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July 2, 2021

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
Harrisburg, PA 17120

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)  
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)  
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)  
Laura Obenski, Docket No. C-2019-3006905 (consolidated)  
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605 (consolidated)  
v. Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S REPLY EXCEPTIONS**

Dear Secretary Chiavetta:

Enclosed for filing is Sunoco Pipeline L.P.'s Reply Exceptions in the above-referenced proceeding. Because this document does not contain new averments of fact, it does not require a verification.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully,

*/s/ Whitney E. Snyder*

Thomas J. Sniscak  
Whitney E. Snyder

*Counsel for Sunoco Pipeline L.P.*

WES  
Enclosure

cc: Administrative Law Judge Elizabeth Barnes (via email only, [ebarnes@pa.gov](mailto:ebarnes@pa.gov))  
Kathryn G. Sophy, Director, OSA (via email only, [ksophy@pa.gov](mailto:ksophy@pa.gov))  
All Counsel and Pro Se Parties on attached Service List

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

|                                |   |                |
|--------------------------------|---|----------------|
| Meghan Flynn                   | : | C-2018-3006116 |
| 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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**RESPONDENT SUNOCO PIPELINE L.P.'S REPLIES TO EXCEPTIONS**

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Dated: July 2, 2021

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Pursuant to 52 Pa. Code § 5.535, Sunoco Pipeline L.P. (SPLP) files these replies to the exceptions of East Goshen Township (East Goshen), Downingtown Area School District (DASD), Chester County, Uwchlan Township,<sup>1</sup> Melissa DiBernardino, and Andover Homeowners Association Inc. (Andover HOA) to the April 9, 2021 Initial Decision (ID) of Administrative Law Judge Elizabeth Barnes.

## **I. INTRODUCTION AND SUMMARY OF REPLIES TO EXCEPTIONS**

Of the 19 parties opposing SPLP in this proceeding, only 2 of 5 Complainants, 1 of 4 school districts, 2 of 7 municipalities and 1 out of 2 counties filed exceptions to the ID. Despite the plethora of unsupported allegations, not a single party excepted to the ID's correct findings that no party has shown SPLP's construction, operation, and maintenance of its pipelines violate any regulation or statutory requirement. None of the exceptions that were filed are justified by the law or record. In fact, none cite any record support and contain numerous requests for relief beyond the Commission's jurisdiction. Moreover, they contain allegations or facts raised for the first time on exceptions, violate due process, and were not properly raised or preserved and thus cannot be considered.<sup>2</sup> For these substantive and procedural reasons, all Complainant and Intervenor exceptions should be denied.

### **A. DASD and East Goshen Common Exception**

First, DASD and East Goshen seek the Commission to order that SPLP must pay their costs in complying with the Commission's order, essentially seeking the Commission to award

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<sup>1</sup> Uwchlan Township filed a letter joining in Chester County's Exceptions. Hereinafter Chester County includes Uwchlan Township.

<sup>2</sup> *Cynthia Young-Nelson v. PECO*, Docket No. F-2019-3009953, 2020 WL 7239799, Opinion and Order at 5 (Order entered Dec. 3, 2020) (holding allegation not raised by Complainant in Complaint and raised in exception untimely and disregarding issue from consideration of exceptions); *Application of Apollo Gas Co.*, 1994 Pa. P.U.C. Lexis, at \*8-14 (Order entered Feb. 10, 1994) ("It is well-established that parties cannot introduce new evidence at the exceptions stage.").

damages or to impose a funding obligation to school districts not permitted by any statute the Commission is empowered to administer. As SPLP explained at length in its Exceptions, the relief for which DASD and East Goshen seek remuneration should not have been granted at all.<sup>3</sup> Moreover, it is longstanding law that the Commission cannot award damages.<sup>4</sup> These claims for relief and allegations were raised for the first time at the exceptions stage with no evidence in the record, and no opportunity for SPLP to respond to what is essentially a request for a blank check. *Infra* Section II.A.

