordon Test.) Gordon testified that as an additional ***safety*** measure, the steel pipe was ***designed*** to be operated at 2100 psi and was tested to verify that, but that the equipment installed on the new pipelines is only capable of ***operating*** at 1480 psi. (N.T. 2955-59, Gordon Test.) Again, the testimony belies Complainants' and aligned Intervenors' assertions.

[3] Delaware County's emergency response expert Timothy Boyce also confirmed that SPLP had provided all of that information. (N.T. 1984-85.)

2. The distance from the pipeline centerline that SPLP mails its public awareness pamphlets.

Andover Homeowners' Association, Inc. ("Andover HOA") proposes as a finding of fact that SPLP's public awareness program is inadequate because SPLP does not provide notice to the affected public beyond 2,297 feet, the alleged impact radius. Andover HOA Br. at 33 (FoF ¶ 4). The radius of mailing is a central issue to Complainants and aligned Intervenors. [**BEGIN HC**]. [redacted] [**END HC**]. By misrepresenting the actual evidence, Complainants and aligned Intervenors seek to create an issue when none exists.

3. SPLP's most recent public awareness brochures.

Flynn Complainants allege that Exhibit JSZ-4 is the most recent version of SPLP's public awareness brochure and that it provides no information about hazards. Flynn Br. at 15 (FoF ¶ 50). This is not only inaccurate, but the Flynn Complainants know full well that it is inaccurate. There was an extensive colloquy on the last day of the hearings over the admissibility of Exhibits GG-1 and GG-2, and Complainants and aligned Intervenors strenuously objected to their admission. Gina Greenslate, the manager of SPLP's public awareness program, testified that GG-1 and GG-2, not JSZ-4, are the most recent brochures. (N.T. at 4513-14, Greenslate Test.) Based on her testimony, GG-1 and GG-2 were admitted into evidence. So, Complainants' and aligned Intervenors' assertions that JSZ-4 is SPLP's most recent brochure, and that SPLP's most recent brochures (GG-1 and GG-2) do not contain information on product hazards, are simply false.

4. Alleged PHMSA violations.

Complainants and aligned Intervenors argue that SPLP cannot safely operate the Mariner East pipelines because SPLP has a poor compliance record. The first things on which they rely for this assertion is Friedman Exhibits 24 and 26, which purport to be summaries of the number of incident identified in PHMSA's database. Putting aside whether SPLP's compliance history is competent evidence to establish a violation of Section 1501, which it is not, the evidence relating to SPLP's PHMSA compliance history does not prove that SPLP is unable to safely operate the Mariner East pipelines. John Zurcher, SPLP's expert, testified that the Friedman exhibit is not even from the PHMSA database itself, but rather someone's summary of data. The source of the data was not provided as an exhibit. (N.T. 4218, Zurcher Test.) As such, the Friedman exhibits do not accurately reflect SPLP's incident history reflected in PHMSA'S database and cannot constitute the substantial evidence necessary to establish a violation of Section 1501.

Moreover, Zurcher testified that SPLP's compliance record over the last ten years, taken from the actual PHMSA database, was at the industry average. Further, Zurcher testified that SPLP had only seven reportable incidents (a release of over 5 gallons) from HVL pipelines nationwide in that time period. Of those seven incidents, six were at pump or valve stations and did not result in any off-site release. Only three occurred in Pennsylvania, and the only release that was not confined to company property was the pinhole leak in Morgantown, which was confined to the right-of-way. (N.T. 4218-20, Zurcher Test.) Accordingly, even assuming PHMSA compliance history were relevant, the record demonstrates that it does not support a finding that SPLP cannot safely operate the Mariner East pipelines under Section 1501.

C. Reliance on a notice of a potential violation is not evidence of non-compliance.

Complainants and aligned Intervenors also attempt to establish SPLP's compliance history by relying on PHMSA's issuance of Notices of Potential Violation ("NOPVs") to SPLP relating to corrosion protection or public awareness. Flynn Br. at 63, 77. As Your Honor properly acknowledged, NOPVs are nothing more than an ***allegation*** of ***probable*** violations and are not evidence of ***anything***, let alone non-compliance. In fact, as SPLP's Perez testified, in one instance, SPLP did not contest an NOPV because SPLP had already implemented the activity identified. (N.T. 3170-72, Perez Test.)

D. Hypotheticals are not evidence.

Both in their direct testimony and through cross-examination, Complainants and aligned Intervenors try to transform hypotheticals and assumed facts contained in hypothetical questions into evidence. They are no such thing. A simple example demonstrates this point. Flynn Complainants assert in their brief and proposed findings of fact that "moderate holes could create hazard zones extending up to 1,000 feet from the pipeline." Flynn Br. at 23. In support of that proposed "factual" finding, Flynn Complainants cite to Marx's direct testimony at 44-46, where Marx provided a hypothetical set of events that he then used to project the time it would take for emergency responders to respond to a pipeline incident. Marx's testimony is telling. He starts by stating "Consider a second *hypothetical*." The italics have not been added by SPLP – it was contained in Marx's prepared written testimony. Marx then goes on to spin a hypothetical including a release from a two-inch hole in an HVL pipeline, a resident detecting the release while walking her dog on a foggy night, a car driving through a vapor cloud, stalling out and then igniting the cloud when the engine was re-started. But Flynn Complainants put none of those foundational facts into evidence. That is because they are invented by Mr. Marx, not facts in evidence. There

has not been a single reported case in the nation that supports the facts underlying that hypothetical. Hypothetical events that are not grounded in fact cannot be used to prove the truth of the hypothetical events.

E. Speculation is not evidence.

In support of one of their central arguments, that the twelve-inch pipeline requires a remaining-life survey, Complainants and aligned Intervenors offer no factual evidence. Dr. Zamanzadeh admits that he performed no tests or studies of any kind on the twelve-inch line. Instead he concedes this:

> 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, Zamanzadeh Direct Test. at 41:44-42:27.) (Emphasis added.) SPLP could not have said it better: we must rely on facts, not conjecture and speculation. Yet, Complainants and aligned Intervenors offered no facts, but instead relied on mere speculation from their only expert on this issue. Speculation is not evidence. *See infra* Section II.B.

F. Reliance on a document that was specifically excluded from evidence.

Flynn Complainants' final attempt to inject SPLP's compliance history into this matter is particularly improper. Specifically, they rely on a consent assessment of civil penalties ("CACP") issued by the Pennsylvania Department of Environmental Protection ("PADEP") to SPLP on August 4, 2020.[4] As a threshold matter, the CACP relates to claimed violations of SPLP's environmental permits during construction of the Mariner East 2 pipelines for inadvertent returns

[4] The Flynn Complainants also rely on an Administrative Order issued to SPLP by PADEP for an inadvertent return of drilling mud to Marsh Creek Lake during construction of a segment of one the Mariner East 2 pipelines. As reflected in the record, SPLP appealed the Administrative Order, contesting its findings. On December 16, 2000, the Environmental Hearing Board ("EHB") superseded a portion of the Administrative Order, which remains the subject of SPLP's appeal before the Board. As such, the Administrative Order is not evidence of anything other than DEP issued it, SPLP appealed it, and the EHB superseded it in part. *See* EHB Docket No. 2020-085, *available at* https://ehb.courtapps.com/public/document_shower_pub.php?csNameID=5923

of drilling mud, an issue that is not within the jurisdiction of the Commission to address and has already been addressed directly by PADEP. Nor do the Flynn Complainants ever explain how the inadvertent return of drilling mud during ***construction*** of the new pipelines has any relevance to SPLP's ***operation*** of the existing pipelines or the Mariner East 2 pipelines after construction is completed.

More significantly, Flynn Complainants represent that Your Honor heard oral argument on September 29, 2020 and admitted the CACP into evidence. Flynn Br. at 33 (FoF ¶ 136). The exact opposite is true. After oral argument, Your Honor ruled that the Administrative Order would be admitted, but not the CACP. (*See* N.T. at 1800.) Flynn Complainants tried to have the CACP admitted a second time and Your Honor again ruled that the CACP was not admissible. (*See* N.T. at 1878-80.) Accordingly, Flynn Complainants rely on a document that Your Honor twice ruled was not admissible evidence.

All of these examples demonstrate one immutable fact – this case begins and ends with evidence in the form of testimony and admitted exhibits: not speculation, not complaints or claimed concerns, not unsupported allegations, not lay opinions or preferences on expert and technical matters, and not reliance on inadmissible documents or bald assertions rebutted by actual testimony. Complainants and aligned Intervenors simply have not provided the substantial evidence necessary to meet their burden of proof on any of the deficiencies that they allege.

II. Argument

A. SPLP's operation of the Mariner East pipelines in high consequence areas in Chester and Delaware Counties, which PHMSA's regulations expressly allow, does not violate Section 1501 of the Pennsylvania Public Utility Code.

Complainants and aligned Intervenors offered no evidence of the likelihood that the Mariner East pipelines will leak, puncture, or rupture. Instead, they argue that the consequences of a hypothetical rupture could be so catastrophic that the pipelines simply should not be allowed

to operate in Chester and Delaware Counties. This argument, which takes various forms, is simply insufficient as a matter of law because PHMSA regulations allow HVL pipelines to operate in high consequence areas. 49 C.F.R. §195.452. No matter how framed, there is no evidence that SPLP's operation of the pipelines violates Section 1501.

1. To prove that the Mariner East pipelines are unsafe under Section 1501, Complainants were required to submit evidence of the likelihood that their hypothetical worst-case rupture will occur.

Andover HOA argues that the requirement set forth in Section 1501 for a public utility to provide "safe" service requires that there be no risk of harm to the public "regardless of how probable it may or may not be." Andover HOA Br. at 12. In a variation of this argument, Flynn Complainants argue that SPLP's public utility service is unsafe because, in a serious disaster, people may die. Flynn Br. at 5. Both rely on supposed consequences of Marx's hypothetical rupture in a high consequence area and a series of worst-case assumptions, which Marx himself conceded have never previously occurred. (N.T. 1853:12-24.) These arguments ignore the regulations, binding precedent, and the testimony of Andover HOA's own president.

PHMSA has enacted specific regulatory requirements for pipelines located in high consequence areas. *See, e.g.,* 49 C.F.R. § 195.452. To interpret Section 1501 to prohibit the Mariner East pipelines from traversing Chester and Delaware Counties without compelling evidence, let alone any evidence, of the likelihood that Marx's hypothetical worst-case rupture will occur would simply negate PHMSA's regulations. The Commonwealth Court expressly rejected this interpretation of Section 1501. In the "smart meter" cases, the Commonwealth Court held that proof that a public utility service has the "potential" to cause harm or is "capable of causing harm" was insufficient to prove a violation of Section 1501. *Povacz v. PECO Energy Co.,* Docket No. C-2015-2475023, Opinion and Order at 29-30 (Order entered March 28, 2019), *aff'd*, *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. Ct. 2020).

Indeed, Complainants' first witness, Eric Freedman, Andover HOA's president, contradicted Complainants' "safety" argument. Although not proffered as an expert in any field, Friedman touted his work experience in commercial aviation and claimed to be involved in the "assessment of risk and the mitigation of risk to acceptable levels" in the commercial airline field. (N.T. 743:8-12, Friedman Test.) Friedman agreed with Marx, who testified and conceded months later, that risk requires an evaluation of consequences and the likelihood of those consequences occurring. (N.T. 852:21-853:1-24, Friedman Test.; 1831:22-24, Marx Test.) But Friedman's testimony went further, conceding that "safety" has no meaning, and that the evaluation must be done in terms of assessing the probability of various consequences occurring:

> So there is a slide that's labeled pipeline safety, but I explained at the beginning, ***safety is a word that doesn't have any meaning***. I understand risk in terms of consequences and probability.

(N.T. 852:21-24, Friedman Test.) (Emphasis added.)

Thus, without evidence of the likelihood of a rupture occurring that will cause the worst-case consequences hypothesized, Complainants and aligned Intervenors did not meet their burden to prove a violation of the requirement under Section 1501 for a public utility to provide "safe" service. There is no evidence that the Mariner East pipelines "will cause harm" in violation of Section 1501. *Povacz v. Peco Energy Co.,* Docket No. C-2015-2475023, Opinion and Order at 29, *aff'd, Povacz v. Pa. PUC,* 241 A.3d 481 (Pa. Cmwlth. Ct. 2020).

2. SPLP's incident history as reported in the PHMSA database does not prove a safety violation of Section 1501.

Flynn Complainants and Andover HOA rely on Exhibits Friedman-24 and Friedman-26 as evidence of the number of SPLP's pipeline incidents recorded in PHMSA's database. From these exhibits, they argue that SPLP cannot safely operate the Mariner East pipelines in Chester and

Delaware Counties. The exhibits do not reflect the incident history in PHMSA's database and they do not prove that SPLP's operation of the Mariner East pipelines violates Section 1501.

First, it is inappropriate to consider SPLP's operational history in evaluating the likelihood of a release from the Mariner East pipelines. Flynn Complainants' expert Marx acknowledged that there is insufficient information in the PHMSA database or elsewhere to perform a risk analysis specific to SPLP's operation of the Mariner East pipelines.

> While I would like to use more specific information in a risk analysis for the Mariner pipeline[s], I have found that information is not available, or there is insufficient statistical significance, the factors that we would like to apply to a specific pipeline. And so while we can see the need for those factors and those adjustments, scientifically I can't justify the use of any factors.

(N.T. 1817:19-1818:2, Marx Test.)

Second, even if it were appropriate to evaluate the safety of the Mariner East pipelines by looking at SPLP's incident history as reported in PHMSA's database, that incident history does not establish that SPLP's operation of the Mariner East pipelines violates Section 1501. SPLP's expert on pipeline safety, John Zurcher, testified that the Friedman exhibits do not even accurately reflect the PHMSA database:

> . . . I looked at that analysis, and, I -- it was not something that was published on the PHMSA website. The dates don't match up with their data, and I've never known PHMSA to mix and match gas transmission and hazardous liquid pipelines.

(N.T. 4218:12-17, Zurcher Test.)

What PHMSA's actual database shows is that SPLP has reported seven incidents on HVL pipelines, none of which involved a pipeline rupture. Of the seven, three were on pipelines located in Pennsylvania. One was the Morgantown release and two were small leaks in pump seals. The other four were small leaks in Ohio and Texas either at a pump station or on a tank farm, and those

four incidents appear to have been double-counted because the initial report for each was followed by a supplemental report on the same incident. All of the reported releases were confined to SPLP's property or to the right-of-way. The remaining incidents in PHMSA's database were on crude pipeline systems or refined product systems. (N.T. 4219:3-4223:6, Zurcher Test.) Thus, even if it were appropriate to look solely to SPLP's history of incidents reported in PHMSA's database, it does not contain any evidence, let alone substantial evidence, to meet the burden to establish that SPLP's operation of the Mariner East pipelines violates Section 1501.

3. Complainants' remaining arguments do not establish a violation of Section 1501.

Flynn Complainants and Andover HOA make a hodgepodge of other arguments in an attempt to establish a violation of Section 1501. None has any merit.

First, Flynn Complainants assert that SPLP concealed its knowledge of the "immediate impact ignition zone," which constitutes a breach of Section 1501. Flynn Br. at 17. Having withdrawn the claim asserted in Count IV of their Second Amended Complaint that SPLP failed to conduct the required quantitative risk assessment (N.T. 2772:3-11), Flynn Complainants now appear to argue that SPLP's designation of these risk assessments as confidential security information is somehow a violation of Section 1501. There is no evidence or argument to suggest that the designation was improper. SPLP's unwillingness to disclose to the public information that the law protects cannot render a public utility's service unreasonable or improper within the meaning of Section 1501. Otherwise, Section 1501 would negate the protections afforded by the Public Utility Confidential Security Information Disclosure Protection Act. In any event, Marx conceded that there was sufficient public information for him to model the consequence of a hypothetical worst-case rupture of the Mariner East pipelines (N.T. 1864:13-23, Marx Test.), and Flynn Complainants concede in their brief that there is "sufficient publicly available information."

Flynn Br. at 23. The Flynn Complainants' emergency response expert Timothy Boyce, similarly testified that he has enough publicly available information on that topic as well. (Boyce Direct Test. at 8-9; N.T. 1973, 1981, Boyce Test.)

Second, Flynn Complainants argue that the Mariner East pipelines are unsafe because there have been three previous ruptures of other companies' HVL pipelines in high consequence areas. Flynn Br. at 27. In fact, of the three incidents identified, only one, the Dixie pipeline incident in Sulfur, Louisiana, was a rupture that occurred in a high consequence area, and it did not cause any injuries or fatalities. (N.T. 4200:12-4201:22, Zurcher Test.) Marx conceded that his hypothesized worst-case rupture has never occurred. (N.T. 1853:12-24, Marx Test.) With over 35,000 miles of HVL pipelines traversing high consequence areas and an additional 30,000 miles of HVL pipelines that could affect a high consequence area, the single incident in Sulfur, Louisiana does not establish that the Mariner East pipelines are unsafe. If it did, then PHMSA would have prohibited HVL pipelines in high consequence areas by regulation. And if it did, then the tens of thousands of miles of HVL pipelines that either traverse or could affect a high consequence area would have to be shut down as well.

Third, Flynn Complainants argue that moderate holes create 1,000-foot hazard zones, thus making the Mariner East pipelines unsafe. Flynn Br. at 23. But there is no evidence of the likelihood of a "moderate hole" and no evidence of a hazard zone created by a "moderate hole." The only "hazard zone" to which Marx testified was from his hypothetical worst-case rupture. Flynn Complainants have no factual support for this argument. Their citation to Marx's ***hypothetical*** chronology of events is not factual ***evidence*** of a hazard zone that would be created from a "moderate hole" in a pipeline. Flynn Complainants cannot create a 1,000-foot hazard zone through Marx's ***hypothetical*** example of the chronology of a hypothetical event, which

hypothesizes that a resident walking her dog on a foggy night discovered the release, but does not even hypothesize a supposed 1,000-foot hazard zone.[5]

Fourth, Flynn Complainants argue that the analysis of risk is somehow different because the risk is involuntary with the Mariner East pipelines. Flynn Br. at 26. There is nothing in law or logic that would change the analysis of risk based on whether an activity is voluntary or involuntary. As Marx and Friedman conceded, risk involves a consideration of consequences and the probability of those consequences occurring. (N.T. 852:21-24, Friedman Test.; 1831:22-24, Marx Test.) The probability of an event occurring can range between 0% to 100%. (N.T. 1832:3-11, Marx Test.) There is no evidence that probability increases or decreases depending on whether a landowner agrees to an easement, and there is nothing in Section 1501 or elsewhere that gives a landowner veto power over the location of a public utility's service simply by withholding consent. Indeed, by providing a public utility with the right of eminent domain, landowner consent is neither required nor relevant.

