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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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June 7, 2021

via Electronic Filing

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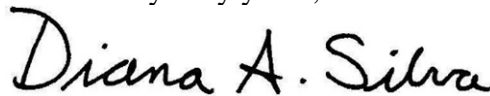
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Re: *Meghan Flynn, et al. v. Sunoco Pipeline L.P.*,
Consolidated Docket Nos. C-2018-3006116; Sunoco Pipeline L.P.
RESPONDENT SUNOCO PIPELINE L.P.'S EXCEPTIONS

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (PUC) is Respondent Sunoco Pipeline L.P.'s Exceptions to the Initial Decision in the above-captioned matter.

Very truly yours,



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: June 7, 2021

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Rosemary Fuller	:	P-2018-3006117
Michael Walsh	:	
Nancy Harkins	:	
Gerald McMullen	:	
Caroline Hughes	:	
Melissa Haines	:	
Andover Homeowners Association	:	C-2018-3003605
Melissa DiBernardino	:	C-2018-3005025
Rebecca Britton	:	C-2018-3006898
Laura Obenski	:	C-2018-3006905
	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

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Pursuant to 66 C.S. § 332(h) and 52 Pa. Code § 5.533, Sunoco Pipeline L.P. (SPLP) files these exceptions to the April 9, 2021 Initial Decision (ID) of Administrative Law Judge Elizabeth Barnes.

I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

The ID correctly denied most of the relief that Complainants and aligned Intervenors requested in their Complaints as: (i) beyond the Commission’s jurisdiction; (ii) subject to the Advanced Notice of Public Rulemaking (ANOPR) pending at Docket No. L-2019-3010267 rather than this Complaint proceeding before the Commission; (iii) devoid of substantial evidence to meet Complainants’ or aligned Intervenors’ burden of proving a violation of statute or regulation; or (iv) moot.

To put SPLP’s exceptions in context, and to ensure consistency with the ID, it is important to first identify the bases on which the ID relied in denying the relief that the Complainants and aligned Intervenors requested. The ID correctly denied the requested relief in holding, among other things, that:

1. The Commission does not have authority to preapprove or reject SPLP’s plans for the siting and location of pipelines such as the Mariner East pipelines.¹ ID at 91, 193; *see also* Prepared Testimony of Gladys M. Dutrieuille Before the Pennsylvania Senate Consumer Protection and Professional Licensure Committee & Environmental Resources and Energy Committee, at p. 5 (Mar. 20, 2018).

2. Even if the Commission did have an authorized siting approval process, both state and federal law expressly allow pipelines that transport hazardous volatile liquids (HVLs) – like

¹ The Mariner East pipelines collectively include the 8-inch Mariner East 1 (ME-1) pipeline, the 12-inch pipeline (12-inch line), and the newly-constructed Mariner East 2 (ME-2) and Mariner East 2X (ME-2X) pipelines.

SPLP's Mariner East pipelines – to be located in Pennsylvania in high consequence areas. ID at 91, 188, 192.

3. Complainants and aligned Intervenors failed to offer the substantial evidence required to meet their burden of proving that SPLP selected its rights-of-ways and constructed ME-2 and ME-2X in an impractical manner so as to establish a violation of 49 C.F.R. Part 195.21(a). ID at 92.

4. Complainants and aligned Intervenors introduced evidence only of the worst-case consequences of a hypothetical rupture of ME-2 or ME-2X without proffering any evidence of the probability or likelihood of that hypothetical rupture actually occurring. ID at 23, 25. Consequence/impact-only analysis is not sufficient to: (i) prove a violation of 66 Pa.C.S. § 1501 or any regulation over which the Commission has jurisdiction, including pipeline safety regulations at 49 C.F.R. Part 195 adopted by 52 Pa. C.S. § 59.33; (ii) direct the relocation of ME-2 or ME-2X; or (iii) amend SPLP's certificate of public convenience to enjoin SPLP from transporting HVLs, as permitted under PHMSA regulations, in high consequence areas within Chester and Delaware Counties. ID at 26, 188-189.

5. The existing pipeline safety regulations do not have a valve-spacing requirement and there is insufficient evidence to require the relocation of any of SPLP's valve sites or to hold that current valve-site locations violate any regulations. ID at 99-102, 106, 193.

6. Much of Complainants' and aligned Intervenors' requested relief is not proper in this Complaint proceeding, but rather is subject to resolution only in the ANOPR. These issues include requirements for installing mass warning systems, adding odorants to natural gas liquids (NGLs), requiring that evacuation procedures be added to SPLP's public awareness pamphlets, requiring direct wiring of SPLP's release detection system to 911, and directing SPLP to conduct

remaining-life studies of its existing pipelines. ID at 115, 140, 161, 167-169, 190, 192, 198-199.²

7. Complainants and aligned Intervenors failed to offer the substantial evidence necessary to meet their burden of proving the need for a remaining life study for the 12-inch line or to establish a violation of 49 C.F.R. § 195.425 or § 195.517. The ID further holds that any remaining-life study for the 12-inch line would be redundant because of SPLP's proper implementation of its effective Integrity Management Plan and corrosion control and cathodic protection standard operating procedures. ID at 28 (Findings of Fact 89, 90, 93, 94), 29 (Findings of Fact 97), 34 (Findings of Fact 136), 115, 189. More specifically, the ID holds that: (i) Complainants' testimony about the 12-inch line was based purely on speculation and conjecture (ID at 111); (ii) SPLP's Integrity Management Plans comply with applicable regulations (ID at 189); (iii) SPLP has complied with pipeline safety corrosion control and cathodic protection regulations (ID at 189); and (iv) there was no evidence of stress corrosion cracking, disbonded coatings or microbiologically influenced corrosion on the 12-inch line. ID at 31, (Findings of Fact 117-118), 33 (Findings of Fact 133), 113-115.

8. The request for a remaining-life study for ME-1 is moot, as is the request for additional buffer distances for mailing SPLP's public awareness pamphlets. SPLP had already agreed to perform a remaining-life study for ME-1 as long as that line is in NGL service, and SPLP had already extended the buffer distances for mailing its public awareness pamphlets. ID at 1, 4, 142.

9. Complainants and aligned Intervenors did not meet their burden of proving that SPLP's public awareness program failed to inform the public, emergency responders and

² As set forth in Exception 4, there is other relief requested by the Complainants and aligned Intervenors that should be subject to this same prohibition.

excavators of key components of 49 C.F.R. § 195.440 and portions of the API Recommended Practice (RP) 1162, Public Awareness for Pipeline Operators (1st ed. 2003). Specifically, SPLP has properly notified these groups of the use of the one-call notification system, how to identify physical indications that a release may have occurred, steps to be taken in the event of a release, procedures to report a release, limitations on the use of cell phones and the need to move to a safe distance in the event of a release from a pipeline. ID at 55 (Findings of Fact 284-285), 139-140, 191.

10. Complainants and aligned Intervenors, who largely are residents or entities in Chester and Delaware Counties, failed to show any irreparable injury to them or the public interest if SPLP's certificate of public convenience is not amended to revoke SPLP's authority to transport HVLs through their counties. ID at 195-196, 204. On the contrary, the ID holds that enjoining SPLP from transporting HVLs through Chester and Delaware Counties would negatively impact the public interest, SPLP and its shippers. ID at 175-176.

11. Complainants and aligned Intervenors did not meet their burden of proving that any event that occurred during the construction of ME-2 or ME-2X violated any law or regulation over which the Commission has jurisdiction. ID at 193. That includes issues relating to inadvertent returns, earth features or claimed impacts to surface water and groundwater. ID at 194.

12. Similarly, Complainants and aligned Intervenors did not meet their burden of proving that the seep at Shoen Road is a violation of any regulation over which the Commission has jurisdiction. ID at 194.

13. Likewise, Complainant Rosemary Fuller did not satisfy her burden of proving that allegations of impacts to her well water (alleged fecal coliform and bentonite) violate any

regulation over which the Commission has jurisdiction. ID at 194-195. The ID further holds that (i) there was insufficient evidence to show that fecal coliform was introduced into Ms. Fuller's well by SPLP's construction of ME-2 and ME-2X, and (ii) any bentonite present in Ms. Fuller's well is safe and poses no human health risk. ID at 46-48, 195.

As described above, SPLP agrees and accepts these holdings in the ID. However, SPLP submits the following exceptions to the ID to ensure that the bases expressly relied upon in the ID for denying relief as described above are applied consistently. SPLP has four primary grounds for its exceptions.

First, the ID grants relief on issues (depth of cover and separation distances) that were not alleged in any of the Complaints or Petitions for Intervention, nor were they part of Complainants' and aligned Intervenors' requested relief. By doing so, the ID violates SPLP's due process rights. *See* Exception 1.

Second, as stated above, the ID properly holds that no relief should be granted in a complaint proceeding on issues subject to the ANOPR. Despite this clear and sensible holding, to avoid prejudicing ANOPR issues when there are many more stakeholders in that proceeding as compared to the Complainants and aligned Intervenors here, the ID erred in granting mandatory injunctive relief on certain issues related to public awareness that are squarely within the ANOPR. Because these issues are addressed and to be decided after input by all stakeholders in the ANOPR, the Commission should not direct SPLP, in advance of the rulemaking concluding and determining standards, by imposing standards in this Complaint matter requiring SPLP to perform now any of the following pending ANOPR issues: (i) attend public meetings with county, municipal, and school district officials; (ii) share with municipalities test results, inspections and evaluations on the Mariner East pipelines; (iii) provide municipalities and school

districts with immediate and direct notice of a release rather than calling 911 and having county emergency responders make such notice; (iv) provide municipalities with advanced notice of any excavation on the Mariner East pipelines; and, (v) provide additional depth of cover over the Mariner East pipelines and create additional separation distances among the Mariner East pipelines and other utilities. Significantly, Complainants and aligned Intervenors submitted comments on these very issues as part of the ANOPR, evidencing that the proper forum for these issues is a rulemaking considering all stakeholder input and not by one stakeholder group essentially seeking prejudgment of these ANOPR issues in this Complaint proceeding. *See* Exception 4.