### **B. East Goshen and Chester County Common Exception**

Second, East Goshen and Chester County seek the Commission to order SPLP to make public copies of its geophysical testing results. This exception must be denied because it is contrary to the Public Utility Confidential Security Information Disclosure Protection Act, *infra*, which places designation of Confidential Security Information in the hands of the utility in the first instance and clearly defines specific locational information of utility assets as Confidential Security Information. The allegations that geophysical reports are not Confidential Security Information is belied by the record and has been waived. The record shows that the only geophysical report submitted as evidence in this proceeding is Confidential Security Information, was entered into the record under the Amended Protective Order as such, and that no party challenged this designation, meaning the parties including East Goshen and Chester County have waived their argument that geophysical testing results are not Confidential Security Information

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<sup>3</sup> SPLP Exceptions 4, 5, 7, 8.

<sup>4</sup> See *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371 (Pa. 1980) (“*Elkin*”); *Feingold v. Bell Telephone Co. of Pennsylvania*, 383 A.2d 791 (Pa. 1977) (“*Feingold*”); *Poorbaugh v. Pennsylvania Pub. Util. Comm’n*, 666 A.2d 744, 748 (Pa. Cmwlth. 1995) (citing *Feingold*); *Vertis Group, Inc. v. Pennsylvania Pub. Util. Comm’n*, 840 A.2d 390, 396 (Pa. Cmwlth. 2003) (citing *Elkin*; *Feingold*.)

and should instead be public. *Infra* Section II.B. Significantly, if the requested geophysical testing results are unrelated to the pipelines, they have no relevance to this proceeding.

### **C. DASD and East Goshen Common Exception**

Third, East Goshen and DASD attempt to add specificity to the relief the ID ordered regarding coordination with municipalities and school districts. The exception should be denied because the relief should not have been ordered at all, but rather is the subject of the pending Advanced Notice of Public Rulemaking (ANOPR), pending at Docket No. L-2019-3010267. Further, the request for additional specificity proves SPLP's point that the affirmative injunctive relief the ID ordered was not, as required, narrowly tailored and amounted to nothing more than an unenforceable "agreement to agree." *Infra* Section II.C.

### **D. DiBernardino Exception**

Fourth, *pro se* Ms. DiBernardino misconstrues Pennsylvania administrative law to argue that the Commission can retroactively order compliance with standards that do not currently exist. To the extent that Complainants allege a violation as the result of actions that are not prohibited or inaction that is not required by current federal pipeline safety regulations, or by proposed standards that are the subject of the Commission's ANOPR, these allegations cannot satisfy the requirement to demonstrate a violation of current applicable law or regulation. The ID was correct to find that such issues, which the Commission is already considering in the ANOPR, should be decided through the notice and comment rulemaking process with input from all stakeholders, not by this adjudication and DiBernardino's preferences. To hold otherwise would violate SPLP's due process rights by setting a new standard of behavior and then retroactively applying it to SPLP. The Commission has already held this in *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 26 (Order entered Sept. 23, 2020) ("*Baker*") (reversing relief granted that is subject of proposed rulemaking). *Infra* Section II.D.



### E. Andover HOA's Untimely Exceptions

Fifth, Andover HOA, which is represented by counsel, filed untimely exceptions after all parties had already received a significant extension of the filing deadline. Andover HOA provides no excuse or cause, and the late filing is prejudicial to SPLP because Andover HOA had SPLP's Exceptions in its possession for days prior to filing its exceptions. In these circumstances, the Commission cannot consider these untimely exceptions.<sup>5</sup> *Infra* Section II.E. To the extent the Commission does consider Andover HOA's exceptions, they must be denied. They are wholly unsupported by the record and rely on misrepresentations of various provisions of law. Essentially, Andover HOA argues the Commission should have dictated where SPLP located its pipelines and that SPLP's pipeline operations should be enjoined based on its mere allegation that they are unsafe. These tardy and unexcused exceptions Andover's counsel submitted are meritless and must be disregarded or denied. *Infra* Section II.F.

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<sup>5</sup> *Gloria Scarnati, v. PA American Water Co.*, Docket No. C-00015273, Opinion and Order (Order entered Jan. 10, 2002) (denying nunc pro tunc treatment for exceptions where delay not caused by extraordinary circumstances); *Cheryl Nickelberry v. Philadelphia Elec. Co.*, Docket No. F-8642641 Opinion and Order (Order entered Jun. 29, 1987) (relying on *Cook v. Unemployment Comp. Bd. of Review*, 671 A.2d 1130 (Pa. 1996)); ("In reviewing untimely exceptions, we have followed the Commonwealth Court of Pennsylvania's opinion in *Walker v. Unemployment Comp. Bd. of Review*, 461 A.2d 346, 347 (Pa. Cmwlth. 1983). The Court wrote, 'An untimely appeal may be allowed where the untimeliness is not the result of the negligence of the appellant.'").