Finally, Andover HOA argues that a risk assessment commissioned by Delaware County states that releases above a certain size have a 100% likelihood of ignition. Andover HOA Br. at 18. This is just another way of arguing that a hypothetical release may have adverse consequences. But like Marx's hypothesized rupture, there is no evidence of the probability that this hypothesized release will occur. Without evidence of probability, Andover HOA is left to speculate, which does not provide the evidence of a "proven exposure to harm" required to establish a violation of safety under Section 1501. *Povacz v. Pa. PUC*, 241 A.3d 481, 493 (Pa. Cmwlth. Ct. 2020).

[5] In his prepared direct testimony, Timothy Boyce hypothesized the same unusual chronology of events, proving what is apparent from reading the hypothetical chronology that it is simply counsel's creative writing, not ***evidence*** supported by actual ***facts***. (Compare Direct Testimony of Jeffrey D. Marx at 44-46 and Direct Testimony of Timothy Boyce at 16-17.)

B. Complainants have failed to show any violation of law or regulation regarding integrity management, cathodic protection, or corrosion control and are not entitled to any relief.

Despite numerous parties making accusations as to SPLP's integrity management, cathodic protection, and corrosion control, only one party briefed this issue. That brief requests, with admittedly no supporting evidence, that remaining-life studies be done for the eight-inch ME1 and the twelve-inch pipelines that are now in HVL service. [**BEGIN HC**] [redacted] [**END HC**]. Moreover, under the Morgantown Joint Petition for Settlement that the Commission approved, the eight-inch ME1 pipeline is already subject to a remaining-life study and any updates to that study will terminate upon its return to refined products. *BI&E v. SPLP*, Docket No. C-2018-3006534, Joint Petition for Settlement ¶17.B.

Complainants request for such studies and evidence is also by their own admission speculative and meritless. Flynn Complainants make broad, unsupported and misleading assertions without even a single citation to the record. Flynn Br. at 77-81. Reliance on their proposed findings of fact fares no better. Attached as Appendix A for the convenience of Your Honor and the Commission is a table rebutting and showing the lack of basis or evidence for Complainants' proposed findings relative to the corrosion control, cathodic protection and integrity management issues addressed by Dr. Zamanzadeh.

Flynn Complainants' arguments about integrity management, cathodic protection, and corrosion control boil down to five points, each of which is insufficient as a matter of law and/or evidence to entitle them to any relief:

- Allegations that the mere presence of corrosion is a regulatory violation and shows the pipelines are unsafe. This argument fails to reflect even a basic understanding of the regulatory regime concerning cathodic protection and corrosion control, which

assumes corrosion may occur and sets standards for responding to the presence of corrosion. This allegation further and completely ignores the evidence presented in this proceeding, some of it by Flynn Complainants' own witness Dr. Zamanzadeh that SPLP takes steps above and beyond those regulatory requirements to ensure corrosion is monitored, inspected, mitigated, controlled, and where and when necessary, remediated. *See infra* Section II.B.1.

- The allegation that SPLP's Integrity Management Plan "does not meet the minimum legal requirements" when their own expert, who could only testify as to the integrity management plan as it relates to cathodic protection and corrosion control, expressly testified multiple times that the plan is "reasonably comprehensive and detailed." (Flynn Complaints St. No. 1, Zamanzadeh Direct Test. at 39:31-33.) Flynn Complainants also continue to argue the disproven allegations that SPLP does not follow its integrity management plan and procedures. As shown below, each point Flynn Complainants assert (without citation to evidence) in an attempt to prove their allegation is inaccurate as the record demonstrates. *See infra* Section II.B.2.

- Dr. Zamenzadeh's ultimate "opinion" is that he could reach no conclusion. Consequently, his opinion is not legally competent evidence because it admittedly lacks the certainty required for a competent expert opinion. Dr. Zamenzadeh could not conclude that the eight-inch ME1 and twelve-inch pipelines 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***.[6]

(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). (N.T. 2173:3-25.) *See infra* Section II.B.3.

- Reliance on past events and allegations that are irrelevant and/or moot is not evidence. None of these ***past*** events shows anything about the ***current*** state of the ME1 or 12-

[6] As stated below, Dr. Zamanzadeh admittedly did not exhaust via discovery what he claims to need to see. In short, he failed to thoroughly review and comprehend the tens of thousands of documents produced and available for his review, including two in-person reviews, only one of which Dr. Zamanzadeh chose to attend, and the other he had his team attend on his behalf, and now suggests something was not supplied that was required to be produced. That allegation is false. It was his and Complainants' obligation to request and review whatever he needed. He failed to do so and so do the Complainants in carrying their burden of proof.

inch pipelines in Chester and Delaware Counties. *See infra* Section B.4. These events include:

- The PHMSA Honeybrook, Chester County inspection and NOPV, for which PHMSA has already found SPLP compliant, making this issue moot. Flynn Complainants also misconstrue the actual allegations at issue, which all involved documentation issues.

- The Morgantown incident, which did not occur in Chester or Delaware County and has been resolved via final Commission Order adopting a Joint Petition for Settlement that precludes the Settlement from being used as evidence against SPLP and moots relief regarding the ME1 pipeline. In defiance of that Order, Complainants attempt repeatedly to use it as evidence against SPLP which is absolutely contrary to the Commission's policy to promote settlements. 52 Pa. Code § 5.231(a) ("It is the policy of the Commission to encourage settlements.").

- The release of refined products at Darby Creek. The PHMSA report shows that this release occurred on a portion of a 12-inch pipeline that was not and is not used for HVL service. This is not relevant to anything because this pipeline was not subject to the significant upgrades and improvements completed on the sections of the 12-inch pipeline prior to placing it into HVL service. That a release occurred on that pipeline of refined products shows nothing about the current state of the 12-inch pipeline used in HVL service.

- The release of refined products at Glen Mills, which occurred in 2015, well before SPLP undertook the upgrades and improvements to the 12-inch pipeline. That a release occurred on the 12-inch pipeline prior to repurposing that pipeline for HVL service is irrelevant because, as shown in Dr. Zamanzadeh's own exhibits, this pipeline was significantly upgraded and had substantial amounts of pipe replaced prior to being placed in HVL service.

- Finally, Flynn Complainants for the first time in their brief make new allegations not made in their Complaint and amendments thereto, not addressed in their evidentiary presentation, and after the record has closed. These untimely claims for relief are inconsistent with their own admissions in this litigation, inconsistent with the law and deprive SPLP of its due process rights and therefore must be rejected. *See infra* Section II.B.5.

1. Corrosion is not a regulatory violation and the presence of corrosion does not mean that a pipeline is unsafe.

Flynn Complainants make various statements in their brief, that the mere presence of corrosion means that a pipeline is unsafe or is unfit for service. These statements show a complete

failure to understand applicable PHMSA regulations, or credibly apply the law and evidence in this case. The mere presence of corrosion does not mean that a regulatory violation has occurred or that a perforation in a pipeline will occur. (N.T. 3924:4-23, Garrity Test.)

Under the applicable PHMSA regulations for ensuring the integrity of a pipeline, corrosion is recognized to occur. Corrosion happens. The issue is how it is managed and treated. This is why PHMSA has regulations that require pipeline operators to identify, mitigate, and monitor the growth of corrosion. *See* 49 C.F.R. Part 195 H. As an example, the regulations specify when wall loss due to corrosion must be repaired, including when wall loss requires a pipeline operator to reduce operating pressure or shut down operations. *See* 49 C.F.R. § 195.452(h)(2)-(4). These regulations speak in terms of percentage of wall loss correlating to when a repair must occur. Specifically, metal loss greater than 80% of nominal wall requires immediate repair, while an area of predicted metal loss greater than 50% that is in an area with widespread circumferential corrosion must be repaired within 180 days. *See id.*

Dr. Zamanzadeh did not present any evidence of the current state of the eight-inch ME1 or 12-inch pipelines and admitted that he conducted no study of the condition of these lines. (N.T. 2163:18-19, 2163:10-12.) He did not present any evidence that SPLP did not repair corrosion consistent with these regulatory requirements. He did not even bother to discuss the wall thickness or any wall loss on these pipelines. There is simply no evidence that corrosion has impacted either the eight-inch ME1 or 12-inch pipeline such that either is unsafe to operate.

In contrast, SPLP has plans in place that it follows to ensure the continued safety and integrity of its pipelines with regard to corrosion. *See* SPLP Br. at 50-51. SPLP implements all of these actions, from ILI tool runs to cathodic protection to replacement or repairs, in compliance with PHMSA regulations. As Zurcher explained, there is no correlation between the presence of

corrosion pitting and manifestation of a rupture. (N.T. 4228:25-4229:2, Zurcher Test.) That is because rigorous integrity management programs contemplated by PHMSA regulations, such as SPLP's, are developed and followed to address and manage corrosion and to provide for pipeline safety.

2. SPLP's integrity management plans and related procedures are comprehensive, compliant, and SPLP follows them.

Despite their own expert opining that SPLP's Integrity Management Plan is "reasonably comprehensive and detailed," (Flynn Complaints St. No. 1, Zamanzadeh Direct Test. at 39:31-33), Flynn Complainants nevertheless assert in their brief that SPLP's Integrity Management Plan "does not met the minimum legal requirements." Flynn Br. at 77. Unsurprisingly, they cite nothing in support of this assertion. That is because the only record evidence is 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.) There is absolutely no evidence to conclude otherwise.

Flynn Complainants also assert – despite any evidence to support their position and in fact substantial evidence to the contrary – that SPLP does not follow its Integrity Management Plan. Flynn Br. at 77. Flynn Complainants argue that the PHMSA NOPV regarding the Honey Brook inspection is evidence of this. It is not. That NOPV did not involve the Integrity Management Plan at all, but rather involved allegations of issues with documentation to show adequacy of cathodic protection. But that lone example relied upon by the Flynn Complainants is moot because PHMSA found SPLP to be compliant. *See* SPLP Br. at 57. Thus, the Honey Brook NOPV is not

evidence of anything other than that SPLP chose to comply with PHMSA's request and did in fact comply.

Flynn Complainants also repeat the rebutted allegation that SPLP is required by PHMSA regulations to conduct leak surveys. Flynn Br. at 78. They rely on a document created to report walking inspections of the ME1 right-of-way for earth features pursuant to an agreement with the Bureau of Investigation and Enforcement regarding Lisa Drive. That document has nothing to do with leak surveys. And there is no legal or regulatory requirement to perform leak surveys for the Mariner East pipelines, which are HVL pipelines subject to 49 C.F.R. Part 195. What the Flynn Complainants seek, instead, is a new regulatory requirement that can be imposed only in a proper rulemaking as opposed to through this action.

Flynn Complainants next cite to Dr. Zamanzadeh's incorrect assertion that coal tar coatings cause shielding of cathodic protection. The record establishes that coal tar coatings do not cause shielding of cathodic protection, even when disbonded. (N.T. 3910:20-3911:10; 3987:1-6; 3987:21-3988:3, Garrity Test.)

Flynn Complainants further alleges that SPLP did not perform failure analyses that were required to be completed on certain pipeline segments. Dr. Zamanzadeh alleges that these analyses were not produced to him and therefore they must not exist. This allegation is false. First, Dr. Zamanzadeh saying he did not have a document is not proof that it was not given to him. As set forth *supra* at n. 6, Dr. Zamanzadeh's review of documents was incomplete. *See also* SPLP Br. at 45-46. Moreover, as explained at length in SPLP's main brief, failure analyses are only required when a leak occurs pursuant to the SPLP Integrity Management Plan. Dr. Zamanzadeh ignores that such a condition must exist before a failure analysis is required.

There has only been one leak, a pinhole leak, on the Mariner East pipelines related to corrosion, and that was the Morgantown incident. The failure analysis performed by SPLP for that leak, the DNV Report, is part of the record of this case. *See* SPLP Ex. JF-5. Regarding the other two incidents that Flynn Complainants reference, Darby Creek and Glen Mills, both of those events happened in refined products service and are not evidence of the current state of the 12-inch pipeline. The Darby Creek incident does not even involve the portion of the 12-inch pipeline currently used in HVL service as part of the Mariner East pipelines – and therefore that incident is irrelevant. The Glenn Mills release occurred on the 12-inch pipeline, but it occurred in 2015, before the upgrades, repairs, and pipe replacements that SPLP performed on the 12-inch pipeline to utilize it for HVL service. A plethora of evidence of those upgrades, repairs, and pipe replacements is located in Dr. Zamanzadeh's own Exhibit MZ-6, which includes extensive records of repairs, upgrades, and replacements made. Incidents occurring prior to this integrity work or upgrade are irrelevant because they have nothing to do with the current state of the 12-inch pipeline.

Flynn Complainants further make confusing and misleading statements about the cathodic protection criteria that SPLP used in the past versus what it uses now. They first alleged that: "Sunoco's use of "ON" potential survey data is inadequate and contrary to Sunoco's own procedures at the time of the Morgantown accident." Flynn Br. at 78. On the contrary, the procedures in place at the time provided for SPLP to utilize only the "ON" potential. On that basis alone, Dr. Zamanzadeh's statement is false. Moreover, the procedures in place at the time of the Morgantown incident provided for SPLP to utilize alternative criteria to demonstrate adequacy of cathodic protection. SPLP has documented how it analyzed that criteria, in particular for the Morgantown incident. *See* SPLP Exhibit JF-4RJ.

As to SPLP's current cathodic protection procedures, Mr. Field testified:

> 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.) Mr. Field was explaining that SPLP's current Integrity Management Plan and related procedures do call for the -850 MV standard measured through ON and OFF potential, and Dr. Zamanzadeh's own exhibit, MZ-9 at pdf pages 195-375 (ME1), 921-1052 (12-inch), which contains close interval potential survey data, shows that for the most recent survey, SPLP was performing and recording both the ON and OFF measurements. Moreover, SPLP is consistently improving its cathodic protection systems to comply with its new standards. *See* SPLP Br. at 56. There is simply no evidence of SPLP failing to follow its Integrity Management Plan or related procedures.

3. Dr. Zamanzadeh's "opinions" are not competent evidence and SPLP's competent evidence rebuts Dr. Zamanzadeh's speculation.

Flynn Complainants' reliance on the following testimony from Dr. Zamanzadeh is legally insufficient because all of these "opinions" are too uncertain and are admittedly speculative and thus do not qualify as a competent expert opinion. They are entitled to no weight and must be rejected.

> (a) Sunoco ***may be operating*** an inadequate integrity management program for the 8-inch pipeline and the 12-inch pipeline considering the leak incidents, age of pipeline, and coatings that, if disbonded, shield cathodic protection.
> (b) ***Important information*** relative to corrosion data, corrosion risk, and corrosion mitigation *is* ***lacking***.
> (c) Sunoco's operation of the 8-inch pipeline and the 12-inch pipeline ***should be reviewed*** for corrosion risk both externally and internally;

> (d) Sunoco's operation of the subject 8-inch pipeline and the 12-inch pipeline ***should be reviewed*** for safety considerations from a corrosion risk point of view; and
> (e) ***The question*** of whether Sunoco should be permitted to continue operating these pipelines ***cannot properly be decided*** without a thorough investigation by an independent expert.

Flynn Br. at 80 (emphasis added). As Commission explained in *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), however, an expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence:

> 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 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 29-30 (Order entered March 28, 2019), *aff'd, Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. Ct. 2020) (holding expert opinion fell below required standard that the utility service "will cause harm" and did not constitute competent evidence to support a violation of that standard) (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.") (emphasis added).

Moreover, even assuming that his opinions were not uncertain and speculative, Dr. Zamanzadeh's "opinions" were completely and comprehensively rebutted by the testimony in this proceeding. The allegation that SPLP might not have an appropriate integrity management plan is rebutted by Dr. Zamanzadeh's own testimony characterizing the Integrity Management Plan or procedures as "reasonably comprehensive and detailed," (Flynn Complaints St. No. 1, Zamanzadeh Direct Test. at 39:31-33). SPLP experts Zurcher and Garrity, and its witness Field rebutted the allegation that SPLP does not follow its Integrity Management Plan. Garrity and Field's disagreement with Dr. Zamanzadeh on all other allegations are set forth in Appendix A.

4. <u>Reliance on past events and allegations that are irrelevant or moot.</u>

a. <u>PHMSA NOPV</u>

Flynn Complainants continue to misconstrue and obfuscate a PHMSA NOPV and improperly characterize ***allegations*** as if they were proven facts about SPLP's ME1 cathodic protection system. Flynn Br. at 77; Flynn 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, Field Test.)

Regardless, the topic of the NOPV is moot because SPLP complied and PHMSA agreed that SPLP is now compliant. (SPLP St. No. 14-RJ, Field Rejoinder Outline at 6) (citing https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120195002/120195002_Closure%20Letter_11262019_text.pdf)) 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.

b. The pinhole leak in Morgantown

Flynn Complainants make various allegations about the Morgantown incident, none of which is relevant to this proceeding. Your Honor already ruled that Morgantown was not to be litigated here, yet Flynn Complainants continue to ignore that ruling and continue to attempt to rely upon that settled matter. The Morgantown incident only involved the ME1 pipeline and a pinhole leak in Berks County. It is not evidence of the condition of the portion of the upgraded 12-inch pipeline in HVL service in Chester and Delaware Counties. Rather, it only involved one discrete location. The settlement in which SPLP agreed to perform a Remaining Life Study cannot be used as evidence against SPLP. *Morgantown Joint Petition for Settlement* ¶ 15 ("Settlement is without admission"), and ¶ 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"). The Commission approved and adopted these provisions in its Order approving the settlement. *BI&E v. SPLP*, Docket No. C-2018-3006534

(Opinion and Order entered Aug. 19, 2020). Moreover, the fact of a leak does not establish a violation of law or regulation. *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. 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).

Flynn Complainants next assert that microbiologically influenced corrosion ***might*** have been a factor in Morgantown. But even if that were the cause of the pinhole leak in Morgantown, SPLP has already 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 in the Morgantown area, as NACE recommends. (N.T. 4078:19-4079:7, Field Test.; N.T. 3925:15-3926:4, Garrity Test.)

