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September 24, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission is Complainant's Main Brief in the above-referenced matter. If you have any questions with regard to this filing, please do not hesitate to contact me. Thank you.

Respectfully,

Samuel W. Cortes

SWC:jcc
Enclosure

cc: Per Certificate of Service

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**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

**MAIN BRIEF OF
GLEN RIDDLE STATION, L.P.**

Dated: September 24, 2021

TABLE OF CONTENTS

	<u>Page</u>
I. CONCISE STATEMENT OF THE CASE	2
A. The Traffic Hazards	2
1. Traffic Planning And Communication Failures.....	2
2. Pedestrian Traffic Failures	7
3. School Bus Stop Planning Hazards	7
B. The Fire Hazards.....	8
C. The Noise Hazards	10
D. The Unannounced and Uncontrolled Calciment Release	12
E. The Water Main Break.....	15
F. The Communication/Warning Hazards	17
III. ARGUMENT	20
A. Standard of Review.....	21
B. Sunoco Violated Its Safety Obligations	22
1. GRS Threatened The Safety Of The GRS Residents By Creating Traffic Hazards	27
a. Sunoco threatened GRS Residents’ and employees safety by failing to implement a traffic plan and communicate regarding traffic safety	27
i. GRS established that Sunoco failed to implement a traffic plan, threatening GRS Residents’ safety	28
ii. Sunoco failed to rebut GRS’s evidence regarding the safety threats created by this failure	30
b. Sunoco threatened GRS Residents’ safety by creating pedestrian hazards	31
i. GRS established that Sunoco created pedestrian hazards, thereby threatening pedestrian safety.....	31
ii. Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the pedestrian hazards.....	32
c. Sunoco threatened GRS Residents’ safety by creating hazards for school children at bus stops at the Property	33
i. GRS established that Sunoco created hazards at the bus stops at the Property, thereby threatening the safety of GRS Residents and local school children.....	33

	ii.	Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the bus stop hazards	33
2.		Sunoco Threatened The GRS Residents’ Safety By Creating The Fire Hazards	34
	a.	GRS established that Sunoco created the fire hazards, thereby threatening the safety of the GRS Residents.....	34
	b.	Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the fire hazards	35
	i.	Reliance on the unofficial Township letter does not protect the GRS Residents’ safety	36
	ii.	Sunoco’s conclusion that the mere ability to reach each building in some manner is sufficient recklessly and needlessly endangers the GRS Residents	36
	iii.	Sunoco’s so- called “expert” in fire safety lacks credibility	39
3.		Sunoco Threatened The GRS Residents’ Safety By Creating The Noise Hazards	39
	a.	GRS established that Sunoco created the noise hazards, thereby threatening the safety of the GRS Residents.....	40
	i.	GRS established that Sunoco’s work produced unsafe noise levels on the Property.....	40
	ii.	GRS established that the noise hazards resulted from Sunoco’s failures to take basic mitigation measures and its poor communication	41
	b.	Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the noise hazards	43
	i.	The noise readings presented by Sunoco were flawed	43
	ii.	The Behrens Report is flawed.....	45
	iii.	Mr. Harrison failed to fully assess the impact of the noise hazards on human health and safety	46
	iv.	Sunoco failed to follow the Behrens Report	46
4.		Sunoco Threatened GRS Residents’ Safety By Releasing Calciment Into The Air At The Property	46
	a.	GRS established that Sunoco released calciment into the air at the Property, thereby threatening the safety of the GRS Residents....	47
	b.	Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the uncontrolled calciment release	49
5.		Sunoco Threatened The GRS Residents’ Safety By Breaking A Major Water Line At The Property.	50

a.	GRS established that Sunoco broke a main water line at the Property, thereby threatening the safety of the GRS Residents.....	51
b.	Sunoco failed rebut GRS’s evidence regarding the safety threats created by the water line break	52
6.	Sunoco Threatened The GRS Residents’ Safety By Failing To Communicate With, And Warn, GRS Throughout Sunoco’s Work On The Property.....	53
a.	GRS established that Sunoco failed to adequately communicate with and warn GRS regarding Sunoco’s work on the Property, thereby threatening the GRS Residents’ safety	55
b.	Sunoco failed to rebut GRS’s evidence regarding Sunoco’s communication failures.....	56
III.	CONCLUSION.....	57
IV.	FINDINGS OF FACT.....	58
V.	CONCLUSIONS OF LAW	59
VI.	ORDERING PARAGRAPHS	59

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>Burleson v. Pa. Pub. Util. Comm’n</u> , 443 A.2d 1373 (Pa. Commw. Ct. 1982)	23
<u>Consolidated Edison Company of New York v. National Labor Relations Board</u> , 305 U.S. 197 (U.S. 1938).....	22
<u>Hurley v. Hurley</u> , 754 A.2d 1283 (Pa. Super. Ct. 2000).....	22
<u>Morrissey v. Pa. Dept. of Highways</u> , 225 A.2d 895 (Pa. 1967)	23
<u>Patterson v. The Bell Telephone Co. of Pa.</u> , 72 Pa. P.U.C. 196 (1990)	22
<u>Pongracz v. Pa. Am. Water Co.</u> , 2018 WL 5082009 (Pa. P.U.C. 2018.).....	22
<u>Romeo v. Pa. P.U.C.</u> , 154 A.3d 422 (Pa. Commw. Ct. 2017)	23
<u>West Penn Power Co. v. Pa. P.U.C.</u> , No. 1548 C.D. 2018, 2019 WL 4858352 (Pa. Commw. Ct. 2019).....	<i>passim</i>
<u>Wilmer Baker v. Sunoco Pipeline, L.P.</u> , No. C-2018-3004294, 2020 WL 5877007 (Pa. P.U.C. 2020).....	<i>passim</i>
Statutes	
2 Pa. C.S. § 704.....	22
66 Pa. C.S. §§ 101, <u>et seq.</u>	<i>passim</i>
66 Pa. C.S. § 102.....	24
66 Pa.C.S. § 332(a)	22
66 Pa. C.S. § 701.....	22, 23
66 Pa. C.S. § 1501.....	<i>passim</i>
49 U.S.C. §§ 60101-60503	24

Other Authorities

29 CFR § 1910.1200(g)14

49 CFR §§ 191-193, 195 and 19924

49 CFR § 195.44024, 61

52 Pa. Code § 59.33 *passim*

MAIN BRIEF OF GLEN RIDDLE STATION, L.P.

Complainant, Glen Riddle Station, L.P. (“GRS”), filed its Complaint because of the numerous dangers created by, and safety violations that marred, Sunoco Pipeline L.P.’s (“Sunoco”) construction of the Mariner East 2 pipeline (the “Pipeline Project”) on GRS’s Property (defined below). GRS seeks to change Sunoco’s dangerous conduct and cavalier attitude about safety through education and the issuance of severe civil penalties.

GRS owns a densely populated residential apartment community known as the Glen Riddle Station Apartments in Middletown Township, Delaware County, Pennsylvania (the “Property”). [GRS Statement No. 2 (Direct Testimony of Raymond Iacobucci, representative of GRS) (“GRS Stmt No. 2”) 1:20-2:2; GRS-1]. The Property includes 5 buildings closely located together with 124 units that house approximately 224 Pennsylvanians, including working families, young children, and the elderly (the “Residents”). [*Id.*, 2:20-21]. The Pipeline Project, which bisects the Property and its homes, threatened the safety and wellbeing of the Residents and GRS’s employees and Property for more than one year in violation of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.* (the “Code”) and regulations promulgated thereunder.