## **II. REPLIES TO EXCEPTIONS**

### **A. The Commission cannot order SPLP to pay for municipality and school district costs. DASD Exception 1; East Goshen Exception 3.**

Intervenors DASD and East Goshen except to ID Ordering Paragraphs 16-19,<sup>6</sup> on the basis that the Commission should require SPLP to pay for any costs the school districts or municipalities incur related to this relief, such as attending meetings and trainings and creating evacuation plans. DASD Exceptions at 4-5; East Goshen Exceptions at 5-6. These exceptions request that the Commission order that Intervenors send SPLP the bill for their costs within 60 days of occurrence, and that SPLP's payment to the Intervenors must be within 60 days. East Goshen Exceptions at 6. No legal rationale is offered for this exception as to Commission jurisdiction to impose damages, levy a tax, or to relieve a school district or a municipality from its emergency response obligations or plans and to pay their costs.

The Commission cannot require SPLP to pay for the costs of municipalities and schools districts related to the relief ordered in Paragraphs 16-19. At the outset and as detailed in SPLP's exceptions, the relief in Paragraphs 16-19 should not be granted at all (let alone additionally requiring SPLP to pay other parties costs) because:

- This relief requires SPLP to implement public awareness program elements that are beyond existing regulatory requirements and even if they were permitted by the Public Utility Code, which they are not, would therefore be subject of the pending ANOPR and not this Complaint proceeding. SPLP Exception 4.

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<sup>6</sup> Ordering Paragraphs 16-19 require SPLP to, *inter alia*, contact municipalities and school districts and hold public awareness/education meetings, appear at the meetings, discuss additional communications and training, provide such training as is reasonably requested, and assist in development of evacuation plans.

- It is unwarranted where the ID incorrectly found SPLP violated the Public Awareness regulations, Public Utility Code, or Commission regulations on which the relief is based. SPLP Exception 5.
- The relief is not narrowly tailored and there is no evidence of irreparable injury if injunctive relief is not granted. SPLP Exception 7.
- The relief of SPLP providing emergency response or evacuation plans is directly contrary to law as those plans are a local municipal obligation not a public utility one. 35 Pa. C.S. § 7503; SPLP Exception 8.
- The relief violates SPLP's managerial discretion. SPLP Exception 8.

Even if the Commission grants the relief in ID Ordering Paragraphs 16-19, it cannot grant in addition the financial relief requested in DASD and East Goshen exceptions because they are seeking open-ended damages, essentially a "blank check". East Goshen and DASD request that the PUC issue an undefined, unknown, and ongoing compensation scheme for these entities to carry out their own required duties as public entities which amounts to an award of damages that must be denied. It is well established that the Commission lacks authority to award damages. *See Elkin; Feingold*. The Commonwealth Court has further held that the remedial and enforcement powers vested in the PUC by the Utility Code were designed to allow the PUC to enforce its orders and regulations, but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a complainant. *Poorbaugh*, 666 A.2d at 748 (citing *Feingold*). While the PUC has extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, the courts of common pleas have traditionally retained original jurisdiction to entertain suits for damages against public

utilities. *Vertis Group, Inc.*, 840 A.2d at 396 (citing *Elkin; Feingold*). Nor does the Public Utility Code provide for utility funding of municipalities or school districts.

These exceptions also cannot be granted because neither DASD nor East Goshen requested this relief in their respective petitions to intervene, nor did they offer any evidence in the record to their costs. It is far too late, and obviously contrary to SPLP's due process rights, to raise this issue now at the Exceptions stage and the Commission cannot consider it. *Cynthia Young-Nelson v. PECO*, Docket No. F-2019-3009953, 2020 WL 7239799, Opinion and Order at 5 (Order entered Dec. 3, 2020) (holding allegation not raised by Complainant in Complaint and raised in exception untimely and disregarding issue from consideration of exceptions).