Flynn Complainants also raise SPLP's past practices to measure the adequacy of its cathodic protection. This is irrelevant because SPLP no longer uses those past practices.

Flynn Complainants further assert there was a significant amount of wall loss in the area of the release. That assertion is directly contradicted by the DNV Report, which stated: [**BEGIN HC**] [redacted] [**END HC**]

Complainants next pull from thin air the assertion that the Commission has previously recognized a lack of safety in the Mariner East system. The Commission has never found the Mariner East pipeline to be unsafe regarding integrity management, cathodic protection, or

corrosion control. The Commission's Orders approving the Joint Petition for Settlement made no such finding and none can be made, particularly as the Settlement cannot be used as evidence against SPLP.[7]

Likewise, the assertion that SPLP was not "able" to explain how the Morgantown leak was not detected by an ILI tool is highly misleading. SPLP's expert Zurcher testified that because this was a pinhole leak in a weld, it is extremely hard to detect with in-line inspection devices because the signal the tool is looking for is somewhat masked by the additional material in the weld, but that such issues will only manifest as tiny pinhole leaks and a very small volume being released and would not develop into a rupture before it would be discovered, especially in the weld material, which is stronger than the pipeline. (N.T. 4226:8-4228:16, Zurcher Test.)

Flynn Complainants allege further that SPLP destroyed or tampered with evidence regulating to the pinhole leak in Morgantown. Flynn Complainants allege that SPLP intentionally hid or destroyed evidence when it used a liquid snoop to locate the leak and removed and replaced an additional 75 feet of pipeline. As both Garrity and Field explained, however, SPLP was not attempting to hide or tamper with evidence, but instead was taking standard and appropriate measures in response to the leak to ensure that it had been properly located by using standard methods and procedures to locate the leak—which was priority one. (N.T. 3963:14-3964:12, Garrity Test.) Regarding the additional 75-feet of pipe, there was no reason to have any additional segment of pipe sent to the laboratory for analysis. (N.T. 3964:13-3965:24, Garrity Test.) Moreover, instead of making baseless assertions about the existence of the pipe or its condition, Flynn Complainants could have asked for it in discovery. They did not. And the pipe still exists

[7] SPLP submitted a formal Answer in the Morgantown matter wherein SPLP did deny and did not admit allegations of the Complaint. Indeed, what Complainants fail to disclose in their Brief is that SPLP's answer denying these allegations ***was in fact part of the Joint Petition for Settlement***. *See* Morgantown Joint Petition for Settlement, Appendix D.

at one of SPLP's warehouses. (N.T. 41220:8-11, Field Test.) To attempt to establish an issue with the 75-feet of replaced pipe, Flynn Complainants should have had it examined and tested. Flynn Complainants cannot create an adverse inference about the condition of the pipe – which they initially sought to establish by filing a spoliation motion, which they later withdrew as specious – without actual evidence in the form of test results that prove that condition.

Finally, Flynn Complainants attempt to relitigate or collaterally attack the Settlement in the Morgantown area after their very same comments opposing the Settlement were rejected by the Commission. They make these assertions even though they were ordered by Your Honor not to do so. The Morgantown incident was resolved via final Commission Order and these contentions are moot.

c. Darby Creek and Glen Mills refined product releases.

Finally, Flynn Complainants attempt to rely on two past incidents that are wholly irrelevant to the question of the current condition of the 12-inch pipeline. Neither of these incidents is relevant because each involved releases of refined products, meaning that the release occurred on a portion of the pipeline that did not undergo the upgrades, repairs and replacements implemented prior to HVL service (Darby Creek, 2018 refined products release) or occurred prior to the upgrades, repairs and replacements that were made on the 12-inch pipeline before it was placed into HVL service (Glen Mills, 2015 refined products release). Moreover, the areas of those two releases were immediately remediated and the pipeline placed back into refined products service. The evidence shows that in 2017 and 2018, SPLP performed hydrotests and in 2016, performed ILI runs, including four different tool types on 12-inch pipeline, (Flynn Ex. MZ-6 at SPLP00008142), used those results in conjunction with historical documents on corrosion and coatings, and took a very conservative approach in making repairs and replacements to the 12-inch pipeline before placing it in service. (N.T. 4084:1-18, 4093:9-4094:9 Field Test.) The records

showing repairs and replacements are located in Flynn Exhibit MZ-6 and demonstrate that extensive amounts of pipe were repaired and replaced. Prior incidents on those pipelines that were properly repaired and addressed are therefore immaterial and irrelevant to the current condition of the pipelines.

5. Flynn Complainants' requested relief is inconsistent, improper, untimely and violates SPLP's due process rights.

Flynn Complainants have not shown a violation of law or regulation entitling them to any relief, let alone the extreme relief of shutting down the ME1 and 12-inch pipelines until a remaining-life study is conducted or even having a remaining-life study conducted. SPLP discussed these issues at length in its main brief, including why Complainants' new "Twin Pipeline Theory" is legally and factually untenable to obtain relief for the 12-inch pipeline. SPLP Br. at 58-61. The argument to shut down the pipelines is also inconsistent with their prior admissions. The Flynn Complainants already conceded and are bound by the admission that they are no longer seeking to shut down the pipelines prior to a Remaining Life Study being conducted. *See* Flynn Complainants Answer to SPLP Motion for Summary Judgement regarding Integrity Management, Corrosion Control, and Cathodic protections at 5-6 ("Flynn Complainants seek to shut down the older pipelines only ***after*** an investigation has concluded that they cannot be safely operated or that Sunoco is not likely to operate them safely.") (emphasis added).

Flynn Complainants now seek new relief – appointment of an independent auditor or investigator to perform an investigation with unknown parameters regarding the 12-inch pipeline. Flynn Br. at 98-99. This relief is unavailable for two reasons. First, Flynn Complainants cannot seek new relief at this stage that was not requested in their complaint because it deprives SPLP of its due process rights to submit evidence on the issue. *See, e.g., Hess v. Pennsylvania Pub. Util. Comm'n*, 107 A.3d 246, 265–67 (Pa. Cmwlth. Ct. 2014) (finding that "PPL would have been

clearly prejudiced if the argument and evidence was allowed in *after the record closed* because PPL had no opportunity to respond to this evidence and the arguments based on it."); *see also, e.g., Lidia Shan*, No. C-2013-2371560, 2014 WL 7339532, at *1 (Pa. PUC Dec. 18, 2014) (issue raised for first time in exceptions is waived). Second, the requested relief is unavailable where, as here, there are already two independent bodies that are inspecting, investigating and auditing the Mariner East pipelines on a regular basis – PHMSA's Office of Pipeline Safety ("OPS") and the Commission's Bureau of Investigation and Enforcement. 49 C.F.R. § 190.203; 52 Pa Code § 59.33(d). There is no statutory or regulatory provision allowing the Commission or PHMSA to delegate these statutory or regulation-based powers to a third-party, but instead, these two entities have the regulatory duty to and do conduct these investigations, audits, and inspections. While Flynn Complainants apparently feel BI&E and PHMSA's OPS do not do an adequate job, their recourse is to seek a change in the law or in regulations, not to try to obtain relief that is unavailable under current law.

C. Complainants and aligned Intervenors failed to meet their burden of proving that SPLP's public awareness program does not comply with 49 C.F.R. § 195.440 and RP 1162.

To prove a deficiency with SPLP's public awareness program, Complainants and aligned Intervenors 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). For SPLP's public awareness program, Complainants and aligned Intervenors must prove a violation of 49 C.F.R. § 195.440, and to the extent applicable, RP 1162, which is referenced therein.

As set forth in SPLP's main brief, all three of Complainants' and aligned Intervenors' proffered experts testified that SPLP's public awareness program contains all of the elements

required by Section 195.440. Further, all three experts, when questioned directly, testified that they did *not* offer any opinion that SPLP failed to comply with Section 195.440 or RP 1162. *See* SPLP Br. at 65-66. That ends the issue.

Notwithstanding these fatal concessions, at the hearing and in their briefs, Complainants and aligned Intervenors allege a potpourri of micro-deficiencies in SPLP's public awareness program: e.g., SPLP did not define in all instances what is a safe distance to evacuate in all possible release scenarios; SPLP did not advise the public that they could be burned in an explosion; and SPLP did not advise the public how to determine which way the wind blows. Again, SPLP's main brief demonstrates that each of these allegations is contradicted by the evidence. SPLP Br. at 77-83. There is no need to rehash that evidence here.

Instead, this Reply Brief addresses the fundamental, overarching flaws in the arguments put forward by Complainants and aligned Intervenors about SPLP's public awareness program. These fundamental flaws fall into three categories: Complainants and aligned Intervenors (i) seek impermissible relief; (ii) misunderstand that a proper, compliant public awareness program provides a flexible process for responding to any and all pipeline releases depending on facts, circumstance and science; and (iii) attempt a "back door" challenge to the location of HVL pipelines in a high consequence area, which the PHMSA regulations expressly authorize.

1. Complainants and aligned Intervenors seek relief as to SPLP's public awareness program that is impermissible.

Complainants and aligned Intervenors seek relief as to public awareness in different forms that are all facially impermissible. The starting point is the relief sought by Andover HOA, which admittedly goes beyond any regulatory requirements for public awareness.

> The Association understands that, to a certain extent, this is a case of first impression. The Association asks the Commission to rule, seemingly for the first time, that it has the authority to rule that a pipeline operator has no right to hide behind cookie-cutter alleged

> compliance with Section 440 and act like it complies with the appropriate law.

Andover HOA Br. at 35-36.

Andover HOA's claim is wrong on all counts. This is not a case of first impression. The law is clear. To prevail, Complainants and aligned Intervenors must prove a violation of Section 195.440, which they admittedly cannot do. Moreover, SPLP is not "hiding behind" the law; it is complying with the law. In essence, what Andover HOA asserts is that the law or regulations should require more. But any changes to the requirements of a compliant public awareness program must be made through a proper legislative or rulemaking process and cannot be imposed in an adjudication merely because one party desires it so.

In a related form of relief, many of the Complainants and aligned Intervenors seek to impose specific requirements on SPLP that go well beyond the regulations. Specifically, they seek to require that SPLP add an odorant to its products in the Mariner East pipelines and/or use a mass early warning system for any potential release. *See* West Whiteland Township Br. at 1; Obsenski Br. at 7; Middletown Township Br. at 13; Downingtown Area School District et al. Br. at 18; Chester County Br. at 96. The Commission expressly denied this relief in the *Baker* case precisely because these elements (odorant and a mass warning system) go beyond the requirements of the existing regulations and can only be imposed after a formal rulemaking. *Baker* at 11, ordering Paragraph 2 (upholding ALJ Barnes' rejection of request for early warning 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").

The main brief of the West Chester County Area School District and the Twin Valley School Districts goes one step further. They seek relief that is taken almost verbatim from

ALJ Barnes' Opinion in the *Baker* case. West Chester School District Br. at 29-30. But the Commission expressly rejected this relief in its *Baker* decision because those elements of the relief "were not justified on the basis of the findings of a violation of the duty to meet public awareness and outreach obligation under 49 C.F.R. §195.440," but rather should be considered as part of the proposed Rulemaking Docket. *Baker* at 26-27.

In some instances, the relief requested by Complainants and aligned Intervenors is not only beyond regulatory requirements, it directly contradicts those requirements. These parties request that SPLP develop emergency response plans for municipalities and school districts rather than providing information to those parties to assist in the development of their own plans. *See* West Whiteland Township Br. at 1; Downingtown Area School District et al. Br. at 18. The legal obligation to develop an emergency response plan falls squarely on the municipalities and the school districts, not on the pipeline operators. *See*, 35 Pa. C.S. § 7503(1) and 22 Pa. Code § 10.24. All Complainants and aligned Intervenors concede that the municipalities and school districts, not SPLP, have the legal obligation to create their own response plans. (N.T. 1975, Boyce Test; N.T. 2210, Turner Test; 2352, Hubbard Test.) And yet, these parties ask for relief that contradicts these express legal requirements.

Similarly, Complainants and aligned Intervenors ask for relief that is beyond the Commission's authority to grant. This includes environmental sampling and testing (Middletown Township Br. at 13; Downingtown Area School District et al. Br. at 17), dedicated pipeline funding to municipalities (Chester County Br. at 97), advance notice of pipeline construction activities (Middletown Township Br. at 13), and restrictions on the siting of valve sites. *See Duquesne Light Co. v. Upper St. Clair Township*, 377 Pa. 323, 105 A.2d 287 (1954). (Obenski Br. at 6; Downingtown Area School District et. al. Br. at 18.) PADEP, not the Commission, regulates

environmental testing and the daily construction of the Mariner East pipelines according to PADEP-issued permits. Further, the Commission simply has no authority to require a pipeline operator to make guaranteed payments to any municipality through which a pipeline traverses. Finally, the request to relocate the existing Dorlan road valve site is not only untimely made and an invasion of SPLP's "managerial discretion" permitted under longstanding Pennsylvania law,[8] but has not been proven to be unsafe, and the Commission does not determine siting.

2. Complainants and aligned Intervenors fundamentally misunderstand the required elements of a compliant public awareness program

Complainants and aligned Intervenors argue primarily that SPLP's public awareness program is deficient because it did not provide specific enough information for every conceivable type of incident, in every unique neighborhood in Chester and Delaware Counties, under every possible scenario (weather, time of day, wind direction). As SPLP's expert, Gregory Noll, ***the*** national authority on emergency response, testified, that approach is not only impracticable, it violates the fundamental principles of public awareness and emergency response.

As Noll testified, public awareness and emergency response training emphasizes a risk-based ***process*** that can be applied to any neighborhood, any type of emergency incident (from a pipeline leak or rupture, a tornado, an active shooter, a plane crash, an explosion, etc.), and any scenario therein. (N.T. at 3301-3302, Noll Test.)

> Q: Can you have an emergency response plan that details every kind of incident and a unique response for each individual neighborhood?

[8] *Pennsylvania Pub. Util. Commn. v. Philadelphia Elec. Co.*, 460 A.2d 734 at 737 (Pa. 1983) ("It is well established that, absent express legislative authority, the PUC is powerless to interfere with the general management decisions of public utility companies. *Swarthmore Borough v. Public Service Commission*, 277 Pa. 472, 478, 121 A. 488, 489–490 (1923). The Public Utility Code does not expressly grant the PUC general authority over the siting and construction of all utility plants. Nor does it require PUC approval for expansion of all facilities, the discretion of the company's management over such matters being generally beyond the PUC's power to supersede. *Duquesne Light Co. v. Upper St. Clair Township*, 377 Pa. 323, 337, 105 A.2d 287, 293 (Pa. 1954).").

> A: No. That is not only impractical it is contrary to the fundamentals of emergency response planning. As I stated, this is a risk-based approach that establishes a ***process*** in place that can be applied regardless of the incident or neighborhood. It is a ***process*** that allows for the reliance on an application of facts, science and circumstances no matter what the situation or location.

(Noll Rebuttal Test. at 12.) (Emphasis added.)

SPLP's entire public awareness program follows the process that Noll delineates. The process is carried out not as one isolated element of SPLP's public awareness program (i.e., just in the mailed brochures), but through a combination of all the means and methods that SPLP employs to disseminate information in its public awareness program: pipeline safety brochure mailers, emergency response training, pipeline safety websites, use of social media (Facebook, Instagram), and pipeline safety information through radio and billboard advertising.

Despite the arguments in the briefs to the contrary, Complainants' and aligned Intervenors' own witnesses concede two important facts on this very issue. First, they concede that there is too much variability to define in advance the proper public response to any particular pipeline incident. (*See* Marx Test. at 44-46; N.T. at 1968, Boyce Test.; N.T. at 2208, Turner Test.) That is precisely consistent with Noll's testimony. And second, they concede that you cannot just look at one portion of SPLP's public awareness program to determine its overall effectiveness. You have to look at SPLP's program holistically. (N.T. at 1964-66, Boyce Test.; N.T. at 2202, Turner Test.; N.T. at 2339-41, Hubbard Test.)

In sum, SPLP's public awareness program sets forth a proper, comprehensive, and compliant process for emergency response and public awareness. Complainants' and aligned Intervenors' assertion that the program requires specific direction in every conceivable scenario is

contrary to law, practice, and the testimony of Complainants' and aligned Intervenors' own experts.

3. Complainants' and aligned Intervenors' assertions about SPLP's public awareness program amounts to a "back door" challenge to the permissible location of an HVL pipeline in a high consequence area.

After two years of litigation, and repeated assertions that the public and emergency responders need ***more*** information from SPLP's public awareness program to respond to a catastrophic release, Complainants and assigned Intervenors make an astonishing reversal. They now argue that ***no*** amount of public awareness information from SPLP will make a difference. Here are examples of their complete reversal:

- "There can be no realistic pipeline awareness plan even if flyers are amended to reflect the possibility of burning and fatalities." Flynn Br. at 5.
- There is no emergency response that could possibly evacuate a densely populated area in time to secure residents from a leak. *See* Andover HOA Br. at 21 (relying on the Boyce Direct Test. at 8. *See also*, N.T. 1993-95 Boyce Test.)
- "I contend that there can be no reasonable pipeline plan even if they are amended to reflect the possibility of fatalities based on a culmination of 16 days of hearings." Britton Br. at 7.

So, what Complainants' and aligned Intervenors' position has devolved into is that SPLP's public awareness program can ***never*** be sufficient, no matter what or how much information SPLP provides, merely because the Mariner East pipelines are located in a high consequence area. This position directly contradicts the PHMSA regulations that expressly authorize HVL pipelines in high consequence areas, and the provisions of RP 1162, which specifically reference and recommend public awareness outreach in those high consequence areas. Complainants' and aligned Intervenors' reversal of position is nothing more than an inappropriate "back door" attempt to prohibit HVL pipelines in high consequence areas in contravention of PHMSA regulations and

common practice.[9]

D. The Commission has no jurisdiction in this proceeding over pipeline siting, construction, or environmental issues, and further Complainants and aligned Intervenors have not met their burden of proving that alleged siting, construction, or environmental concerns demonstrate that the Mariner East pipelines are unsafe or an abuse of managerial discretion.

