

July 2, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

**Re: Docket Nos. P-2018-3006117, C-2018-3006116, C-2018-3005025,
C-2019-3006898, C-2019-3006905, and C-2018-3003605
Meghan Flynn, et al. v. Sunoco Pipeline, L.P.**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is Chester County's Reply to Exceptions of Sunoco Pipeline L.P. to the April 9, 2021 Initial Decision in the above-referenced matter.

A copy of the attached has been forwarded in the manner indicated on the Certificate of Service.

If you have any questions regarding this filing, please feel free to contact the undersigned.

Sincerely,



Mark L. Freed
For CURTIN & HEEFNER LLP

MLF
Enclosures
cc: Per Certificate of Service

**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>	:	

REPLY OF CHESTER COUNTY TO EXCEPTIONS OF SUNOCO PIPELINE, L.P.

Intervenor Chester County respectfully submits this Reply of Chester County to Exceptions of Sunoco Pipeline 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.

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Dated: July 2, 2021

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INTRODUCTION

On April 9, 2021, the Honorable Elizabeth H. Barnes issued the Initial Decision (“Initial Decision”) in the captioned matter.¹ On June 7, 2021, Sunoco Pipeline, L.P. (“Sunoco”) filed Respondent Sunoco Pipeline L.P.’s Exceptions (“Sunoco’s Exceptions”) with the Public Utility Commission (“Commission”). Also on June 7, 2021, Chester County filed its Exception (“Chester County Exception”) with the Commission.

As set forth more fully in its Post-Hearing Brief, Chester County, which provides for the health, safety and welfare of its residents, expended its time, energy and resources to intervene in this action due to, among other things, its concern over the lack of essential, clear, and useful public safety and public awareness information and tools from Sunoco, and the grave consequences that could result from such lack of information and tools. Chester County is not alone in these concerns. As the list of parties to this action attests, residents, municipalities, school districts, principals, and first responders, among others, consistently complain that they do not have the information from Sunoco that they need to prepare and to properly protect themselves and their constituents in the event of a pipeline leak.

In response to the complaints of and evidence provided by Chester County and the other parties to this action, the Initial Decision appropriately identified and ordered a number of well-reasoned and enforceable measures to increase the safety of the public. Sunoco’s Exceptions take issue with these reasonable measures ordered by Judge Barnes. Chester County files this Reply to oppose certain of Sunoco’s Exceptions as unsupported by the proceedings and the record and which are contrary to law.

¹ All references in this submission refer to the non-proprietary version of the Initial Decision.

I. REPLY TO SUNOCO’S “INTRODUCTION AND SUMMARY OF EXCEPTIONS”

Sunoco’s Exceptions were preceded by an “Introduction and Summary of Exceptions” section which contains numbered paragraphs and argument. Chester County replies to those arguments, referring to the paragraph numbers where appropriate, as follows:

Reply to Sunoco Paragraph 1.

Sunoco states that the Commission does not have authority over the siting and location of pipelines. This statement is contrary to law. As Chester County set forth more fully in its Reply Brief at section II (G), which section is incorporated herein by reference, the Commonwealth Court has held as follows:

Sunoco's decisions are subject to review by the PUC to determine whether Sunoco's service and facilities “are unreasonable, unsafe, inadequate, insufficient, or unreasonable discriminatory, or otherwise in violation of the Public Utility Code” 66 Pa. C.S. § 1505(a). In this manner, **Sunoco's decisions as to the location of its facilities are within the jurisdiction of the PUC.**

Delaware Riverkeeper Network v. Sunoco Pipeline L.P., 179 A.3d 670, 693 (Pa. Commw. Ct. 2018)(emphasis added). The Pennsylvania Supreme Court is in accord:

[T]he Legislature has vested in the Public Utility Commission exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.

Chester Cty. v. Philadelphia Elec. Co., 218 A.2d 331, 333 (Pa. 1966)(emphasis added). See also *Borough of Lansdale v. Philadelphia Elec. Co.*, 170 A.2d 565, 566–67 (Pa. 1961) (emphasis added) (“[N]o principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the PUC. Initial jurisdiction [of the PUC includes] ... ***location of utility facilities***”).

In its post-hearing Brief, Sunoco cited to just one unreported case, *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, 2018 WL 4851407 (Oct. 2018), in support of its siting argument and, as more fully discussed in Chester County’s Reply Brief at pages 31-32, incorporated herein by reference, that case is inapposite and does not state that the Commission has no jurisdiction over siting issues. In *West Goshen*, the heart of the matter before the Commission consisted of the interpretation of a Settlement Agreement between Sunoco, West Goshen Township, and Concerned Citizens of West Goshen Township with regard to the *locating* of a valve or its appurtenances. *Id.* The only limitation on its authority that the Commission noted in *West Goshen* is that the Commission is not in the position to order Sunoco to build valves in particular locations. Sunoco chooses the valve locations and the Commission reviews challenges to those locations. The Commission does not design the pipelines or choose the valve locations. But the Commission most definitely has jurisdiction to review challenges to those siting decisions. The law is clear on this issue and Sunoco’s protestations to the contrary in its Exceptions must fail.

