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Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Third Floor
Harrisburg, PA 17120

by electronic filing

August 4, 2021

Re: Comments on the proposed settlement of Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Transfer Company, Docket No. M-2020-3004646

Clean Air Council timely provides the following comments with respect to the proposed settlement between the Bureau of Investigation and Enforcement (“I&E”) and Energy Transfer Company/ETC Northeast Pipeline, LCC of PUC Docket #M-2020-3004646 regarding the September 2018 explosion of the Revolution Pipeline. Clean Air Council is joined in these comments by Pipeline Safety Coalition.

Clean Air Council is an environmental health organization that has been working to protect everyone’s right to a healthy environment for over 50 years. In recent years, the various hazards pipeline projects pose to the public have been of increasing concern to the Council and the Pennsylvania communities the Council serves. It is commonly understood that Energy

Transfer and its corporate affiliates have been particularly egregious offenders of public safety and environmental laws. The predictable, preventable, September 2018 explosion of Revolution Pipeline is but one example of Energy Transfer's wanton disregard for the health and safety of nearby residents. While Energy Transfer's actions have had devastating consequences for Pennsylvanians, Energy Transfer has repeatedly proven undeterred by the various attempts of regulatory agencies to hold it accountable. This proposed settlement, if accepted by the Commission, will be no different. As detailed below, the protective actions Energy Transfer would be required to undertake do not go far enough and the civil penalty is too low to be of consequence. The law supports the Commission taking stronger action and it is not in the public interest for the Commission to accept this settlement.

1. The protective measures in the proposed settlement are flawed and inadequate.

The proposed settlement sets forth a number of measures to be taken by Energy Transfer in hopes of preventing another of its pipelines from exploding. These measures are an improvement of the status quo, but ultimately leave too much discretion in the hands of Energy Transfer and too little oversight to be meaningfully protective.

Energy Transfer would be required to update its policies and procedures with respect to geohazards. The proposed settlement directs that Energy Transfer will deliver updated policies to its project manager prior to the start of pipeline construction and that the policies will be submitted to I&E. Having adequate policies on the books and in the right hands is only the start of a solution. Ensuring they will be followed is another matter entirely. Unfortunately, the proposed settlement achieves neither.

First, Energy Transfer's updated policies and procedures should be subject to public review, analyzed by an independent expert, and approved by I&E before they are implemented.

Without a robust and transparent review process followed by explicit I&E approval, the policies cannot be trusted to be protective. Second, given that the proposed settlement recognizes the need for updated geohazard policies and procedures, it is both disturbing and unreasonable that Energy Transfer should be allowed to continue under its old, unsafe policies in the interim. Finally, even the strongest policies and procedures are of little value if they are not followed. The settlement should provide for ongoing oversight and specific, substantial penalties, and a stop to operations if the policies are not followed.

The proposed settlement also requires Energy Transfer to conduct a series of inline inspections (“ILIs”). While ILIs are a critically important tool for assessing pipeline integrity, the settlement has undercut their value by allowing Energy Transfer to conduct the ILIs itself and requiring Energy Transfer to provide only summaries of the results to I&E. Energy Transfer has proven time and again to be unreliable and untrustworthy. The ILI should be conducted by an I&E-approved, independent expert. Full results must be shared with I&E as another check on accuracy and reliability.

The third safety precaution contemplated by the proposed settlement is a program for monitoring slope failure. From the outset, the monitoring plan is deeply flawed because it contemplates very little I&E involvement or oversight. Energy Transfer would be required to immediately report slope failure, but by the time a slope has failed, the situation could already be dire. The point of monitoring is prevention, which means identifying risk factors and changes in conditions and reporting any relevant developments to I&E immediately, before it reaches the point of a slope failure. It should also be made explicit that, in the event that field conditions suggest an increased risk of slope failure, appropriate precautions will be taken in terms of pipeline operation, including discontinuing service until the conditions are stabilized. As written,

the proposed settlement contemplates only reporting dangerous conditions after the fact, not taking precautionary action.

Finally, Energy Transfer would be required to implement a quality assurance/quality control program to oversee pipeline siting and construction practices for Energy Transfer's gas and hazardous liquid pipelines in Pennsylvania. As is the case with the settlement terms pertaining to updated geohazards policies and protocols, such a program is plainly necessary, but of little value without appropriate oversight and transparency. The proposed settlement only calls on Energy Transfer to submit the plans for the program to I&E for review. It does not provide for enforcement or ensuring the adequacy of the program. The fact that Energy Transfer, in its statement in support of this proposed settlement, claims to *already* have a robust quality assurance/quality control program makes the value of this aspect of the settlement even more dubious.

While a worthwhile start, the various safety measures Energy Transfer would be required to take under this proposed settlement fall far short of protecting the public and require a great deal of trust in a company that has proven again and again to be untrustworthy. Such an outcome is not in the public interest.

2. Energy Transfer's disastrous record in Pennsylvania demonstrates the proposed settlement will have no deterrent effect.

Under 52 Pa. Code § 69.1201(c)(8), the Commission must consider whether the amount of the penalty proposed is sufficient to deter future violations. Without question, it is not. Energy Transfer and its web of corporate affiliates and subsidiaries operating in Pennsylvania have already received tens of millions of dollars in fines just in the past few years for their pipeline violations. They nevertheless remain the industry poster child of a bad actor.