Complainants and aligned Intervenors presented a hodgepodge of issues that they allege demonstrate the Mariner East pipelines are unsafe under PHMSA Regulations and Section 1501. This includes their misplaced argument that the mere location of the pipelines in a densely-populated area, in proximity to homes, schools, and places of public congregation, makes the Mariner East Pipelines inherently unsafe. Complainants and aligned Intervenors next allege that the construction methods used for the ME2 pipelines make the pipelines inherently unsafe. And finally, Complainants and aligned Intervenors allege that certain environmental issues, including subsidence and alleged water well impacts, render the Mariner East pipelines unsafe. But Complainants and aligned Intervenors have not presented sufficient technical or expert evidence to meet their burden of proving that any of the alleged issues with pipeline siting, pipeline construction, or alleged environmental impacts demonstrate that the Mariner East pipelines are unsafe under Section 1501.

1. Siting of the Mariner East pipelines cannot be addressed through this proceeding, and moreover, pipelines carrying HVLs are expressly permitted in high-consequence areas by state and federal law.

As set forth at length in SPLP's main brief, other than high voltage transmission electrical lines, the Commission lacks jurisdiction over the siting and location of public utilities, including

[9] The argument that no amount of information is sufficient to respond to a pipeline is flawed for another reason. The same limitations of emergency response (evacuating those with physical and mental limitations, detection of an emergency at night, the time needed for emergency responders to arrive on scene) apply equally to other emergencies: a propane truck crash, a fire, an explosion, a tornado, or a plane crash. Complainants' and aligned Intervenors' experts concede this point. (N.T. at 1983-85, 1993-96, Boyce Test.; N.T. at 2225-27, Turner Test.) But that does not mean that planes cannot fly over or that trucks cannot drive through high consequence areas or that everyday activities are prohibited due to adverse weather.

pipelines and related equipment such as valve stations, an issue that the Commission has already ruled upon regarding ME2 in the *West Goshen Township* decision. *West Goshen Township v. Sunoco Pipeline L.P.,* Docket No. C-2017-2589346, Opinion and Order at 10-11 (Order entered October 1, 2018) ("with the exception of high voltage electric transmission lines, the Commission's authority regarding the siting of public utility facilities is limited . . . It is not clear that the Commission has the authority . . . to otherwise direct a valve location on a specific tract of land.") This is also reflected in the Commission's June 13, 2019 Advanced Notice of Proposed Rulemaking, which focuses on potential new 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 – a Rulemaking in which multiple parties to this proceeding have actively participated. *See 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); *see also, e.g.*, Docket No. L-2019-3010267, Senator Killion (Aug. 1, 2019); Comments of Clean Air Council (Aug. 28, 2019); Comments of Middletown Township (Sept. 11, 2019); Comments of Chester County (Sept. 11, 2019); Comments of Complainant Rebecca Britton (Sept. 11, 2019); Comments of Virginia Kerslake (Sept. 11, 2019).

Here, the heart of Complainants' and aligned Intervenors' arguments against the Mariner East pipelines is that they allege the pipelines should be located elsewhere in Chester and Delaware Counties or presumably in other counties. Even if the Commission did have authority over the siting and location of pipelines, which it does not, as set forth *supra* at Section II.D.1, both state and federal law expressly allow pipelines, including pipelines carrying HVL, to be located in high consequence areas. *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"). Because there is no basis for Complainants and aligned Intervenors to challenge the location or siting of the Mariner East pipelines and related equipment, any argument the pipelines are unsafe based on the pipelines' location fails as a matter of law.

2. Complainants and aligned Intervenors have not presented any evidence that either the design or construction of the Mariner East pipelines or valve stations violates PHMSA regulations and Section 1501.

SPLP presented detailed evidence in its main brief demonstrating that the construction of the Mariner East pipelines and related facilities, including valve stations, meet or exceed all state and federal requirements. Yet, pro se Complainant Obenski continues to assert that the valve station located on Dorlan Mill Road is unsafe because it is near schools. *See* Obenski Br. at 6 (arguing SPLP failed to show that it has "hardened" the valve site). None of the Complainants or aligned Intervenors presented any technical information or expert testimony about pipeline engineering or construction, the engineering and construction of related facilities, including valve stations, or what is necessary to protect a valve site from accidental or intentional damage. Complainants and aligned Intervenors failed to meet their burden of proof on this issue on that basis alone.

Nevertheless, the weight of the evidence that SPLP presented on these issues demonstrates that SPLP meets or exceeds all federal requirements for pipeline construction. As SPLP's Gordon

testified and explained, at the valve stations in Chester and Delaware Counties – including the valve station on Dorlan Mill Road – SPLP implemented various safety precautions, including fencing around the valve sites, physical locks on equipment, safety bollards or jersey 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, SPLP evaluates potential risks to valve stations and other pipeline equipment and facilities, and "then we put other mitigating factors in place with that consideration is mind," which "is a standard condition or practice that you can use to harden a facility." (N.T. 2903:1-11.)[10] All of these "hardening" measures meet or exceed the PHMSA regulatory requirements for valve sites found at 49 C.F.R. §§ 195.258 and 195.260.

As fully described in SPLP's main brief, SPLP also meets or exceeds all federal and state requirements for design and construction of the pipelines and uses enhanced design and construction practices to enhance the overall safety of the pipelines. (*See e.g.*, SPLP St. No. 13, Gordon Rebuttal Test. at 2-3.; SPLP St. No. 3, Ariaratnam Rebuttal Test. at 1, 9, 10, 12, 14; N.T. 3852-54; N.T. 3774:17-25, 3813-14; N.T. 3797; N.T. 3852-54). Moreover, even if there were an issue that arose during construction of the Mariner East 2/2X pipelines that could potentially affect integrity or safety, it would be detected and corrected before the pipelines are placed into service, under SPLP's robust commissioning process, that includes resistivity testing, caliper tool runs, and hydrostatic testing. (SPLP St. No. 3, Ariaratnam Rebuttal Test. at 3, 13-14; N.T. 3824-25; SPLP St. No. 13, Gordon Rebuttal Test at 3.) The pipelines are also routinely inspected. SPLP St. No. 13, Gorton Rebuttal Test. at 3-4; N.T at 2908:4-6; N.T. 2912:16-18.)

[10] Gordon testified that valve sites are in fact themselves a safety feature for pipeline operations. (N.T. 2899-2901, Gordon Test.) Moreover, Gordon testified that the Mariner East 2 valve sites were co-located with existing valve site locations. (N.T. 2976, Gordon Test.)

Because the overwhelming weight of the evidence presented by SPLP establishes that SPLP has implemented appropriate construction protocols, specifications, and procedures to construct the Mariner East 2/2X pipelines, and that the pipelines once fully constructed and tested will safely operate in accordance with federal and state law, Complainants have not met their burden of proving that the pipelines as constructed violate Section 1501 of the Commission's regulations.

3. PADEP, not the Commission, is the agency with responsibility and authority to address environmental issues regarding the Mariner East pipelines; therefore, any such claimed environmental issues are outside the scope of this proceeding.

As set forth at length in SPLP's main brief, PADEP, not the Commission, is the Commonwealth agency that is vested with the expertise, competency, and legal authority to address environmental matters in the Commonwealth, including any and all environmental compliance matters associated with the construction of the Mariner East 2 pipelines. *See e.g.*, *Pickford v. Public Utility Com'n*, 4 A.3d 707, 713 (Pa. Cmwlth. Ct. 2010); *Roving v. Pa. Public Utility Com'n*, 502 A.2d 785 (Pa. Cmwlth. Ct. 1986); *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72, 74-75 (Pa. Cmwlth. Ct. 1995). *See also Baker and Blume v. Sunoco Pipeline, L.P.*, Dkt. No. C-2020-3022169, Initial Decision at 8-9 (Dec. 8, 2020) (dismissing complaint and acknowledging limits of Commission's jurisdiction, that the Commission "does not permit or regulate the environmental permitting process for SPLP's construction," and that the Commission lacks authority to enforce environmental laws, including any issues with inadvertent returns). Notwithstanding this clear precedent, Complainants and aligned-Intervenors persist in alleging various environmental issues associated with the construction of the Mariner East 2

pipelines – such as inadvertent returns of drilling mud, alleged impacts to private water supplies,[11] groundwater seeps, and earth features and subsidences.

In addition to this precedent, the Commission has already recognized the limits of its authority over any environmental issues associated with the Mariner East 2 pipelines in prior rulings in this case. Testimony and documents were excluded or discovery prohibited as to environmental issues, PADEP Notices of Violation, PADEP Consent Orders, or PADEP Consent Assessment of Civil Penalties – were all excluded. *See, e.g.*, SPLP's Answer Opposing Flynn Complainants' Motion for Leave to Submit Additional Evidence, at Attachment A (Excerpt of Deposition Transcript, N.T. 120:3-8 (upholding SPLP's objection to Flynn Complainants' attempt to depose Mr. Gordon regarding PADEP Consent Orders and related documents, or to introduce such documents), N.T. 121:24-25 (declining to reconsider ruling)). Indeed, in a prior May 28, 2020 Order regarding Flynn Complainants' Motion to Determine Sufficiency of Sunoco Pipeline, L.P.'s Objections and Answer to Request for Admission, Your Honor found that PADEP Consent Orders were not relevant and beyond the scope of this proceeding: "SPLP will not be compelled to answer these Admissions pertaining to PADEP's COAs because they are not relevant to the issues in the instant case and exceed the scope of the Complainants' direct case before the Commission. . . ." Order entered May 28, 2020 at 2-3. At the evidentiary hearing in this case,

[11] As set forth at length in SPLP's Main Brief, any alleged issues with Complainant Rosemary Fuller's water well have not only been fully investigated and addressed by PADEP, but at bottom relate to private property claims that are not within the power of the Commission to address. *See e.g.*, *Baker and Blume*, at 11 (noting that requested relief of drilling new private water well was "injunctive relief is also outside the jurisdiction of the Commission and would be more properly brought before a Court of Common Pleas. . . 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."); *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)). As Your Honor recently explained in *Blume and Baker*, Fuller's alleged concerns regarding her water well and plumbing are not issues that can be addressed through this proceeding – "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.

Flynn Complainants again attempted to introduce an August 4, 2020 Consent Order, but again Your Honor refused to admit it into evidence. (N.T. 1800.) *See supra* Section I.F.

And even if any of the alleged environmental complaints associated with the Mariner East 2 construction could be relevant to this case, no Complainant or aligned Intervenor presented any expert testimony on these issues. Complainants and aligned Intervenors did not present any engineer, geologist, or any other scientific or technical testimony to support any allegation that an inadvertent return of drilling mud or subsidence negatively impacted the safety or integrity of the pipelines, or that any of these events resulted in the pipeline being in a violation of Section 1501.

Instead, all that Complainants and aligned Intervenors presented were concerns and grievances, which are insufficient to satisfy their burden of proof as a matter of law. *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 do not constitute factual evidence."); *Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, Docket No. C-2014-2421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebeur, J.) (Final by Act 294, Dec. 30. 2014) (finding no violation where Complainant failed to show violation of relevant portion of 49 C.F.R. Part 195). There is nothing in the evidence to suggest that claimed violations of SLP's environmental permits during construction of the Mariner East 2 pipelines satisfies the burden to come forward with substantial evidence to prove that SPLP cannot safely operate the existing or newly-constructed pipelines. There is simply no proof that any of the inadvertent returns of drilling mud or subsidences that occurred during HDD construction have any affect on the integrity of the

pipelines or establish that SPLP cannot safely operate the pipelines after construction within the meaning of Section 1501.

E. Flynn Complainants' argument on the statistical value of a human life is not supported by competent evidence and is irrelevant because there is no evidence of the probability or likelihood that the Mariner East pipelines will cause harm.

In their main brief, after two years of litigation, Flynn Complainants offer for the first time the concept of the statistical value of a human life to rebut the economic benefits put forth by SPLP. *See* Flynn Br. at 4, 49 (FoF ¶ 218), and 95; *see also* Britton Br. at 6. Flynn Complainants sensationalize this concept by extrapolating that "100 dead citizens in Chester or Delaware Counties represent a loss of $1 billion dollars." Flynn Br. at 95. In support of their argument, Flynn Complainants cite the testimony of lay witness Eric Friedman and Exhibit Friedman-21, a hearsay document admitted into the record over SPLP's objection. (*See* N.T. 804.) The lay witness testimony by Friedman and the hearsay Exhibit Friedman-21 are not competent evidence under the standards governing limits as to what a lay witness may testify to and the *Walker/Chapman* evidentiary standards, which state that objected-to hearsay ***cannot be relied upon by an agency***. *See* SPLP Br. at 23-24 (discussing hearsay evidentiary standards before the Commission); SPLP Br. at 26-29 (discussing lay witness testimony evidentiary limitation standards before the Commission).

1. Friedman's unqualified lay opinion on the statistical value of a human life cannot be given any evidentiary weight.

First, Friedman is not, nor has he been, qualified as an expert witness on statistics or monetary valuation of a human life. Specifically, it is undisputed that Complainants and aligned Intervenors failed to qualify or for that matter offer Friedman as an expert in any field. *Application of PPL Elec. Utilities Corp.*, A-2009-2082652, 2010 WL 637063, at *11 (Feb. 12, 2010) (rejecting lay witness testimony on technical issues, which necessarily "require expert evidence to be

persuasive enough to support the proposing party's burden of proof"). Absent that lack of proffer and status granted by Your Honor as an expert, Friedman is incompetent to have his opinions entered into the record as expert testimony and conclusions. On that basis alone, his testimony and any documents he offered in support of his "opinion" or implication should be disregarded under Pennsylvania law.[12]

Further, under longstanding Pennsylvania law, including in cases determined by the Commission, lay opinion on technical expert matters cannot be considered and must be rejected. *Pickford v. Pa. PUC*, 4 A.3d 707, 715 (Pa. Cmwlth. Ct. 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 opinions or testimony and exhibits regarding expert technical health and safety issues "carry no evidentiary weight and … were properly objected to and excluded") Specifically, 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 of witness as opposed to relying upon others], 701 [opinion testimony by lay witnesses ***may not*** be based on scientific, technical, or other specialized knowledge within the scope of Rule 702] and 702 [scientific, technical or specialized

[12] Even if proffered, Friedman could not be qualified as an expert on statistics or the value of a human life. Friedman has a bachelor's of aeronautical science and has certificates as a commercial pilot, an aircraft dispatcher, a ground instructor, and as a flight instructor. (N.T. 741-742, Friedman Test.) He has been a professional pilot in multiple capacities throughout his career. (N.T. 742, Friedman Test.) Friedman is currently employed by the Federal Aviation Administration as an aviation safety inspector. (*Id.*) Friedman has no scientific, technical, or specialized knowledge to render an expert opinion on the statistical value of a human life.

testimony may only be given by expert witnesses] generally applicable in agency proceedings); *Manes v. PECO Energy Co.*, 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"). The Commission has recognized and applied these legal principles. *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").

In sum, Friedman's personal lay opinions or testimony about the statistical value of a human life is unqualified lay witness testimony that is far outside and unrelated to any issues of which he claims expertise. He has not and is not recognized as an expert in this area nor was he offered as such.

2. Exhibit Friedman-21 is uncorroborated hearsay evidence, which was properly objected to at hearing and is not competent evidence to support a finding.

Flynn Complainants rely on Exhibit Friedman-21 to support their arguments on the statistical value of a human life. *See* Flynn Br. at 49 (FoF ¶ 218). But Exhibit Friedman-21 is uncorroborated hearsay evidence. The only testimony discussing this exhibit, and consequently the statistical value of a human life, was the unqualified lay testimony of Friedman, which relied on statements, calculations, and conclusions by a declarant in Friedman-21 who was not: (a) identified as a witness as required by Your Honor's Procedural Order, (b) offered as a witness, and (c) subject to cross-examination. A party's due process rights include an opportunity to confront and cross-examine adverse witnesses. *Henderson v. Unemployment Compensation Board of Review*, 77 A.3d 699, 715 (Pa. Cmwlth. Ct. 2013); *McFadden v. Unemployment Comp. Bd. of*

Review, 806 A.2d 955, 958 (Pa. Cmwlth. Ct. 2002). Here, due process would require Complainants to produce a witness to back the statements made in Friedman-21. They did not. No expert appeared or provided testimony on the concept or the calculation of the statistical value of a human life. Further, SPLP properly objected to the admission of Exhibit Friedman-21 on the grounds of hearsay at the hearing. Under the *Walker/Chapman* rule, corroboration is required where such objection was made. That Your Honor overruled the objection and admitted the exhibit into the record, N.T. 804, does not cure these foundational evidentiary defects.

Indeed, it cannot. As 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. 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 Corp., Docket No. C-2018-2644957, Initial Decision at 16-18 (Nov. 14, 2018) (Barnes, J.).

Applying these standards to Exhibit Friedman-21, under the *Walker/Chapman* rule, this hearsay evidence is not competent evidence to support a finding. The evidence is pure hearsay as there is no declarant who made or penned the statement that testified in this proceeding, was sworn in as a witness in this proceeding, offered for cross-examination on their opinion, and not to mention qualified as an expert who could give the technical opinions and conclusion. Under the *Walker/Chapman* rule, Exhibit Friedman-21 is pure hearsay regarding the statistical value of a human life. It was properly objected to by SPLP and not corroborated by any competent or expert evidence of record. Therefore, Exhibit Friedman-21 and the concept of the statistical value of a human life is not competent evidence in this proceeding that may be considered in this case. To do so would directly contradict the Commonwealth Court's holding in *Walker/Chapman*.

3. Even if Friedman's lay testimony or Exhibit Friedman-21 were competent evidence, the statistical value of a human life is irrelevant because Flynn Complainants presented no evidence on the likelihood or probability that the Mariner East pipelines will cause harm.

Assuming, *arguendo*, that the lay testimony and exhibit regarding the statistical value of a human life was not hearsay, was offered by an expert testifying at the hearing and subject to cross-examination comporting with fundamental due process, it still would fail as it is irrelevant to the outcome of this proceeding. As discussed in SPLP's main brief, Complainants failed to meet their 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. *See* SPLP Br. at 30-37. Indeed, Complainants and aligned Intervenors repeatedly conceded that they did not and would not introduce any evidence of the likelihood or probability of any such harm occurring. By failing to meet this burden, the evidence and argument surrounding the statistical value of a human life is

irrelevant, immaterial, and of no consequence to the outcome of this case. Simply put, there is ***no evidence*** to support that the Mariner East pipelines will cause harm. Without such likelihood or probability evidence, any argument regarding the statistical value of a human life is of no moment. In simple terms, Complainants offered zero evidence that the loss of ***any*** human life will occur to support the statistical claim or sensational extrapolations argued by the Flynn Complainants. *See* Flynn Br. at 49 (FoF ¶ 218), and 95.