**B. Ordering SPLP to make public copies of geophysical testing is contrary to law, unsupported by the record, and the issue has been waived. East Goshen Exception 1; Chester County Exception 1.**

East Goshen and Chester County each except to ID Ordering Paragraph 13, which requires SPLP pursuant to non-disclosure agreements "to share geophysical testing inspection and evaluation reports assessing the condition of its pipelines to . . . Township Supervisors or their designee engineering consultants," and argue on such basis that the geophysical reports should be made public. East Goshen Exceptions at 5; Chester County Exceptions at 1-3; ID at p. 199, Ordering Paragraph 13 (emphasis added). This relief cannot be granted because it is contrary to law, unsupported by the record, and East Goshen and Chester County waived the issue.

Making the geophysical reports public is contrary to law. When ordering that the geophysical reports be disclosed "pursuant to non-disclosure agreements [SPLP] deems necessary to protect its confidential security information," the ID correctly recognized that ordering the geophysical results to be public is contrary to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6 (CSI Act). ID at p.

199, Ordering Paragraph 13. The CSI Act puts the responsibility on the public utility to identify whether a document contains Confidential Security Information and to treat it according to the Act if it does. Ordering SPLP to publicly disclose documents regardless of whether those documents contain Confidential Security Information is directly contrary to the CSI Act.

Had the General Assembly intended for SPLP to publicly release such documents, it could have passed legislation to do so. But the General Assembly has recognized that non-disclosure agreements and limited provision of documents containing Confidential Security Information is appropriate. *See, e.g.*, 66 Pa. C.S. § 1512 (providing that natural gas liquids pipelines in high consequence areas provide to specified individuals upon request emergency response plans subject to non-disclosure agreements).

Further, there is no evidentiary support for the Township and County exception allegations that “these *geophysical* reports deal only with the characteristics of the land and not the pipelines themselves,” “geophysical reports deal only with the characteristics of the land and not the pipelines themselves” or that geophysical reports “were a matter of public record until February 26, 2020.” East Goshen Exceptions at 5; Chester County Exceptions at 3. The Commission cannot consider facts alleged for the first time in exceptions. *Application of Apollo Gas Co.*, 1994 Pa. P.U.C. Lexis, at \*8-14 (Order entered February 10, 1994) (“It is well-established that parties cannot introduce new evidence at the exceptions stage.”).

And even if that evidence existed in the record, which it does not, the argument would be self-defeating. If the geophysical reports do not deal with the pipelines, then they are irrelevant to the issues before the Commission in this matter.

Moreover, the record supports that geophysical testing results do in fact contain CSI and should be kept confidential. The only geophysical testing materials in the record are contained in SPLP Exhibit RK-8, which was entered on the highly confidential record because it contains

Confidential Security Information. Specifically, this exhibit shows geophysical testing results overlaid on a map of a portion of the pipeline and provides specific locational data that is clearly Confidential Security Information. *See* SPLP Exhibit RK-8; CSI Act, 35 P.S. § 2141.2 (defining Confidential Security Information to include a plan, map or other drawing or data showing location). The record shows that SPLP must be able to keep such information confidential to protect public safety and the exceptions should be denied.

The parties, including the Township and County, have waived this issue. Not a single party challenged the confidential status of SPLP Exhibit RK-8. Instead, East Goshen and Chester County raise the issue for the first time in exceptions. Moreover, when various geophysical reports were produced in discovery as highly confidential, Confidential Security Information, these parties did not challenge the designation. Thus, they have waived the issue and the Commission should not consider their exceptions on this point. *Cynthia Young-Nelson v. PECO*, Docket No. F-2019-3009953, 2020 WL 7239799, Opinion and Order at 5 (Order entered Dec. 3, 2020) (holding allegation not raised by Complainant in Complaint and raised in exception untimely and disregarding issue from consideration of exceptions).

**C. The Commission should deny other requested modifications to ID Ordering Paragraphs 16-19. East Goshen Exception 2; DASD Exception 2.**

East Goshen and DASD except to ID Ordering Paragraphs 16-19 seeking more particularized relief. As argued at length in SPLP's Exceptions, neither the record nor the applicable regulations provide a basis to order any of the relief in ID Ordering Paragraphs 16-19, including the more particularized requests DASD and East Goshen present. SPLP Exceptions 4, 5, 7, 8. The requests for more specificity regarding meetings with public and school officials are expressly part of the ANOPR and should not be the subject of this Complaint proceeding.