The health and safety threats GRS raises before the Public Utility Commission (the “Commission”) result from Sunoco’s nonexistent or substandard communication and refusals to consider safer, readily available options for its work. Sunoco’s safety failures violate its obligation to provide safe and reasonable service (66 Pa. C.S. § 1501), to reduce the hazards to which customers and others may be subjected to by reason of its equipment and facilities (52 Pa. Code § 59.33), to warn of dangers (66 Pa. C.S. § 1501; 52 Pa. Code § 59.33), and to communicate as required by its Public Awareness Plan (defined below).

To deter Sunoco from engaging in similar conduct and to avoid preventable tragedies, GRS asks the Commission to direct Sunoco to pay civil penalties in the amount of

\$2,000,000.00. Additionally, GRS requests that the Commission require at least 50 hours of safety training at Sunoco's expense for Sunoco and all of Sunoco's contractors and its/their employees that work on Sunoco's behalf in residential areas.

I. CONCISE STATEMENT OF THE CASE

Below summarizes the evidence of Sunoco's avoidable safety threats presented at the evidentiary hearing, which GRS categorizes as follows: (A) traffic hazards; (B) fire hazards; (C) noise hazards; (D) the unannounced and uncontrolled calciment release; (E) the water main break; and (F) communication and warning hazards.

A. The Traffic Hazards

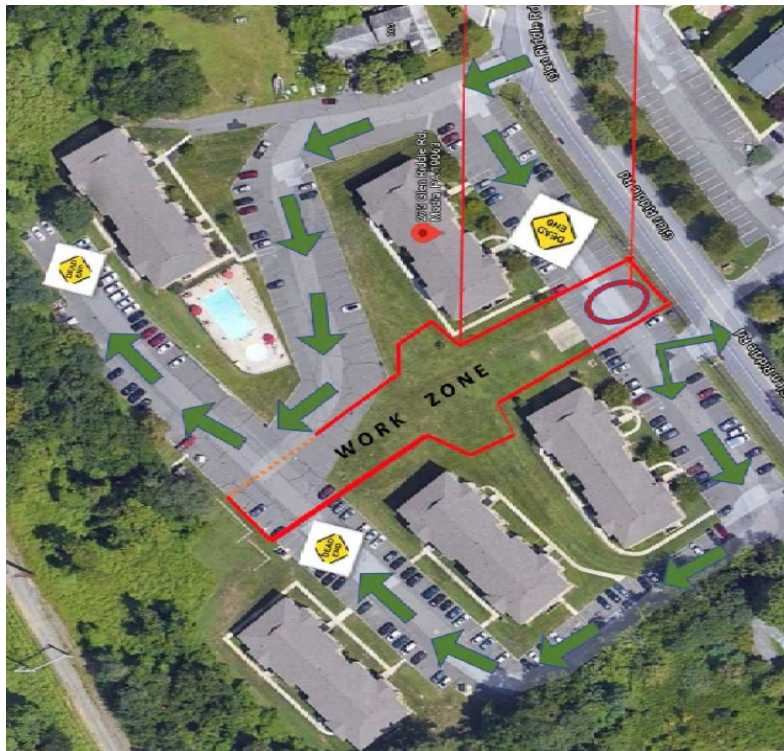
The traffic hazards created by Sunoco arise out of its following failures: (1) traffic planning and communication failures; (2) pedestrian traffic failures; and (3) school bus stop planning failures.

1. Traffic Planning And Communication Failures

Before Sunoco, the drive aisles at the Property created a looped configuration, allowing traffic to flow around the Property to and from two points of ingress and egress along Glen Riddle Road, a public highway. [GRS Statement No. 7-SR (Surrebuttal Testimony of Jay T. Etzel, P.E.) ("GRS Stmt No. 7-SR"), 4:10-15]. GRS explained to Sunoco the importance of maintaining this looped configuration long before Sunoco began its work. [GRS-158 - 161, 166]. Among other things, GRS explained to Sunoco that this looped configuration allowed for faster emergency vehicle access to the buildings on the Property, which was necessary because the buildings lacked fire sprinklers and had wooden roofs. [GRS-171].

Sunoco recognized the legitimacy of GRS's concerns about the looped road configuration and promised to maintain it. [GRS Stmt No. 1, Direct Testimony of Stephen Iacobucci,

representative of GRS) (“GRS Stmt No. 1”), 19:3-5]. This promise, like many others, proved false. [Id.]. Ultimately, Sunoco’s work area, bordered by sound walls and other barricades erected by Sunoco, bisected the Property into two east and west halves, eliminating the looped configuration and blocking the circular flow of traffic. [GRS Stmt No. 7-SR, 4:16-20; GRS Statement No. 3. (Direct Testimony of Jason Culp, P.E.) (“GRS Stmt No. 3”), P.E., 8-9; GRS Stmt No. 7-SR, 5:2-19]. GRS-20 illustrates Sunoco’s traffic impact at the Property:



[GRS-20].

As shown above, Sunoco overtook 50-60 parking spaces (including spaces reserved for the handicapped) and driving aisles on the north and south ends of the Property, constraining the width of driving aisles, forcing large construction vehicles to make multi-point k-turns to enter and exit the Property to and from a public PennDOT highway, and limiting drivers to one means of ingress/egress. [GRS Stmt No. 7-SR, 5:21-6:9; GRS Stmt No. 1, 8:2-23; SPLP Statement No. 3-R (Rebuttal Testimony of Joe Becker, Sunoco’s Senior Director of Engineering and

Construction) (“SPLP Stmt No. 3-SR”); GRS-23]. To add to the congestion, Sunoco “stacked” multiple trucks at Property instead of using an off-site staging area. [GRS Stmt No. 7-SR, 11:19-12:11]. Sunoco’s vehicles, work, and barricades forced GRS employees and Residents to navigate, narrow drive aisles with Sunoco’s large construction vehicles entering and exiting the work area. [GRS Stmt No. 7-SR, 5:21-6:9].

Anticipating the challenges that Sunoco’s work created for its community, GRS requested from Sunoco a traffic plan before Sunoco began its work. [T.T. (Amerikaner), 544:15-545:4]. This was important to GRS because the GRS Residents and GRS employees were familiar only with the looped, wide drive aisle without an active construction site bisecting the Property. [GRS Stmt No. 7-SR, 8:5-17]. Sunoco, however, refused to distribute any written traffic plan for the Property. [Trial Transcript (“T.T.”) (Fye) 234:7-12; (admitting that Sunoco has no written traffic plan); T.T. (Farabaugh) 651:15-652:8; T.T. 672:12-673:5]. The absence of any communication regarding a traffic plan prompted safety complaints by Residents. [See, e.g., GRS-25 (email complaint by Resident, Genie Horsky)].

To make matters worse, Sunoco did not communicate to Residents or GRS employees when parking spaces would be unavailable because of Sunoco’s work. [GRS Stmt No. 1, 8:6-7.] This confusion and interference caused Residents and employees to park on the public, unlit PennDOT roadway (Glen Riddle Road) without sidewalks or areas for safe pedestrian traffic, and to walk back to their homes, without any safety precautions in place. [GRS Stmt No. 1, 8:21-23; GRS-23]. Thankfully, no one was injured or killed.

Sunoco’s failure to implement a traffic plan also impeded emergency vehicles’ access to the Property. [GRS-110]. On December 12, 2021, a Resident made a 911 emergency call. [Id.]. Rocky Run Fire Department, Middletown Fire Department, and EMS responded to the call.