Third, the ID grants relief on issues directly contrary to the record evidence or outside the Commission's authority to grant relief. These issues include: (i) an alleged lack of cover over existing pipelines (*see* Exception 2); (ii) an alleged lack of 12 inches of separation between existing pipelines (*see* Exception 3); (iii) SPLP's alleged refusal to meet with and train municipalities and school districts on public awareness and emergency response issues (*see* Exception 5); (iv) an alleged need for an independent audit of SPLP's public awareness program where such an audit has already been completed and found the program to be effective (*see* Exception 6); and (v) directive that SPLP employ a dedicated liaison to better assist municipalities and schools in developing their own emergency response plans, and fund these liaison activities (*see* Exception 8). The actual record evidence demonstrates unequivocally that Complainants and aligned Intervenors failed to satisfy their burden of proof on these issues and/or that these issues are beyond the Commission's authority to order as relief through this Complaint proceeding.

Fourth, the record amply demonstrates that SPLP’s public awareness program is robust, and in the words of the very experts proffered by Complainants and aligned Intervenors, greater than any public awareness funding and training offered by any other NGL pipeline operator in Delaware and Chester Counties. ID at 59 (Findings of Fact 320). As the record further demonstrates, SPLP has offered in writing to provide to municipalities and school districts in Chester and Delaware Counties specific emergency response planning best management practices and additional tabletop emergency training exercises. ID at 59 (Findings of Fact 314, *citing* SPLP Exhibits 48 and 49.) SPLP will continue to honor these commitments.

In contrast, the ID grants mandatory injunctive relief requiring SPLP to meet with municipalities and school districts with the direction being “to discuss additional communications and training.” ID at 201. As the Commission recognizes, mandatory injunctive relief is an extraordinary remedy which must be narrowly tailored to abate the harm complained of. *See, e.g., West Goshen Twp. v. Sunoco Pipeline, L.P.*, Docket No. C-2017-2589346, Recommended Decision at 42 (Barnes, ALJ.) (adopted in full by Commission by Order dated October 31, 2018) (*citing Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. Ct. 1977), *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. Ct. 2010), *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018)). Here, the injunctive relief recommended is not narrowly tailored or sufficiently specific; in fact, it is ill-fitting. *See* Exception 7.

The ID does not indicate what information should be provided by SPLP to the municipalities and school districts. Indeed, in the 205 pages of the ID, there is no reference to precisely what information the municipalities and school districts lack as far as emergency response preparations. As such, the ID’s mandatory injunctive relief regarding public awareness

meetings is not narrowly tailored and there are no means for SPLP to determine what it needs to do to comply with this directive.

The mandatory injunctive relief is also improper because there has been no finding that Complainants and aligned Intervenors have or will suffer any irreparable injury without such meetings taking place. On the contrary, the ID finds that there was “insufficient evidence to show SPLP’s ME1 and 12-inch pipelines are not being appropriately managed to ensure they are safe to operate.” ID at 29 (Findings of Fact 99).

SPLP’s specific exceptions are set forth in detail below. SPLP respectfully requests that the Commission grant these limited exceptions, and uphold the remainder of the ID.

II. EXCEPTIONS

SPLP Exception 1. The ID erred in paragraphs 22-26 of the Order by directing SPLP to conduct a survey of depth of cover and separation distance between other underground pipelines/structures for the ME-1 and the 12-inch pipelines because none of the Complainants or aligned Intervenors raised these issues in their Complaints or sought this relief.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations, as adopted by the PUC,³ provide that an HVL pipeline installed in a residential area must have 36 inches of cover *when constructed*. 49 C.F.R. § 195.248. Section 210(b) of the regulations, 49 C.F.R. §195.210(b), provides further that when the HVL pipeline is located within 50 feet of any private dwelling, the pipeline operator must provide an additional 12 inches of cover *when constructed*.

The Flynn Complainants initiated this action. In their original Petition for Emergency Relief at paragraphs 71-77, and in their original Complaint at paragraphs 73-80 (Count III: Violation of 49 C.F.R. § 195.248), the Flynn Complainants alleged that portions of ME-1 and the

³ The PUC incorporates by reference 49 C.F.R. Part 195. 52 Pa. Code § 59.33(b).

12-inch line were located within 50 feet of residences, had less than 48 inches of cover, and thus were in violation of 49 C.F.R. §§ 195.210(b) and 195.248.⁴ In both their First Amended Complaint (dated January 10, 2019) and Second Amended Complaint (dated June 18, 2019), the Flynn Complainants *withdrew* this Count and no longer made any allegation, or sought any relief, for an alleged violation of 49 C.F.R. §§ 195.210(b) and 195.248. By the Flynn Complainants own actions this issue has been withdrawn from the case for over two years.

Likewise, none of the other Complainants and none of the aligned Intervenors alleged in their Complaints or in their Petitions to Intervene that SPLP violated 49 C.F.R. §§ 195.210(b) and 195.248. And none of the Complainants and aligned Intervenors sought any relief for a violation of those provisions in their post-hearing briefs. Thus, whether the Mariner East pipelines have adequate cover was simply not at issue in these consolidated proceedings.

49 C.F.R. § 195.250 also requires that any HVL pipe installed must have at least 12 inches of clearance between the outside of the pipe and any other underground utilities, unless adequate provisions for corrosion control are made. None of the Complainants nor the aligned Intervenors alleged in their Complaints, Petitions for Intervention, or post-hearing briefs that SPLP violated 49 C.F.R. § 195.250. As with alleged violations of Sections 195.210(b) and 195.248, any alleged violation of Section 195.250 was simply not part of this consolidated Complaint proceeding.

Despite the fact that these issues are not part of this case, the ID *sua sponte* granted mandatory injunctive relief in paragraphs 22-26 of the Order requiring SPLP to: (i) conduct a study of depth of cover and distance between other pipelines for ME-1 and the 12-inch line for as

⁴ The evidence is undisputed that ME-2 and ME-2X were installed with sufficient cover. *See* ID at 38 (Findings of Fact 166), 93; SPLP St. No. 13, Gordon Rebuttal Test. at 2:21-22, 3:1-2; McMullen Exhibits 8, 9. Therefore, the ID's reference to cover depths applies only to ME-1 and the 12-inch line as long as they are in HVL service.

long as they carry HVLs; (ii) based upon the results of the study, bury pipelines at least 12 inches apart from other pipelines unless SPLP can show that they are providing adequate corrosion control; and (iii) submit an annual report to the Commission regarding SPLP's compliance with these requirements. ID at 187-188. Paragraphs 22-26 of the ID's Order violate SPLP's due process rights because these issues are not part of this Complaint proceeding and SPLP had no notice of any need to demonstrate its compliance with the regulations on depth of cover and utility separation.

The Commission is bound by the due process provisions of constitutional law. *See, e.g., W. Penn Power Co. v. Pa. PUC*, 100 A.2d 110, 128-129 (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 part* by Opinion and Order Sept. 23, 2020) (Barnes, ALJ) ("*Baker*") (citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. Ct. 2014); *Davidson v. Unemp. Comp. Bd. of Rev.*, 151 A.2d 870 (Pa. Super. Ct. 1959); *In re: Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. Ct. 1946)).

Here, the ID violated SPLP's fundamental due process rights because SPLP was never on notice to present evidence on matters that were not part of Complainants' or aligned Intervenors' Complaints. *See, e.g., 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 and aligned Intervenors are limited to the causes of actions and regulatory violations asserted in their Complaints and Petitions to Intervene and the relief requested therein. The ID cannot grant relief beyond that. By doing so, the ID violates SPLP’s due process rights.

Had Complainants and Intervenors sought this relief, SPLP could have, for example, presented evidence on cover depths or separation distances. SPLP was deprived of this opportunity, thus violating its due process rights.

The ID itself reinforces that precise point. The ID states:

Because SPLP did not successfully refute the evidence regarding shallow and closely spaced piping with measurements, or evidence of sufficient cover/distance, Complainants and aligned Intervenors successfully met their burden of showing a violation of regulations.

ID at 93. In simple terms, the ID ruled on issues expressly withdrawn from or never asserted in this Complaint proceeding, and then found SPLP in violation of PUC regulations because SPLP failed to introduce evidence on the very issues that were withdrawn and thus no longer a part of this Complaint proceeding. A due process violation could not be more self-evident. Therefore, on this basis alone, SPLP’s exception to paragraphs 22-26 of the Order should be granted and there should be no penalty for an alleged violation of 49 C.F.R. §§ 195.210(b), 195.248 and 19.250.

SPLP Exception 2. The ID erred in holding that Complainants and aligned Intervenor established a *prima facie* case that SPLP violated 49 C.F.R. §§ 195.210(b) and 195.248.

The ID holds that Complainants and aligned Intervenor established a *prima facie* showing, by unrefuted evidence, that ME-1 and the 12-inch line are not buried under the required depth of cover in violation of 49 C.F.R. §§ 195.210(b) and 195.248. The ID holds further that this showing is sufficient for the Commission to assess a civil penalty against SPLP and directs SPLP to conduct a depth of cover survey and submit compliance filings to the Commission on an annual basis. ID at 196 (Conclusions of Law 69), 202-203 (Order ¶¶ 22-26). Separate and apart from the due process violations discussed in SPLP’s Exception 1, the ID erred because: (1) the ID misinterprets the regulations – which apply only to construction, and do not require the maintenance of a minimum depth of cover over the life of a pipeline; and, (2) the very record evidence on which the ID expressly relies demonstrates that Complainants and aligned Intervenor failed to establish a *prima facie* showing of a violation of the depth of cover regulations for ME-1 and the 12-inch line.

As a matter of law, there is no requirement in the regulations to maintain a minimum depth of cover over the lifetime of a pipeline. The title of this subpart of the regulations is clear: 49 C.F.R. Part 195, Subpart D, *Construction* (emphasis added). These regulations provide requirements for how a pipeline must be *constructed*, not *maintained* during its subsequent operation. In contrast, the operation and maintenance regulations are in a completely separate subpart, 49 C.F.R. Part 195, Subpart F, Operation and *Maintenance*. Subpart F contains no standards or requirements for the minimum depth of cover to be *maintained* over the life of a pipeline’s operation.

Moreover, SPLP has its own standard operating procedure for addressing *exposed* pipelines, and SPLP follows those procedures. *See* SPLP Exhibit MG-12; SPLP St. No. 13,

Gordon Rebuttal Test. at 10 (explaining SPLP’s SOP HLI.24, Exhibit MG-12 requires monitoring for pipeline *exposures* and remediating any when they pose an actual safety concern). As with Subpart F, there is no requirement in SPLP’s SOP that requires *maintaining* depth of cover post-*construction*. Instead, the only requirement is that SPLP monitor for pipeline *exposures* (which are not a violation in and of themselves)⁵ and remediate any *exposed* pipeline that poses an actual safety concern. SPLP does just that.