East Goshen and DASD's own arguments demonstrate that the relief in ID Ordering Paragraphs 16-19 is in error. Specifically, East Goshen and DASD seek specificity as to the nature, timing, frequency, and subject matter of public meetings. That requested relief demonstrates that ID Ordering Paragraphs 16-19 lack the required narrow tailoring of affirmative injunctive relief. To add that specificity now via exceptions of two parties seeking new additional relief with no record evidence would violate SPLP's due process rights.

Moreover, the more particularized relief requested is unduly burdensome and impracticable in addition to being raised at a too late stage of the matter. For example, DASD seeks to have a schedule in place for the completion of requirements in ID Ordering Paragraphs 16-19 within twenty days of a Commission Order adopting this relief (ten days prior to the thirty-day time frame the ID Ordering Paragraphs already provide). SPLP would have to coordinate not only the provision of information and meetings, but also would have to develop a schedule that accommodates the schedules of elected officials/employees of four school districts, two counties, and numerous municipalities all within 20 days. This is burdensome, unnecessary, impracticable, and should be denied.

Regarding the exception to ID Ordering Paragraph 19, DASD requests that prior to submitting the plan for enhancements to public awareness and emergency notifications, SPLP be required to submit the plan to the school districts to review prior to the Commission's Bureau of Technical Utility Services' review. School districts do not have jurisdiction to regulate public utilities, yet DASD seeks to place themselves in the shoes of the Commission and regulate the plan to enhance public awareness and emergency notification. Moreover, this request unreasonably impedes on the time given for SPLP to complete its plans if the Commission so orders (which it should not). This exception should be denied.

**D. The ID correctly found that this adjudication cannot encompass matters within the Commission’s proposed rulemaking docket. DiBernardino Exceptions.**

*Pro Se* complainant Ms. DiBernardino excepts generally to the ID on the basis that this adjudication should essentially find SPLP in violation of standards of which SPLP had no notice – *i.e.*, to create new regulations through the adjudicatory process and retroactively apply them to SPLP. *See generally* DiBernardino Exceptions. This exception should be denied. As explained at length in SPLP’s Exceptions and Main Brief, issues subsumed within the Commission’s ANOPR need to be addressed in that forum and by the wide variety of stakeholders and commentators, not via DiBernardino’s complaint and want to impose retroactive legal or regulatory obligations, which would violate SPLP’s due process rights. To the extent that Complainants allege a violation as the result of actions that are not prohibited or inaction that is not required by current federal pipeline safety regulations, or by proposed standards that are the subject of the Commission’s proposed rulemaking docket, these allegations cannot satisfy the requirement to demonstrate a violation of applicable law or regulation. SPLP Exceptions at pp. 24, ID at 115, 140, 167-69, 190 (Conclusions of Law 36), 192 (Conclusions of Law 48), 198 (Order ¶ 9); *Baker* at 26 (reversing relief granted that is subject of proposed rulemaking); SPLP MB at pp. 86-87.

**E. Andover HOA’s Untimely Exception Cannot Be Considered.**

Andover HOA, who is represented by counsel in this consolidated proceeding, filed and served its Exceptions on June 13, 2021, six days late.<sup>7</sup> Andover HOA did not seek the parties or

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<sup>7</sup> Andover HOA should have filed its exceptions on the same day as SPLP, June 7, 2021, unless it was going to utilize the process for exceptions containing confidential information, in which case it would have been required to provide its exceptions to SPLP on the same day all exceptions were due so SPLP could review for confidentiality markings and concerns. *See* Joint Stipulation of Record; April 19, 2021 Joint Petition for Extension of Time; April 23, 2021 Secretarial Letter. Andover HOA did not utilize this process, failing to provide SPLP with its exceptions until it filed them late on June 13, 2021. Andover HOA’s Exceptions were late filed even it had used the process for exceptions containing confidential information, which ran on June 11, 2021.