[Id.]. One of the responding emergency vehicles could not access the Property, and other vehicles struggled to access and leave the Property (the “Emergency Access Problem”). [Id.]. GRS notified Sunoco of the Emergency Access Problem and explained that this problem was a consequence of Sunoco’s failure to respond to GRS’s requests and demands regarding safety. [Id.].

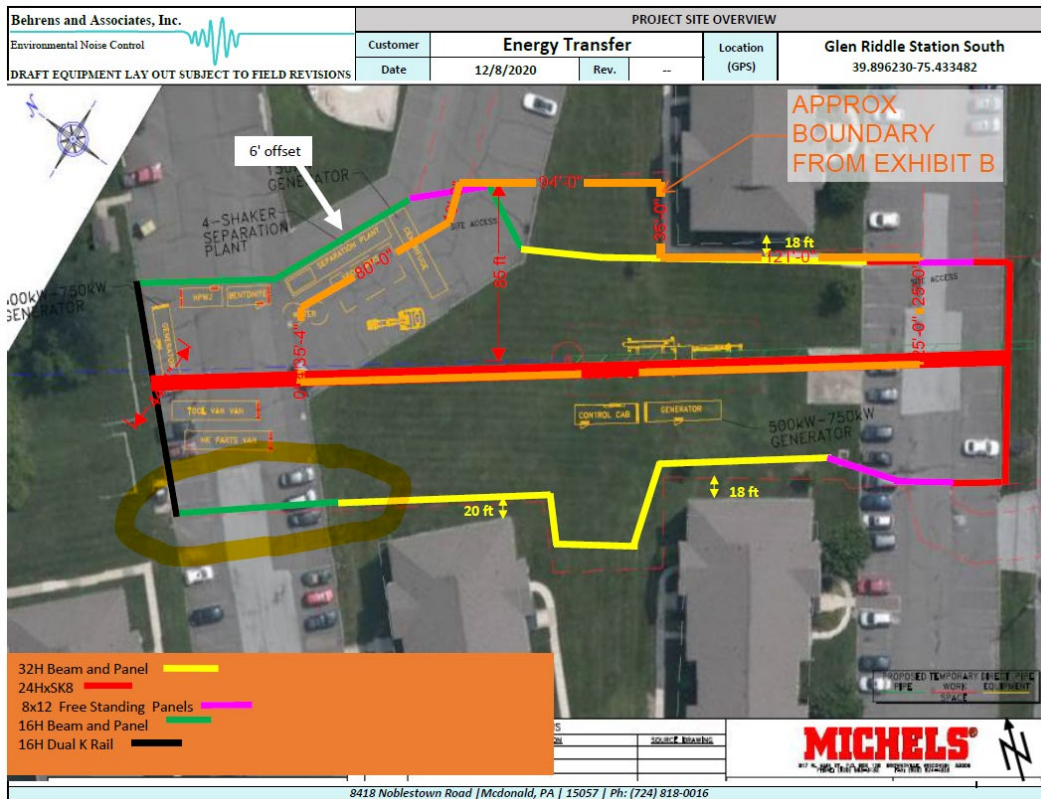
In addition to failing to implement a traffic safety plan, Sunoco did not install any traffic control signs or flaggers around driving aisles at the Property. Notwithstanding GRS’s requests, Sunoco did not provide GRS with any plan for traffic control signage, pedestrian safety, flaggers, and/or markings for the work area. [T.T. (Amerikaner) 544:15-545:4]. Instead, Sunoco installed only minimal signage. [T.T. (Farabaugh) 670:8-671:18].

Sunoco also failed to use flaggers. [T.T. (Fye) 653:19-654:2]. In the video marked as GRS-155, a Sunoco vehicle moves in reverse, while Sunoco personnel (without traffic flags) do not direct traffic. [T.T. (Fye) 653:19-654:2; see also GRS-171 and 172 (videos showing a tanker truck making a k-turn and traversing the parking lot in reverse without traffic flaggers)]. Moreover, the video depicts the driver of the large Sunoco vehicle driving recklessly close to a pedestrian. [GRS-155; T.T. (Becker) 609:1-610:10]. The Sunoco executive in charge of the worksite, Mr. Joe Becker (Sunoco’s Senior Director of Engineering and Construction), admitted that he “would not be standing” that close to the Sunoco vehicle depicted driving in GRS-155. [T.T. (Becker) 609:1-610:10]. Though Mr. Becker apparently knew of the dangers that Sunoco’s drivers created, Sunoco never warned the Residents or GRS of those same dangers. [See Record, generally].

To add to the confusion and avoidable danger, Sunoco did clearly identify its work area for the entire initial phase of Sunoco’s work (beginning November 20, 2020). [GRS Statement

No. 1-SR (Surrebuttal Testimony of Stephen Iacobucci) (“GRS Stmt No. 1-SR”), 7:12-17]. Sunoco also created and then left unguarded holes (from potholing) in grassy areas where children played. [GRS Stmt No. 1, 10:11-20; GRS Stmt No. 1-SR, 22:7-12]. Sunoco did not address these hazards until GRS lodged several complaints about them. [GRS Stmt No. 1, 10:11-20]. Thankfully, no child was seriously injured.

To add to the dangerous configuration, Sunoco failed to mark the northwestern portion of its work area, near the “6’ offset” indication in upper left corner in the diagram below:



[GRS-28]. Although Sunoco eventually admitted its surveying error, [GRS Stmt No. 3, 8:15-19; GRS-28], Sunoco’s improper markings reduced the drive aisle in that area to 16 feet in a location with an over 12.5% grade and tight turning radius, impacting navigation by vehicle and foot. [GRS Stmt No. 3, 8:7-15]. Planning and communication by Sunoco would have avoided this hazard.

2. Pedestrian Traffic Failures

Before Sunoco, the Residents, including children, crossed between the eastern and western sides of the Property for exercise, to visit and play with others, and to access the pool and playground facilities. [GRS Stmt No. 1, 10:3-5]. Sunoco's work precluded such access. [GRS Stmt No. 1, 10:5-7; GRS-14; GRS-20]. Sunoco left the Residents to traverse the public highway (Glen Riddle Road), which had no sidewalks or lighting, without any prior notice. [GRS Stmt No. 1, S.I. 8:11-15]. Sunoco never provided a pedestrian walkway. [GRS Stmt No. 1-SR, 13: 1-2].

Because Sunoco did not install a walkway, GRS insisted on a greater visual deterrence to slow pedestrian traffic from crossing into the work area zones. [GRS Stmt No. 3, 9:20-23; GRS Stmt No. 1-SR, 13:3-8]. Sunoco refused, instead adopting what it labeled a "common sense" approach. [GRS Stmt No. 1, 4:10-17, 11:20-22]. This "common sense" approach involved young children and the elderly knowing how to "look" before crossing the drive aisle. [GRS Stmt No. 3, 9:17-20].

Further, although Sunoco suggested that it requires its personnel to take defensive driving courses, Jayme Fye, a Michels' Superintendent responsible for certain Sunoco work at the Property, had "no idea" whether the subcontractors Sunoco retained to work on the Property completed defensive driving courses or any other safety training. [T.T. (Fye), 655:1-657:22].