F. Flynn Complainant's misrepresent and mischaracterize the record regarding the economic aspects of the Mariner East project.

Flynn Complainants misrepresent and mischaracterize the uncontroverted economic benefits of the Mariner East project presented by SPLP and Range Resources. Flynn Complainants selectively cite either a few words, a sentence, or citations without full content or context in their attempt to mischaracterize *by omission* the testimony given. *See* Flynn Br. at 43-49 (FoF ¶¶ 186, 187, 189, 192, 194, 198, 199, 200, 204, 209, 216).

For instance, for their proposed finding of fact at paragraph 194, Flynn Complainants propose Your Honor to find that "as high as eighty percent of the product shipped on Mariner East to Marcus Hook ***is transshipped overseas***. (N.T. 2620:8-25)." Flynn Br. at 45 (FoF ¶ 194) (emphasis added). Indeed, that fact was not established in the testimony cited. Flynn Complainants proposed finding of fact at paragraph 194 revolves around Billman's testimony under cross-examination, which in relevant part provides:

> Q. Do you know roughly what the percentage of product transferred on Mariner East from Marcus Hook that goes overseas?
>
> A. So I think the way I explained it to her was it's going to depend on timing, timing of the year and different market conditions. I mean, it could be 70 percent. It could be as high as 80 percent at some times, and it could be even lower. It's ultimately dictated by the shippers and where they send them and which off-ramps they send them to.

(N.T. 2620:18-2621:2, Billman Test.) The proposed finding of fact is not an accurate reflection of the testimony of record. Billman stated that: 1) where shippers chose to send product is ultimately their decision and depends on the time of year; 2) that the percentage ***could*** be 70 percent, it ***could*** be 80 percent, or it ***could*** be lower. *Id.*

Flynn Complainants resorted to similar mischaracterization and misrepresentations, which are also not supported by the record. *See* Flynn Br. at 43-49; *see also, e.g.* FoF ¶ 186 (referencing N.T. 2605:5-9 and implying available capacity in the Mariner East pipelines while ignoring SPLP's witness' testimony that Mariner East 2 runs at close to 100 percent capacity and Mariner East 1 at 90 percent or greater capacity at N.T. 2605:18-23); FoF ¶187 (referencing N.T. 2607:21-2608:2 for the assertion that SPLP did not lose capacity during a previous ordered shutdown, while conflating that with a statement discussing that the shutdown was a planned, coordinated outage to transition ME1 to purely ethane service N.T. 2606:13-2608:9); FoF ¶ 189 (referencing N.T. 2614:2-5 in an overly broad statement to discredit the witness for the claim that shippers decide where the products end up while ignoring the witness's personal knowledge of where some specific shippers products in fact end up in the following question at N.T. 2614:6-2615:14); FoF ¶ 192 (referencing N.T. 2616:9-2618:3 and misstating that ethane is only used "occasionally" where the witness stated that ethane is used "as a supplement for what they call peaking season particularly the winter months." N.T. 2616:18-21); FoF ¶198 (referencing N.T. 3052:7-10 for the claim that Dr. Angelides did not look elsewhere for data when N.T. 3052:7-10 clearly was an explanation on how the model worked, taking SPLP's investment made on the project and modeling benefits that flowed from it); FoF ¶ 200 (referencing N.T. 3067:3-3070:14 and misrepresenting Dr. Angelides' testimony where the witness plainly discussed that the economic benefit from being in operation would be lost from a shutdown and providing comparative

hypotheticals); FoF ¶ 216 (referencing no testimony but rather making sweeping, inaccurate conclusions where SPLP St No. 10 at 2-6 as well as Mr. Billman during cross examination *in passim* plainly described the basis for SPLP's lost revenues). Flynn Complainants' misrepresent the record by picking and choosing fragments of testimony, conflating testimony and omitting testimony.

In contrast to these misrepresentations, SPLP and Range presented unrebutted and credible evidence on the economic benefits of the Mariner East pipelines, as well as the substantial harm that would result to SPLP, Range, and the public if SPLP's certificated public utility service were to be enjoined for any reason. *See* SPLP Br. at 105-114; Range Br. at 13-27. SPLP's public utility service provides direct benefits to Pennsylvania through the direct supply of propane and butane across the state and ethane supply for power generation in Cambria County. (SPLP St No. 10 at 10-11). Many of these natural gas liquid-based products are the components of a wide-array of products and particularly in reacting to the current COVID-19 pandemic. (SPLP St. No. 10 at 10.) Mariner East provides a necessary and proper pipeline utility service by transporting commodities that ultimately form the building blocks for products used in everyday life and many industrial processes. (SPLP St. No 10 at 13-20.) Both SPLP and Range would suffer significant economic turmoil in the event of a stoppage of service (SPLP Br. at 109-110), and Range's royalty owners, consumers, and the Commonwealth itself would lose major economic benefits if the Mariner East pipelines were enjoined. (Range Br. at 13-27.) The economic benefits of Mariner East are clear – SPLP's continued and uninterrupted operation is in the public interest. This Commission has found SPLP's service and thus its products to be necessary or proper for the public. 66 Pa. C.S. § 1103(a); *see also e.g.* the Certificates of Public Convenience granted at Pa PUC Docket No. A-140001 and A-2014-2425633.

In contrast, Complainants and aligned Intervenors presented no evidence to challenge the economic benefits of the Mariner East pipeline operations and construction. They presented no evidence to contradict the substantial harm of an injunctive shutdown would have on SPLP, shippers, and the public. They presented no evidence to contradict the economic and societal benefits that SPLP's public utility service provides. This case must be decided on the actual evidence in the record, and the economic evidence presented by SPLP and Range was both credible and uncontradicted by the Complainants and aligned Intervenors.

G. Flynn Complainants' untimely and improper request raised for the first time in post-hearing briefing that the Commission restrict SPLP's Certificate of Public Convenience in Chester and Delaware Counties fails to comport with the Commission's Rules of Practice and Procedure, prejudices SPLP and its customers, who had no advance notice of such claim, violates SPLP's due process rights, and even if it were properly raised, the request fails to meet the Commission's standard for revocation of certificate rights.

For the first time in this proceeding, Flynn Complainants request in their post-hearing briefing that the Commission "restrict" SPLP's Certificate of Public Convenience ("CPC") in Chester and Delaware Counties. *See* Flynn Br. at 72 (FoF ¶ 309); *id.* at 97, 98 (requested relief at 1); *id.* at 99-100 (proposed ordering paragraphs). This newly-sought relief, raised for the first time after pleadings closed, after the hearings, and after the close of the record, is improper and prejudices SPLP as Flynn Complainants failed to plead the relief, present the issue, or put forth claims and evidence despite having over two years to do so, leaving no opportunity for SPLP to present contrary evidence to address Flynn Complainants' new request in violation of SPLP's due process rights.

Further, even if the Flynn Complainants' had properly raised the request for the Commission to restrict SPLP's CPC on a county-by-county basis, Complainants failed to meet the standard for revoking a Commission-issued CPC as there is no "due cause" to revoke SPLP's CPC in a private party's complaint proceeding. *W. Penn Power Co. v. Pa. PUC*, 643 A.2d 125, 127

(Pa. Cmwlth. Ct. 1994); *Pennsylvania Transportation Serv., Inc. v. Pa. PUC*, 165 A.3d 1033, 1037 (Pa. Cmwlth. Ct. 2017) ("The PUC has authority to revoke or amend certificates of public convenience upon due cause being shown."). Flynn Complainants, who bear the burden of proof, presented no evidence to support their new request during the course of this proceeding.

Additionally, Flynn Complainants' new claim affects more than just SPLP, which is a public utility that serves customers, who had had no notice from Complainants nor opportunity to be heard on this new claim. SPLP's customers and others are necessary parties to any proceeding that seeks to restrict SPLP's CPC, and would have to have been joined to provide them with the opportunity to protect their rights. Finally, this latest effort represents an improper collateral attack on SPLP's CPC issued by the Commission. The rights granted therein are presumptive and conclusive under Section 316 of the Public Utility Code, 66 Pa. C.S. §316.

1. Flynn Complainants' request to restrict SPLP's Certificate of Public Convenience in Chester and Delaware Counties was improperly and untimely raised for the first time after the close of the record in violation of SPLP's due process rights.

Flynn Complainants request that the Commission restrict SPLP's CPC in Chester and Delaware Counties for the first time in their main brief. The Commission and the Commonwealth Court have rejected attempts by parties to assert new arguments and seek new relief raised for the first time after the record is closed. *See, e.g., Hess v. Pa. PUC*, 107 A.3d 246, 265–67 (Pa. Cmwlth. Ct. 2014) (finding that "PPL would have been clearly prejudiced if the argument and evidence was allowed in ***after the record closed*** because PPL had no opportunity to respond to this evidence and the arguments based on it").

The Commission is bound by the due process provisions of constitutional law. *W. Penn Power Co. v. Pa. PUC.*, 100 A.2d 110 (Pa. Super. Ct. 1953). In Commission proceedings, the Commonwealth Court has recognized that the "fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner." *Barasch v. Pa. PUC*, 521 A.2d 482, 496 (Pa. Cmwlth. Ct. 1987). SPLP has a fundamental due process right to notice and the "opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Baker v. SPLP*, Docket No. C-2018-3004294, Initial Decision at 20 (Decision entered Dec. 18, 2019) (*affirmed in relevant par*t by Opinion and Order Sept. 23, 2020) (ALJ E. Barnes); citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. Ct. 2014); *Davidson v. Unemployment Compensation Bd. of Review*, 151 A.2d 870 (Pa. Super. Ct. 1959); *In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. Ct. 1946).

Here, Flynn Complainants seek to violate SPLP's fundamental due process here by denying SPLP the opportunity to respond to this issue raised after the record was closed. *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlth. Ct. 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. Ct. 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"). Complainants are limited to what they pled and the relief they requested.

Had Flynn Complainants' sought this relief previously, SPLP could have, for example, presented evidence on how a county-by-county restriction on SPLP's CPC would result in a *de facto* system-wide injunction across the state, which would harm the public interest. SPLP could have presented evidence that no alternative means exist for SPLP to comply with its necessary and proper public utility service to transport its products through Chester and Delaware Counties to

meet its utility customer's needs. The relief must not be allowed after the close of the record because SPLP has had no opportunity to respond with testimony or evidence to Flynn Complainants' newly-requested relief. That is a violation of SPLP's due process rights.[13]

In sum, Flynn Complainants' new, improper, and untimely request made for the first time in its post-hearing brief, after the close of the record, to restrict SPLP's CPC in Chester and Delaware Counties cannot be considered. Doing so would violate SPLP's due process rights to be heard at a meaningful time and in a meaningful manner on the issues.

2. Complainants also failed to meet the Commission's standard for revoking SPLP's CPC because they presented no evidence of "due cause."

In addition, Flynn Complainants failed to meet the Commission's standard required for the Commission to amend or rescind a CPC. By failing to meet this standard, Flynn Complainants cannot be granted their newly-requested relief. While the Commission has the power to amend or rescind a CPC, it may not act in an arbitrary, capricious, or unreasonable manner. Thus, a "certificate of public convenience can only be revoked for cause" and after requisite notice and process. *W. Penn Power Co. v. Pa. PUC,* 643 A.2d 125, 127 (Pa. Cmwlth. Ct. 1994); *Pennsylvania Transportation Serv., Inc. v. Pa. PUC*, 165 A.3d 1033, 1037 (Pa. Cmwlth. Ct. 2017) ("The PUC

[13] Only where a utility failed to respond to an order to show cause and/or a failure to respond to Commission-filed complaints and "after notice and opportunity to be heard" has the Commission found cause to revoke a public utility's CPC. 66 P.S. § 703(g). *See also, e.g., Cresco, Inc. v. Pa. PUC*, 622 A.2d 997, 1000 (Pa. Cmwlth. Ct. 1993) (finding that a hearing was not required before PUC's revocation of CPC because "petitioners failed to follow the PUC procedures and failed to respond to an order to show cause in a timely fashion and because they failed to assert a property interest in the certificate of public convenience"); *Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. Ct. 1978) (where the certificate holder had adequate notice of its alleged violations of the Public Utility Law and of PUC regulations and had an opportunity to request a hearing but failed to respond, the certificate holder's due process rights were not violated by the PUC's decision to sustain the complaints and to suspend the certificate for 30 days). That is not the case here. SPLP has committed no such failures and has operated in compliance with the Public Utility Code and the Commissions regulations. Without such failures, SPLP, as the certificate holder, must be given the opportunity to respond to any evidence and argument on the issue. *See, e.g., Pa. PUC v. Metropolitan Edison Co.*, 37 P.U.R.4th 77 (Pa. PUC May 23, 1980) ("Common sense and due process require that a certificated public utility be given notice of its deficiencies and a reasonable opportunity to correct those deficiencies" prior to revocation.)

has authority to revoke or amend certificates of public convenience upon due cause being shown."). As the Superior Court explained:

> The Commission has been granted broad authority to affect the legislative intent, and is empowered, not only to amend, but even to cancel certificates previously granted. While the Commission may not act arbitrarily, it has the same power to revoke a certificate as it has to issue it, ***upon due cause being shown.***

Snyder v. Pa. PUC, 144 A.2d 468, 470 (Pa. Super. Ct. 1958) (internal citations omitted) (emphasis added). Although the Commission has the power to modify or rescind orders subject to the requirements of due process, "that power must be 'granted judiciously and only under appropriate circumstances.'" *ARIPPA v. Pa. PUC*, 792 A.2d 636, 663 (Pa. Cmwlth. Ct. 2002) (*citing City of Pittsburgh v. Pennsylvania Dep't of Transportation*, 416 A.2d 461 (Pa. 1980).

Here, those circumstances do not exist. Aside from the myriad of due process and other legal deficiencies present, Flynn Complainants presented no caselaw or evidentiary support for the Commission to order a county-by-county restriction on SPLP's CPC. Flynn Complainants cite *Abramson v. Public Utility Commission* as their only supporting case for the Commission's right to cancel Certificates of Public Convenience. *See* Flynn Br. at 97; citing *Abramson v. Pa. PUC,* 371 A.2d 576 (Pa. Cmwlth. Ct. 1977) ("*Abramson*"). While the underlying PUC order in *Abramson* canceled a public utility's CPC, the *Abramson* case cited by the Flynn Complainants focused on the procedural distinction between a petition for rehearing and a petition for rescission of a Commission order, and did not discuss the Commission's standards of due cause shown and the due process requirements when considering whether to revoke a public utility's CPC. *Abramson* at 577.

In addition to the absence of supporting case law, Flynn Complainants presented no evidence to support their newly-sought relief for a county-by-county restriction of SPLP's CPC.

They presented no evidence of due cause to do so, no evidence that SPLP is unwilling and incapable of operating in a lawful manner, and no evidence that SPLP is failing to perform or incapable of performing its essential service functions to the public. *Pennsylvania Pub. Util. Comm'n Law Bureau Prosecutory Staff v. Kilbuck Run Disposal Corp.*, 2007 WL 517124, at *2 (Pa. PUC Feb. 8, 2007). Granting the county-by-county restrictions newly requested by Flynn Complainants is wholly unsupported by the record and would be, by definition, arbitrary, capricious and unreasonable under the governing law.

3. Flynn Complainants' failed to join necessary parties to their complaint and their newly-requested relief would infringe upon those parties' rights.

To the extent that Flynn Complainants' seek to revoke SPLP's CPC in Chester and Delaware Counties, which would effectively revoke the CPC across the Commonwealth, they failed from the start to join the necessary parties in such a proceeding. Revocation of SPLP's CPC on a county-by-county would infringe on the rights of those necessary parties, which include SPLP's shipping customers, shipper's royalty receivers, and the large labor force and other businesses that depend on deliveries from the Mariner East pipelines, such as the Marcus Hook Industrial Complex in Delaware County.

"A necessary party is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights." *Pennsylvania Fish Commission v. Pleasant Twp.*, 388 A.2d 756, 759 (Pa. Commw. Ct. 1978). SPLP's shippers on the Mariner East pipelines are necessary parties because they, as public utility customers, have a right to obtain service from SPLP. Revoking SPLP's CPC will infringe upon those customers' rights. SPLP has binding contractual commitments to serve certain shippers. Revoking SPLP's CPC infringes on those contractual rights. Moreover, some of those shippers, such as Range Resources, pay royalties to landowners for their mineral rights. If SPLP's CPC were to be revoked in Chester and Delaware

Counties, product may become shut-in, meaning that those royalty payments would end. Likewise, a large labor force and other businesses depend on deliveries from the Mariner East pipelines, such as the Marcus Hook Industrial Complex in Delaware County. The Flynn Complainants' new relief, if granted, infringes on the ability of those necessary parties to operate their businesses. Range Resources Statement No. 1-R at 5, 6, 7, 9-11, 14-16, Rebuttal Test. of Alan Enberg; SPLP Statement No. 10 at 7, 8-10, 12, Rebuttal Test. of Richard Billman; SPLP Statement No. 11 at 2-5, Rebuttal Test. of James Snell.

4. Flynn Complainants are barred from challenging SPLP's Commission granted Certificate of Public Convenience under 66 Pa. C.S. § 316.

Flynn Complainants' latest effort for additional relief is a collateral attack on a prior Commission Order. SPLP's Commission-granted CPC, and the rights granted therein, are presumptive and conclusive under pertinent part of Section 316 of the Public Utility Code, 66 Pa.C.S. §316:

> **§ 316. Effect of commission action.**
>
> Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

The Commission and the courts have found or affirmed that SPLP is a public utility whose service under Section 1103 of the Public Utility Code, 66 Pa. C.S §1103, is "necessary or proper for the service, accommodation, convenience, or safety of the public." *See In re Sunoco Pipeline, L.P.*, 143 A.3d 1000, 1016 (Pa. Cmwlth. Ct. 2016) (the "PUC authorized Mariner East 1 and Mariner East 2 intrastate service in 17 counties, from Washington County in western Pennsylvania, through 15 other counties, including Cumberland County**,** to Delaware County in eastern Pennsylvania"); *Application of Sunoco Pipeline L.P. for Approval of the Right to Offer, Render,*

Furnish or Supply Intrastate Petroleum and Refined Petroleum Products Pipeline Service to the Public in Washington County, Pennsylvania, Docket No. A-2014-2425633, Order at 4 (Order entered Aug. 14, 2014) ("we believe that approval of this Application is necessary and proper for the service, accommodation, and convenience of the public."). Further, Your Honor has recognized that 66 Pa. C.S. § 316 creates a presumption that prior facts in a determination or order are reasonable and precludes collateral attacks upon those facts absent a showing of changed circumstances. *Baker & Blume v. Sunoco Pipeline L.P.*, Docket No. C-2020-3022169, Initial Decision at 14-15 (Decision entered Dec. 8, 2020); *citing Duquesne Light Co. v. Pa. PUC*, 715 A. 2d 540 (Pa. Cmwlth. Ct. 1998); *Popowsky v. Pa. PUC*, 669 A. 2d 1029, 1037 n.14 (Pa. Cmwlth. Ct. 1995), *rev'd in part on other grounds*, 550 Pa. 449, 706 A. 2d 1197 (1997); *Zucker v. Pa. PUC*, 401 A. 2d 1377, 1380 (Pa. 1979); *Schellhammer v. Pa. PUC*, 629 A.2d 189, 193 (Pa. Cmwlth. Ct. 1993).

