

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Flynn, Rosemary Fuller,	:	
Michael Walsh, Nancy Harkins,	:	
Gerald McMullen, Caroline Hughes,	:	Docket No. P-2018-3006117
and Melissa Haines,	:	Docket No. C-2018-3006116
<i>Complainants,</i>	:	Docket No. C-2018-3005025
v.	:	Docket No. C-2019-3006898
	:	Docket No. C-2019-3006905
Sunoco Pipeline, L.P.,	:	Docket No. C-2018-3003605
<i>Respondents.</i>	:	

**JOINT REPLY EXCEPTIONS OF INTERVENORS THE DOWNINGTOWN AREA  
SCHOOL DISTRICT, THE ROSE TREE MEDIA SCHOOL DISTRICT AND EAST  
GOSHEN TOWNSHIP**

Intervenors, the Downingtown Area School District, the Rose Tree Media School District and East Goshen Township respectfully submit this Joint Reply to the Exceptions of Respondent Sunoco Pipeline, L.P. to the April 9, 2021 Initial Decision pursuant to the correspondence of Secretary Rosemary Chiavetta to all parties dated April 23, 2021, and in accordance with 52 Pa. Code §5.535.

Dated: July 1, 2021

Respectfully submitted,

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## I. INTRODUCTION

Intervenors the Downingtown Area School District, the Rose Tree Media School District and East Goshen Township respectfully submit this joint reply to the Exceptions of Respondent Sunoco Pipeline, L.P. to the April 9, 2021 Initial Decision (“SPLP Exceptions”). SPLP’s Exceptions take issue with a number of well-reasoned and correct findings and conclusions contained in the Initial Decision. This joint submission addresses three of SPLP’s Exceptions, Exceptions 4, 5 and 7 – this is not to be construed as agreement with the SPLP’s Exceptions that are not addressed herein.<sup>1</sup>

SPLP’s Exceptions 4, 5 and 7 request modifications to the Initial Decision as follows:

- *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;*
- *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.*

(SPLP’s Exceptions, *Conclusions*, p. 36)

The SPLP Exceptions suffer from two deficits - they either rely too heavily on the pending ANOPR, or; they construe the critical examination in the Initial Decision of *both sides* of the various arguments as some sort of irreconcilable conflict of the ultimate determination. These

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<sup>1</sup> This concise reply incorporates by reference the Exceptions filed by the Downingtown Area School District and East Goshen Township as permitted by 52 Pa. Code §5.535(a). And, to the extent that other Intervenor-aligned parties file Reply Exceptions, they are likewise incorporated herein, specifically the Reply Exceptions filed by Chester County, which are specifically incorporated into this submission.

positions and the related arguments lack merit, and as set forth below, these SPLP Exceptions should be denied.<sup>2</sup>

## II. REPLY TO SPLP EXCEPTIONS

### A. Reply to SPLP Exception 4

**“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.”**

SPLP Exception 4 makes the following argument - because issues joined in the instant case are subject to *Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Docket No. L-2019-3010267 (Order entered June 13, 2019) (*ANOPR*), Judge Barnes is precluded from ordering relief such as evacuation procedures be added to SPLP’s public awareness pamphlets or requiring direct wiring of SPLP’s release detection system to 911. SPLP references a number of pages and paragraphs of the Initial Decision to support this unprecedented, until now never raised, scope of the underlying matter. Of course, none of the references to the Initial Decision support this argument. To the contrary, rather than failing some “bright-line test” (SPLP Exceptions, pg. 24) it was expressly noted in the Initial Decision that “[i]n the instant case, emergency preparedness issues are squarely within this consolidated proceeding”. (ID, page 159)

SPLP’s argument that if it has complied with minimum standards the Commission has no power or jurisdiction over Sunoco’s public awareness programs is incorrect. SPLP “shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall

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<sup>2</sup> And, in some circumstances, the SPLP Exceptions emphasize issues determined in SPLP’s favor. For example, SPLP Exceptions, at para 6, page 4, seem to build the foundation of its exceptions on the consideration of the installation of a mass warning system and the addition of odorants to natural gas liquids (NGLs).

exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.” 52 Pa. Code § 59.33(a). Every public utility, like SPLP, is required to maintain safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501. The Pennsylvania Public Utility Commission (“Commission”) has the power and duty under the Public Utility Code to enter such orders as are necessary to assure that the public utility service and facilities are safe and reasonable. 66 Pa.C.S.A. § 1505(a). SPLP’s argument that if it has complied with minimum standards, “that’s enough”, is contrary to law and SPLP Exception 4 should be denied.

#### **B. Reply to SPLP Exception 5**

**“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.”**

SPLP Exception 5 takes issue with the sufficiency of the evidence. It would be accurate to observe that there was conflicting evidence and exhibits on a number of issues. But the determination that SPLP has refused to meet or provide information to the school districts and the municipalities is supported by competent evidence. As an example, Timothy Hubbard testified that at least up until December of 2018, the Downingtown Area School didn't have proper information with respect to the pipeline, its contents, pressures, and things of that nature and that “[u]p until that point and even beyond, we've been met with -- met with a little bit of what I would term a brick wall”. (October 1, 2020, N.T. 2363) Mr. Hubbard also testified regarding the practical effect of non-disclosure agreements and the inability to share critical information, as well as an 11<sup>th</sup> hour transmission of a SPLP letter offering assistance. (October 1, 2020, N.T. 2364, 2377; Exhibit SPLP-50)

Intervenors understand that advocates will cherry pick certain record references, but to suggest that there is no evidence to support SPLP's reticence in meeting and providing information is simply not accurate. Accordingly, Conclusion of Law 46, that SPLP's unwillingness to meet with school districts and public officials and the withholding of information useful in the preparation of PEMA plans is a violation of Commission regulation, warranting the directive to provide information and emergency training to assist these political subdivisions and school districts (52 Pa. Code § 59.33, 66 Pa. C.S. § 1501) is supported by the evidence, and SPLP Exception 5 should be denied.

### **C. Reply to SPLP Exception 7**

**“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.”**

SPLP Exception 7 suggests that the very narrow injunctive relief (i.e., ordering meetings and discussions and providing information) is somehow beyond the ability of professional adults operating in good faith to accomplish. The SPLP Exceptions at pages 9-10 take issue with meetings between municipalities and school districts “to discuss additional communications and training.” (*quoting* ID at 201). The Exceptions of the Downingtown Area School District directly address the mechanisms for meaningfully implementing that narrow relief granted.

The Initial Decision recognizes correctly that in order to obtain *permanent* injunctive relief, as requested here, a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v. Jones*, 571 Pa. 637, 644, 813 A.2d 659, 663 (2002), *cert. denied*, 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003). The relief ordered here – discussion and disclosure – could not have been more narrowly tailored, and SPLP Exception 7 should be denied.

**III. CONCLUSION**

Intervenors the Downingtown Area School District, the Rose Tree Media School District and East Goshen Township respectfully request that SPLP Exceptions 4, 5 and 7 be denied.

Respectfully submitted,

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Dated: July 1, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that this day I have served a copy of the Joint Reply of the Downingtown Area School District, the Rose Tree Media School District and East Goshen Township to the SPLP Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

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