3. School Bus Stop Planning Failures

On November 20, 2020, Sunoco began work on the Property, interrupting a school bus service without a plan for a safe system for picking up and dropping off school-aged students. [GRS Stmt No. 1-SR, 16:1-16]. Sunoco's work evidently required a change in location of the school bus stops from inside the parking lot area to the side of a well-traveled highway. [GRS Stmt No. 7-SR, 8:19-9:2]. Yet, Sunoco did not contact the Rose Tree Media School

District (“RTMSD”) before it began its work. [GRS Stmt No. 7-SR, 9:3-14]. The first contact between Sunoco and RTMSD occurred on December 1, 2020 - weeks into Sunoco’s work on the Property. [GRS Stmt No. 7-SR, 9:3-14].

On December 6, 2021, GRS contacted RTMSD, concerned about the safety of the GRS children who used the school bus. [GRS Stmt No. 1-SR, 16:5-12]. GRS learned that Sunoco had done nothing to provide for the safety of these children. [Id.; GRS-167].

GRS then asked Sunoco to implement bus stop signage or a delineated, lighted area for children to stand while they waited for the school bus, but Sunoco refused. [GRS Stmt No. 1-SR, 11:20-22]. Instead, as it now concedes, Sunoco relied upon an incomplete set of communications between GRS and RTMSD regarding bus stop safety issues to make changes to the bus stops. [T.T. (Becker) 588:16-591:11].

Sunoco’s work caused school bus drivers difficulty determining where to stop and how to access the Property safely. [GRS Stmt No. 1, 9:16-19; GRS-23]. This confusion caused at least one Resident’s child to miss a school bus, compelling the Resident to run into Glen Riddle Road to flag down the school bus for her child. [GRS Stmt No. 1, 9:16-19; GRS-23]. Thankfully, neither she nor her child were injured.

B. The Fire Hazards

Sunoco’s installation of immovable sound walls impaired emergency response personnel access to the Property, creating fire safety hazards.

For months prior to Sunoco’s installation of the Sound Walls, GRS asked Sunoco for the plan for their installation (the “Sound Wall Plan”). [GRS Stmt No. 1, 13:9-11; 13:12-17; GRS-7; GRS-101; GRS-131]. Sunoco refused to provide any written plan and only orally told GRS at a meeting on November 18, 2020, that it intended to install the Sound Walls a mere *five feet* from the apartment buildings. [GRS Stmt No. 1, 3:17-4:9; 13:12-14:10; GRS-102; GRS-20; GRS

Stmt No. 3, 4:3-4; 13:4-10]. GRS objected, raising the obvious concern that placing the Sound Walls five feet from the buildings would block emergency ingress and egress. [GRS Stmt No. 1, 3:17-4:9]. Astonishingly, this concern surprised Sunoco, which is exactly why GRS continued to ask to review the Sound Wall Plan – i.e., to address safety concerns not considered by Sunoco. [GRS Stmt No. 3, 13:8-10 (Mr. Culp testifying that Sunoco would have installed the Sound Walls with no access for emergency personnel if he had not raised his concerns)].

Sunoco eventually agreed not to install the Sound Walls five feet from the buildings. [GRS Stmt No. 3, 13:8-10]. Sunoco, however, continued to refuse GRS's requests to review Sunoco's Sound Wall Plan. [GRS Stmt No. 1, 4:3-6; 13:12-14:10; GRS-102; GRS-20; GRS Stmt No. 3, 4:3-4; 13:4-10]. Instead, Sunoco unilaterally installed the Sound Walls around the perimeter of its work area, causing the above-referenced problems.¹ [Id.].

As stated above, emergency vehicles accessed the GRS apartment buildings by way of a looped access road with multiple ingress and egress points. [T.T. (Davidson), 332:16-25]. Although Sunoco represented to GRS that it would maintain this looped access road, [GRS Stmt No. 1-SR, 19:3-5], Sunoco failed to do so. [T.T. (Davidson), 334:13-19; GRS Stmt No. 3, 13:11-14, 14:1-6]. As a result, the western side of the Property lacked turn around space for emergency access vehicles, and the eastern side of the Property lacked a hammerhead or cul-de-sac to allow for fire department turn around. [GRS Stmt No. 3, 14:5-6; T.T. (Davidson) 336:12-

¹ The Sound Walls also created avoidable storm water management hazards. GRS could not fully assess them because Sunoco failed to provide grading plans and other documents showing pre-existing stormwater conditions and the stormwater plan during construction. [GRS Stmt No. 3, 11:7-11]. Based on the assessment that was possible, Sunoco's work caused avoidable erosion and stormwater damage likely because soil compaction has significantly reduced infiltration and runoff absorption. [Id., 11:17-19, 12:3-11; GRS-18 (illustrating stormwater impacts)]. Sunoco's failures were hazardous because runoff could have easily backed up against the Sound Walls with inadequate conveyance, resulting in apartment units flooding and other damage. [Id., 12:14-17; GRS Stmt No. 1-SR, 26:2-7]. GRS's assessment of stormwater impacts and related hazards continues as of the date of this filing.

19]. This violated the International Fire Code’s (the “IFC”) requirements at paragraphs D103, D106.1, and D102.1. [T.T. (Davidson), 334:13-19; T.T. (Etzel), 336:12-19; GRS Stmt No. 3, 6:9-10, 13:11-14]. GRS’s fire safety expert, James Davidson, testified that the failure by Sunoco to follow these important IFC requirements was unsafe and put lives in danger unnecessarily. [GRS Statement No. 6-SR (Surrebuttal Testimony of James S. Davidson, Jr., P.E.) (“GRS Stmt No. 6-SR”), 7:13-15].

Further, GRS’s expert, Jason Culp, P.E. testified that it is unclear why Sunoco simply did not install a movable gate on the western side of the Property when such an alternative was easily available. [GRS Stmt No. 3, 14:14-19]. As Mr. Culp opined, the absence of a movable Sound Wall on the western side created an unreasonable threat to the safety of the lives of those living and working at the Property. [*Id.*]. Making matters worse, after installing the immovable Sound Wall on the western side of the Property, Sunoco failed to test the western side of the Property² for emergency access. [GRS Stmt No. 1-SR, 17:9-17].

GRS repeatedly asked Sunoco to reevaluate its Sound Wall Plan to ensure that it protected the safety of the GRS Residents, but Sunoco refused all of these requests. [GRS Stmt No. 1-SR, 11:13-19].

C. The Noise Hazards

Sunoco ignored GRS’s repeated requests for information regarding Sunoco’s sound mitigation plan and dismissed GRS Residents’ complaints about the excessive – and dangerous – noise levels created by Sunoco’s construction.

² None of the emergency calls placed during the time that the Sound Walls were blocking the looped access required emergency response to the western side of the Property. [GRS Stmt No. 1-SR, 17:9-17].

Sunoco created noise on the Property consistently in the 80s, 90s, and over 100 decibels. [GRS Stmt No. 1, 6:5-8; GRS Stmt No. 3, 4:23 – 5:1; GRS-5; GRS-33]. The noise inside the GRS Residents’ homes and at “point source mitigation” locations sometimes reached the same excessive levels. [GRS Stmt No. 1, 6:5-8; GRS Stmt No. 3, 4:23 – 5:1; GRS-5; GRS-33]. Such noise levels are deemed unsafe by the Occupational Safety and Health Administration (“OSHA”), the Center for Disease Control (“CDC”), and the National Institute for Occupation Safety & Health (“NIOSH”), and pose significant danger to the GRS Residents and employees exposed to the noise, including, but not limited to, a risk of permanent hearing loss. [GRS Statement No. 10-SR (Surrebuttal Testimony of Jeffrey A. Davis, M.D. (“GRS Stmt No. 10-SR”), 3:18-19)].