To the extent that the Initial Decision can be interpreted to state that the Commission lacks power to review siting decisions, as Sunoco claims it does on pages 91, 188, and 193, the Initial Decision is in error and directly conflicts with settled law as set forth by the Commonwealth Court and the Pennsylvania Supreme Court in the cases cited above, *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, *Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, and *Borough of Lansdale v. Philadelphia Elec. Co.*, 170 A.2d 565. Chester County joins in the Exceptions of Andover Homeowners’ Association, Inc. (“Andover”) to the extent that the Andover Exceptions argue that the Commission has siting authority. *See* Andover Exception No. 1, pp. 3-6.

Reply to Sunoco Paragraph 2.

Sunoco’s argument that if it is permitted to build pipelines in high consequence areas, then it can do so however it wants, wherever it wants, without any challenge to its siting decisions and without review by the Commission is not supported by any law. Chester County incorporates herein by reference its reply to Sunoco Paragraph 1 above.

Reply to Sunoco Paragraph 6.

Sunoco uses a broad brush to claim that the bulk of the relief requested by the plaintiffs in this action, including that with regard to public awareness pamphlets and warning systems, can only be resolved through Advanced Notice of Public Rulemaking (“ANOPR”). Such is not the case. In Pennsylvania, every public utility, like Sunoco, is required to maintain safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501. The 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). The Pennsylvania Public Utility Code provides the Commission with broad powers:

In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

66 Pa.C.S.A. § 501(a).

The Commonwealth Court has explained that “[t]he PUC exercises its authority in several ways, including regulations and orders. Regardless of whether there are PUC regulations governing the location of pipelines, there are numerous PUC orders governing the ME2 pipeline

... Sunoco's decisions are subject to review by the PUC to determine whether Sunoco's service and facilities “are unreasonable, unsafe, inadequate, insufficient, or unreasonable discriminatory, or otherwise in violation of the Public Utility Code” 66 Pa. C.S. § 1505(a). *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d at 693.

Further, under the Hazardous Material Emergency Planning and Response Act (“Emergency Planning Act”):

The General Assembly hereby determines, declares and finds that exposure to hazardous materials has the potential for causing undesirable health and environmental effects and poses a threat to the health, safety and welfare of the citizens of this Commonwealth, and that the citizens of this Commonwealth and emergency service personnel who respond to emergency situations should be protected from health hazards and harmful exposures resulting from hazardous material releases at facilities and from transportation-related accidents.

35 P.S. § 6022.102. Judge Barnes ruled that “emergency preparedness issues are squarely within this consolidated proceeding. ... While these entities may be participating through comments to a rulemaking proceeding, this does not preclude an examination or review of whether [Sunoco] is compliant with current regulations regarding emergency preparedness.” Initial Decision, p. 159. Judge Barnes reviewed those current regulations against the facts of record throughout the Initial Decision and found Sunoco’s compliance to be lacking. Nowhere does the law state that the Commission’s hands are tied with regard to protecting the public and that the Commission can only act pursuant to an ANOPR. Sunoco’s attempts to limit the power of the Commission are not supportable. To the extent that the Initial Decision limits the Commission’s broad powers, it is in error.

Reply to Sunoco Paragraph 9.

The plaintiffs in this matter did meet their burden of proving the failures of Sunoco's public awareness program. Sunoco is required to pay attention to the voices of the numerous stakeholders pleading for information and tools necessary to develop a proper emergency preparedness plan, to prepare for potential pipeline leaks, and to understand their safest options for evacuation. Sunoco is required to use every reasonable effort to properly warn and protect the public from danger. It is required to develop a program and media as comprehensive as necessary to achieve the goals of pipeline safety. As Judge Barnes stated in the Initial Decision, "[a] sufficient public awareness program is a damage prevention measure just as routine inspection and maintenance, corrosion protection, and integrity management." Initial Decision, p. 138. Judge Barnes stated that in the event of an incident involving the pipelines, "it is critical the school districts, municipalities and counties know how to respond and are prepared to work with the pipeline operator's representatives. ***The evidence is substantial*** that these entities are not comfortable with their knowledge how to respond and do not perceive [Sunoco] to be willing to work with their representatives." Initial Decision, p. 138 (emphasis added). See also Initial Decision Findings of Fact 244-254, 257, 292-295.

The evidence presented in this matter and detailed in the County's Post-Hearing Brief (section V A, C-F) and the County's Reply Brief (section II A-F), which brief sections are incorporated herein by reference, prove by a preponderance of the evidence that Sunoco is in violation of its obligations under the law. *See also* Initial Decision Conclusion of Law 43 at p. 191 ("[Sunoco's implementation of its public awareness program is not in compliance with its programs or the requirements of 49 C.F.R. § 195.440 and API RP 1162.]")

Reply to Sunoco Paragraph Labeled “Second”

Contrary to Sunoco’s argument, the Initial Decision did not hold that “no relief should be granted in a complaint proceeding on issues subject to the ANOPR.” Sunoco Exceptions, p. 7. To the contrary, Judge Barnes ruled that “emergency preparedness issues are squarely within this consolidated proceeding. ... While these entities may be participating through comments to a rulemaking proceeding, this does not preclude an examination or review of whether [Sunoco] is compliant with current regulations regarding emergency preparedness.” Initial Decision, p. 159.