As to Complainants’ and aligned Intervenors’ evidence, it is important at the outset to delineate their burden of proof. As the proponent of a rule or order, Complainants and aligned Intervenors have the burden of proof under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990), *appeal denied*, 602 A.2d 863 (Pa. 1992). *See also*, ID at 69-70. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 855-856 (Pa. 1950). To satisfy their burden of proof, Complainants must show that SPLP is responsible or accountable for the problem described in their Complaints. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990).

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

We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be *in violation* of its duty under this section. Without such a violation by

⁵ The ID also erred to the extent that it found that an exposed pipeline is in and of itself a regulatory violation. On the contrary, 40 C.F.R. § 195.401(b)(1) requires a pipeline operator to correct only a pipeline exposure “that could adversely affect the safe operation of its pipeline system” and to do so “within a reasonable time.”

the utility, the PUC does not have the authority, when acting on a customer's complaint, to require *any* action by the utility.”

West Penn Power Co. v. Pa. PUC, 478 A.2d 947, 949 (Pa. Cmwlth. Ct. 1984) (emphasis added); *see also Two, of Spring. v. Pennsylvania-American Water Co.*, Docket Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*). “[T]he offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff.” *Baker*, Docket No. C-2018-3004294, Opinion and Order at 6 (citing 66 Pa. C.S. § 701). *See also*, ID at 70.

Moreover, the Commission’s adjudications must be supported by “substantial evidence” in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of N.Y. v. Nat’l Labor Relations Bd.*, 305 U.S. 197, 229 (1938). *See also*, ID at 71. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemp. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. Ct. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. Ct. 1984).

While the burden of going forward with evidence may shift back and forth during a proceeding, the burden of proof *never* shifts. The burden of proof *always* remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). In sum, Complainants and aligned Intervenors always had the burden of proof

in this proceeding. Here, the record is clear that they have not only failed to meet that burden of proof, they have not even established a *prima facie* case.

Significantly, the ID acknowledges at the outset that there was no record evidence of the actual depth of cover of any portion of ME-1 or the 12-inch line:

No one offered *any* measurements regarding the depth of coverage within 50 feet of the [Chester County] [L]ibrary or the McMullen’s house.

(emphasis added). ID at 93. That finding alone should have ended the inquiry. With no measurements of cover depth, Complainants and aligned Intervenors cannot and did not establish a *prima facie* case of a violation of cover depth requirements.

The record citations the ID relies upon are, as demonstrated below, not substantial evidence and cannot establish a *prima facie* case, the legal conclusion of a violation of federal regulations cited by the ID, and the relief directed. Notably, none of the evidence cited in the ID establishes depth of cover at any time, including at the time of construction or repurposing of ME1 or the 12-inch line. Specifically, the ID incorrectly relies on the following testimony, exhibits, and Administrative Order:

1. McMullen Testimony. Complainant Gerald McMullen testified that the pipe near his residence was “shallow.” ID at 93. The ID relies primarily on Mr. McMullen’s testimony and his exhibits to find that Complainants established a *prima facie* case of a violation of depth of cover requirements. But Mr. McMullen’s testimony only says the following:

We’ve gotten different information about how deep the Mariner East 1 is on our property, but I’ll just say it’s shallow. All these new pipelines that are proposed to go in will also be shallow.

N.T. at 979, lines 10-12; ID at 35 (Findings of Fact 146). There is no measurement offered as to what Mr. McMullen means by “shallow.” Tellingly, however, Mr. McMullen refers to ME-2 and ME-2X as also being “shallow.” N.T. at 979, lines 10-12; ID at 35 (Findings of Fact 146).

The unrefuted evidence demonstrates that those pipelines are buried with 48 inches of cover. ID at 93; SPLP St. No. 13, Gordon Rebuttal Test. at 2:21-22, 3:1-2. Therefore, if Mr. McMullen's definition of "shallow" is 48 inches of cover, then his testimony demonstrates the exact opposite of the ID's holding, namely that ME-1 and the 12-inch line have more than 48 inches of cover.

2. McMullen Exhibit 3. This exhibit is an aerial photograph of pipeline locations and contains no evidence on pipeline depth of cover.

3. McMullen Exhibit 4. This exhibit depicts distances between pipelines and contains no evidence on pipeline depth of cover.

4. McMullen Exhibits 8 and 9. These exhibits SPLP reports regarding the re-design of certain HDDs for ME-2 and ME-2X. They contain no information on the depth of cover for ME-1 or the 12-inch line.

5. McMullen Exhibit 15. This exhibit is a photograph identified as "Exposed pipes in stream near Whiteland West Apartments." The photograph shows two pipes at or near ground surface. Mr. McMullen himself testified that the first pipe was abandoned and grouted. ID at 97, N.T. at 966:3-5. SPLP's witness Matthew Gordon, confirmed that the first pipe was not an active ME-1 pipeline segment and had been *abandoned and grouted in 2013-2014* (emphasis added); ID at 35 (Findings of Fact 148); SPLP St. No. 13, Gordon Rebuttal Test. at 9:12-17; N.T. at 2917:22-25, 2918:1-2. The second pipe was a refined product pipe, unassociated with ME-1 or the 12-inch line, and thus completely irrelevant to this Complaint proceeding. ID at 35 (Findings of Fact 148); SPLP St. No. 13, Gordon Rebuttal Test. at 9:19-20. Nonetheless, that pipe segment had also been replaced. N.T. 2920:8-16. Accordingly, McMullen Exhibit 15 provides no evidence of any portion of the active ME-1 or the 12-inch line with less than 48 inches of cover.

6. McMullen Exhibit 16. This exhibit depicts the location of two ME-1 pipeline segments in the Stolen Sun parking lot but contains no information on the depth of cover of those pipelines.

7. McMullen Exhibit 20. This exhibit is a photograph of the Exton little league field with no information related to depth of cover of any pipeline.

8. DEP Administrative Order. ALJ Barnes took Judicial Notice of an Administrative Order issued by the Pennsylvania Department of Environmental Protection (DEP) to SPLP on September 11, 2019 requiring SPLP to cover 43 locations of exposed pipeline across the Commonwealth. ID at 97. The ID acknowledges that all but one of these exposed pipes were transporting refined products, not HVLs. ID at 97. There is no evidence in the record that the one exposed HVL pipeline was located in Chester or Delaware Counties. Therefore, the Order does not establish any exposed ME-1 or 12-inch line pipes in Chester and Delaware Counties.

9. N.T. 1150; Exhibit Dussling-1. Finally, the ID references testimony and an exhibit regarding an event when Aqua scraped a pipe segment at a depth of 6 feet when SPLP allegedly identified to Aqua that the pipe segment had 9 feet of cover. ID at 95. This event occurred during construction of ME-2 and ME2X, involved pipes that were not active, did not contain product, and which have no relevance to ME-1 or the 12-inch line. ID at 95. Regardless, the depth of cover exceeded 48 inches. *See* footnote 4 at p. 10.

In sum, the ID cites to no relevant, let alone substantial, evidence in the record to support its finding that Complainants and aligned Intervenors established a *prima facie* case that SPLP violated depth of cover requirements for the ME-1 and 12 inch lines in Chester and Delaware Counties at the time of construction or thereafter. Therefore, the ID erred in paragraphs 22-26 of

Order in holding that SPLP violated these requirements and in ordering any injunctive relief or civil penalties based on this alleged violation, and SPLP's exception should be granted.

SPLP Exception 3. The ID erred in holding that Complainants and aligned Intervenor established a *prima facie* case that SPLP violated 49 C.F.R. § 195.250.

The ID likewise holds that Complainants and aligned Intervenor established a *prima facie* showing, by unrefuted evidence, that the ME-1 and the 12-inch line are closer than 12 inches from other pipeline structures in violation of 49 C.F.R. § 195.250. ID at 202-203 (Order ¶¶ 22-26). The ID errs on both the law and the facts.

At the outset, the ID erred in considering and concluding that the 12-inch clearance is the only factor in determining compliance. It is not a regulatory violation to place pipelines closer than 12 inches from other structures. Instead, a pipeline-spacing violation only occurs if it is shown that there is inadequate corrosion control:

Any pipe installed underground must have at least 12 inches (305 millimeters) of clearance between the outside of the pipe and the extremity of any other underground structure, except that for drainage tile the minimum clearance may be less than 12 inches (305 millimeters) but not less than 2 inches (51 millimeters). *However, where 12 inches (305 millimeters) of clearance is impracticable, the clearance may be reduced if adequate provisions are made for corrosion control.*

(emphasis added). 49 C.F.R. § 195.250. Thus, a violation can only be established if Complainants and aligned Intervenor proved with substantial evidence that there was both less than 12 inches of clearance *and* inadequate corrosion control.

The unrefuted evidence shows exactly the opposite.

First, the ID expressly found: (1) Complainants failed to establish that SPLP has inadequate corrosion control; and, (2) that SPLP complies with corrosion control regulations. ID at 111-112, 189 (Conclusion of Law 31).

Second, the ID's holding is based on the false determination that measurements between pipelines in the exhibits admitted into evidence was shown in *inches*, when the record evidence clearly and unambiguously demonstrate that those measured distances were in *feet*. When the proper unit of measurement is used, the record demonstrates that Complainants never even established that the pipelines did not have 12 inches of clearance; thus, SPLP fully complied with the clearance and corrosion protection alternatives set forth in 49 C.F.R. § 195.250.

For example, the ID first relies on evidence of pipeline separation on the McMullen property. McMullen Exhibit 4 demonstrates the separation distances between the four pipelines on his property: ME-1 is 8 *feet* from ME-2X, which is 8 *feet* from 8 ME-2, which is 9 *feet* from the 12-inch line. As the photographs admitted into evidence demonstrate, all of the distances between the pipelines were measured in *feet*, not *inches*. Mr. McMullen confirmed that those separation distances were measured in *feet* during his testimony. N.T. at 951:5-12. The ID itself initially confirms that the separation distances between pipelines on the McMullen property are in *feet*. ID at 37 (Findings of Fact 160); *see also* ID at 95. Yet, the ID's ultimate conclusion errs, inexplicably, in holding that the pipelines may be less than 12 *inches* apart. ID at 37 (Findings of Fact 164); *see also* ID at 94-95. It appears that the ID mistakenly confused the distances as *inches* rather than *feet*.