Sunoco refused to communicate its sound mitigation plans, if any, or sound readings to GRS. [GRS Stmt No.1-SR, 15:6-21; GRS Stmt No. 3 4:12-20]. Sunoco also refused sound monitoring measures requested by GRS, which included sound decibel metering during construction. [T.T. (Amerikaner) 548:13-19].

After Sunoco belatedly provided its Sound Wall Plan to GRS, GRS discovered that it lacked any detail regarding the anticipated sound sources, such as a generator, excavators, drilling equipment, and any run time limits. [GRS Stmt No. 3, 4:8-12]. In fact, Sunoco’s “plan” shows the separation plant - one of the loudest points on the Property - located in a different location from where Sunoco actually placed it. [GRS Stmt No. 1-SR, 21:11-15, GRS-152; GRS-168]. Although Sunoco originally showed the separation plant located at the farthest point away from the GRS Residents’ homes, Sunoco actually placed it in close proximity to their homes. [Id.]. Accordingly, the Plan itself was not actually a “plan” that Sunoco intended to follow. [GRS Stmt No. 4-SR, 10:18-11:13].

The Sunoco-created noise adversely affected the Residents' work and their children's schooling, particularly when many were at home during the COVID-19 pandemic. [GRS Stmt No. 1, 6:12-14]. A GRS Resident, Ms. Joanna Rincon, described the noise:

Sunoco's work on the Property has affected nearly every aspect of my life and my son's life from my work and his schooling to our sleep. Although the noise and vibrations have been an ongoing issue, the noise has become unreasonable and constant as it lasts the entire day. I have had to rearrange my work calls and close all windows and I am still unable to hear colleagues on the phone, or even my television. Additionally, my son has had to leave the apartment for several days simply to get away from the vibrations. He has also been unable to sleep because of the noise and the spotlights for Sunoco's work shine into his windows past his bedtime. These vibrations and the loud noise levels generated are making it extremely difficult for me to perform my job and for my son to stay with me in my apartment. This has made me very upset and it has caused a substantial disruption to our lives. I am very concerned about the effect this constant noise and the ongoing vibrations will have on my family's health and safety.

[GRS Statement No. 4 (Direct Testimony of Johanna Rincon) ("GRS Stmt No. 4"), 1:16-2:5].

D. The Unannounced And Uncontrolled Calciment Release

At the height of Sunoco's work on the Property – when GRS was begging Sunoco for information about safety (which pleas went unanswered) – Sunoco released airborne plumes of calciment into the homes and common areas of the GRS Property without any warning. [GRS Stmt No.1-SR, 31:4-11; GRS-182 (videos); GRS-135; GRS-136 (photographs); GRS-137 (photographs)]. Sunoco characteristically shrugged off GRS Residents' concerns. [GRS Statement No. 1-SR, 32:15-22].

It is undisputed that Sunoco used calciment during construction at the Property. [T.T. (Magee), 133:21-24]. Calciment is a mixture of calcium, magnesium carbonates, oxides and hydroxides, which can solidify wet cuttings for purposes of offsite disposal. [T.T. (Magee), 133:6-13]. Calciment is dangerous to human health, and may cause irritation in the eyes, skin,

respiratory system, and gastrointestinal tract. [GRS Statement No. 5-SR (Surrebuttal Testimony of Normal Henry) (“GRS Stmt No. 5-SR”), 4: 15-18; GRS-135]. Further, when calciment interacts with water, it creates calcium hydroxide - a strong base chemical with a pH of 12 – which burns human skin. [T.T. (Henry) 310:1-10; GRS Stmt No. 5-SR, p. 4 ln. 15-18].

Serious injuries can occur through acute exposure from calciment, including a short term exposure. [T.T. (Henry) 311:24 – 312:3]. Exposure of calciment to the eyes can cause severe injuries including, but not limited to, total blindness. [T.T. (Henry) 312:3-7]. Beyond threatening human health, calciment is a danger to property because it is corrosive. [T.T. (Henry) 313:11-15].

Due to its hazardous effects, OSHA requires calciment manufacturers to issue safety data sheets to communicate information regarding the hazardous chemical (the “Safety Data Sheet”). See 29 C.F.R. § 1910.1200(g) (requiring manufacturers to provide safety data sheets for each hazardous chemical to downstream users); [GRS 135; T.T. (Magee) 155:3-13]. Pursuant to its Safety Data Sheet, no quantity of calciment is safe for human inhalation – not even a trace amount. [T.T. (Magee) 157:9-17; GRS-135].

To avoid the dangers caused by inhaling calciment, the calciment Safety Data Sheet advises that cleanup methods for calciment must minimize the creation of airborne dust. [T.T. (Magee) 156:19-22]. Among other things, to avoid the serious complications that can occur when calciment enters a person’s eyes, every worksite using calciment must be equipped with readily available eye-washing stations. [GRS-135; T.T. (Magee) 156:23-157:5]. None were present here. [T.T. (Magee) 157:5-8].

In addition to OSHA, the National Fire Protection Association (the “NFPA”) also recognizes the dangers that calciment poses to human health and safety. [T.T. (Henry), 310:15-

311:17]. The NFPA designates calciment as a level three out of four (four being the most hazardous) on its hazard material index system. [Id.]. The NFPA qualifies calciment as a level three hazardous compound because calciment is severely corrosive to skin and a single, short term exposure can cause irreversible eye damage. [T.T. (Henry), p. 311:18-25]

GRS presented videos depicting Sunoco delivering many large bags of calciment to the worksite at the Property, tearing them open, shaking the calciment into mixing containers, and using a large auger drill to apparently mix them, all without taking steps to contain its airborne release. [GRS Stmt No. 1-SR, 31:4-11; GRS-182]. This resulted in plumes of calciment released into the air surrounding and entering into the homes on the Property. [GRS Stmt No. 1-SR, 31:4-11; GRS-182; GRS-135; GRS-136); GRS-137]. GRS's expert witness, Norman Henry, a board certified industrial hygienist, confirmed that the videos depicted calciment plumes (not water vapor) and that the release of calciment seen in the video constitutes an "uncontrolled release." [T.T. (Henry): 311:0-312:20]. Calciment also settled onto GRS Residents' vehicles parked in the GRS parking lot. [GRS Stmt No. 1-SR, 31:4-11; GRS-182; GRS-135; GRS-136; GRS-137].

Notwithstanding all of the above, Sunoco never once warned GRS or the Residents about its use of calciment or the airborne release of calciment. [GRS-135]. As a result, neither GRS nor its Residents had any notice or any opportunity to take any precautions to avoid exposure of their person, homes, and property to the harmful, corrosive chemical. [Id.]. After receiving numerous complaints from the Residents regarding the airborne calciment, GRS's counsel wrote to Sunoco's counsel demanding that Sunoco stop using calciment on the worksite until measures were taken to contain its airborne release. [GRS Stmt No. 1-SR, 32:19-22]. Sunoco never responded to GRS's concerns. [See Record, generally].

Instead of responding to the safety concerns raised by GRS, Sunoco stopped using calciment at the Property and issued car wash gift certificates to the GRS Residents. [GRS Stmt No. 1-SR, 32:15-22]. Sunoco did not communicate with the GRS Residents, did not test anything, and did not take any steps to remediate the calciment airborne release. [GRS Stmt No. 1-SR, 32:19-22]. Sunoco's own expert, Brian Magee, Ph.D., could not explain Sunoco's "rationale" for its response. [T.T. (Magee), 160:2-10].