The Initial Decision notes numerous ways in which Sunoco is non-compliant and can do better, and references requirements that Sunoco must follow and over which the Commission has oversight authority. Section 195.402 and the American Petroleum Institute's (“API”) Recommended Practice (RP) 1162 (“RP 1162”) require that operators such as Sunoco maintain liaison with fire, police and other appropriate public officials such as school board officials and school districts. Initial Decision, p. 159. Section 195.403 requires operators to conduct a continuing training program “to instruct emergency response personnel to know the characteristics and hazards of hazardous liquids including flammability of mixtures with air, odorless vapors and water reaction.” Initial Decision, p. 160. Section 195.440(a), (e) and (f) require Sunoco to develop and implement a written public education program. Initial Decision, p. 160. Judge Barnes also found Sunoco to be in violation of 66 Pa.C.S.A. § 1501 “as their refusal to meet with School District representatives and public officials in Chester and Delaware Counties to assist in the preparation of emergency plans is unreasonable...” Initial Decision, pp. 160-161.

Indeed, Sunoco’s very argument in paragraph “Second” illustrates Sunoco’s unreasonableness and the necessity for the Commission to exercise its powers in this action to protect the public. Despite the fact that Sunoco’s public awareness programs have failed to inform

the public and have left individuals, school districts, and first responders, among others, confused and concerned about how to identify, prepare for, and to properly evacuate from an Highly Volatile Liquids (“HVL”) leak, and despite the fact that stakeholders such as emergency planning agencies, first responders, residents, school districts, and municipalities testified over numerous days of hearings that they are confused and concerned, despite the fact that these stakeholders are all clamoring for information necessary to protect themselves and their communities, Sunoco continues to callously attempt to avoid cooperation with the very public it serves and profits from. Sunoco even objects to the Initial Decision requiring Sunoco to perform such reasonable and responsible acts such as attending public meetings with county, municipal, and school district officials and providing municipalities and school districts with immediate and direct notice of a release. Sunoco Exceptions, p. 7.

The Initial Decision did not hold that the Commission is powerless to order Sunoco to comply with its obligations except through an ANOPR, and to the extent that the Initial Decision can be read to so hold, it would be in error.

Reply to Sunoco Paragraph Labeled “Third”

The Initial Decision does not grant relief contrary to the record evidence or outside the Commission’s authority to grant relief. To the contrary, as Judge Barnes noted, “[t]he evidence is **substantial** that [school districts, municipalities and counties] are not comfortable with their knowledge how to respond and do not perceive [Sunoco] to be willing to work with their representatives.” Initial Decision, p. 138 (emphasis added). See also Initial Decision Findings of Fact 244-254, 257, 292-295. Sunoco’s arguments in this paragraph and in the Exceptions make plain that it remains unwilling to work with these stakeholders. Contrary to Sunoco’s protestations, the Commission absolutely has the power to direct Sunoco to improve its public awareness

program. Chester County, in its Post-Hearing Brief, extensively documented the Commission's powers to act in Section V(A) and (F) thereof and provided comprehensive reasoning as to why it was imperative for the Commission to exercise those powers in the County's Post-Hearing Brief at Sections V (C), (D), and (E) and Chester County's Reply Brief in Sections II (D), (E) and (F), which Sections are incorporated herein by reference.

Reply to Sunoco Paragraph Labeled "Fourth"

If Sunoco's public awareness program is as "robust" as Sunoco claims, why did witness after witness, stakeholder after stakeholder, homeowners, school principals, municipalities, first responders, and emergency management professionals, among others, testify to their confusion, concern, and lack of information from Sunoco? If Sunoco has such a robust public awareness program, why did stakeholders commit their precious time, energy and resources to intervene in this action? If these stakeholders had the tools and information that they needed to develop proper emergency preparedness plans, they would not have become parties to this action.

As the County argued in its Reply Brief, Sunoco appears to view the County, other local government bodies, and the public it serves as little more than annoyances to be dealt with and dismissed. Such is improper. Sunoco profits from its designation as a public utility and, in return, it must meet its obligations to the County and the public. Under Pennsylvania law, Sunoco is required to "at all times use every reasonable effort to properly warn and protect the public from danger." 52 Pa. Code § 59.33(a). Sunoco has failed to do so. The Commission has the power and the authority to order Sunoco to comply.

There is nothing "ill-fitting," as Sunoco claims, or overly broad about the Initial Decision's requirement that Sunoco meet with municipalities and school districts to discuss additional communications and training. Sunoco Exceptions, p. 9; Initial Decision, p. 201. To the contrary,

Chester County, along with other municipalities and school districts, requested information, training, and meeting with Sunoco. The Initial Decision ordered the relief requested. The relief ordered is specific and is tailored to the requests made. *See* Initial Decision, *e.g.*, Order, paragraphs 14-18, pp. 199-201. With regard to the requirement that it meet with these stakeholders, Sunoco complains that it doesn't know what information it should provide. Once again, Sunoco appears to be purposely missing the point. Meetings necessarily involve dialogue. It doesn't take a giant leap of imagination to see that municipalities, school districts, and first responders want to meet with Sunoco to get information and assistance. These stakeholders will undoubtedly discuss their concerns and the information and training they are looking for in order to properly protect the children and citizens under their care in the event of a pipeline emergency. The reason Sunoco does not know what information it should provide is because it has a documented failure to listen. The Initial Decision attempts to rectify that failure and to provide a forum where the stakeholders and Sunoco can work together to enable the municipalities, school districts, and emergency management personnel to feel informed enough to craft the best emergency management plans for their constituencies.