The ID contains the same error at the Lenni Road locations, near the Harkins, Higgins, and White properties.⁶ For the Harkins property, the ID relies on Harkins Exhibits 2 and 3. Harkins Exhibit 2 is a map that shows the houses generally in relation to all pipelines in Chester County, but what it does not contain is any measurement of the spacing between pipelines. *See*

⁶ The only evidence regarding the White property is Dussling Exhibit 7, which measures ME-2 at 5.1 *feet* from the White residence. Dussling Exhibit 7 contains no measurement of the separation distance between ME-2 and any other pipelines at the White residence.

Harkins Exhibit 2. Harkins Exhibit 3 is merely a photograph of the Harkins' house, again with no pipelines or distance measurements depicted. Thus, Harkins Exhibits 2 and 3 fall woefully short of satisfying Complainants' burden of proving that the pipelines do not have at least 12 inches of spacing between them.

As to the Higgins property, the ID relies on Dussling Exhibits 3 through 6 and 8. Dussling Exhibit 3 is nothing more than a photograph of the Higgins house. Dussling Exhibits 4, 5 and 6 measure the distances from the Higgins house to ME-2X (5.1 *feet*), from the house to the 12-inch line (13.7 *feet*), and from the house to ME-2 (25.1 *feet*). These distances are confirmed in *feet* in Dussling Exhibit 8, which is SPLP's answer to Complainants' interrogatory number 79. Based on the exhibits cited in the ID, ME-2 is 8.6 *feet* from the 12-inch line and 20 *feet* from ME-2. Again, all distances were measured in *feet*, not *inches*.

The ID itself initially confirms that the separation distances of pipelines at the Higgins property are in *feet*. ID at 37 (Findings of Fact 160). But the ID then concludes, contrary to this undisputed evidence, that between the "ME-2X and the 12 inch pipeline there is 8.5 *inches*, less than the minimum requirement of 12 inches. Between ME-2X and ME2, there is 20 *inches* separation . . ." ID at 94 (emphasis added). Clearly, there is no evidence to support a finding that the Higgins house is within 12 inches of any pipeline.

In sum, the entire predicate for the ID's holding that SPLP violated the separation distance requirements of 49 C.F.R. § 195.250 is based on an error: the ID mistakenly refers to the measured separation distances in *inches* when the record evidence measures the separation distance in *feet*.⁷ Therefore, the ID erred in paragraphs 22-26 of the Order in holding that SPLP

⁷ The ID also refers to McMullen Exhibit 16, which as described above, depicts two ME-1 pipelines in the Stolen Sun parking lot. McMullen Exhibit 16 contains no actual measurement of separation distances between the two lines. By the context and markers in this photograph, however, it is clear that pipelines are many feet apart, thus exceeding the 12-inch spacing requirement set forth in the regulation.

violated the spacing requirements and in ordering any injunctive relief or civil penalties based on the alleged violation, and SPLP's exception should be granted.

SPLP Exception 4. The ID erred in Order paragraphs 13, 14, 15, 16, 17 and 18, which require SPLP to implement public awareness program elements that are beyond existing regulatory requirements and therefore the proper subject of the pending ANOPR and not this Complaint proceeding.

First, the ID correctly holds that SPLP's public awareness program complies with the fundamental elements required by 49 C.F.R. § 195.440. The ID confirms that PHMSA's website contains public awareness information about pipelines for stakeholders that satisfies the criteria set forth in 49 C.F.R. § 195.440(d), and that SPLP's public awareness program contains that information. ID at 52, 54 (Findings of Fact 268, 279-281).

Second, relying on the testimony of Complainants' and aligned Intervenors' own experts, the ID specifically holds that SPLP provided the very information for municipalities and schools that 49 C.F.R. § 195.440 and portions of API RP 1162 requires for municipalities and schools to develop their own emergency response plans. This information includes: (i) the location of the pipelines; (ii) the location of the valve stations; (iii) proximity to schools; (iv) the products in pipelines and their physical properties; (v) the hazards of those products; (vi) a rule of thumb for a safe distance in the event of a significant release; (vii) the direction of flow of products in the pipelines; (viii) that in the event of a catastrophic release, the product between the corresponding valve sites will be released; (ix) plume modeling; (x) SPLP's integrity management, security and PHMSA compliance programs; and, (xi) SPLP's remote monitoring center for leak detection. ID at 60 (Findings of Fact 324).

Third, the ID holds that SPLP's public awareness pamphlets are consistent with the specific information that Delaware County itself sends to its own residents in Delaware County's Emergency Planning Guide. ID at 52 (Findings of Fact 269).

These holdings should have ended the challenge to SPLP's compliance with the public awareness planning requirements in 49 C.F.R. § 195.440 and RP 1162. But the ID goes beyond these regulatory requirements and orders SPLP to implement additional, more stringent public awareness requirements, which are expressly being considered in the pending ANOPR.

The ID makes clear, repeatedly, that matters subject to the ANOPR are appropriately resolved in that rulemaking process and are not appropriate relief in this Complaint proceeding. For example, the ID properly holds that the requirements to implement a mass public warning system on pipelines, to add an odorant to NGLs, to add new evacuation procedures to SPLP's public awareness pamphlet, to revise the public awareness mailers to include information on wind direction and other means of transporting persons other than by moving on foot away from the pipeline and upwind from a release, and to conduct a remaining-life study are all reserved for the ANOPR and are not proper bases for relief in this Complaint proceeding. ID at 115, 140, 167-69, 190 (Conclusions of Law 36), 192 (Conclusions of Law 48), 198 (Order ¶ 9).

The ID also clearly sets forth the scope of the issues properly reserved for the rulemaking process initiated by the ANOPR rather than in a Complaint proceeding:

The Commission has initiated a rulemaking proceeding at Docket No. L-2019-3010267 and is reviewing comments on whether or not to promulgate Commission regulations with more stringent and compatible requirements to the federal regulations regarding *public awareness, emergency preparedness, advanced warning systems, odorant, etc.* [ANOPR]. In this ANOPR, the Commission sought comments on proposed regulations regarding: (1) utility interactions with local government officials, including but not limited to such topics as *emergency planning and emergency response coordination, periodic drills with utility/municipal coordination*; (2) *whether there should be regulations requiring periodic public awareness meetings with municipal officials and the public*; and (3) Pennsylvania specific enhancements to public utility's public awareness programs pursuant to 49 C.F.R. § 195.440 and API Recommended Practice 1162.

ID at 77 (emphasis added).

The ID contravenes its own bright-line test, however, by ordering SPLP to implement public awareness program elements more stringent than existing regulatory requirements, elements that fall squarely within the pending ANOPR exactly as described in the ID.⁸ Specific examples include:

1. In response to the ANOPR, the Commission received comments on whether pipeline operators should be required to provide municipalities with reports of evaluations of pipeline conditions. Participants in this Complaint proceeding commented on the ANOPR seeking to require pipeline operators to provide local officials with “all data, images, alerts and information generated from any pipeline in this jurisdiction” (Clean Air Council Comment 29), and “any anomalies on the pipeline.” (County of Chester comments at 10-11). Existing regulations do not require pipeline operators to provide this information. Despite this issue falling squarely within the scope of the public comments on the ANOPR, ordering paragraph 13 of the ID requires SPLP to provide the results of geophysical test reports and inspection and evaluation reports assessing the condition of its pipelines in East Goshen and Middletown Townships on at least an annual basis. Because the directives in paragraph 13 of the Order are properly the subject of the ANOPR, the ID erred in including these directives.

2. The Commission also received comments on direct notification to municipalities in the event of a release. In response to the ANOPR, aligned Intervenor Downingtown Area School District commented that “schools be provided with immediate notice of a pipeline incident.” DASD Comment at 2. The ID expressly holds that neither existing regulations nor RP 1162 contain any such requirements. ID at 160. Rather, SPLP provides direct notice through

⁸ For the Commission’s convenience, SPLP has attached as Exhibit 1 a chart of the relevant issues covered by the ANOPR and the comments addressing those issues, including comments *submitted by Complainants and aligned Interveners*.

911, which allows emergency responders to make the appropriate notice to municipal and school officials. Despite this issue being subject to the ANOPR, paragraph 14 of the Order requires SPLP to provide direct notice of a release event to police departments of municipalities and designees of school districts. Thus, the ID erred in paragraph 14 of the Order by directing SPLP to provide direct notice of a release event to municipalities and schools because the determination whether to impose that requirement on pipeline operators like SPLP is properly subject to the ANOPR.⁹

3. The ANOPR also sought comment on “[a]dvanced notification and/or Commission pre-approval of major construction activities.” ANOPR at 19. In response to the ANOPR, Intervenor Chester County commented that “pipeline operators [should] be required to notify all municipalities, township and counties of anticipated, scheduled, or commenced work.” (Chester County Comment at 15). Existing regulations do not require such advanced notification of construction activities. Again, notwithstanding this issue falling directly within the ANOPR, paragraph 15 of the Order requires SPLP to give advanced notification prior to proposed excavation on the pipeline system in all municipalities of Chester and Delaware Counties. The ID erred by including paragraph 15 in the Order because the determination whether to impose that requirement on pipeline operators like SPLP is properly the subject of the ANOPR.

⁹ The ID erred in paragraph 14 of the Order for another reason. The ID misquotes the relevant testimony on this issue. The ID, quoting SPLP’s expert Greg Noll, states that:

It would *not* be counter-productive for the operator to directly notify the schools and municipalities in the event of a rupture or release event near/within these entities.

(emphasis added). ID at 57 (Findings of Fact 302). But Mr. Noll’s testimony says the exact opposite: that direct notice can delay emergency response and create conflicting information and that communications should be made through emergency responders. SPLP St. No. 4, Noll Rebuttal Test. at 23, lines 19-23, 24, lines 1-5.

4. The ANOPR seeks public comment requiring periodic public awareness meetings with municipal officials, and the public. Neither 49 C.F.R. § 195.440 nor API RP 1162 requires such periodic public meetings. Several of the parties to the Complaint proceeding, including Middletown Township, the Clean Air Council, East Goshen Township, and Ms. Kerslake, commented on this exact issue in the ANOPR. Similar comments regarding required meetings with schools were submitted from aligned Intervenor Downingtown Area School District. Because the requirement for a pipeline operator to attend public meetings or meet with schools is the express subject of the ANOPR, the ID erred in paragraphs 16,17 and 18 of the Order by requiring SPLP to schedule, conduct and attend such public meetings.