SPLP's CPC has not been "set aside, annulled, or modified" and thus remains conclusive upon all parties. 66 Pa. C.S. § 316. Flynn Complainants have not presented evidence of changed circumstances that would allow Your Honor to review the facts established when the Commission issued SPLP its CPC. That Complainants or aligned Intervenors do not like where the pipeline is located, and would prefer that it be located in other counties, is not a basis to collaterally attack the Commission-granted CPC, without evidence or case law support for revoking the CPC.

III. Conclusion

For the reasons set forth above, and also set forth at length in SPLP's main brief, SPLP respectfully requests that Your Honor conclude that each of the Complainants and aligned Intervenors have not met their burden of proof to show that SPLP violated laws or regulations in the operation or construction of the Mariner East pipelines. Absent substantial evidence demonstrating that SPLP violated a law or regulation, Complainants and aligned Intervenors are

not entitled to any relief, much less the extreme relief sought in this proceeding, which seeks to shut down all of the Mariner East pipelines, require SPLP to perform a remaining-life study on the 2-inch pipeline, require additional enhancements to SPLP's public awareness plans and emergency response protocols and training, or to require SPLP to install additional equipment or safety measures beyond the comprehensive safety measures that SPLP already utilizes. Nor can SPLP's Certificate of Public Convenience be revoked or service on the Mariner East pipelines otherwise be suspended.

Respectfully submitted,

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PUBLIC VERSION
APPENDIX A
REBUTTAL TO FLYNN COMPLAINANTS' PROPOSED FINDINGS OF FACT REGARDING INTEGRITY MANAGEMENT, CATHODIC PROTECTION, AND CORROSION CONTROL

Flynn Brief FoF Allegation	**SPLP Response**
237. At Complainants' request, Dr. Zee and his staff reviewed tens of thousands of documents with a mind towards determining the condition of the eight-inch ME1 and the twelve-inch portion of ME2 workaround pipelines from the corrosion point of view. (Zee Direct at 6, l. 31-19, l. 40; 25, l. 6-26, l. 35; Zee Surrebuttal at 9, l. 4).	First, Flynn Complainants fail to acknowledge that they did not even seek in discovery the production of every SPLP document related to corrosion control, cathodic protection and integrity management. Dr. Zamanzadeh implies that the Flynn Complainants requested the production of every document within SPLP's possession related to cathodic protection and corrosion control, and that if he did not review a document, that is proof that the document does not exist. But on cross examination, Dr. Zamanzadeh admitted that the lack of data was due to Flynn Complainants' failure to seek the documents 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 he submitted his direct testimony. (N.T. 2176:21-24, Zamanzadeh Test.) In fact, no such discovery requests were made in the ***seven*** months that Flynn Complainants had between filing direct testimony and surrebuttal testimony. Dr. Zamanzadeh could not point to a single instance where SPLP was requested to provide responsive discovery, but failed to do so. Second, Dr. Zamanzadeh's review of the data was admittedly incomplete. Dr. Zamanzadeh testified 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).

238. Even though the performance of failure analyses was mentioned in some of the accident reports, the technical review of documents did not identify any such failure analyses. Two of the reports in particular are noteworthy (SPLP00005725 and SPLP00005764) because they specifically identify external corrosion as the root cause of failure. (Zee Direct at 19. l. 20 - 21, l. 40).	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.) SPLP00005764 is the PHMSA report for the pinhole leak in Morgantown. That is only release on the Mariner pipelines related to corrosion. SPLP entered into the record the DNV Report, which contains a root cause analysis and which was produced to Dr. Zamanzadeh. Therefore, Dr. Zamanzadeh in fact had the root cause analysis performed consistent with SPLP's Integrity Management Plan. (SPLP Ex. JF-5.) As to the other PHMSA incident report referenced, that incident was on the 12-inch pipeline before it was converted to HVL transportation. SPLP00005725 (indicating refined and/or petroleum product (non-HVL). The report itself contradicts the assertion that no failure analysis was conducted. SPLP00005728. Moreover, the incident identified in this report and the failure analysis are not relevant because SPLP performed significant upgrades and integrity repairs to the 12-inch pipeline before it was converted to HVL service. Because it is not relevant, SPLP was required to produce a failure analysis to Dr. Zamanzadeh for this event.
239. Confidential/Highly Confidential 104-ROW Walking Reports (Ex. Zee-5) include provision for leak surveys but no leak surveys were conducted. (Zee Direct at 23, l. 35 -24, l. 6).	Mr. Field explained that the ROW Walking Reports were created to comply with a settlement to monitor the right-of-way for earth features and had nothing to do with conducting leak surveys. There is no requirement for SPLP to conduct leak surveys for HVL pipelines, as this is a requirement for natural gas pipelines pursuant to 49 C.F.R. Part 192 and is not a requirement for HVL pipelines. SPLP St. 14, Field Rebuttal Testimony at 6:8-14.
240. Highly Confidential/CSI 1, 10, and 13 included 1647 document files in the range of SPLP00015477 to SPLP00028647. Three of the files include integrity summaries reflecting metal loss (corrosion) (Zee Direct at 25, l. 6 - 26, l. 35),	This ignores the context of these integrity summaries, which were performed and created as part of the conversion to HVL service. SPLP took a conservative approach and repaired or replaced all segments where there was 50% or greater metal loss. These summaries show a functioning and conservative integrity management approach and practice. (SPLP Br. at 53-55; N.T. 4093:9-4094:9. Field Test.) The presence of corrosion is not a violation of law or regulation and does not show the

where the key criterion appears to be over 50% metal loss to require repairs. (Zee Surrebuttal at 9, l. 4).	pipelines are unsafe. (N.T. 3924:4-23, Garrity Test.) Under the applicable regulations, metal loss greater than 80% of nominal wall requires immediate repair, while an area of predicted metal loss greater than 50% that is in an area with *widespread circumferential corrosion* must be repaired within 180 days. *See* 49 C.F.R. § 195.452(h)(2)-(4).
241. 215 inspection and repair maintenance records (the "Dig Reports") are in Exhibit Zee-2 and were prepared during the period 2013 to 2016. (Zee Direct at 26, l. 41 - 27, l. 2). The Dig Reports showed there had been uncoated pipe segments both on ME1 and the twelve-inch pipelines. (Garrity Surrebuttal at 10, ll. 13-15). Also, where a coating was present, it was a coal tar epoxy coating. (Zee, 9/30/20 at 2119, ll. 18-21).	These records were created in response to ILI runs that called out metal loss, which was then examined and repaired in the field, including coatings (i.e., SPLP dug up the pipes to investigate and repaired as necessary). (SPLP Br. at 53-55; N.T. 4093:9-4094:9. Field Test.). In addition, Dr. Zamanzadeh testified that there were various types of coating present, not just coal tar coating. Flynn St. No. 1, Dr. Zamanzadeh Direct Testimony at 11.
242. Among the documents they reviewed were accident reports showing leaks due to corrosion at Darby Creek and Glen Mills, Delaware County and Morgantown, Berks County in which microbiologically induced corrosion may have contributed to the failure. (Zee Direct at 19, l. 32 – 21, l. 36).	The Darby Creek incident has already been ruled to be irrelevant to this proceeding because it occurred on a portion of the pipeline that is not being used for HVL service. (N.T. 4106:4-4110:5). The Glen Mills failure report is the document SPLP00005725. As described above, it is not relevant because this occurred before SPLP's integrity upgrades and repairs to the 12-inch pipeline, after which it was converted to HVL service. Regarding the Morgantown incident, in response to the DNV report that MIC *may* have contributed to the failure, 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.)
243. Three of the highly confidential documents include integrity summaries reflecting metal loss (corrosion) (Zee Direct at 25, ll. 34-36). Aging, degraded and disbonded coal tar epoxy coatings are known to interfere with ("shield") CP, and so CP may not be effective along such a coated pipeline	As Mr. Garrity explained, coal tar coating, even when degraded and/or disbonded, does not shield cathodic protection. (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.

section. (Zee Direct at 17, ll. 23-28). Early pipeline coatings were coal tar and they can shield CP. (Zee, N.T. 9/30/20 at 2120, ll. 16-21).	
244. Document production disclosed interval survey plots using ON potential survey data. Sunoco's reliance solely on use of ON potential survey data limits the value of the results. (Zee Direct at 28, ll. 23-35).	This does not reflect SPLP's current CP measurement criteria and practice. SPLP's current integrity management plan and practices require and utilize both ON and OFF potentials. Dr. Zamanzadeh had the evidence in his own exhibits to show that SPLP's most recent survey did utilize both ON and OFF potentials. (N.T. 4075:24-4076:13; Dr. Zee Ex. 9 at pdf pages 195-375 (ME1), 921-1052 (12-inch)). The prior use of ON potentials was resolved with both PHMSA and the PUC when SPLP its revised procedures and is moot.
245. In general, aging underground pipelines such as these are at risk of corrosion failure due to coating degradation, external corrosion and stress corrosion cracking. Corrosion failures in aging pipelines are either sudden catastrophic ruptures or gradual leaks due to localized corrosion and cracking. These areas have a much higher statistical probability of catastrophic failure and rupture. Inline inspection of pipes and pipelines to detect and size internal damage have limited capability for detecting or identifying stress corrosion cracking and pitting corrosion initiation because it does not reflect the extent of the probable external metal loss/corrosion problem along the Mariner East 1 pipeline and it cannot detect initiation of corrosion and certain type of coating disbondments. (Zee Direct at 8, ll. 4-41).	Corrosion is a threat to all pipelines and that is why the PHMSA regulatory requirements require pipeline operators to monitor, mitigate, manage and repair corrosion. The record shows that SPLP does just that. SPLP Brief at 49-58. Flynn Complainants and Dr. Zamanzadeh continue to misconstrue the record and SPLP's practices by taking issue with ILI tools because they ignore that ILI tools are not the only measurements and monitoring that SPLP performs for corrosion. SPLP Brief at 53-57.
246. While aging by itself may not result in corrosion, a variety of conditions leading to coating degradation and disbondment. As the pipeline ages, coating on the pipeline could damage	SPLP appropriately monitors for and mitigates these types of corrosion. SPLP Br. at 53-54. Moreover, as Mr. Zurcher explained, there is no correlation between pitting and the manifestation of a rupture. (N.T. 4228:25-4229:2, Zurcher Test.)

/ disbond / delaminate and result in corrosion with age at the exposed areas in the aggressive soil conditions. The two main types of corrosion are pitting corrosion and stress corrosion cracking. Mitigation of these conditions necessitates integrity management, including external corrosion direct assessment; internal corrosion direct assessment; and stress corrosion cracking direct assessment. (Zee Direct at 7, l. 22 - 8, l. 41).	
[**BEGIN HC**] [redacted]	Corrosion pits can be measured in various ways and SPLP does utilize pit gauges during integrity digs to measure pit depths. Dr. Zamanzadeh is wrong that the records in his own exhibits do not show measurement of pit depths. *See, e.g.* Flynn Ex. MZ-6 at SPLP00011641 at 11708 (showing feature depth as percent of wall thickness), SPLP00012385 at 12523, 12531 (same); *see generally* Flynn Exs. MZ-6 and MZ-8. Moreover, as Mr. Garrity testified: > 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.)

	Regarding Dr. Zamanzadeh's false allegations that he saw ILI data that indicates pit depths are decreasing instead of increasing, first, this shows that even Dr. Zamanzadeh acknowledges that ILI tools measure pit depth. Second, while Dr. Zamanzadeh failed to identify any specific data on which his conclusion is based, he appears to be referring not to ILI data, but to a summary table that Mr. Field prepared to show that, over time, considering the upgrades and repairs made to the pipelines have resulted in an overall increase in wall thickness of the pipeline – i. e., SPLP is improving its pipelines faster than the rate at which corrosion occurs. This is obvious from the data itself, which discusses maximum pit depths and average pit depths, not the depth of any one individual pit. SPLP Ex. JF-4RJ at 3. Dr. Zamanzadeh misconstrued data that actually shows that the average pit depth of the pipelines has decreased because of the repairs and upgrades that SPLP has made over time, and this does not suggest s problem with the ILI tool data.
[redacted]	The document itself shows that the corrosion was repaired and that SPLP's integrity management and corrosion control processes are properly functioning. SPLP Br. at 53-55; N.T. 4093:9-4094:9. (Field). The corrosion was identified via an ILI tool run, dug up, inspected, and repaired. There is no evidence that the corrosion was active corrosion or that the current CP applied in this area is inadequate.
[redacted]	*See* response to paragraph 248. Moreover, there is no evidence that SPLP's pipelines are experiencing coating shielding.
[redacted] **[END HC]**	*See* response to paragraph 248.

251. One of the oldest measures of corrosion protection is to coat the substrate with a polymeric material. Summaries of Sunoco repair reports show the coatings found on the eight-inch and twelve-inch pipelines. For the twelve-inch pipeline for the seven-month period they were permitted to examine, bare pipe had the greatest amount of corrosion. (Zee Direct at 9, l.21-11, l.5). As shown in Zee Ex. 2, Dr. Zee's team prepared summaries of Sunoco repair reports that show the coating found on the eight-inch and twelve-inch pipelines. For the twelve-inch pipeline for the seven-month period they were permitted to examine, bare pipe had the greatest amount of corrosion. (Zee Direct at 9, ll. 38 - 12, l. 5).	Again, these were repair reports where corrosion resulting in wall loss was called out by an ILI tool, SPLP dug up the pipe inspected and repaired it. This shows a well-functioning integrity management and corrosion control program. SPLP Br. at 53-55; N.T. 4093:9-4094:9. (Field).
252. Cathodic protection is a method for reducing corrosion by minimizing the potential difference between the anode and cathode. As a general proposition, in soil environments, CP is effective if the real potential of steel (without the ohmic drop) is more negative than –850 mV with respect to a copper/saturated copper sulphate reference electrode. (Zee Direct at 12, l. 7-12, l. 16).	SPLP does not disagree.
253. Documents produced by Sunoco are not clear as to what CP criteria were used on the ME1 pipeline. Sunoco's answer to the BI&E complaint acknowledges not meeting the minimum -850mV in Morgantown but, the company contends it meets the requirements of an alternative standard. (Zee Direct at 12, ll. 18-26).	*See* response to paragraph 244. This issue is moot.

254. Sunoco records, however, do not support this claim and its Integrity Management Manual specifically calls for following the -850 mV standard. (Zee Direct at 39, ll. 31-34). Further, the BI&E Complaint notes that company records show that "[a]t station 2459±00, which is approximately 1,030 feet from the leak, SPLP's records indicated CP readings of -628 mV in 2016 and -739 mV in 2015 … From readings, it is evident that the potentials are maintained at more positive than -850 mV CSE." Moreover, ON potentials are recorded. There is no mention of OFF potentials. (Zee Direct at 13, ll. 4-10). Mr. Field agrees that only ON potentials were measured. (Field N.T. 10/13/20 at 4122, ll. 5-12).	SPLP current Integrity Management Plan and related procedures do call for the -850 MV standard and SPLP is consistently improving its cathodic protection systems to comply with this standard. *See* SPLP Br. at 56. Regarding past cathodic protection criteria and measurements, *see* response to paragraph 244. This issue is moot.
255. In the initial record production, Dr. Zee and his team received no information regarding stray current surveys. Stray current corrosion is a major concern for accelerated corrosion. As for AC interference, this can cause serious pitting corrosion even on pipes under CP. Further, no information was provided on AC interference surveying. (Zee Direct at 16, ll. 21-38).	Regarding alleged lack of data, *see* response to paragraph 237. Dr. Zamanzadeh's allegations concerning SPLP's stray current or AC interference are based on no evidence and squarely contradicted by Mr. Garrity and Mr. Field. SPLP Br. at 58.
256. Data collected by CP Data Manager in 2009 reveals that almost the entire length of the pipeline surveyed is more electropositive than -850mV. At some locations the side drain potentials were around -261mV. (Zee Surrebuttal at 22, ll. 38-40).	This statement lacks context in terms of time. In 2009, SPLP was not solely using the -850mV criteria and use of past criteria is moot. See response to paragraph 244. SPLP's current Integrity Management Plan and related procedures do call for the -850 MV standard and SPLP is consistently improving its cathodic protection systems to comply with this standard. *See* SPLP Br. at 56.
257. The testimony of Messrs. Field and Garrity showed they had not reviewed Sunoco	This is a complete falsehood. Mr. Garrity testified that he reviewed all of the documents that Dr. Zamanzadeh reviewed. *See* SPLP St. No. 1, Garrity Rebuttal at

records. At no point did they contest the factual findings noted by Dr. Zee as set forth above. (Zee Surrebuttal at 9, ll. 8-39; Zee, N.T. 9/30/20 at 2131, l. 25 - 2132, l. 3; Field Rebuttal at 5, ll. 18 - 22; 6, ll. 1-7).	4:1-11. Mr. Field likewise reviewed these records and more and is familiar with them as part of his daily work activities. SPLP St. No. 14, Field Rebuttal at 1:3-13; *see also* N.T. 4087:5-13, 4102:23-4103:1. (Field). As shown in SPLP's main brief and herein, Mr. Garrity and Mr. Field contest many of Dr. Zamanzadeh's allegations.
258. While Mr. Field vouched for the condition of the ancient pipelines going back decades, he acknowledged he had not seen Dig Reports dated prior to 2013 and he was just relying on what Sunoco personnel told him. He conceded further that he had no idea what corrosion occurred in 1940 and what corrosion occurred in 2010, seventy years later. (Field, N.T. 10/13/20 at 4124, ll. 3 – 23 & 4126, ll. 11-13; Field Rebuttal at 4, l. 21).	This completely misrepresents Mr. Field's testimony. While he testified that he had not reviewed every dig record from the 1930s through 2013, he further testified that he had personal knowledge of the condition of the pipelines prior to 2013 and of course he would as that is part of his day-to-day job and he has worked with the company for 20 years. *See* SPLP St. No. 14, Field Rebuttal at 1:3-13. Whether Mr. Field reviewed every single dig record is irrelevant in any event. Dig records show the repair and replacement of corrosion or wall loss that may have existed. As Mr. Field testified regarding his knowledge of sufficient CP practices, "I based my statement upon the data that we have from past in-line inspections, from past cathodic protection surveys and from the comparisons done from in-line inspection to in-line inspection." N.T. 4126:7-10. Moreover, Mr. Field only agreed that he wouldn't know how much corrosion was present prior to the 1990s, but if he wanted to see what corrosion was present in 2010, he could go back and compare ILI data. Again, the corrosion that was present in the past is irrelevant. It is the corrosion that exists today that matters and how it is measured, monitored, mitigated, and remediated that matters, and SPLP takes all these steps consistent with and above and beyond regulatory requirements. SPLP Br. at 51-58.
259. When coating becomes disbanded, the CP current is shielded, bacteria growth occurs and there may be microbiologically induced corrosion ("MIC"). (Zee Direct at 17, ll. 1-7).	This completely misrepresents the process of coating shielding. Just because coating is disbonded, does not mean that it will shield cathodic protection, and coal tar coating does not shield CP, even when disbonded. N.T. 3910:20-3911:8 (Garrity). Moreover, more is needed than merely coating disbondment for MIC to occur.
260. Mr. Field suggested in his testimony that because CP increased almost two years after the Morgantown accident it was not important to determine whether MIC was the cause of that leak.	This assertion ignores Dr. Zamanzadeh's own testimony and completely misrepresents the record. Under the NACE criteria, where MIC is present, cathodic protection should be increased to -.950V. Thus, when the DNV report indicated MIC *may* have been a cause, SPLP took steps to increase the cathodic protection for both the 8-inch ME1 and 12-inch pipelines in this area – i.e., SPLP treated both pipelines