In February 2018, Energy Transfer/Sunoco Pipeline L.P. was fined \$12.6 million by the Pennsylvania Department of Environmental Protection (“DEP”) for, among numerous other things, its mishandling of geohazards while constructing a pipeline.¹ DEP described the company’s conduct as “egregious and willful.”² Seven months later, Energy Transfer’s Revolution Pipeline exploded due to the company’s continued, reckless disregard for geohazards. More fines have been issued since.³ Notably, in January 2020, DEP issued a \$30.6 million fine against Energy Transfer for its violations with respect to the Revolution Pipeline itself.⁴ Various legal actions have been brought against the company, including before the Commission. The problems have persisted. Even as recently as last month, Chester County sought the help of the Commission to stop Energy Transfer from creating even more sinkholes through its pipeline work, including one that swallowed a tree.

The Commission must consider all this recent and relevant history of Energy Transfer in determining whether the proposed penalty at hand will deter it from further violations. If the Commission limits its analysis to PUC violations of the single branch of Energy Transfer doing

¹ See, *Consent Order and Agreement*; E&S Permit Nos. ESCG030015002, ESCG030015001, WO&E Permit Nos. E02-1718, E06-701, E07-459, E11-352, E15-862; E21-449; E22-619, E23-524, E32-508, E34-136, E36-945, E38-194, E50-258, E63-674, E65-973, E67-920 (February 8, 2018), *available at*: https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary_of_Order/Sunoco%20Pipeline%20L.P.%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf

² *Pennsylvania Department of Environmental Protection Administrative Order*; E&S Permit Nos. ESCG030015002, ESCG030015001, WO&E Permit Nos. E02-1718, E06-701, E07-459, E11-352, E15-862; E21-449; E22-619, E23-524, E32-508, E34-136, E36-945, E38-194, E50-258, E63-674, E65-973, E67-920 (January 3, 2018), *available at*: <https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf>

³ Updates with respect to the Mariner East Pipelines are available on the DEP website at: <https://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/pages/mariner-east-ii.aspx>. Updates with respect to the Revolution Pipeline are available at: <https://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Revolution-Pipeline-.aspx>

⁴ See “DEP Issues Historic \$30.6 Million Penalty Over Revolution Pipeline Violations Department Collects One of the Largest Civil Penalties in Single Settlement History” DEP Newsroom Website (January 3, 2020), *available at*: <https://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21792&typeid=1>

business as ETC Northeast Pipeline, LLC, as I&E's analysis does, it would be disregarding critical context. Even if the Commission is inclined to construe very narrowly the meaning of 52 Pa. Code § 69.1201(c)(6), which requires the Commission to consider the offender's compliance history, 52 Pa. Code § 69.1201(c)(10) directs the Commission to also consider "other relevant factors." Energy Transfers' hundreds of violations- including violations found by the Commission, tens of millions of dollars in fines for pipeline work in Pennsylvania over just the past few years, and ongoing misconduct related to its pipelines are surely relevant factors. Given this context, the Commission should be under no illusion that its comparatively meager fine of \$1 million will have any deterrent effect.

3. Past Commission decisions support stronger enforcement.

Under 52 Pa. Code § 69.1201(c)(9), the Commission is to consider how this proposed settlement relates to past Commission decisions. I&E has provided one past decision for comparison. In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Order entered August 11, 2016), the Commission-approved settlement imposed a \$1,000,000 civil penalty. I&E points to the fact that the present proposed settlement includes nearly a million dollars of additional measures to be taken by Energy Transfer on top of the million-dollar fine, while the *Hickory Hills* settlement had no such additional measures. The fact that the Commission *could* not impose such additional measures in *Hickory Hills* because the project was abandoned is a critical distinction. Project abandonment eliminated the deadly threat, negating the need for additional safety measures. While project abandonment creates its own burden for neighbors left to live with scraps of defunct infrastructure, abandonment of the project was likely the safest result. Here, Energy Transfer will continue to endanger neighbors while reaping untold profit.

The value of the flawed safety measures Energy Transfer has agreed to provide pales in comparison to the value to residents of the project being stopped.

Other key differences between *Hickory Hills* and this case justify an even higher penalty. Unlike Energy Transfer, Continental and Hickory Hills are not “large public utilities who were familiar with Commission regulations and were rendering services that was their core business.” *Hickory Hills* at 22, 24. Instead, they operated a single manufactured housing community in Pennsylvania with three miles of pipeline. *Id.* at 17. Unlike Energy Transfer, they had no history of complaints. Additionally, because Hickory Hills and Continental abandoned the pipeline with the intent of never owning or operating pipeline facilities again, there was no specific deterrence concern in that settlement. With Energy Transfer’s continued pipeline operations across the state, a large penalty is needed to deter additional violations that would put communities and lives at risk.

The settlement’s analysis of the ninth factor also failed to look at a more comparable case: *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.*, [Docket No. M-2013-2338981](#) (Opinion and Order entered Sept. 26, 2013). In that case, the Commission approved a settlement with UGI—a major utility more analogous to Energy Transfer than Hickory Hills—arising from a pipeline leak. UGI’s violations were similar in extent and severity to Energy Transfer’s, but the UGI leak resulted in *no* explosion, *no* property damage, *no* injuries, *no* large evacuations, and *no* major service disruptions. *UGI* at 6-8; 18. Although the Revolution Pipeline explosion caused devastating damage, the settlement in *UGI* was extremely similar to this proposed settlement: a \$1,000,000 civil penalty and numerous protective measures. *Id.* at 11-12. Lastly, unlike this case, *UGI* predated the implementation of Act 127. *Hickory Hills* at 24. *Hickory Hills* clearly states that

settlements for incidents taking place after the enactment of Act 127 should be *higher* than similar cases predating it. *Id.* Therefore, the civil penalty in the Energy Transfer settlement should be considerably higher than in *UGI*.

For the foregoing reasons, the Council and Pipeline Safety Coalition respectfully submit that the proposed settlement is not in the public interest and should not be approved.

Respectfully submitted,



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