Sunoco's final argument that these stakeholders will not suffer irreparable injury because there is "insufficient evidence that the pipelines are not being appropriately managed to ensure they are safe to operate" is a glaring *non sequitur* and a logical fallacy. Sunoco Exceptions, p. 10. Sunoco appears to be suggesting that the stakeholders cannot show injury unless and until they suffer harm from an explosion. By Sunoco's logic, students who attend schools that never practice fire drills cannot show injury. The students have no evidence that they will be harmed because the school building is safe and well looked after. Evidence of harm would only occur after the fire starts and the students, confused in the pandemonium and unsure of the fire exits, are burned. Of

course, all parties to this action hope that Sunoco appropriately manages the pipeline such that there is never a dangerous leak of HVLs. However, it would be entirely foolish and contrary to basic emergency preparedness to not plan for various leak scenarios. The emergency planners cannot properly make those plans without information and assistance from Sunoco. It is why they are parties to this action.

II. REPLY TO SUNOCO'S EXCEPTIONS

Reply to Sunoco Exception 4

Once again, nowhere does the law state that the Commission's hands are tied with regard to protecting the public and that the Commission can only act pursuant to an ANOPR. The County incorporates herein by reference its Reply to Sunoco Paragraph 6 above. Judge Barnes did not err in requiring Sunoco to include police departments and school districts on Sunoco's emergency contact list for Chester and Delaware Counties, in directing Sunoco to give advance notification to municipalities prior to proposed excavation on the pipeline system, or in requiring Sunoco to meet with affected municipalities and school districts for information sharing, training, and other educational activities. Sunoco's attempts to limit the power of the Commission are not supportable.

Further, Sunoco's argument that it can meet minimum requirements and then skate away from its obligations is also unsupported by law. Sunoco claims that it has done the minimum, and appears not to care whether or not it has actually achieved the goals of pipeline safety. As set forth in the County's Brief at Section V(A) and the County's Reply Brief at Section II(A), which brief sections are incorporated herein by reference, Sunoco may not ignore serious shortfalls in compliance achievement of the goals of stakeholder education by claiming that it has done the minimum.

Federal law does not direct the Secretary of Transportation to provide *maximum* safety standards, limiting what can be required for public safety. To the contrary, the law provides that the Secretary will provide “*minimum* safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C.A. § 60102(a)(2) (emphasis added).

The Code of Federal Regulations (“CFR”) does not state that operators may meet minimum standards and then nothing further can be required of them. The CFR, which incorporates the guidance provided in RP 1162, states that “[t]he program and the media used must be as *comprehensive as necessary* to reach all areas in which the operator transports hazardous liquid or carbon dioxide.” 49 CFR Part § 195.440(f) (emphasis added).

Further, the CFR expressly requires enhancement of a public awareness program where the pipeline is located in a high consequence area. *Wilmer Baker vs. Sunoco Pipeline*, C-2018-3004294, Initial Decision of ALJ Barnes, December 18, 2019 (“The applicable public awareness and emergency responder regulations, 49 C.F.R. Part 195.403, 49 C.F.R. Part 195.3(b)(8) (incorporating [RP 1162]), 49 C.F.R. Part 195.440, expressly require an enhancement of a baseline public awareness program if there is heightened inquiry and construction in high consequence areas.”)

Though Sunoco sets a low bar for itself, the Pennsylvania Code does not. It provides that each public utility, such as Sunoco, “shall *at all times use every reasonable effort to properly warn and protect the public from danger*, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.” 52 Pa. Code § 59.33(a).

In Pennsylvania, every public utility, like Sunoco, 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). Sunoco’s argument that if it has complied with minimum standards, the Commission has no power or jurisdiction over Sunoco’s public awareness programs is contrary to law.

Reply to Sunoco Exception 5

Judge Barnes did not err in finding that “[Sunoco’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 subdivision and school districts.” Initial Decision, Conclusion of Law 46. The Initial Decision found: (i) “Complainants and aligned Intervenors have not been provided with information addressing how individuals with physical or mental limitations should be evacuated the event of an emergency.” Initial Decision, FOF 292; (ii) “[Sunoco’s] baseline message to the affected public, emergency officials, and public officials does not fully describe the awareness of hazards in the tables of its mailers/flyers.” Initial Decision, FOF 295; (iii) “[Sunoco] does not provide notice of a pipeline release directly to schools and municipalities.” Initial Decision, FOF 301; (iv) “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.” Initial Decision, FOF 302; (v) “It is feasible, productive and assists in emergency preparedness to require SPLP, its controller or county liaison, to not only give notice of a release through 911, but also directly to school districts and municipalities affected in Delaware and Chester Counties because the school districts are also the first responders.” Initial Decision, FOF 303; (vi) “Here, numerous school districts have intervened to request additional training, exercises

or drills and actions such as a direct notification from the operator the same information it would provide to the lead emergency coordinator for the county.” Initial Decision, p. 159.