E. The Water Main Break

On May 26, 2021, the Wednesday before Memorial Day Weekend, Sunoco broke an underground water main owned by GRS that serviced the Property. [GRS Statement No. 8-SR (Surrebuttal Testimony of Kevin Burns, P.G.) ("GRS Stmt No. 8-SR"), 6:6-7]. The break could have allowed contamination into the service lines to the GRS Residents. [GRS Statement No. 3-SR (Surrebuttal Testimony of Jason Culp, P.E. ("GRS Stmt No. 3-SR"), 10:14-15:7]. Mr. Culp, a licensed professional engineer with a decade of experience in site design, structural and geotechnical related design, and construction, explained how Sunoco caused the water main break:

Per Sunoco, its pipeline centerline was more or less underneath of the bell/spigot end of the 4 inch ductile iron pipe. It appeared that no water was flowing from the connection which you would expect is a typical location of failure. When further excavated, it was found that the pipe had snapped just outside of the previous trench excavation. I estimate that the break was approximately 4 feet short of the aforementioned connection, in general the pipe appeared in good condition without significant scaling or rust on the outside. The soil excavated around the pipe was notable to me for two reasons: first, that it was saturated and second, that it was very soft. It appeared that soft saturated material was placed under and around the pipe. I was told that this was standard operation procedure for Sunoco. I indicated that my typical recommendations and that most recommendations are that the water line pipe be backfilled to at least the spring line (halfway up the pipe depth) with flow fill or similar non compressible material. It was apparent that the break was caused by settlement of soil below the pipe within the trench

Michels had excavated and backfilled. The weight of the soil above and below pushed the pipe down where it was soft and it snapped just outside the trench where the soil below the pipe was stiff and did not 'give' with the excessive deflection of the pipe. In other words, Sunoco caused this break.

[GRS Stmt No. 3-SR, 10:15-12:17: GRS-183].

At Sunoco's request, GRS turned off the water after Sunoco broke the water main. [GRS Stmt No. 1-SR, 33:23-34:1]. A plumber and an engineer advised GRS to keep the water off until testing ensured that the water was safe. [GRS Stmt No. 1-SR, 34:1-4]. Nevertheless, later that same day, Sunoco's contractor, Horn Plumbing ("Horn"), entered GRS's building without permission from GRS and turned back on the water. [GRS Stmt No. 1-SR, 34:4-6].

The next day, after Sunoco turned the water on without GRS's permission and before any testing had occurred, Sunoco's counsel wrote that "*the water was safe to use for all purposes*" after it was run through the taps to clear sediment. [GRS Stmt No. 1-SR, 35:8-10; GRS-139 (emphasis added)]. Sunoco's counsel's statements regarding safety contradicted the advice GRS had received. [GRS Stmt No. 1-SR, 35:10-16; GRS Stmt No. 8-SR, 4:16-20, 4:21-5:8]. Accordingly, at the advice of its expert, GRS sent the GRS Residents written notice advising them not to drink the water until testing was completed. [GRS-169]. Sunoco sent no communication intended for the GRS Residents except for its counsel's statement that the water was "safe for all purposes." [GRS Stmt No. 8-SR, 6:1-9].

Over the next several days, GRS repeatedly asked Sunoco to support or discuss its counsel's statement regarding the potability of the water and to coordinate with GRS regarding testing. [GRS Stmt No. 1-SR, 35 ln. 17-22]. Sunoco rebuffed GRS's requests. [GRS Stmt No. 1-SR, 35:17-36:8]. Sunoco conducted *no testing*. [T.T. (Amerikaner), 222:22-223:2; GRS-139].

Weeks later, on June 18, 2021, GRS learned, for the first time, that Sunoco’s plumbing contractor told Sunoco that the water was *not* safe for all purposes before Sunoco’s counsel told GRS the direct opposite. [Horn Cross Examination 1]. On May 26, 2021, after inspecting the Property, Horn Plumbing advised Sunoco that the GRS Residents “for safety should use the portable water supplied by the main for showers and other conventional use, *aside from drinking*” until the water was tested. [T.T. (Horn), 178:15-17; Horn Cross Examination 1 (emphasis added)]. Yet, the next day, on May 27, 2021, Sunoco’s counsel reported to counsel for GRS that the water was safe to use for all purposes. [GRS-139]. Sunoco did not provide GRS with Horn Plumbing’s advice until June 18, 2021 – *three weeks* after Horn provided it to Sunoco and only after Sunoco’s counsel misled GRS about the water’s safety. [T.T. (Horn) 178:15-180:5; Horn Cross Examination 1; GRS-139].

To address the safety issues raised by the water main break caused and ignored by Sunoco, GRS was forced to consult with three different plumbing experts and hydrogeologists and to pay for its own testing. [T.T. (Deisher) 511:2-9]. All of this substantial expense would have been avoided if Sunoco acted responsibly.

F. The Communication/Warning Hazards

Sunoco repeatedly failed to communicate with GRS about safety or to warn GRS and its Residents of known or knowable dangers. This lack of communication and Sunoco’s outright dismissal of GRS and the GRS Residents’ concerns was unreasonable and created safety hazards.

GRS repeatedly attempted to obtain information from Sunoco regarding the safety of its work. [GRS-103; GRS-105; GRS-109; GRS-111; -113; GRS 158-66.] These requests began before Sunoco’s work on the Property and continued throughout its duration. [Id.]. GRS raised detailed concerns and requested specific information pertaining to safety including, without limitation, a site plan, work plan, details regarding the Sound Walls, site access, emergency

utility repair, and fire/medical emergencies – with no substantive response from Sunoco. [Id.; GRS SR-1 (S.I.) 29:7-17].

GRS also raised safety/planning concerns at various meetings with Sunoco including, without limitation, on the following dates: November 18, 2020; February 3, 2021; March 5, 2021; March 17, 2021; and March 22, 2021. [GRS Stmt No. 1-SR, 10:13-20; 18:11-19].

Receiving a work plan from Sunoco was a particularly important for GRS so that it could put GRS Residents on notice and plan for their safety. [GRS Stmt No. 1-SR, 9:3-6; 10:14-23, 12:1-7, 29:7-30:7, 31:21-32:3; GRS-159; GRS-161-62; GRS-165-66].

Although Sunoco promised at times to provide the requested information, it never followed through, as identified below:

- In February 2021, Sunoco agreed to provide a timeline of major project milestones to distribute to GRS in a weekly communication and to GRS Residents in a bi-weekly update, but never once provided these updates. [GRS Stmt No. 1-SR, 9:3-6; 30:3-7; 11:10-13];
- In March 2021, GRS again asked for the update communications. [Id. 13:8-18; GRS-117]. Sunoco committed to providing safety information to GRS and, again, failed to follow through [Id. 13:8-18; GRS-117]; and
- On March 17, 2021, Sunoco agreed to provide safety information to GRS – this time committing to report incidents on the Property as quickly as possible and to inform GRS when Sunoco personnel would be on the Property and the purpose of their visit. [Id., 12:19-22]. This, too, never happened. [Id. 13:1].

Moreover, Sunoco failed to provide the communications from GRS raising specific safety concerns to the person in charge of the worksite, Joe Becker. [T.T. (Becker) 591:18-599:16]. As a result, he operated under the misunderstanding that GRS had not raised specific concerns.

[Id.].

The only Town Hall meeting that Sunoco held for GRS Residents and management took place on February 23, 2021 – months after Sunoco began working on the Property. [GRS Stmt

No. 1-SR, 14:11-14]. Sunoco held this meeting only after Sunoco forced GRS to file an Emergency Petition with the Commission. [Id.]