For these reasons, the ID erred in ordering paragraphs 13, 14, 15, 16, 17 and 18, all of which provide relief that is the subject of the ANOPR, and therefore SPLP's exception should be granted.¹⁰

SPLP Exception 5. The ID erred in holding that SPLP refused to meet and provide information to municipalities and school districts and therefore violated 49 C.F.R. §195.440.

The ID states, on at least six separate occasions, that SPLP was “unwilling” or “refused” to meet with school and municipal officials to provide public awareness information and that such “unwillingness” or “refusal” was a violation of 66 Pa. C.S. § 1501.¹¹ ID at 138, 140, 151, 160-61, 192 (Conclusions of Law 46). As an example, the ID holds:

I am finding SPLP to be violating 66 Pa. C.S. § 1501 as their refusal to meet with school district representatives and public officials in Chester and Delaware Counties to assist in preparation of emergency plans is unreasonable and in violation of Section 1501.

¹⁰ The ANOPR also sought comments on depth of cover requirements and pipeline separation distances that are the subject of paragraphs 22-26 of the Order in the ID.

¹¹ The ID suggests that 66 Pa. C.S. § 1501 grants the Commission authority to impose public awareness obligations even when no such obligations exist in the regulations. ID at 150. The ID's suggestion would create an exception that swallows the rule and would negate the entire purpose and function of the ANOPR.

ID at 160-161. There is nothing in the evidence to support these findings.

The ID's Findings of Fact contain numerous record citations that catalogue SPLP's meetings with municipal and school officials and the extensive training and emergency response planning information SPLP has provided at those meetings. This includes:

1. SPLP engaged a consulting company that specializes in community planning and emergency preparedness and met with school districts and parochial schools in Chester and Delaware Counties. ID at 53 (Findings of Fact 276).
2. SPLP provided over twenty tours and specific training exercises for municipalities in Chester and Delaware Counties, including tabletop and active ("boots on the ground") training sessions. ID at 59 (Findings of Fact 315), SPLP St. No. 13 Gordon Rejoinder Test., 1-3; N.T. at 2849-58.
3. SPLP meets with representatives of Chester and Delaware Counties' local emergency response committee every other month. ID at 59 (Findings of Fact 316).
4. SPLP participates in bi-weekly meetings with townships across Chester and Delaware Counties and regularly participates in the Chester County Association of Township Officials' monthly meetings. ID at 59 (Findings of Fact 317).
5. SPLP held various open houses in Chester and Delaware Counties to provide information about the Mariner East pipelines. ID at 53 (Findings of Fact 274).
6. SPLP conducted Mariner Emergency Responder Outreach (MERO) training for public officials and emergency responders two times each in Delaware and Chester Counties in 2017 and repeated that training in 2020. ID at 57 (Findings of Fact 305). The MERO training consisted of a 100-page power point presentation with time for questions and answers, and provided information about, among other things, the nature of the materials in the Mariner East

pipelines, the consequences of a pipeline release, mapping resources, how to detect a release, and emergency response procedures in the event of a release. ID at 57, 58 (Findings of Fact 306-309).

7. SPLP also participates in CoRE training for emergency responders offered by all of the pipeline operators in Chester and Delaware Counties. ID at 58 (Findings of Fact 312).

8. By letters dated August and September 2020, SPLP offered to provide additional tabletop training exercises and offered assistance on emergency response best management practices to all municipalities and schools in Chester and Delaware Counties. ID at 59 (Findings of Fact 314); SPLP Exhibits 48 and 49.

All of these Findings of Fact, contained within in the ID itself, directly refute the ID's ultimate conclusion that SPLP refused to meet, train or assist local officials or schools on public awareness or emergency response issues. The words of Complainants' and aligned Intervenors' own emergency response experts, who work for Chester and Delaware Counties and a school district, directly contradict these findings:

The amount of training and funding for equipment provided by SPLP is greater in Delaware and Chester Counties than any other NGL pipeline operator in those [C]ounties.

ID at 59 (Findings of Fact 320).

Simply stated, the record evidence demonstrates that SPLP did not act unreasonably or violate Section 1501. Based on the IDs' own findings, if SPLP committed such a violation, then every other pipeline operator in Chester and Delaware must be violating Section 1501 as well.¹²

¹² It is important to note that SPLP was not only willing to meet and train local officials and school districts, but the record evidence shows that the training was effective. Over 500 people attended the MERO training, and the reviews stated that over 98% of attendees rated the training as effective and that it provided enough information to respond to an emergency on the Mariner East pipelines. ID at 163. As the ID held, based on testimony from Complainants' and aligned Intervenors' own experts: "Emergency responders have substantial knowledge about the Mariner East pipelines." ID at 60 (Findings of Fact 325).

SPLP Exception 6. The ID’s requirement that SPLP independently audit its public awareness program is moot.

Paragraph 21 of the Order directs SPLP to complete a review of its public awareness program through an internal self-assessment using an internal working group or through third-party auditors. But the ID acknowledges that SPLP already successfully completed this audit of its public awareness program. Specifically, the ID finds that SPLP’s public awareness program has been independently audited as part of the Public Awareness Program Effectiveness Research Survey (“PAPERS”). ID at 54 (Findings of Fact 277), 144. The PAPERS audit concluded that SPLP’s public awareness program was effective in achieving program objectives and was comparable to the other pipeline operators’ programs. ID at 54 (Findings of Fact 278). The ID further finds that PHMSA is aware of the PAPERS study protocol and SPLP’s participation in the study and PHMSA has provided no adverse comments on the PAPERS study as a means of independently evaluating the effectiveness of SPLP’s public awareness programs. ID at 144. Therefore, paragraph 21 of the Order is inconsistent and contrary to the evidence, which demonstrates that SPLP did in fact perform an independent audit of its public awareness program, and SPLP’s exception should be granted.

SPLP Exception 7. The ID erred because the mandatory injunctive relief in ordering paragraphs 16-20 of the Order is not narrowly tailored and there is no evidence of irreparable injury if injunctive relief is not granted.

The Commission has recognized that injunctive relief is an extraordinary remedy that must be narrowly tailored to abate the harm complained of:

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v.*

Sunoco Pipeline L.P., Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018).

West Goshen Twp. v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, Recommended Decision at 42 (Barnes, ALJ.) (adopted in full by Commission by Order dated Oct. 1, 2018); *see also Baker*, Opinion and Order at 26 (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record-keeping, and complete an audit of public awareness program by a third-party “were not justified on the basis of the finding of a violation of the duty to satisfy public awareness and outreach obligations under 49 C.F.R. § 195.440”). *See also*, ID at 73.

In addition, the Commonwealth Court has held that an injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and is often described as an extreme remedy. *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. Ct. 2010) (citing *Big Bass Lake Cmty. Assoc. v. Warren*, 950 A.2d 1137, 1145 (Pa. Cmwlth. Ct. 2008)). The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145; *see also Crums Mill Assoc. v. Dauphin Consol. Water Supply Co.*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. Ct. 1980)). Indeed, Pennsylvania courts have previously held that a party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *Allen*, 417 A.2d at 401; *see also* ID at 73.

Paragraphs 16-20 of the Order direct SPLP to arrange for meetings with Chester and Delaware Counties, all municipal supervisors and all school districts “for the purpose of scheduling public awareness/education meetings” and to “discuss additional communications

and training” and “provide such training as reasonably requested by those parties.” Those mandatory injunctive directives are not narrowly tailored. There is no direction as to how many meetings must take place, whether the meetings are with all parties at once, or individually, or as to the scope of the training or information required to be provided. On the latter point, in its 205 pages, the ID does not identify any specific emergency response information that SPLP failed to provide municipalities and schools or is not willing to provide with an appropriate non-disclosure agreement to protect information protected by the Pipeline Security Act.

In fact, the ID’s own findings contradicts the allegation that SPLP failed to provide information to the public officials. On page 148, the ID states that William Turner, Chester County’s emergency planning expert wants to know “the type of product, maximum operating pressures, hazards of product, location of valve stations, and flow direction of materials in the pipelines.” Yet, Finding of Fact 324 holds that SPLP provided all of that information and more.

Similarly, the ID states that school districts are confused whether to evacuate or shelter in place in the event of a pipeline release, and have been provided no guidance on how far a safe distance for evacuation may be or whether cell phones can be used to call 911. ID at 152-153. The ID relies on these statements in holding that SPLP’s public awareness program is unreasonable in violation of 66 Pa. C.S. § 1501.

However, the ID’s own Findings of Fact contradict these holdings. The ID finds, based on the testimony of Complainants’ own expert, that there is “no-one-size-fits-all” rule for evacuating or sheltering in place due to the variability of event magnitude and possible hazards. ID at 24 (Findings of Fact 69), 55 (Findings of Fact 284). The ID confirms, again based on Complainants’ and aligned Intervenors’ experts, that “[t]he decision to evacuate or shelter in place should be made on a case-by-case basis.” ID at 55 (Findings of Fact 291).

The ID renders the same findings on what is a safe distance to move away from a release event:

There is no one-size-fits-all safe distance or location to which to evacuate as it depends upon the facts and circumstances of each event, and, where applicable, guidance from emergency responders.

ID at 55 (Findings of Fact 284), 139. Finally, the ID correctly finds that SPLP is complying with PHMSA regulations on the use of cell phones. ID at 139. All of the above demonstrates that the injunctive relief is not narrowly tailored because there is no direction as to what additional, allegedly missing, information SPLP must provide to municipalities and schools.

Additionally, the injunctive relief is not narrowly tailored for another reason.

Paragraph 18 of the Order requires SPLP to provide “such training as reasonably requested” by municipalities and schools. There is nothing in that paragraph that cabins or limits SPLP’s obligations to provide the requested training. The ID correctly finds that the Public Utility Code creates a uniform, statewide regulatory scheme for utilities to avoid overlaying a state-wide scheme with a “crazy quilt of local regulations.” ID at 81. The open-ended obligation that paragraph 18 of the Order imposes creates the risk of exactly the “crazy quilt” of training obligations that each local municipality or school districts may individually request.

Finally, there is no finding in the ID that Complainants and aligned Intervenors will suffer irreparable injury if these meetings do not take place. Indeed, the ID finds that there is no imminent, irreparable injury likely without these additional meetings. The ID specifically finds that there is “insufficient evidence to show SPLP’s ME-1 and 12-inch pipelines are not being appropriately managed to ensure they are safe to operate.” ID at 29 (Findings of Fact 99).