Meeting the bare minimum requirement of Section 195.440, can be one goal, but also having positive feedback from school districts, townships, and emergency responders who feel comfortable knowing what to expect, and what they have been advised to do is goal worthy. The measure of success in reaching goals can be measured by the feedback from governmental entities. There is a directive that the pipeline operator “maintain liaison” with emergency officials. [Sunoco] argues it’s conduct is maintaining a liaison, but *the emergency officials/responders testified otherwise*. It is clear the Complainants/Intervenor want SPLP to move from bare minimal compliance-driven programs toward corporate social responsibility and they want a named liaison contact person dedicated to their respective counties.

Initial Decision, p. 162 (emphasis added). Such testimony includes, but is not limited to, the following:

- Mr. William H. Turner, the Deputy Director for Emergency Management for the Chester County Department of Emergency Services testified that he does not have the information needed to develop a proper emergency response plan in the event of a pipeline incident. Unfortunately, it has been very difficult for him to get information from Sunoco. N.T. 2244:1-4. Mr. Turner has sought out the information needed to develop a proper emergency plan, but dealing with Sunoco has been difficult. Indeed, Mr. Turner described his attempts at getting information from Sunoco to be like hitting a “brick wall.” N.T. 2363:2-14. Mr. Turner testified that the CoRE meetings were not actual “trainings,” but simply a “buy dinner and provide awareness of pipelines in your jurisdiction.” N.T. 2212:13-23.

- The table top exercises are more of a sitting around a table and having a discussion than they are any practice in emergency responding. N.T. 2244:20-25; 2245:10; 2244:5-8, 25; 2245:2-3.
- Mr. Timothy Hubbard, who is the fire marshal/emergency management officer in Charlestown Township, Chester County, who is certified in emergency management by PEMA and who has primary responsibility to provide emergency oversight of emergencies that occur within the municipality, testified that he has encountered difficulties in obtaining information from Sunoco that has caused him concern. N.T. 80:15, 18. He has found it to be very difficult to have “consistent contact that would be able to provide information that would be useful from an emergency management perspective, what product is flowing at any given time, when it’s flowing, when products are changing and the nature of the products.” N.T. 80:18-23. Mr. Hubbard stated that there was a lack of any real, true and credible assistance from Sunoco, such as “advice, expert advice from the perspective of a pipeline operator or resources in the event that an emergency were to occur.” N.T. 80:24-25; 81:1-2.. N.T. 68:21-25.; N.T. 69:1-9; N.T. 71:18-25. There are four phases to any aspect of emergency management, mitigation, preparedness, response, and recovery. In the instant matter, Mr. Hubbard states that he is missing the mitigation and preparedness phases. N.T. 2313:8-22. Though Sunoco has made appearances, those appearances were lacking the information needed by Mr. Hubbard that he could rely upon. N.T. 2319:23-25; 2320:1-3.
- Kevin Campbell, the director of facilities and operation for the West Chester Area School District, testified that there is information regarding the pipeline that he does not have that would make a difference to him in carrying out his job. N.T. 1248:8-12. Because

he does not have information on the types of material moving through the pipeline, and their pressure, he cannot predict the blast zone. If he cannot predict the blast zone, he cannot develop an effective emergency plan. N.T. 1249:14-24. He has received information on recommended evacuation distance from other companies that he has not received for ME1 or ME2, making it impossible to develop an evacuation plan. N.T. 1251:1-5.

- Dr. Emile Lonardi, the superintendent of schools for the Downingtown Area School District, testified that there is a Sunoco valve station located almost squarely between the exit and entrance of the Shamona Creek and Marsh Creek schools, the exits are used every day, N.T. 919:10-19, she does not have a “credible or practical or realistic plan in place to keep the students safe in the event of leak” from the Mariner East pipeline, N.T. 921:9-14, she was not even informed when HVLs started flowing through the 12-inch pipeline at the school, N.T. 921:23-25, the school district itself does not employ experts on pipelines, HVLs, or valve stations and does not have enough information to create its own emergency plans. N.T. 935:7-18; 936:13-15.. N.T. 901:14-21.

- Ronald Gravina, a trained first responder for 48 years (N.T. 1121:16-22), testified that he has major concerns about dealing with a potential problem or incident related to the Mariner pipelines (N.T. 1126:21-25) and that he has not been provided with sufficient information to respond to a pipeline incident in Edgmont Township for products in the Mariner pipelines. (N.T. 1127:24-25; 1128:1-4)

Chester County incorporates herein by reference Section V(D) from its Post-Hearing Brief and Sections II(B-C) from its Reply Brief.

Judge Barnes had significant evidence upon which to base her finding that Sunoco is in violation of 66 Pa. C.S. § 1501 and Sunoco’s Exception Number 5 must be denied.