the Commission's permission for an extension and provided no timely or sufficient cause for its untimely timing, which is particularly untenable given that all parties had already been granted a significant extension from the original deadline. Moreover, Andover HOA had the benefit of receiving SPLP's Exceptions prior to filing its own exceptions, which is prejudicial to SPLP. The Commission may only consider late-filed exceptions where the untimeliness is not due to the party's own negligence and there is no prejudice to opposing parties. *Gloria Scarnati, v. PA American Water Co.*, Docket No. C-00015273, Opinion and Order (Order entered Jan. 10, 2002) (denying nunc pro tunc treatment for exceptions where delay not caused by extraordinary circumstances); *Cheryl Nickelberry v. Philadelphia Elec. Co.*, Docket No. F-8642641 Opinion and Order (Order entered June 29, 1987) (relying on *Cook v. Unemployment Comp. Bd. of Review*, 671 A.2d 1130 (Pa. 1996)); ("In reviewing untimely exceptions, we have followed the Commonwealth Court of Pennsylvania's opinion in *Walker v. Unemployment Comp. Bd. of Review*, 461 A.2d 346, 347 (Pa. Cmwlth. 1983). The Court wrote, 'An untimely appeal may be allowed where the untimeliness is not the result of the negligence of the appellant.'").

Here, there can be no finding but that Andover HOA's late filing was due to its own negligence. Coupled with the prejudice to SPLP, the Commission cannot consider these late-filed exceptions.

**F. To the extent Andover HOA's Exceptions are considered, they should be denied.**

Andover HOA submits two exceptions regarding the Commission's authority and use thereof for siting of pipelines and enjoining operation of pipelines. Neither has any merit under the law or facts.

**1. Commission Siting Authority to Regulate Routing of Pipelines. Andover HOA Exception 1.**

Andover HOA makes various baseless accusations regarding the Commission’s authority over siting pipelines, stating:

- “The Association sought relief in this matter because the Commission has failed to use its authority to regulate pipeline siting”
- “The Commission must recognize, and stop, this blatant hypocrisy. The Commission must admit that it is afraid to regulate pipeline siting within its actual documented authority and rewrite Judge Barnes’ opinion to reflect that the Commission just refuses to do its job.”

Andover HOA Exceptions at 2, 5.

Andover HOA essentially alleges the Commission has authority to dictate or approve the exact location of pipeline facilities and does not use it. Andover HOA Exceptions at 3-6. This is inconsistent with the law and the record. The ID correctly held that the Commission does not have a pre-approval process for the siting of pipelines and cannot retroactively hold SPLP to non-existent standards. ID at 91, 193. The Commission has stated its stance on its authority regarding pipeline siting various times and Chairman Dutrieuille has explained the reasoning behind it. 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). To the extent the Commission does regulate siting of pipeline facilities, the Pipeline Hazardous Materials Safety Administration (PHMSA) regulations that the Commission adopted at 52 Pa. Code § 59.33(b) expressly allow pipelines that transport hazardous volatile liquids (HVLs) – like SPLP’s Mariner East pipelines – to be located in Pennsylvania in high consequence areas. ID at 91, 188, 192.

The regulations specify that when a pipeline is in a high consequence area, the operator must implement an integrity management plan, which SPLP does. ID at 189 (SPLP's Integrity Management Plans comply with applicable regulations). The regulations also contain specifications for construction of pipelines including distance and depth from various types of structures. 49 C.F.R. §§ 195.210, 195.248, 195.250. Thus, the Commission is properly exercising its authority in this area of regulation.

Andover HOA misrepresents that 15 Pa. C.S. § 1511(b) shows that the General Assembly disfavors condemnation of land for placement of pipelines within 100 feet of a home. To the contrary, Section 1511(b) contains an express exemption for petroleum pipelines, like the Mariner East pipelines, from the limitations applicable to other public utilities and condemnation of land. The exemption in Section 1511(b) states:

*(b) Restrictions.--The powers conferred by subsection (a) shall not be exercised:*

*(1) To condemn for the purpose of constructing any street railway, trackless-trolley omnibus, petroleum or petroleum products transportation or aerial electric transmission, aerial telephone or aerial telegraph lines:*