(Field Rejoinder at 2; Field, N.T. 10/13/20 at 4078, l. 25 – 4079, l.7). That contention is nonsensical.	as if MIC were present, even though there was no determination that MIC was in fact present. SPLP St. 14-RJ at 2. This is a conservative approach and characterizing SPLP's implementation of remedial steps (that Dr. Zamanzadeh agrees should be taken) as "nonsensical" defies credibility.
261. Mr. Garrity suggested that because the Dig Reports did not indicate the presence of MIC, MIC is not a problem on the Mariner East pipelines. (Garrity Rebuttal at 5, ll. 20-22 and at 6, ll. 1-2; Zee Surrebuttal at 13, ll. 6-14). It took cross-examination for him to admit that the Dig Reports do not call for a MIC assessment and he had no idea if the field personnel were even qualified to assess for MIC. (Garrity, N.T. 10/9/20 at 3983, ll. 15-18).	That the Dig Reports did not have a specific call out for MIC assessments is irrelevant. Mr. Garrity testified that the Dig Reports were only one element of his conclusion that MIC is not a concern on these pipelines. Moreover, the Dig Reports do include a description of what was found at the site, and MIC was not listed. N.T. 3984:4-12.
262. Mr. Field vouched for Sunoco's CP program as well as its smart pig ("ILI") program but he did not deny the factual averments in the BI&E Complaint, (N.T. 10/13/20 at 4119, l. 17 – 4123 l.6), and neither he nor Mr. Garrity offered any explanation as to how the Morgantown leak had not been detected by those tools.	The Morgantown Complaint is not being litigated in this proceeding as Your Honor has ruled. Moreover, SPLP submitted an answer to that complaint, attached to the Joint Petition for Settlement that admits and denies various allegations of the complaint and that document speaks for itself. SPLP explained why the ILI tool did not identify the pinhole leak in Morgantown. Mr. Zurcher testified that because this was a pinhole leak in a girth weld, it is extremely hard to detect with in-line inspection devices because the signal that the tool is looking for is somewhat masked by the additional material in the weld, but that such issues will only manifest as tiny pinhole leaks and a very small volume being released and would never develop into a rupture before it would be discovered, especially in the weld material which is stronger than the pipeline. N.T. 4226:8-4228:16.
263. The DNV laboratory report for the Morgantown accident was not produced by Sunoco until mid-June 2020. (Zee Surrebuttal at 3, ll. 17-24). [**BEGIN HC**] [redacted]	These assertions are irrelevant to this case. The Morgantown Complaint is not being litigated in this proceeding as Your Honor has ruled, which is why the DNV report was only produced once Flynn Complainants ignored Your Honor's ruling and made this issue the cornerstone of Dr. Zamanzadeh's testimony. Flynn Complainants continue to try to litigate those issues here to no avail by raising preposterous

[redacted] [**End HC**] The report indicated that MIC may have been the cause. (Zee Surrebuttal at 7, ll. 18-23). Notably, nothing in the report or Sunoco documents explained what happened to the seventy-five feet of the twelve-inch pipeline that was removed during the investigation. It is not unreasonable to conclude that it was just as corroded as the eight-foot segment sent to DNV for analysis. (Zee Surrebuttal at 21, ll. 21-26).	assertions that SPLP tried to hide or destroy evidence. Regarding SPLP's actions directly in response to the leak, as both Mr. Garrity and Mr. Field explained, SPLP did not hide or tamper with "evidence" but instead was taking standard and appropriate measures in response to the leak to ensure it had been properly located. N.T. 3963:14-3964:12 (Garrity). Regarding the additional 75-feet of pipe, there was no reason to have any additional segment of pipe sent to the laboratory for analysis. N.T. 3964:13-3965:24 (Garrity). Moreover, instead of making baseless assertions about the existence of the pipe or its condition, Flynn Complainants could have asked for it in discovery. They did not. And the pipe still exists at one of SPLP's warehouses. N.T. 41220:8-11 (Field). Regarding MIC as a potential cause of the incident, SPLP took a conservative approach and remediated the area with increased cathodic protection meeting the NACE criteria for cathodic protection as if MIC were present. (N.T. 4078:19-4079:7, Field Test.; N.T. 3925:15-3926:4, Garrity Test.)
264. While Mr. Field claims that Sunoco has taken steps to stop corrosion, he once again fails to identify specific records that support his assertion. As for Morgantown, the DNV Report showed significant amount of wall loss in the area of the leak, suggesting that the pipe's integrity was compromised. (Zee Surrebuttal at 8, ll. 1-5).	The assertion that Mr. Field did not identify records to support his assertion is preposterous. Those records are in Dr. Zamanzadeh's own exhibits, including but not limited to the various dig reports discussed above that show SPLP's conservative identification, inspection, and repair of corroded pipe, SPLP's upgrades to its cathodic protection systems in the Morgantown area and in Chester and Delaware Counties, evidenced by its close interval potential survey conducted in 2019 that is part of Dr. Zamanzadeh's Ex. 9. (N.T. 4076:4-13, Field Test.; SPLP St. No 14-RJ, Field Rejoinder Outline at 1-2.) Moreover, Mr. Field sponsored into the record SPLP's new procedures for cathodic protection and corrosion control in SPLP Ex. JF-3.
[**BEGIN HC**] [redacted]	The allegation that the DNV report was somehow flawed is nothing more than a baseless assertion. As Mr. Garrity testified, "DNV was tasked with establishing metallurgical factors associated with the release, and as I term it, the root cause of the release and the contributing factors. And they did that." N.T. 3963:17-23; 3964:5-12; 3965:15-22 (Garrity). Moreover, regarding the adequacy of cathodic protection at the Morgantown incident site, Mr. Field provided documentation of how SPLP demonstrated the adequacy of CP in this area, SPLP Ex. JF-4RJ and the DNV report specifically noted that a CP reading in the incident area showed adequate CP.

[redacted]	
[redacted]	This statement exemplifies why Flynn Complainants and Dr. Zamanzadeh's assertions should be given no credibility. Side drain measurements do not measure or find corrosion. They measure cathodic protection. Moreover, side drain measurements are just one of the methods SPLP uses to measure cathodic protection. N.T. 4084:19-4086:1(Field).
[redacted] [**END HC**]	This statement again ignores the full scope of SPLP's integrity management, cathodic protection and corrosion control program, which does involve identifying and examining wall loss and corrosion and digging up the pipe in the field to evaluate the integrity of the pipeline. SPLP Br. at 51-58; N.T. 4093:9-4094:9. (Field). Moreover, Dr. Zamanzadeh does not point to what alleged "known corrosion engineering approach" he refers to or if this is simply his opinion. Also, Dr. Zamanzadeh's conclusion that there is "more likely than not" corrosion in other areas does not meet the standard for competent expert testimony and cannot serve as the basis for a finding of fact. *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) (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).
268. Dr. Zee credibly concluded that, in connection with Morgantown, (a) Sunoco should have done a survey eight-hundred feet upside and eight-hundred feet downside from the leak location; (b) Sunoco should have taken both ON and OFF readings, not just at the leak spot; (c) Sunoco's technician got rid of evidence, making it impossible to determine if there was MIC;	Dr. Zamanzadeh's conclusions are not credible. (a) Regarding the survey Dr. Zamanzadeh alleges should have been done, *see* response to paragraph 267. (b) Regarding ON and OFF readings, SPLP was following its standards in place at the time, which only required ON readings and since that time, SPLP now uses OFF readings as well and this issue is moot. *See* response to paragraph 244. (c) SPLP's response to the incident was appropriate and was not intended to hide or destroy evidence. *See* responses to paragraphs 263, 265. (d) A question is not a conclusion and this question is not competent evidence on which to base a finding of fact. *Vertis*

(d) If the -893mV reading demonstrated protection, then how could there have been corrosion perforation?; (e) Sunoco should have taken soil samples, which are like fingerprints; and (f) DNV did not do a root cause analysis. (N.T. 9/30/20 at 2079, l. 21 - 2081, l. 3).	*Group, Inc.* (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). (e) Soil samples were taken and analyzed as shown in the DNV report itself and Dr. Zamanzadeh's own testimony. Flynn St. No. 1-SR, Dr. Zamanzadeh Surrebuttal at 19. (f) the DNV report is a failure analysis; that the exact cause of the incident was not found is irrelevant where SPLP took steps to address the potential culprit of MIC through increasing cathodic protection. *See* responses to paragraphs 263, 265.
269. Neither Mr. Field nor Mr. Garrity made any determination as to whether there was any basis for the factual allegations in the BI&E Complaint. They made no effort to find out how much product leaked; what the condition of the missing seventy-five feet was; whether the two pipelines are in the same right of way; and what the 2016 CP readings were. Mr. Field did admit, however that he no reason to doubt the CP readings or that three previous ILI surveys showed that only "ON" potentials were measured. (N.T. 10/13/20 at 4122, ll. 5 – 8).	This allegation is both irrelevant, false, and unsupported by the record. The citation provided only supports the uncontentious allegation that SPLP only used ON potentials per its prior procedures, which has now changed, making this issue moot. *See* response to paragraph 244. Mr. Field and Mr. Garrity both reviewed the BI&E Complaint and SPLP's Answer thereto, which admitted and denied allegations of the Complaint, including the amount of product released and data on CP readings. In fact, Mr. Field submitted an exhibit discussing in detail how SPLP analyzed CP criteria regarding the Morgantown incident at the time. SPLP Ex. JF-4RJ. Regarding the 75-feet of pipe – it is not missing, but is in storage as Mr. Field testified. There is no basis to allege that either witness should have examined that piece of pipe. *See* responses to paragraphs 263 and 265.
270. Dr. Zee also observed that no Sunoco records were produced that explain the adoption of new standard operating procedures following the Morgantown accident. The low CP readings are not sufficiently negative to ensure adequate CP. He also noted that Mr. Field fails to comment on the presence or absence of side drain measurements. In a conversation about CP and corrosion, this is significant. (Zee Surrebuttal at 9, ll. 24-32 & 10, ll. 5-9; Zee, N.T. 9/30/20 at 2117, ll. 17-23).	Again, these assertions are unsupported by actual evidence. SPLP explained that the new standard operating procedures were adopted in conjunction with the merger with Energy Transfer. (N.T. 4074:21-4075:2, Field Test.) Why a new standard was adopted is irrelevant and does not show any wrongdoing. It does not require a record to prove why a new standard was adopted in any event. Regarding low CP readings, as Mr. Field testified and demonstrated, SPLP has been consistently upgrading and improving its cathodic protection system in Chester and Delaware Counties. (N.T. 4080:15-24, Field Test.; Flynn Ex. No. MZ-9) Low readings in the past are irrelevant. It is also false that Mr. Field did not comment on side drain measurements. He in fact showed that side drain measurements were taken and that Dr. Zamanzadeh had this

	information in his own exhibit MZ-9. SPLP Ex. No. JF-4RJ; N.T. 4086:6-17, 4146:9-16; (Field).
271. Mr. Field has made the broad claims that "SPLP has and follows robust integrity and corrosion control assessment and management practices." He says that has been true for the almost two decades he has been there. (N.T. 10/13/20 at 4103, l. 4 – 4104, l. 1).	Mr. Field testified truthfully and credibly and there is no evidence to the contrary.
272. Dr. Zee agrees that recently adopted practices in the immediate vicinity of the leak incident are good practices. The fact that they were *adopted*, however, does not by itself mean they were *implemented*. (Zee Surrebuttal at 9, ll. 8-14). If there are data that reflect implementation of these practices in the Morgantown vicinity, those data were not shared with Matergenics. (Zee Surrebuttal at 9, ll. 17-21). Further, Mr. Field does not identify any such records. This also is obvious from the fact that many of Sunoco's sub-par practices are specifically identified in Dr. Zee's initial direct testimony and not one comment identifying those practices is criticized by Mr. Field. (Zee Surrebuttal at 4, ll. 28-34).	SPLP disproved Dr. Zamanzadeh's allegations that SPLP was not following its current integrity management plan and cathodic protection and corrosion control procedures using Dr. Zamanzadeh's own exhibits. SPLP Br. at 45-49. Regarding the Morgantown area specifically, Mr. Field also presented exhibit JF-4RJ, which shows that SPLP is meeting the new CP criteria in this area. The allegation that SPLP did not support its testimony with records is completely false. As shown herein, Mr. Field disproved various of the assertions that Dr. Zamanzadeh made.
273. The presence of a leak at Morgantown is evidence that a CP system is inadequate. There is evidence that there has been a problem with coatings. Moreover, it seems that no one is considering the shielding effect. Finally, with these pipelines there also may be soil-related issues. (Zee, N.T. 9/30/20 at 2133, l. 6 - 2135, l. 4).	SPLP presented evidence that, contrary to Dr. Zamanzadeh's assertion, the CP was adequate in the area at the time. Moreover, the CP system in that area has been improved and now meets the higher criteria NACE recommends for the presence of MIC, even though there was no finding that MIC was present, only that MIC *may* be present. *See* responses to Paragraphs 242, 363, 365. This issue is irrelevant and moot. Regarding coatings, this statement is very misleading because: 1) it ignores that where there was an issue with coating identified in the Dig Records, the coating was

	either repaired or pipe replaced with new coating, (N.T. 4093:12-18, Field); and 2) Dr. Zamanzadeh's own table of coating condition shows a very low percentage of coating defects, approximately 3%. SPLP St. No. 14, Field Rebuttal at 5:7-9. It is also untrue that SPLP does not consider potential shielding, and the record demonstrates that shielding is not an issue on these pipelines because the large majority of coated portions of these pipeline have coal tar coating, which does not shield. (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. (N.T. 3910:20-3911:10, Garrity Test.) Finally, Dr. Zamanzadeh alleges without reference to any actual evidence that "there may be soil problems." This is not competent evidence and cannot serve as the basis for a finding of fact. *Vertis Group, Inc.* (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).
274. Although Mr. Field claims that the revised standard operating procedures were adopted in May 2018 as part of the Energy Transfer rollover, (Field, NT. 10/13/20 at 4074, ll.21- 23), he was unable to identify any changes made in CP procedures after Morgantown but prior to 2018 when new procedures went into effect. (Field, N.T. 10/13/20 at 4105, ll. 9-25).	That no changes were made to CP procedures directly after the Morgantown incident is irrelevant. SPLP's prior procedures complied with applicable law and regulation and there is no evidence to the contrary. Moreover, this issue is moot as all experts (including Dr. Zamanzadeh) agree that SPLP's current procedures are comprehensive and compliant. SPLP Br. at 42-45.
275. Dr. Zee and his team prepared a table (Surrebuttal Ex. Zee-1) (highlighting added) that identifies all of the new procedures by procedure number, title, effective date, and code (49 CFR 195) reference for each. (Zee Surrebuttal at 4, ll. 10-17): [summary omitted]	Dr. Zamanzadeh's table simply proves that SPLP's procedures comply with the applicable regulations.