Reply to Sunoco Exception 6

Judge Barnes did not err in Ordering Paragraph 21 in directing Sunoco to perform a comprehensive review of its public awareness program. As set forth herein and in Chester County's Post-Hearing Brief at Sections V(C)-(D) and Reply Brief at Sections II (B), (D), which sections are incorporated herein by reference, substantial evidence was presented at the hearings that Sunoco's public awareness program has failed and does not meet the goals for which such programs are intended. As set forth in the Reply to Sunoco Exception 5 above, there is substantial testimony from first responders, emergency management personnel, school district officials, municipalities, and residents regarding the failure of Sunoco's public awareness program. Ronald Gravina, a fire chief and first responder for 48 years testified that he has major concerns and has not been provided with sufficient information from Sunoco. N.T. 1121:16-22; 1126:21-25; 1127:24-25; 1128:1-4. Mr. William H. Turner, the Deputy Director for Emergency Management for the Chester County Department of Emergency Services Turner and accepted as an expert in emergency management and emergency preparedness, testified that he does not have the information needed to develop a proper emergency response plan in the event of a pipeline incident and it has been very difficult for him to get information from Sunoco. St. 1, 2:5-18; N.T. 2197:1-5; N.T. 2244:1-4. Mr. Timothy Hubbard, the fire marshal/emergency management officer in Charlestown Township, Chester County, testified that he encountered difficulties in obtaining information from Sunoco that caused him concern and that that there was a lack of any real, true and credible assistance from Sunoco, such as "advice, expert advice from the perspective of a pipeline operator or resources in the event that an emergency were to occur.".... N.T. 68:21-25; 80:15, 18; 80:24-25; 81:1-2. School district personnel such as Dr. Emile Lonardi, the superintendent of schools for the Downingtown Area School District, Dr. James Scanlon, the

superintendent of the West Chester Area School District, and Kevin Campbell, the director of facilities and operation for the West Chester Area School District for the past 20 years, among others, N.T. 901:14-21; 1214:16-23; 1215:20-23; 1247:2-7, testified extensively about the failure of Sunoco's public awareness program. *See* Chester County Post-Hearing Brief, Section V(D)(1). Additionally, Chester County residents Dr. Gerald McMullen, Nancy Harkins, Caroline Hughes, Virginia Marcille-Kerslake, and Thomas McDonald, among others, have testified that they remain unsure of what to do in the event of a pipeline leak. *See* Chester County Post-Hearing Brief, Section V(D)(3).

Reply to Sunoco Exception 7

In Exception 7, Sunoco would have us believe that the Commission does not have the power and the authority to order Sunoco to comply with its obligations under the law. Nothing could be further from the truth. As set forth herein and in Chester County's Post-Hearing Brief at Sections V(A) and (F) and Reply Brief at Section II(F), which Sections are incorporated herein by reference, in Pennsylvania, every public utility, like Sunoco, is required to maintain safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501. The 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). As Judge Barnes stated in the Initial Decision, "[a] sufficient public awareness program is a damage prevention measure just as routine inspection and maintenance, corrosion protection, and integrity management." Initial Decision, p. 138. The Pennsylvania Public Utility Code provides the Commission with broad powers. 66 Pa.C.S.A. § 501(a).

Sunoco's protestations that the Commission cannot issue directives for enhanced public awareness and emergency training plans is belied by the very case that Sunoco cites. In *Wilmer*

Baker vs. Sunoco, C-2018-3004294, Opinion and Order entered September 17, 2020, the Commission ordered Sunoco to contact the Lower Frankford Township Supervisors and Cumberland County Commissioners within 30 days “for the purpose of scheduling a public awareness/education meeting to be held in Cumberland County and to participate in such meeting.” *Baker*, Opinion and Order, pp. 31-32. This requirement from the initial decision was upheld by the Commission.

The initial decision in *Baker* also directed Sunoco, among other things, to provide training to the Cumberland County Board of Public Safety and Board of Commissioners and provide a baseline evaluation of its public awareness program. *Baker*, Opinion and Order, pp. 25-26. Sunoco’s exceptions to these requirements were granted, but not – as Sunoco would have us believe – because the Commission does not have the power to order such requirements. The exception was granted because the complainant in *Baker* never requested such relief. The Order and Opinion found that these directives by the ALJ “exceeded the scope of relief sought by the Complaint. ... Therefore, we conclude that the relief in the present case ... should be confined to the allegations in the Complaint and the findings relevant thereto.” *Baker*, Opinion and Order, p. 26-27. Since some of the relief that was the subject of the directive was not requested, the Commission held that it should be considered instead at the proposed Rulemaking Docket. *Baker*, Opinion and Order, p. 26. Sunoco’s claim in the exception that the Commission rejected injunctive relief in *Baker* – and that it must also reject such relief in the instant matter – is simply untrue.

In the instant case, the County provided an extensive amount of evidence of the failure of Sunoco’s public awareness program, especially with regard to emergency responders, emergency management personnel, school districts, and municipalities. Judge Barnes found that “[t]he evidence is substantial” that these entities are not comfortable with their knowledge how to respond

and do not perceive [Sunoco] to be willing to work with their representatives.” Initial Decision, p. 138 (emphasis added). *See also* Initial Decision Findings of Fact 244-254, 257, 292-295. Further, unlike the complainant in *Baker*, Chester County specifically requested the relief that was granted. *See* Chester County’s Post-Hearing Brief, Proposed Ordering Paragraphs, pp. 96-98 and Reply Brief at Sections II(C) and II(D)(3), which Brief sections are incorporated herein by reference.