*(i) Any dwelling house or, **except in the case of any condemnation for petroleum or petroleum products transportation lines**, any part of the reasonable curtilage of a dwelling house within 100 meters therefrom and not within the limits of any street, highway, water or other public way or place.*

15 Pa. C.S. § 1511(b) (emphasis added). Petroleum products include the products carried on the Mariner East pipelines – propane, ethane, and butane. 49 C.F.R. § 195.2 (“Petroleum means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas. Petroleum product means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.”); *In re: Sunoco Pipeline L.P.*, Docket Nos. P-2014-2411941 et al.,

Opinion and Order at 38 (Order entered Oct. 29, 2014) (“NGLs are encompassed under the terms “petroleum” and ‘petroleum product.’”). Therefore, the Mariner East pipelines are expressly exempted from this limitation on the use of condemnation.

Andover HOA also references 26 Pa. C.S. § 208 regarding the Commission’s authority over condemnation of conservation easements. Andover HOA Exceptions at 4. This section is irrelevant given the express exemption discussed above and that statute does not give the Commission authority to regulate pipelines more broadly. Moreover, this case, as well as Andover’s presentation of testimony, have nothing to do with conservation easements.

Finally, Andover HOA misrepresents how SPLP obtained its certificates of public convenience (CPC) and application of the CPCs to the Mariner East pipelines, alleging “the Commonwealth Court, and not the Commission, incorrectly granted Sunoco public utility status for the Mariner East project.” Andover HOA Exceptions at 3. Contrary to Andover HOA’s revisionist assertions, the Commonwealth Court’s recitation of SPLP’s certificates of public convenience applying to its Mariner East pipelines was correct and consistent with the Commission’s prior decision on this point. *In re: Sunoco Pipeline L.P.*, Docket Nos. P-2014-2411941 et al., Opinion and Order at 6-39 (Order entered Oct. 29, 2014) (detailing entire history of SPLP’s CPCs and explaining the CPCs apply to Mariner East pipelines).

**2. Commission Authority to Enjoin Pipeline Operations. Andover HOA Exception 2.**

Andover HOA next alleges “the Commission utterly refuses to accept its duty to protect the citizens of the Commonwealth” because the ID did not recommend enjoining the operation of SPLP’s pipelines. Andover HOA Exceptions at 6-8. Andover HOA cites no evidence in support of its allegations that the Mariner East pipelines are too risky or dangerous to be allowed to operate. Allegations are not evidence. Contrary to Andover HOA’s assertions, the record does

not show that SPLP is the “worst operator.” SPLP Reply Brief at 5 (explaining Complainants’ alleged PHMSA violations do not accurately reflect SPLP’s incident history reflected in PHMSA’s database, do not constitute substantial evidence, and that SPLP’s compliance record over the last ten years taken from the actual PHMSA database is at the industry average). In fact, SPLP’s construction, maintenance, operation of its pipelines meets or exceeds all applicable safety standards. Andover HOA did not except to any of the ID’s findings that SPLP’s construction, operation, and maintenance of its pipelines are not unsafe.

Moreover, the ID correctly found, and no party has challenged that because Complainants completely failed to put on any evidence of the likelihood of any harm to the public, there is no basis under the facts or law to order any relief on this basis, let alone the extreme relief of enjoining operation of a public utility. 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. For this same reason, Andover HOA’s suggestion (without citation) that “safety” pursuant to 66 Pa. C.S. § 1501 means “the absence of harm” is clearly wrong. Almost all public utility operations “could” theoretically cause harm. If absence of theoretical harm were the definition of safe, no electricity or natural gas distribution utilities could operate without being in violation of the Public Utility Code. As discussed above, the ID correctly recognized that to prove utility operations are unsafe, the law requires both a showing of consequence and likelihood yet Complainants, particularly Andover, failed to show any likelihood of harm to the public. ID at 23, 25-26, 188-189. Andover’s exceptions must be denied.

### III. CONCLUSION

WHEREFORE, for the reasons stated above, SPLP respectfully requests the Commission deny the exceptions of East Goshen Township, Downingtown Area School District, Chester County, Uwchlan Township, Melissa DiBernardino, and Andover Homeowners Association Inc. and modify the ID consistent with SPLP's Exceptions.

Respectfully submitted,

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Dated: July 2, 2021

**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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