For these reasons, this exact same open-ended, injunctive relief was rejected by the Commission in the *Baker* case and should be rejected here.

SPLP Exception 8. The ID erred in Order paragraph 16(i) by directing SPLP to designate a liaison to tour the area surrounding the pipeline and provide dedicated employees or funding.

The language of ordering paragraph 16(i) is at best confusing and certainly its directives are improper. Ordering paragraph 16(i) provides that SPLP must:

Introduce to the operator's designated County liaison(s) a tour of the area surrounding the pipeline facilities such that liaison(s) may be made aware of the geology, terrain and location of schools, libraries, retirement and apartment housing as well as train tracks, roadways, recreational parks, housing developments such that the liaison may provide local emergency planning assistance to local emergency management partners that could consist of dedicated employee(s) and or funding to support additional employees.

ID at 201. It is not clear what the Order requires SPLP to do, and where it does contain a directive, that directive is beyond the scope of the regulations.

First, the Commission has no authority to mandate that a pipeline operator employ a specific liaison, let alone direct what activities that liaison must perform. That decision is within a utility's managerial discretion.¹³

Second, this directive fundamentally misunderstands the relative responsibilities of the municipalities and the schools in developing emergency response plans. Initially, the ID correctly acknowledges that municipalities and schools alone have the responsibility to develop their emergency response plans under Title 35 of the Pennsylvania Consolidated Statutes and that SPLP does not have that obligation. ID at 60 (Findings of Fact 322). The ID then directly contradicts itself in response to Twin Valley School District's request for a public awareness plan tailored to its particular needs. The ID states: "SPLP's obligation to provide a plan is well-

¹³ Managerial discretion is the Commission and court-recognized legal principle that provides the Public Utility Code is performance-based and it is up to a utility's management to determine how and when to manage, maintain, and construct its facilities within the bounds of the Public Utility Code and the Commission's regulations. See *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. Ct. 1981).

established. . .” ID at 152. SPLP has no such obligation and therefore paragraph 16(i) of the Order directs SPLP to participate in emergency response planning in a manner inconsistent with the relative responsibilities of a pipeline operator on the one hand, and municipalities and schools on the other.

Third, the ID erred by seemingly requiring SPLP to fund dedicated local emergency response employees. It is unclear whether the ID requires funding of an additional SPLP employee, or additional local emergency response employees, but in either case, the Commission has no authority to require a pipeline operator to do so.

Fourth, the ID errs in requiring emergency response planning that is specific to the features of each neighborhood or school. As the ID correctly finds, emergency response planning is a risk-based approach, which emphasizes “that you cannot have an emergency response plan for each potential incident or each potentially affected neighborhood.” ID at 57-58 (Findings of Fact 307-308). Therefore, paragraph 16(i) of the Order directs SPLP to implement a neighborhood, feature-by-feature, emergency response plan in direct contravention of the ID’s own finding that such plans are not feasible or appropriate.

For all of these reasons, the ID erred in directing SPLP to implement the directives in paragraph 16(i) of the Order, and therefore SPLP’s exception should be granted.

III. CONCLUSION

WHEREFORE, for the reasons stated above, SPLP respectfully requests the Commission modify the ID consistent with these exceptions, because:

1. The ID erred in paragraphs 22-26 of the Order by directing SPLP to conduct a survey of depth of cover and separation distance between other underground pipelines/structures for ME-1 and the 12-inch pipelines because none of the Complainants or aligned Intervenors

raised these issues in their Complaints or sought this relief, and to do so would violate SPLP's due process rights;

2. The ID erred in holding that Complainants and aligned Intervenors established a prima facie case that SPLP violated 49 C.F.R. §§ 195.210(b) and 195.248;

3. The ID erred in holding that Complainants and aligned Intervenors established a prima facie case that SPLP violated 49 C.F.R. § 195.250;

4. The ID erred in Order paragraphs 13, 14, 15, 16, 17 and 18 which require SPLP to implement public awareness program elements that are beyond existing regulatory requirements and therefore the proper subject of the pending ANOPR and not this Complaint proceeding;

5. The ID erred in holding that SPLP refused to meet and provide information to municipalities and school districts and therefore violated 49 C.F.R. §195.440;

6. The ID's requirement that SPLP independently audit its public awareness program is moot;

7. The ID erred because the mandatory injunctive relief in ordering paragraphs 16-20 of the Order is not narrowly tailored and there is no evidence of irreparable injury if injunctive relief is not granted; and,

8. The ID erred in paragraph 16(i) of the Order by directing SPLP to designate a liaison to tour the area surrounding the pipeline and provide dedicated employees or funding.

Respectfully submitted,

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Dated: June 7, 2021

Exhibit 1 – Summary of Relevant Issues Subject to PA PUC Advanced Notice of Proposed Rulemaking

Topic/Issue	PA PUC Advanced Notice of Proposed Rulemaking (ANOPR) (L-2019-3010267) (June 13, 2019)	Relevant ANOPR Comments
1. Depth of Cover	“The Commission seeks comment regarding the appropriate amount of cover for hazardous liquid public utility pipelines, including whether additional cover should be required at installation and how cover is to be maintained.” (ANOPR at 8.)	Carol R. Fleischman (Citizen) – Requests that pipeline depth requirements be increased. (Fleischman Comment at 1.)
		Clean Air Council (CAC) – Requests regulations that require pipeline operators to maintain a cover over pipelines of at least 4 feet and conduct periodic reviews to confirm this depth. (CAC Comment at 13.) This commenter also suggests that special depth and monitoring requirements should be implemented for areas that may be susceptible to erosion. (<i>Id.</i> at 14.)
		Sol Spec – Provides that aerial software can be used to measure the depth of cover for pipeline segments. (Sol Spec Comment at 3.)
		Kay Whittle (Citizen) – Requests that depth of soil cover be decided based on conditions like soil composition and geology and that the PA PUC must set requirements for the depth of cover. This commenter recommends that this decision should be made after a third party visits the site and makes an independent assessment. (Whittle Comment at 4-5.)
		Bureau of Investigation and Enforcement (BI&E) – Requests that regulations require operators to develop procedures to address existing pipeline segments that do not meet cover requirements. This commenter also suggests that pipeline in farmland should be installed at least 40 inches below the surface and that pipeline operators should be required to verify depths of all pipeline segments every 3 years. (BI&E Comment at 3.)
		Associated Petroleum Industries of Pennsylvania (API PA) – Believes that the current depth requirements are sufficient and that, if these regulations should be changed, it should be done at the federal level. (API PA Comment at 2.)
		Barbara Goblick (Citizen) – Requests that pipelines be buried at least 3 feet below the surface. (Goblick Comment at 1.)

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			<p>East Goshen Township Board of Supervisors – Requests that regulations require pipelines to be buried at least 4 feet below the surface. (East Goshen Township Comment at 1.)</p> <p>Virginia Marcille-Kerslake (Citizen) – Requests that pipelines be buried at a depth of 4 feet or deeper in densely populated areas. (Marcille-Kerslake Comment at 2.)</p> <p>Karen Gdula (Citizen) – Raises concern about earth movement, rain, and landslides and requests that more depth of coverage be required. (Gdula Comment at 2.)</p> <p>Kathleen Hester (Citizen) – Requests that pipelines be buried at a depth of 4 feet or deeper in densely populated areas. (Hester Comment at 3.)</p> <p>Andrea Cauble (Citizen) – Requests that regulations require 6 feet of cover and that certain requirements should be implemented to require inspections to ensure that the amount of cover does not vary. (Cauble Comment at 3.)</p> <p>Association of Oil Pipe Lines (AOPL) – Believes that the current regulations are sufficient with respect to pipeline cover. (AOPL Comment at 2.)</p> <p>Andrew Dinniman (State Senator) – Requests that pipelines be buried at a depth of 48 inches and that operators be required to submit reports to confirm this coverage. (Dinniman Comment at 3.)</p> <p>John McLaughlin (Citizen) – Requests that the PA PUC inspect for depth of cover. (McLaughlin Comment at 5.)</p> <p>Adam Kapp (Citizen) – Requests that all pipelines that are new or repurposed be installed at a depth of 4 feet. The commenter also recommends continual monitoring and testing of depth of coverage. (Kapp Comment at 5.)</p>

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			<p>Del Chesco United for Pipeline Safety (DCU) – Requests that all new and repurposed pipelines be buried at a minimum depth of 4 feet and “deeper in high consequence areas.” This commenter also requests that the PA PUC halt operations when pipelines are exposed. (DCU Comment at 7.)</p> <p>Kim Van Fleet (Citizen) – Requests that the depth of cover be determined based on the pipeline’s location in relation to certain community locations and on whether an area is prone to erosion. (Van Fleet Comment at 1-2.)</p> <p>Pipeline Safety Coalition (PSC) – Requests regulations that are clearer as to a depth requirement and that require operators to monitor for erosion. This commenter also suggests implementing reassessment requirements. (PSC Comment at 7.)</p> <p>County of Chester – Requests that regulations require a depth of cover to be based on a hydraulic evaluation, including a sediment transport study. This commenter also requests that regulations implement requirements for covering any pipeline segment that becomes exposed and that regulations require that bedding material for the first 12 inches of fill overtop of a new pipeline be sifted material that cannot damage the coating of the pipeline during backfilling and compaction. Finally, this commenter requests that additional depth of cover be required in areas of development and at perennial stream crossings. (County of Chester Comment at 2-3.)</p> <p>Danielle Friel Otten (State Representative) – Requests that pipelines be installed at least 6 feet deep to ensure that they are below the freeze line. (Otten Comment at 2.)</p> <p>Kathleen Griffith (Citizen) – Expresses concern about exposed pipelines. (Griffith Comment at 1.)</p>