For example, Chester County requested relief ordering Sunoco to:

- Create a more robust public outreach and public education program to inform the public about what to expect during training or routine maintenance as well as what to do in a pipeline emergency.
- Work with the local communities to educate the public of the options to shelter in place or evacuate providing clear and consistent messaging. This will permit all residents to discuss and create a responsible individual plan for their family regarding sheltering in place and evacuation.
- Enhance planning funding/resources for pipeline emergencies.
- Develop, in cooperation with state, county, and local emergency services and municipalities, evacuation and shelter in place plans or annexes to the EOP for each county, municipality, neighborhood, high-occupancy structure, high-hazard area, school, hospital, church, public gathering place, or any other area or parcel that may need assistance or direction evacuating during a pipeline emergency.

Chester County Reply Brief, Section II(D)(3). Further, Chester County requested, among other things, the following relief:

- A dedicated pipeline planner.
- Annexes to EOPs.

- Ongoing training and education.
- A comprehensive database.
- Monitoring/Public Warning Devices.
- Direct Connections with 911 Centers from pipeline control centers.
- Emergency Classification Levels.
- Odorants/Dyes.
- Public Notification Devices.
- Local Emergency Planning Assistance.
- Advance Notification of Scheduled Pipeline Work.
- Advance Notification of Pipeline Activity.
- Notification Process Used by Nuclear Power Stations.

In its exception, Sunoco provides standard citations on the elements of injunctions. However, this does not support Sunoco’s exception. Chester County requested the relief, the Commission has the power to grant the relief requested, and the directives are narrowly tailored. “The required elements of injunctive relief are: a clear right to relief; an urgent necessity to avoid an injury that cannot be compensated in damages; and a finding that greater injury will result from refusing, rather than granting, the relief requested.” *Big Bass Lake Cmty. Ass'n v. Warren*, 950 A.2d 1137, 1144 (Pa. Commw. Ct. 2008).

Chester County has demonstrated its right to relief. Judge Barnes held that there is substantial evidence in the record supporting the relief granted. The whole reason that Chester County is a party to this action is the urgent necessity to avoid injury of a potentially catastrophic nature – an injury that cannot be compensated in damages. The balance of harm is substantially in the County’s favor. Chester County and the emergency responders and emergency management

personnel for municipalities and school districts need to be properly prepared to save lives in the event of a pipeline leak of HVLs. In contrast, no injury will result to Sunoco as a result of a directive requiring it to meet with these stakeholders to assist them in their emergency preparedness. As was stated in *Baker*, “[a] public utility should want to meet with the public... An informed public and well-trained emergency officials reduce the likelihood of injury or damage to everyone and all property involved.” *Wilmer Baker vs. Sunoco Pipeline*, C-2018-3004294, Initial Decision of ALJ Barnes, December 18, 2019.

Sunoco also argues that directives requiring it to meet with and help train the stakeholders are not narrowly tailored. Sunoco states that “[t]here 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.” Sunoco Exception 7, p. 32. Perhaps the best analysis of Sunoco’s objection here is that it has lost the forest for the trees. Just as the Commission will not dictate to Sunoco how to design its pipeline or where to place its valves, it cannot arrange the dates, times and locations of the meetings with Chester County or provide the agendas. Sunoco is enjoying the benefits that come with being a public utility. Sunoco’s argument that it cannot meet with stakeholders who have testified extensively in this case that they need emergency planning assistance because the Commission has not told Sunoco when and where to meet and what to talk about, rings hollow. The stakeholders know what information they need, what questions they need answered, what planning advice is crucial for the development of their emergency plans. All Sunoco has to do is show up and be cooperative. The very fact that there is no one-size-fits-all evacuation plan is exactly why Sunoco’s advice and expertise is needed. An emergency evacuation plan for a high school on flat ground will likely need to be different for an elementary school on a hill that is located between the pipeline and the Pennsylvania Turnpike.

What the stakeholders have been saying over and over again in this matter is that they simply want to be able to create the safest possible emergency plans that they can in order to protect the people in their care.

Finally, entirely contrary to Sunoco's assertion, the Initial Decision does not hold that there is no imminent, irreparable injury likely without these additional meetings. Sunoco Exception 7, p. 33. The Initial Decision held only that the Complainants failed to show they will suffer irreparable injury if Sunoco's certificate of public convenience is not amended to prohibit Sunoco from transporting NGLs in Delaware and Chester Counties. Initial Decision, pp. 181, 196. Sunoco's conflation of meetings with revocation of a rather important element of its certificate of public convenience is inappropriate.

Reply to Sunoco Exception 8

Despite Sunoco's protestations, there is nothing confusing or improper about Judge Barnes' ordering paragraph 16(i). Judge Barnes has simply directed Sunoco's designated County liaison to tour the areas around the pipeline so that the liaison will be better informed about the geology, terrain and the location of schools, libraries, retirement communities, roadways, etc. This common-sense step will enable the liaison to be better informed when providing emergency planning assistance to stakeholders.