276. There is no evidence in the record showing that the earlier procedures were acceptable.	This is false and turns the burden of proof on its head. SPLP's procedures are comprehensive and compliant. SPLP Br. at 42-45. Flynn Complainants have the burden of proof to show the prior procedures were in violation of law or regulation and have completely failed to do so.
277. Mr. Field conceded that he does not know when exactly it was that Sunoco installed these improved CP systems in Morgantown, nor could he identify what documents here relied upon for the information that these improvements were made and on what date they were made. (Field, N.T. 10/13/20 at 4103, ll. 5-13 and 4074, 1-3 and 21-23).	The allegations in this finding are unsupported by the record, false, and irrelevant. Neither of the cited portions of the transcripts supports these allegations. Page 4103 simply references when the new Energy Transfer procedures went into effect. Page 4074 is admission into the record of Mr. Field's exhibits. Contrary to the assertions here, Mr. Field testified that improvements to the CP system in Chester and Delaware Counties started being made in 2019 and continues through the present. SPLP Ex. No. JF-3RJ; N.T. 4080:15-24 (Field); Flynn Ex. MZ-9 (CIPS data showing improvements).
278. As highlighted in the table above, fully eight of the supposedly revamped procedures did not go into effect until May 1, 2020, just weeks before Messrs. Field and Garrity submitted their rebuttal testimony.	Pipeline operators update their procedures on a regular basis. Updating or implementing additional procedures does not show any violation of law or regulation.
279. As highlighted in the table above, the topics of the May 1, 2020 changes included coatings, corrosion control, voltage drop measurement, electrical measurements, pipe inspection and coatings. Not coincidentally, these were all the subject of Dr. Zee's Direct Testimony. Although the BI&E Complaint alleged that Sunoco's Close Interval Potential Surveys only measured ON potentials, a practice that is inadequate, Sunoco's own procedures at the time of the Morgantown accident required measurement of OFF potentials as well.	Regarding changes to SPLP's procedures, *see* response to paragraph 278. Moreover, SPLP proved that it had procedures in place regarding these topics prior to adoption of the current procedures. SPLP Ex. JF-1RJ; SPLP Br. at 42-45. To the extent that Flynn Complainants suggest that SPLP made changes to its procedures based on anything Dr. Zamanzadeh alleged, there is absolutely no record support for that and it is absurd. Regarding SPLP's past use of measuring cathodic protection using ON potentials, the statement that SPLP's procedures called for using OFF potentials at the time of the Morgantown incident is false. In fact, the prior procedures did not call for use of the OFF potential. *Vertis Group, Inc.* (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). Moreover, since the implementation of SPLP's new procedures, which do call for use

	of the OFF potential, SPLP's records contained in Dr. Zamanzadeh's Ex. MZ-9 show that the most recent CIPS surveys did use the OFF potential, proving that SPLP is complying with its applicable procedures. SPLP Brief at 47.
280. Regarding the PHMSA Notice of Probable Violations for Honey Brook, Chester County, Mr. Garrity conceded that at the time he submitted his rebuttal testimony—which stated that Sunoco had applied and maintained CP consistent with 49 CFR part 195—he was aware that PHMSA issued a notice to Sunoco of probable violations in February, 2019 for violations of 49 CFR part 195. (N.T. 10/9/20 at 3951, ll. 15-22).	Allegations are not evidence and just because PHMSA issued a NOPV does not mean that SPLP was in fact out of compliance with regulatory requirements. Moreover, as explained at length in SPLP's main brief, PHMSA was not alleging that SPLP's cathodic protection was ineffective or out of compliance, but instead PHMSA took issue with the way that SPLP was measuring its CP and an alleged lack of documentation showing the underlying analysis SPLP was using to demonstrate compliance. SPLP Br. at 57. Moreover, Mr. Garrity discussed that he had reviewed the NOPV proceeding and understood that PHMSA found SPLP to be in compliance. (N.T. 3928:8-15, Garrity).
281. The Honey Brook Notice of Probable Violation (Garrity Cross Ex. 2, App. 659) stated that inspections conducted in March 2018 proved Sunoco had failed to provide proper CP on the Mariner East system. (N.T. 10/9/20 at 3953, ll. 3-6). The PHMSA inspectors noted the absence of certain voltage readings and Sunoco in conversations could not explain how voltage drop readings were being considered when evaluating the adequacy of the readings that were taken. (N.T. 10/9/20 at 3953, ll. 13-20).	The PHMSA NOPV did not allege that SPLP had inadequate cathodic protection, but instead that SPLP had not measured and demonstrated analysis to show the adequacy of its cathodic protection. (N.T. 3928:8-15 Garrity; N.T. 4095:20-24, 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.)
282. Sunoco also was found to have maintained improper records of its corrosion control measures. (N.T. 10/9/20 at 3954, ll. 5-10). PHMSA observed that the in-line inspection tool may not be capable of detecting all types of external corrosion damage, has limitations in its accuracy, and may report as anomalies items that are not	*See* response to paragraph 281 and SPLP Br. at 57.

external corrosion. (N.T. 10/9/20 at 3954, ll. 17-12). Pipe-to-soil records for the period 2015-2017 were taken at nine separate test stations and all of them failed to show adequate CP. (N.T. 10/9/20 at 3955, ll 3-8).	
283. Mr. Garrity was aware that Sunoco did not contest PHMSA's findings of violations in Honey Brook. (N.T. 10/9/20 at 3958, ll. 22-25). Mr. Garrity offered no explanation or justification for the inspectors' findings either. It also must be noted that Sunoco never furnished the Honey Brook data to Dr. Zee and his team, making it impossible for them to verify PHMSA's findings. (Zee, N.T. 9/30/20 at 2191, ll. 2-7).	Regarding allegations of the NOPV, *see* response to paragraph 281 and SPLP Br. at 57. Regarding alleged lack of data, *see* response to paragraph 237.
284. The statements of the Honey Brook Notice of Probable Violations are adopted as true findings.	Allegations are not evidence. Moreover, SPLP explained its disagreement with the NOPV and that SPLP did not contest the NOPV and instead chose to comply with what PHMSA requested. SPLP Br. at 57.
285. Complainants contend, *inter alia*, that because the two pipelines are of the same vintage and owned by the same company, it would ordinarily be expected that they would have the same or similar problems. Sunoco experts Field and Garrity, therefore, were asked a series of questions relating to the two pipelines. Both agreed that the pipelines were similar in age, materials, coatings, integrity management protocols, and the need for repairs arising from corrosion. (Garrity, N.T. 10/9/20 at 3940, l. 2 - 3942, l. 16; Field, N.T. 10/13/20 at 4100, l. 20 - 4103, 1. 4).	Flynn Complainants "twin pipeline theory" advanced for the first time at hearing is meritless and cannot serve as the basis for any relief regarding the 12-inch pipeline. SPLP Br. at 38-39.
286. The Sunoco accident reports for Darby Creek and Morgantown are important	The Darby creek incident is irrelevant because it occurred on a portion of the 12-inch pipeline that is not in use for HVL service and thus did not receive the upgrades

because they specifically identify external corrosion as the root cause of failure. Sunoco's document production, however, did not include failure analysis or root cause analysis reports. (Zee Direct at 40, ll. 14-17).	and improvements that SPLP completed before other sections of the 12-inch pipeline were converted to HVL service. The Morgantown incident is irrelevant to this proceeding and moot.
287. While the revised Sunoco Integrity Management Manual, as updated, shows it to be reasonably comprehensive and detailed, Sunoco's integrity management practices have not followed good engineering standards or its own manual with respect to root cause analyses, close interval surveys, and maintenance of proper pipe-to-soil ON potential. (Zee Direct at 39, ll. 31 – 40, l. 2).	SPLP agrees that its Integrity Management Plan is reasonably comprehensive and it is also compliant with regulation and there is no evidence to the contrary. SPLP Br. at 42-45. The allegations that SPLP does not comply with its current integrity management plan are patently false, as shown by Dr. Zamanzadeh's own exhibits and additional evidence of record. SPLP Br. at 45-49.
288. Review of 22 in-line inspection anomaly reports obtained during the 2017-2018 period reveals that many cases of external metal loss (corrosion) may have been overlooked and also that these reports do not reflect the true extent of the probable external metal loss/corrosion problem along the ME1 pipeline. (Zee Direct at 40, ll. 29-37).	These allegations have absolutely no basis in fact or record evidence. Each and every one of the anomaly inspection reports shows that the anomaly was inspected and repaired. SPLP Br. at 53-55; N.T. 4093:9-4094:9. (Field).
289. The Zee Team's review of over 2000 Sunoco technical documents shows a pipeline integrity system that lacks a centralized source sufficient to document corrosion incidents, factual corrosion data, corrosion risk assessments/aspects of the aging pipeline and corrosion mitigation. (Zee Direct at 41, ll. 10-13). Corrosion failures, ruptures and explosions of aging pipelines are made more likely in corrosive soils and when there is a lack of an effective integrity	There is no support for Dr. Zamanzadeh's conclusion that SPLP lacks a centralized source to document corrosion incidents, data, etc. *See* response to paragraph 237. The generalized statement that failures, ruptures or explosions are "made more likely" is not competent evidence to support a finding of fact. *Vertis Group, Inc.* (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). Moreover, the record evidence shows SPLP has a robust, comprehensive, and compliant integrity management plan and cathodic protection and corrosion control procedures, follows the plan and procedures, and

management program that considers disbonded coatings, shielding, MIC, and CP. (Zee Direct at 41, ll. 15-17).	does consider issues regarding disbonded coatings and shielding, MIC and cathodic protection. SPLP Br. at 42-48.
290. Based on (a) the factual allegations contained in the PUC formal complaint dated December 13, 2018 (Appendix C); (b) the fact that the eight-inch line and the twelve-inch line date back to the 1930s; (c) the records from Sunoco reflecting coatings that interfere with CP; (d) the records showing corrosive soils; and (e) past incidents/accidents, it is more likely than not that accelerated corrosion is taking place in the twelve-inch workaround pipeline that will cause serious damage to people and property in high consequence areas. (Zee Direct at 41, ll. 19-24). The testimony of Messrs. Field and Garrity regarding the BI&E Complaint's allegations as well as the similarity of the pipelines further confirms the above.	This statement wholly ignores the integrity management that SPLP performs, SPLP Brief at 42-48, and the upgrades to its pipelines made prior to placing them in HVL service making past events irrelevant to the current state of the 12-inch pipeline. The evidence shows that in 2017 and 2018, SPLP performed hydrotests and in 2016, SPLP performed ILI tool runs that included four different tool types on the 12-inch pipeline, (Flynn Ex. MZ-6 at SPLP00008142), used those results incorporated with historical documents on corrosion and coatings, and took a very conservative approach in making repairs and replacements to the 12-inch pipeline prior to placing it in HVL service. (N.T. 4084:1-18, 4093:9-4094:9 Field Test.) The records showing repairs and replacements are located in Flynn Ex. MZ-6 and demonstrate that extensive amounts of pipe were repaired and replaced. Moreover, the statement "more likely than not" is not competent evidence because it is speculative and equivocal. *Vertis Group, Inc.* (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). Complainants' "twin pipeline theory" is legally untenable and allegations regarding ME1 do not serve as proof for the current condition of the 12-inch pipeline. SPLP Br. at 38-39. Neither Mr. Field nor Mr. Garrity gave any testimony to support these allegations and Flynn Complainants cite to none.
291. Additional evidence of Sunoco pipeline corrosion was furnished by Complainant	The exhibits referenced are not evidence of the current state of the 12-inch pipeline. Both are PHMSA incident reports showing releases of refined products, not releases of HVLs. Because these occurred on segments of the 12-inch pipeline prior to its conversion to HVL service or on portions not used for HVL service, at the time

Rosemary Fuller in the admission of exhibits Fuller-14 and Fuller-15 in the November 20, 2019 hearing. (Exs. Fuller-14 and Fuller-15, App. 584 and 596).	of the incidents, these pipelines had not been subject to the significant upgrades and repairs undertaken as part of the conversion process. The evidence shows that in 2017 and 2018, SPLP performed hydrotests and in 2016, SPLP performed ILI tool runs that included four different tool types on the 12-inch pipeline, (Flynn Ex. MZ-6 at SPLP00008142), used those results incorporated with historical documents on corrosion and coatings, and took a very conservative approach in making repairs and replacements to the 12-inch pipeline before those portions were was converted to HVL service. (N.T. 4084:1-18, 4093:9-4094:9 Field Test.) The records showing repairs and replacements are located in Flynn Ex. MZ-6 and demonstrate that extensive amounts of pipe were repaired and replaced.
292. A timeline based upon the evidence is set forth below: February 21, 2002 PHMSA Report dated 3/22/2002. Accident occurred at Darby Creek in Delaware County involving the twelve-inch Point Breeze to Montello pipeline. An in-line inspection in October, 2001 identified a feature which was not reported until January 2002. Leak due to external corrosion occurred prior to scheduled date for investigation. Product leaked: 357 barrels (14,994 gallons) April 10, 2015 PHMSA Report dated 5/6/2015. Accident occurred at Glen Mills, Delaware County. Leak into wetland from Point Breeze to Montello twelve-inch refined products pipeline. Lab analysis confirmed external corrosion brought on by coating failure that resulted in shielding. (Fuller-14, App. 584).	Regarding the various past incidents on portions of the 12-inch pipeline, most of which did not occur on the portion now used for HVL service, these events are irrelevant to the current state of the 12-inch pipeline. *See* response to paragraph 291. Regarding Morgantown, this occurred on the ME1 pipeline and is not evidence of the current condition of the 12-inch pipeline. SPLP Br. at 38-39. Regarding the Honey Brooke NOPV, *see* response to paragraph 280. Regarding speculation concerning what procedures SPLP had in place, when they changed and why, Flynn Complainants are provably wrong that SPLP did not have procedures relating to cathodic protection and corrosion control in place prior to the Morgantown incident. SPLP Ex. JF-1RJ; SPLP Br. at 44. In short, Dr. Zamanzadeh and Flynn Complainants misrepresent what the effective date on the documents means, which is not the date on which they were first promulgated, and that is clear on the face of the documents.

April 1, 2017 PHMSA Report dated 4/26/2017. Accident occurred at Morgantown, Berks County. Leak on eight-inch line due to external corrosion. MIC may have contributed. Subsequent investigative lab report. July 13, 2017 Promulgation of Sunoco Operations Manual only three months after Morgantown. Not shared with Flynn Complainants until August rejoinder outlines. Manual contains integrity management material that should have been disclosed with other IM materials during August 2019 review. [allegations unrelated to corrosion control, cathodic protection and related integrity management omitted] March 19-23, 2018 Violations of CP at Honey Brook, Chester County at nine locations discussed with Sunoco personnel at the time. Formal NOV not sent until February 2019. Sunoco did not contest violations. April 1, 2018 22 new standard operating procedures were initiated; April 4, one more. Putative reason: Routine in Energy Transfer acquisition. In fact, every single one related to issues raise in the Honey Brook discussions only a week earlier.	

[allegations unrelated to corrosion control, cathodic protection and related integrity management omitted] June 16, 2018 Report dated 8/16/18. Accident occurred at Darby Creek, Delaware County on twelve-inch Point Breeze to Montello pipeline. Corrosion fatigue and hydrogen cracking were found under an area of disbonded coal tar coating. 246 barrels (10,332 gallons) of product leaked into creek. (Fuller-15, App. 596). January 15, 2020 Matergenics Direct Testimony of Dr. Zee in which Sunoco's CP is criticized. May 1, 2020 Eight new standard operating procedures initiated without explanation. Field and Garrity said all procedure went into effect in April 2018. In fact, eight came out just six weeks before Field and Garrity rebuttal testimony. Six of the eight relate to matters raised by Dr. Zee. [allegations unrelated to corrosion control, cathodic protection and related integrity management omitted]	
293. The timeline above easily shows a picture of a company out of control. A corrosion engineer working for Sunoco / Energy Transfer for almost 20 years (Field) claims in the face of ample evidence that that Sunoco's Integrity Management practices	The timeline above is not evidence of any violation of law or regulation or the current state of the 12-inch pipeline. *See* response to paragraph 292. This is a complete mischaracterization of Mr. Field's testimony and no citation to the record is provided. *See* response to paragraph 257.

have always been "robust" and unimpeachable, but he admits he has not really looked that carefully at the records and he does not contradict Dr. Zee's factual findings.	
294. Leaks brought on by coating failures in multiple instances were identified in Sunoco's own reports but somehow neither Mr. Field nor Mr. Garrity thought they were fit to comment upon. Both Mr. Field and Mr. Garrity have confirmed Dr. Zee's contention that the two pipes in question are substantially the same.	Regarding prior releases, these are not evidence of the current state of the 12-inch pipeline, which is why neither Mr. Garrity nor Mr. Field found them relevant. Moreover, no citation to the record is given regarding these allegations concerning Mr. Field and Mr. Garrity's testimony. *See* response to paragraph 290.
297. The testimony of Messrs. Field and Garrity regarding the BI&E Complaint's allegations as well as the similarity of the pipelines further confirms Dr. Zee's findings. A remaining life study and predictive modeling are also important in this case because past potential surveys were done improperly.	Regarding allegations of Mr. Field's and Mr. Garrity's testimony, *see* responses to paragraphs 294 and 290. The allegation that "past potential surveys were done improperly" is without record citation and false. Past potential surveys from 2009 through 2018 were compliant, and additional types of data were collected over time, particularly in 2018 to meet the new cathodic protection and corrosion control criteria. (N.T. 4086:2-4087:4 Field Test.)
298. Dr. Zee's findings are evidence-based and credible. His conclusions are founded upon his findings. His opinions based on those conclusions are adopted and set forth below: (a) Sunoco may be operating an inadequate integrity management program for the eight inch pipeline and the twelve-inch pipeline considering the leak incidents and the age of pipeline and coatings that, if disbonded, shield CP. (b) Important information relative to corrosion data, corrosion risk and corrosion mitigation is lacking.	None of these are competent expert conclusions. Instead, they are speculation and equivocation and cannot legally form the basis of a finding of fact. *Vertis Group, Inc.* (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). Moreover, the evidence shows these allegations are false. (a) The evidence shows SPLP's Integrity Management Plan is comprehensive and compliant and that SPLP follows it. SPLP Br. at 42-49. (b) Allegations regarding alleged lack of data are meritless given Dr. Zamanzadeh's admittedly circumspect review process and that SPLP was not required to disclose to him every document in its possession. SPLP Br. at 45-46.

(c) Sunoco's operation of the eight-inch pipeline and the twelve-inch pipeline should be reviewed for corrosion risk both externally and internally. (d) Sunoco's operation of the subject eight-inch pipeline and the twelve-inch pipeline should be reviewed for safety considerations from a corrosion risk point of view. (e) The question of whether Sunoco should be permitted to continue operating these pipelines cannot properly be decided without a thorough investigation by an independent expert. (Zee Direct at 42, ll. 6-27).	(c) SPLP already does just this, that is what its integrity management program and related procedures address in terms of corrosion. SPLP Br. at 42-49. (d) SPLP already does just this, that is what its integrity management program and related procedures address in terms of corrosion. SPLP Br. at 42-49. (e) There is no competent evidence supporting this conclusion.
299. Dr. Zee's recommendations for the proper scope of an expert's investigation as set forth in his Direct Testimony at 31, l. 18 to 39, l. 6 must be adopted.	Dr. Zamanzadeh's wish list of additional testing is unsupported and will not provide information of any value above and beyond the data SPLP already collects through its integrity management and cathodic protection and corrosion control programs. SPLP Br. at 58-61.
300. An independent expert must be selected to perform the investigation on the basis of its technical expertise, and years of experience in pipeline corrosion risk assessment, as well as its existing practice as an independent corrosion engineering consulting business.	There is no basis for granting any relief related to appointment of an independent expert. SPLP Br. at 37-60.