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			<p>Chester County Association of Township Officials (CCATO) – Requests that “some type of durable material” be placed over pipelines to alert excavators of the pipelines during development. (CCATO Comment at 2.)</p>
2.	Distance Between Other Underground Pipelines/ Structures	<p>“The Commission seeks comment regarding the proper minimum amount of clearance between hazardous liquid public utility pipelines and underground structures, including other pipelines.” (ANOPR at 8.)</p>	<p>Virginia Marcille-Kerslake (Citizen) – Requests regulations to require HVL pipelines to be at least 10 feet apart. (Marcille-Kerslake Comment at 2.)</p> <p>Pipeline Safety Coalition (PSC) – Requests that the PA PUC implement regulations with clear terms as to the clearance distance between pipelines and other structures and that pipeline stacking should not be allowed. (PSC Comment at 7-8.)</p> <p>Marcia Gentry (Citizen) – Requests a clearance of at least 10 feet. (Gentry Comment at 1.)</p> <p>Kathleen Hester (Citizen) – Requests that the spacing between pipelines should be 10 feet. (Hester Comment at 2.)</p> <p>County of Chester – Requests that current regulations related to the clearance between pipelines and other structures be more prescriptive. (County of Chester Comment at 7.)</p> <p>Adam Kapp (Citizen) – Requests regulations that govern the clearance between pipelines and other underground structures. (Kapp comment at 5-6.)</p> <p>Andrew Dinniman (State Senator) – Requests that regulations require operators with pipelines that are in close proximity to each other to meet with officials to discuss the impacts associated with the distance between the pipelines. (Dinniman Comment at 3.)</p> <p>John McLaughlin (Citizen) – Requests that the PA PUC mandate and enforce safe distances between pipelines. (McLaughlin Comment at 5.)</p>

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			<p>Karen Gdula (Citizen) – Requests a greater clearance distance than 12 inches. This commenter recommends 15 feet. (Gdula Comment at 2.)</p> <p>Andrea Cauble (Citizen) – Requests that regulations related to the clearances between pipelines be clarified. (Cauble Comment at 3.)</p> <p>East Goshen Township Board of Supervisors – Requests that operators not be given the authority to determine that spacing requirements for pipelines and other structures are impractical. (East Goshen Township Comment at 2.)</p> <p>Association of Oil Pipe Lines (AOPL) – Suggests that current federal regulations provide the underground clearance allowances and that these requirements should not be modified. (APOL Comment at 2.)</p> <p>Clean Air Council (CAC) – Requests that regulations reflect risk associated with excavation when pipelines are placed too closely together. This commenter suggests that spacing should be 10 horizontal feet and 3 vertical feet. (CAC Comment at 14-15.) This commenter also suggests that regulations should be revised to eliminate or narrow the use of the “impracticable” exception that allows pipeline operators to place pipelines closer together. (<i>Id.</i> at 16.)</p> <p>Chester County Association of Township Officials (CCATO) – Requests that the PA PUC approve all clearance exceptions. (CCATO Comment at 3.)</p> <p>Del Chesco United for Pipeline Safety (DCU) – Requests stricter regulations to ensure distance between pipelines. (DCU Comment at 7.)</p> <p>Carolyn Comitta (State Representative) – Requests that pipelines be spaced at least 5 feet apart to allow for inspections. (Comitta Comment Addendum at 1.)</p>

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3.	Public Meetings	“The Commission seeks public comment on . . . requiring periodic public awareness meetings with municipal officials and the public.” (ANOPR at 19.)	<p>Board of Commissioners of Cumberland County – Requests public outreach meetings to occur at least once a year. (Cumberland County Comment at 1.)</p> <p>Hampden Township, Board of Commissioners – Requests that pipeline operators be required to hold periodic public outreach meetings at least once a year. (Hampden Township Comment at 2.)</p> <p>Silver Spring Township, Board of Commissioners – Requests that pipeline operators be required to hold periodic public outreach meetings at least once a year. (Silver Spring Township Comment at 1.)</p> <p>Del Chesco United for Pipeline Safety (DCU) – Requests that operators be required to hold annual meetings. (DCU Comment at 11.)</p> <p>Monroe Township, Board of Supervisors – Requests that pipeline operators be required to hold periodic public outreach meetings at least once a year. (Monroe Township Comment at 2.)</p> <p>Borough of Lemoyne – Requests that pipeline operators be required to hold periodic public outreach meetings at least once a year. (Borough of Lemoyne Comment at 1.)</p> <p>Lower Allen Township, Board of Commissioners – Requests that pipeline operators be required to hold periodic public outreach meetings at least once a year. (Lower Allen Township Comment at 2.)</p> <p>Virginia Marcille-Kerslake (Citizen) – Requests that pipeline operators be required to hold at least two meetings per county prior to initiation of construction, quarterly meetings during construction, and annual meetings during operation. (Marcille-Kerslake Comment at 5.)</p>

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			<p>Andrew Dinniman (State Senator) – Requests public meeting requirements that begin prior to construction. (Dinniman Comment at 6.)</p> <p>Township of Middletown – Requests monthly public meetings with residents and bi-weekly meetings with municipalities during construction. (Township of Middleton Comment at 1.)</p> <p>Clean Air Council (CAC) – Requests that pipeline operators be required to hold public meetings once every 6 months. (CAC Comment at 30.)</p> <p>Kim Van Fleet (Citizen) – Requests regular meetings in each county that are advertised on television and the radio. (Van Fleet Comment at 3.)</p> <p>Adam Kapp (Citizen) – Requests that pipeline operators be required to hold regular meetings. (Kapp Comment at 9.)</p> <p>Pipeline Safety Coalition (PSC) – Requests periodic public engagement meetings. (PSC Comment at 16.)</p> <p>Alexia Cole (Citizen) – Requests requirements for public meetings. (Cole Comment at 1.)</p> <p>Associated Petroleum Industries of Pennsylvania (API PA) – Requests that any public meeting requirements be aligned with API RP 1162, Public Awareness Programs for Pipeline Operators. (API PA Comment at 5.)</p> <p>Capital Region Council of Governments (CAPCOG) – Requests that regulations require annual public meetings. (CAPCOG at 2.)</p>
4.	Content of Public Communications	“The Commission seeks public comment on . . . Pennsylvania specific enhancements to public utility’s public awareness programs pursuant to 49 CFR § 195.440 and API	Bernard Greenberg (Citizen) – Requests public awareness meetings that explain risks of the pipelines and that the public should be made aware of what to do in the event of an emergency. (Greenberg Comment at 2.)

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	Recommended Practice 1162.” (ANOPR at 19.)	<p>Washington County Chamber of Commerce – Supports current regulations and believes that residents are provided with sufficient information about pipelines. (Washington County Chamber of Commerce Comment at 1.)</p> <p>Clean Air Council (CAC) – Requests that operators identify members of the public and provide them with specific information that corresponds to the event at issue. (CAC Comment at 30.) This commenter suggests that API RP-1162 is inadequate with respect to these requirements. (<i>Id.</i>)</p> <p>Del Chesco United for Pipeline Safety (DUC) – Requests that the PA PUC review public awareness plans to ensure that the plans include all of the relevant information. (DUC Comment at 11.)</p> <p>Andrew Dinniman (State Senator) – Requests that the public be provided with information related to inspection reports, emergency management response plans and public awareness procedures. (Dinniman Comment at 7.)</p> <p>Andrea Cauble (Citizen) – Requests that “[a]ny prospective buyer of a property with a pipeline locale or planned construction within a mile should be made aware of the possibilities of vibrational structural damage from pipeline installation, chronic noise and traffic from pipeline installation, suffer well water or aquifer spoiled by HDD drilling fluid, or toxic, corrosive liquids spillage, or worse; including risk loss of life or major property loss from an explosion.” (Cauble Comment at 5.)</p> <p>Tom Killion (Senate of Pennsylvania) – Requests that the PA PUC “explore all possible avenues” to require pipeline operators to “inform and educate residents about responding to a pipeline incident.” (Killion Comment at 3.)</p>

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			<p>Chester County Association of Township Officials (CCATO) – Requests that regulations require pipeline operators to provide those living within ½ mile of the pipeline with clear information on incident response. This commenter suggests using guidelines provided for nuclear facilities. (CCATO Comment at 7.)</p> <p>Edith Templeton (Citizen) – Requests information about how to respond to an incident and what indicators would show that an incident may be occurring. (Templeton Comment at 1.)</p> <p>Danielle Friel Otten (State Representative) – Requests that regulations require the public be provided with resources that explain any risks posed by pipelines and how to respond in the event of an emergency. (Otten Comment at 3.)</p> <p>Kathleen Griffith (Citizen) – Expresses concern that residents have not been provided with clear information about the Sunoco pipeline. (Griffith Comment at 1.)</p> <p>Adam Kapp (Citizen) – Requests that the PA PUC review information provided to the public to ensure that it is plausible, relevant and effective. (Kapp Comment at 9.)</p> <p>Richard McIntyre (Citizen) – Requests that pipeline operators provide citizens with a laminated card with clear instructions on what to do in response to an incident. This commenter also believes that the information to “run up-wind” is insufficient. (McIntyre Comment at 1.)</p> <p>Jennifer Nichols (Citizen) – Requests that emergency response plans be made public. (Nichols Comment at 1.)</p> <p>Edward Cavey (Citizen) – Requests that regulations mandate what information should be provided to the public. (Cavey Comment at 1.)</p>

Exhibit 1 – Summary of Relevant Issues Subject to PA PUC Advanced Notice of Proposed Rulemaking

	Topic/Issue	PA PUC Advanced Notice of Proposed Rulemaking (ANOPR) (L-2019-3010267) (June 13, 2019)	Relevant ANOPR Comments
5.	Coordination with Local Government Officials	“The Commission seeks public comment on . . . [u]tility interactions with local government officials, including but not limited to such topics as emergency planning and emergency response coordination, periodic drills with utility/municipal coordination.” (ANOPR at 19.)	<p>Barbara Goblick (Citizen) – Requests that regulations require communication with local officials. (Goblick Comment at 1.)</p> <p>Andrew Dinniman (State Senator) – Requests that pipeline operators be required to respond to inquiries from local officials and should be required to meet with local officials once per year. (Dinniman Comment at 7.)</p> <p>Adam Kapp (Citizen) – Requests that regulations require regular communication between local officials and pipeline operators and that operators should be required to provide documentation of these efforts. (Kapp Comment at 8-9.)</p> <p>Association of Oil Pipe Lines (AOPL) – Provides that regulations already require coordination with local government officials. This commenter suggests that public officials are often invited to meetings but do not normally attend. (APOL at 7.)</p> <p>Clean Air Council (CAC) – Requests that pipeline operators be required to review action plans and drills with local authorities and that the PA PUC should grant intervenor status to these authorities. This commenter suggests that these authorities should be given “real-time” access to pipeline data streams. (CAC Comment at 29.) This commenter also requests that regulations require pipeline operators to attend any meeting requested by a local official (<i>Id.</i>)</p> <p>Virginia Marcille-Kerslake (Citizen) – Requests that operators be required to communicate with local government officials on a regular basis and provide documentation to demonstrate that those communications have been made. (Marcille-Kerslake Comment at 5.)</p> <p>County of Chester – Requests regulations that require the PA PUC to give local government officials notice of investigations related to</p>