Sunoco argues that the Commission cannot order it to employ a liaison. First, Sunoco should *already* have liaisons with the County. It is required by law. A liaison is "a person who establishes and maintains communication for mutual understanding and cooperation."² As Judge Barnes notes in the Initial Decision,

Section 195.402 and API RP 1162, Section 2.3.2 (Emergency Responder liaison activities) ***requires operators maintain liaison*** with fire, police and other appropriate public officials and

² Webster's Dictionary, <https://www.merriam-webster.com/dictionary/liaison>

coordinate with them on emergency exercises or drills actual responses during an emergency. I interpret this section to mean [Sunoco] must maintain a liaison with more than just one lead emergency manager per county. This section implies a duty is upon the operator to coordinate with school board officials (or their designees) as they are “other public officials” on emergency exercises or drills and actual responses during an emergency.

Initial Decision, p. 159 (emphasis added). As Judge Barnes found, “there is a requirement that a liaison be made available to meet with and assist the districts and local municipalities’ emergency responders with their emergency plans that they must have under Title 35.”

It is symptomatic of Sunoco’s problems with the community that it argues that its liaisons – whose very purpose by definition is to maintain communication for mutual understanding and cooperation – should not have to meet with the emergency preparedness stakeholders who are simply trying to prepare evacuation plans based on the best possible information.

As with many of its exceptions, Sunoco once again argues that the Commission has no power – either to require liaisons or to direct that the liaisons do their jobs. Sunoco argues that the Commission cannot intrude upon its managerial discretion. However, managerial discretion does not override Sunoco’s legal obligations. As Judge Barnes clearly set forth in the Initial Decision, quoted above, the law requires liaison. Managerial discretion does not give Sunoco immunity from performing its legal duties. Further, the single case cited by Sunoco does not support its argument. In *Metro. Edison Co. v. Pennsylvania Pub. Util. Comm’n*, 437 A.2d 76 (Pa. Commw. Ct.1981), a ratepaying case, the court noted that utilities have a right of self-management. However, the Court made clear that “[a]n obvious corollary of the above proposition is that if there has been an abuse of managerial discretion, and the public interest has been adversely affected thereby, then the Commission is empowered to intervene.” *Id.* 437 A.2d at 80. Judge Barnes found just such abuse and an adverse effect upon the public interest. “I am finding [Sunoco] 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 the preparation of emergency plans is unreasonable and in violation of Section 1501.” Initial Decision, pp. 160-161.

Finally, the Commission has upheld such requirements in the past. “Similar to the directed meeting in Cumberland County in the *Baker* decision, [Sunoco] will be directed to meet with these schools and public officials.” Initial Decision, p. 161. *See Wilmer Baker vs. Sunoco*, C-2018-3004294, Opinion and Order entered September 17, 2020 (Sunoco is ordered to contact the Lower Frankford Township Supervisors and Cumberland County Commissioners within 30 days “for the purpose of scheduling a public awareness/education meeting to be held in Cumberland County and to participate in such meeting.” *Baker*, Opinion and Order, pp. 31-32. This requirement was upheld by the Commission.)

Sunoco’s attempt to feign confusion over what is required by Ordering paragraph 16(i) is transparent. Nowhere does the Initial Decision require Sunoco to visit every home, school, business, park, and library and to draft an emergency preparedness plan for each and every such particular location. To the contrary, all the Initial Decision requires is that Sunoco visit the areas adjacent to the pipeline and liaison with emergency preparedness professionals to provide information that would assist those professionals in developing the best possible evacuation plans for the people under their care. There is nothing confusing or improper about the requirement. What is improper is Sunoco’s continual refusal to cooperate with the very public it serves and profits from. Sunoco benefits from its designation as a public utility and, in return, it must meet its obligations to the County and the public.

III. CONCLUSION

WHEREFORE, for all the reasons set forth above, Chester County respectfully requests that the Commission deny Sunoco's exceptions.

4. The Initial Decision does not err in Ordering paragraphs 13-18. In Pennsylvania, every public utility, like Sunoco, is required to maintain safe and reasonable service and facilities. 66 Pa.C.S.A. § 1501. The 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). Nowhere does the law state that the Commission's hands are tied with regard to protecting the public and that the Commission can only act pursuant to an ANOPR.

5. The Initial Decision does not err in Conclusion of Law 46. Judge Barnes had significant evidence upon which to base her finding that Sunoco is in violation of 66 Pa. C.S. § 1501.

6. The Initial Decision does not err in Ordering Paragraph 21 in directing Sunoco to perform a comprehensive review of its public awareness program. Substantial evidence was presented at the hearings that Sunoco's public awareness program has failed and does not meet the goals for which such programs are intended.

7. The Initial Decision does not err in Ordering paragraphs 16-20. The ordered relief is appropriate, necessary, and narrowly tailored to abate the harm complained of. The very type of relief ordered has been upheld by the Commission in the *Baker* decision.

8. The Initial Decision does not err in Ordering paragraph 16(i). Sunoco is required to liaison with fire, police and other appropriate public officials, managerial discretion does not

override legal obligations, the Commission has the power and the authority to order Sunoco to liaison, and there is nothing confusing or improper about the requirement in the Initial Decision.

Respectfully submitted,

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I hereby certify that I have this day served a true copy of the foregoing filing upon parties identified below via email, unless otherwise indicated:

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