On February 10, 2021, Sunoco posted signs demanding that all persons avoid coming within 100 yards of Sunoco's worksite on the Property due to the "danger" that Sunoco's activities created within that area (the "Danger Area"). [See GRS's Emergency Petition, filed February 11, 2021, at ¶ 37]. It was impossible for the GRS Residents to avoid the Danger Area because their homes fell within it. [Id., ¶ 38]. Sunoco's posting of the signs, without prior notice to GRS or to any of the Residents, unsurprisingly panicked the GRS Residents, who understood (as a result of Sunoco's own words) that their homes and their lives were in danger. [Id., ¶¶ 40-51]. In response to GRS's Emergency Petition, Sunoco admitted that the signs were placed "in error," and agreed to hold a Town Hall meeting to explain the signs used at the site, to discuss the work at the site and the safety of the GRS Residents and GRS personnel, and to answer any questions. [See Stipulation Regarding Emergency Petition]. Sunoco, however, never explained how its control of the worksite could be so negligent as to allow its contractors to notify 224 Pennsylvanians that they lived in imminent danger.

At the Town Hall, Sunoco failed to address the GRS Residents' concerns. [Id. 14:22-152; GRS-120; GRS-121.] Sunoco also failed to provide any regular updates to GRS or the GRS Residents as it promised at the Town Hall, either through the GRS's website, or otherwise. [GRS Stmt No. 1-SR, 27:5-11]. Sunoco also failed to communicate the information through counsel or through its direct line of communications with GRS. [GRS Stmt No. 1-SR, 32:3-15]. Sunoco even failed to communicate regularly with Middletown Township. [GRS Stmt No. 1-SR, 27:15-21, 37:6-11; GRS-131; GRS-145].

In addition to the traffic hazards, fire hazards, dangerous noise levels, the uncontrolled calciment release without notice, and the water main break set forth in greater detail above, Sunoco failed to communicate with GRS regarding the following:

- The use of Sound Walls as a shoring device for dirt that Sunoco excavated [GRS Stmt No. 1-SR, 36:9-37:11];
- The failure to provide any clean fill certificates to GRS regarding the fill it used on the Property until the hearing itself [GRS Stmt No. 3, 11:1-5]; and
- GRS observed Sunoco repeatedly digging up, and then filling, a boring pit with unknown content and removing what appeared to be groundwater. [GRS Stmt No. 1-SR, 25:10-13; GRS-127 (pictures of Sunoco filled tanks with liquid content from boring pit)]. In response to GRS's inquiries about Sunoco's impact on groundwater, hydrology, and stormwater management, Sunoco refused to substantively respond, claiming that GRS's inquiry did not have "expert support" and would therefore not be entertained.³ [GRS-128].

Throughout its work, Sunoco displayed a careless and dismissive attitude toward, and even a callous disregard for, the significant impact that the Pipeline Project had on the GRS Residents' lives and GRS, including the real dangers created by Sunoco's unsafe practices. Sunoco's approach to the health and safety of the GRS Residents and employees left GRS with no option but to seek the Commission's oversight.

I. ARGUMENT

Sunoco unnecessarily endangered the lives of the GRS employees and Residents, and the GRS Property, by engaging in unsafe practices, failing to warn of dangers, and ignoring GRS's and its Residents' safety concerns. GRS respectfully requests that the ALJ order Sunoco to pay civil penalties in the amount of \$2,000,000.00 and require all personnel working on Sunoco's

³ Sunoco claims that its stormwater-related activity was proper under the permits issued by Middletown Township. Sunoco, however, not GRS, signed the Middletown Township permits as the "owner" of the Property, which was a materially false representation. [T.T. (Culp) 488:8-20]. If GRS executed and held the permits as opposed to Sunoco, GRS would have had far greater control to prevent stormwater-related hazards.

behalf in residential areas to undertake mandatory safety education.

A. Standard of Review

The complainant in a formal complaint proceeding before the Commission bears the initial burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden is “substantial.” 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Consolidated Edison Co. of New York v. Nat’l Labor Relations Bd., 305 U.S. 197, 229 (U.S. 1938).

To satisfy the burden of proof, the complainant must show that the utility is responsible or accountable for an offense. Patterson v. The Bell Telephone Co. of Pa., 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701. Such a showing must be by a “preponderance of the evidence.” Pongracz v. Pa. Am. Water Co., No. F-2018-3002303, 2018 WL 5082009, at *2 (Pa. P.U.C. 2018). “Preponderance of the evidence” means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. Id.

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. Wilmer Baker v. Sunoco Pipeline, L.P., No. C-2018-3004294, 2020 WL 5877007, at *3 (Pa. P.U.C. 2020) (citing, Hurley v. Hurley, 754 A.2d 1283 (Pa. Super. Ct. 2000)). The burden of production “determines which party must come forward with evidence to support a particular claim or defense.” Id. If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, the burden of production shifts to the utility to rebut the complainant’s evidence. See Baker, 2020 WL 5877007, at *3.

Once the Commission determines that complainant satisfied its burden, the Commission then evaluates whether respondent has submitted “evidence of co-equal value or weight to refute

[c]complainant’s evidence.” Swiggett, 2015 WL 9595693, at *2 (citing 66 Pa. C.S. § 701). If the Commission finds that respondent’s evidence is of co-equal value or weight to refute complainant’s evidence, complainant must present additional evidence to meet its burden. Id. (citing, Morrissey v. Pa. Dept. of Highways, 225 A.2d 895 (Pa. 1967); and Burleson v. Pa. Pub. Util. Comm’n., 443 A.2d 1373 (Pa. Commw. Ct. 1982)).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the complainant then must satisfy its burden of persuasion. Baker, 2002 WL 5877007, at *3. In determining whether a complainant has met the burden of persuasion, the factfinder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. Id.

A complainant may prove his/her claim through the complainant’s personal testimony and/or “the testimony of others as well as other evidence that goes to that issue.” Id. (citing, Romeo v. Pa. P.U.C., 154 A.3d 422, 430 (Pa. Commw. Ct. 2017)). Lay testimony can meet complainant’s burden, particularly when the violation is “unquestionably serious.” West Penn Power Co. v. Pa. P.U.C., No. 1548 C.D. 2018, 2019 WL 4858352, at *6 (Pa. Commw. Ct. 2019).

B. Sunoco Violated Its Safety Obligations

A public utility must maintain “adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa. C.S. § 1501; see also 66 Pa. C.S. § 102 (defining pipeline transportation services as public utility services).

The term “service” is defined broadly under the Code to include any and all acts done or rendered, or performed and any and all things furnished or supplied and any and all facilities

used, furnished or supplied by public utilities. See 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed. Baker, 2020 WL 5877007, at *5.

The Commission Regulations at 52 Pa. Code § 59.33, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. “Each public utility 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 other may be subject to by reason of its equipment facilities.” 52 Pa. Code § 59.33. The minimum safety standards required by the Commission’s Regulations include emergency preparedness and public awareness plans. See 49 CFR § 195.440.

Consistent with the requirements of 49 CFR § 195.440, Sunoco’s Pipeline Project is governed by a public awareness plan, which the Commission ordered Sunoco to prepare after it failed to communicate responsibly with those affected by its work See Dinniman v. Sunoco Pipeline, L.P., Nos. P-2018-3001453, C-2018-3001451 (Pa. P.U.C. June 15, 2018). Specifically, the Commission enjoined Sunoco from working on the Pipeline Project in Chester County, Pennsylvania, because of its communication failures. Id. The Commission also ordered Sunoco to submit a public awareness plan demonstrating how it intended to better communicate with four groups: affected public; emergency officials; public officials; and excavators. Id.