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			<p>pipelines and access to certain information about pipelines. (County of Chester Comment at 10.)</p> <p>Associated Petroleum Industries of Pennsylvania (API PA) – Requests that any requirements for interactions with local officials be aligned with API RP 1162, Public Awareness Programs for Pipeline Operators. (API PA Comment at 5.)</p> <p>Marcellus Shale Coalition (MSC) – Suggests that the PA PUC should not alter coordination requirements to ensure consistency with PHMSA requirements. (MSC Comment at 7.)</p> <p>Pipeline Safety Coalition (PSC) – Requests that pipeline operators should be required to inform local and state officials of changes in product being transported. This commenter also requests that regulations require a certain amount of coordination between operators and local governments. (PSC Comment at 15.)</p> <p>Del Chesco United for Pipeline Safety (DCU) – Requests that the PA PUC mandate that operators communicate with local municipalities on a regular basis and provide the PA PUC with evidence of those efforts. (DCU Comment at 11.)</p> <p>East Goshen Township Board of Supervisors – Requests that the PA PUC adopt Texas Railroad Commission regulations that require operators to meet with municipal officials. (East Goshen Township Comment at 6.)</p> <p>Bernard Greenberg – Requests mandatory meetings with local officials and that regulations implement consequences for failing to attend those meetings. (Greenberg Comment at 2.)</p> <p>County Commissioners Association of Pennsylvania (CCAP) – Requests a library of pipeline information, including best practices, subject matter experts, and training opportunities, that can be accessed by local government and citizens. (CCAP Comment at 16.)</p>

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			<p>Andrea Cauble (Citizen) – Requests regulations that require “[a] regular dialogue should exist between the operator of a pipeline and the relevant local governmental entities for the purpose of a reasonable response in the event of emergency occurrences or conditions.” (Cauble Comment at 6.)</p> <p>Pennsylvania State Association Township Supervisors (PSATS) – Suggests that regulations should require pipeline operators to “communicate early and often with Local Government Officials.” (PSATS Comment at 2.)</p>
6.	Coordination with Schools	“Interested parties may comment on other provisions of Part 195 relating to the operation and maintenance of hazardous liquid public utilities that they believe the Commission should consider strengthening through this rulemaking.” (ANOPR at 10.)	<p>Bernard Greenberg – Requests that regulations be implemented to require meetings with school districts. (Greenberg Comment at 2.)</p> <p>Judith Schwank (Senate of Pennsylvania) – Requests that school administrators be provided with information on how to respond to pipeline incidents. (Schwank Comment at 2.)</p> <p>Tom Killion (Senate of Pennsylvania) – Requests regulations that require operators with pipelines within 1000 feet of a school to (1) provide non-sensitive information to school officials, and (2) meet with school officials quarterly to develop best practices. (Killion Comment at 2.)</p> <p>Pipeline Safety Coalition (PSC) – Requests a statewide “Pipeline Safety Near Schools” education program. (PSC Comment at 17.)</p> <p>East Goshen Township Board of Supervisors – Requests that the PA PUC adopt Texas Railroad Commission regulations that require operators to hold meetings with school officials when a school is within 1,000 feet of the pipeline. These regulations also require the operator to provide certain information related to emergency response plans to the school. Additionally, this commenter requests that operators be required to maintain records documenting compliance with this regulation. (East Goshen Township Comment at 8-9.)</p>

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		<p>Downingtown Area School District – Requests that schools be provided with immediate notice of a pipeline incident. This commenter also requests that pipeline operators provide education and an emergency response plans that are specific to the school and age of students. (Downingtown Comment at 2.)</p> <p>Chester County Association of Township Officials (CCATO) – Requests regulations that require meetings with schools within 1000 feet of a pipeline. (CCATO Comment at 6-7.) This commenter also requests that schools be immediately notified in the event of an incident. (<i>Id.</i> at 9.)</p>
7. Coordination with Emergency Responders	<p>“The Commission seeks public comment on . . . [u]tility interactions with local government officials, including but not limited to such topics as emergency planning and emergency response coordination, periodic drills with utility/municipal coordination.” (ANOPR at 19.)</p>	<p>East Goshen Township Board of Supervisors – Requests that the PA PUC adopt Texas Railroad Commission standards which require operators to communicate with fire, police, and other responders once a year. (East Goshen Township Comment at 5.)</p> <p>Chester County Association of Township Officials (CCATO) – Requests operators be required to provide a map, and information on valve locations and MAOP to emergency responders. (CCATO Comment at 6.)</p> <p>Tom Killion (Senate of Pennsylvania) – Requests that pipeline operators be required to “meet with the county emergency coordinator entrusted to respond in the event of natural gas release to ensure that the response would be efficient and effective.” This commenter also requests that pipeline operators be required to provide current Emergency Response Plans to the PA PUC, who could then responsibly and confidentially share these plans to coordinate emergency responses. (Killion Comment at 3.)</p> <p>Clean Air Council (CAC) – Requests that local response officials be provided with “all data, images, alerts, and information generated from any pipeline in the jurisdiction.” (CAC Comment at 29.)</p>

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			<p>Bureau of Investigation and Enforcement (BI&E) – Requests that regulations require operators to develop continuing education plans for police, the fire department, and other appropriate organizations. This requirement includes requiring operators to conduct table-top drills semi-annually and an annual response drill. (BI&E Comment at 11.) This commenter also suggests that meetings should be held with local emergency responders at least once per quarter. (<i>Id.</i> at 12.)</p> <p>Pennsylvania State Association Township Supervisors (PSATS) – Requests regulations that require pipeline operators to standardize emergency response plans, enhance emergency response training for responder agencies, and provide training to local emergency responders. (PSATS Comment at 2.)</p> <p>Andrew Dinniman (State Senator) – Requests that operators be required to meet with emergency management personnel semi-annually or upon request. This commenter also suggests that pipeline operators should be required to provide inspection reports and operating pressure information to responders. (Dinniman Comment at 7.)</p> <p>Marcellus Shale Coalition (MSC) – Suggests that the PA PUC should not alter coordination requirement to ensure consistency with PHMSA requirements. (MSC Comment at 7.)</p> <p>Josh Maxwell and Marian Moskowitz (Candidates for Chester County Commissioner) – Requests that the PA PUC develop a process to release information that can assist in emergency response planning. (Maxwell & Moskowitz Comment at 2.)</p> <p>Carolyn Comitta (State Representative) – Requests that pipeline operators provide local first responders with a guided tour of new pipelines. (Comitta Comment Addendum at 2.)</p>

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			<p>Pipeline Safety Coalition (PSC) – Requests that operators be required to implement tabletop and functional exercises that involve local first responders. (PSC comment at 15.)</p> <p>County of Chester – Requests that operators be required to provide emergency responders with maps of the pipelines and information related to the MAOP and the location of any anomalies on the pipeline. This commenter also requests that operators be required to provide responders with information on a variety of topics, including the potential impact radius for each product in the pipeline, consequence analyses, worst case scenario or discharge from each product, potential impacts to the public, pressure relief valve locations, pumping and compressor station locations, and potential impacts to the environment. (County of Chester Comment at 10-11.)</p> <p>Michael Perlow Jr. (Engineer) – Recommends that the PA PUC use a Public Utilities Hazards Assessment – Emergency Response Preparedness Tool to coordinate emergency responses. (Perlow Comment at 2.)</p> <p>Edward Cavey (Citizen) – Requests that regulations remove bureaucratic barriers so that emergency plans can be disclosed to first responders. (Cavey Comment at 1.)</p>
8.	Notification of Pipeline Activity, Including Excavation, or Maintenance	“The Commission seeks public comment on . . . [a]dvance notification and/or Commission preapproval of major construction activities.” (ANOPR at 19.)	<p>Bureau of Investigation and Enforcement (BI&E) – Requests that operators be required to provide notice and certain information prior to construction, verification digs, and major and minor maintenance. (BI&E Comment 15-19.)</p> <p>Kay Whittle (Citizen) – Requests that operators give local communities notice of major construction 9 days prior to the commencement of any construction that impacts one mile or more of a pipeline. This commenter also requests written notification to any impacted municipality. (Whittle Comment at 12.)</p>

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			<p>County of Chester – Requests that pipeline operators be required to notify all municipalities, townships, and counties of anticipated, scheduled, or commenced work. (County of Chester Comment at 15.)</p> <p>Tom Killion (Senate of Pennsylvania) – Requests that pipeline operators provide notice to residents and municipalities within a 1,000 foot radius of new pipeline construction at least 5 days prior to beginning that construction. (Killion Comment at 2.)</p> <p>County Commissioners Association of Pennsylvania (CCAP) – Requests that the pipeline industry and local governments develop best practices related to “[r]equirements for property developers to consult in advance with pipeline operators and/or owners to assure precautions are taken during construction to avoid damage to existing pipelines [and] [d]evelopment of notification protocols to assure county and municipal governments are aware of proposed pipeline development.” (CCAP Comment at 2.)</p>
9.	Public Notification System	“Interested parties may comment on other provisions of Part 195 relating to the operation and maintenance of hazardous liquid public utilities that they believe the Commission should consider strengthening through this rulemaking.” (ANOPR at 10.)	<p>Kathleen Hester (Citizen) – Requests that an emergency notification system via phone/text to registered residents be established. (Hester Comment at 2.)</p> <p>Richard McIntyre (Citizen) – Requests a text message in the event of an incident. (McIntyre Comment at 2.)</p> <p>Marcia Gentry (Citizen) – Requests state-of-the-art warning systems be installed on pipelines. (Gentry Comment at 1.)</p> <p>County of Chester – Requests that landowners be provided with notifications of an incident or a suspected incident. (County of Chester at 11.)</p> <p>Danielle Friel Otten (State Representative) – Requests that leak and incident detection systems be integrated with county emergency services to provide quick notice of incidents.</p>

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			<p>Kim Van Fleet (Citizen) – Requests a public alarm/notification system be installed near pipelines. (Van Fleet at 4.)</p> <p>Kay Whittle (Citizen) – Requests leak detection requirements that provide notice to the public. (Whittle Comment at 9.)</p> <p>Tom Killion (Senate of Pennsylvania) – Requests that the PA PUC “clarify[] how early warning[s] would reach residents within the potentially impacted area.” (Killion Comment at 2.)</p>