On June 22, 2018, Sunoco filed the required public awareness plan (the “Public Awareness Plan”) and certain standard operating procedures (“SOPs”) with the Commission. [See Public Awareness Plan (attached as Exhibit B to GRS’s Complaint), and relevant SOPs

contained therein.]⁴ Sunoco’s “ongoing implementation of the outlined policies and notice requirements . . . is a separate and ongoing compliance matter” properly within the jurisdiction of the Commission. [Id., at pp. 24-25]; see also Baker, 2019 WL 7403546, at **12-13 (holding, the Commission has jurisdiction over unsafe conditions relating to Sunoco’s Pipeline Project).

Sunoco’s failure to communicate effectively with the public was recently highlighted in Flynn, Fuller, Walsh, et al., v. Sunoco Pipeline, L.P. (the “Safety 7 Case”), in which the Commission concluded that Sunoco must do more than simply comply with its Public Awareness Plan in Delaware and Chester Counties. Docket Nos. C-2018-3006116, P-2018-3006117, C-2018-3003605, C-2018-3005025, C-2018-3006898, C-2018-3006905, at *134-168 (Pa. P.U.C. April 9, 2021). The Commission found that Sunoco unreasonably withheld information necessary for the preparation of emergency response plans in Delaware and Chester Counties. Id. at 160-161, 176, 180. As a result, the Commission required Sunoco to undertake remedial action and pay a civil penalty, emphasizing to Sunoco that “with the right to do business in Pennsylvania comes responsibility.” Id. at 149-150.⁵

⁴ The Public Awareness Plan contains Sunoco’s SOPs relating to, among other things, Sunoco’s communications with stakeholders, safety issues, and compliance. [Public Awareness Plan, attached as Exhibit B to GRS’s Complaint].

⁵ Additionally, in late April 2021, the Chester County District Attorney’s Office filed a complaint on behalf of the Commonwealth of Pennsylvania against Sunoco seeking to stop or reduce the nuisances caused by Sunoco’s construction and installation of the Mariner East Pipeline System, in the case captioned, Commw. v. Energy Transfer LP, et al., Court of Common Pleas of Chester County, Pennsylvania, No. 2021-02716-TT. The District Attorney’s complaint alleged that Sunoco’s pipeline activities violates Sunoco’s work permits, the Constitution of Pennsylvania, and the Pennsylvania Clean Streams Law. Id.

On April 22, 2021, the District Attorney’s Office filed a consent decree with Sunoco (the “Consent Decree”). See Commw. v. Energy Transfer LP, et al, (No. 2021-02716-TT, April 22, 2021). Pursuant to the Consent Decree, Sunoco must submit to environmental audits and inspections and provide enhanced communications regarding its Pipeline Project to the District Attorney’s Office and the Chester County Conservation District, among other obligations. The Chester County Court of Common Pleas retained jurisdiction to enforce the Consent Decree.

Sunoco must comply with its Public Awareness Plan and SOPs for its entire Pipeline Project. [Public Awareness Plan, generally]; see also August 18, 2018 Dinniman Order, at pp. 7, 10-14.] Sunoco’s Public Awareness Plan requires, in relevant part, as follows:

- Sunoco’s communications must comply with Sunoco’s SOP located at HLI.40, which establishes the guidelines for communications with the affected public. [Id., at p. 11, at HLA.17, at 7.4.1; see also Public Awareness Plan – Communication with API RP 1162 – defined Stakeholders, at Procedure No. HLI.40 (“Public Awareness Plan – Communication with API RP 1162”), a true and correct copy of which is attached as Exhibit B to GRS’s Complaint (setting forth guidelines for pipeline operators to follow to communicate and interact with the affected public).]
- Sunoco must undertake certain activities, including group meetings, personal contacts, and the distribution of print materials, for any planned major maintenance/construction activity. [See Public Awareness Plan, at pp. 5-15, at Procedure No. HLA.17, 7.0-7.4.5.]
- Sunoco must “communicate with specific stakeholders” on a regular basis and to maintain records of such communications. [Public Awareness Plan – Communication with API RP 1162, generally, and specifically at Sections 1.0 (Purpose), 2.0 (Scope), and 3.0 (Applicability).]
- “Continuous improvement in communications with a variety of key audiences in the communities where [] [Sunoco] operates pipelines.” [See Exhibit 52, Public Awareness Plan, at p. 1, at Section 2.0, Scope; see also August 18, 2018 Dinniman Order, at pp. 7, 10-14.]

Community standards, guidelines, and laws can be relevant to the duty of safety that a public utility owes under the Code. See West Penn Power Co., 2019 WL 4858352, *7; see also Pa. P.U.C. v. Equitable Gas Co., LLC, No. M-2009-1505395, 2010 WL 1975374, at *4 (Pa. P.U.C. May 10, 2010) (holding that, “each day of non-compliance with federal or state regulations . . . would constitute a separate violation pursuant to 66 Pa. C.S. § 3301(b) (Civil Penalties, Continuing Violations)); Pa. P.U.C. v. PECO Energy Co., No. M-2012-2205782, 2012 WL 2190481, at *3 (Pa. P.U.C. June 12, 2012) (holding, public utility’s failure to document actions taken during a leak incident violated 49 C.F.R. § 192.13(c), and 49 C.F.R. § 192.605 and

constituted a violation of 66 Pa. C.S. § 1501’s requirement to furnish and maintain adequate, efficient, safe and reasonable service and facilities).

Accordingly, even if the Commission lacks jurisdiction to enforce specific laws and regulations pertaining to specific practices, the Commission acts within its jurisdiction by determining that a utility’s conduct that violates those laws or regulations is “unsafe” under the Code. See West Penn Power Co., 2019 WL 4858352, at *7 (explaining that although the Commission could not prohibit the use of herbicides under the Pesticide Control Act, it does not “need to refrain from evaluating whether a public utility’s vegetation maintenance is reasonable under Section 1501 of the Code simply because that maintenance involves herbicide use”).

Similarly, as Administrative Law Judge Joel Cheskis (the “ALJ”) has already held, “the Commission has jurisdiction to hear[] claims of threats to safety,” and GRS’s Complaint raises “issues that may constitute a violation of the Public Utility Code for which [GRS] may be entitled to relief.” See Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P., C-2020-3023129 (Pa. P.U.C. Jan. 28, 2021), Order Granting in Part and Denying in Part Preliminary Objections pp. 10-11 (holding, Sunoco’s obligations under the Public Utility Code “are broad and do not exclude new pipeline construction but include the type of activity which [GRS] averred in the complaint”). In short, Sunoco’s construction activities associated with its Pipeline Project fall under the oversight of the Commission and must be reasonably “safe.” Id.; 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33.

Here, GRS established that Sunoco repeatedly violated the Code, the Commission’s Regulations, and the Public Awareness Plan by failing to do the following: provide safe and reasonable service [66 Pa. C.S. § 1501]; warn and protect the public from danger [66 Pa. C.S. § 1501; 52 Pa. Code § 59.33]; exercise reasonable care to reduce the hazards to which customers

and others may be subject to be reason of its equipment and facilities [52 Pa. Code § 59.33]; and educate the public on Sunoco's ongoing pipeline construction activities [See Public Awareness Plan, p. 1]. Specifically, Sunoco engaged in unsafe practices that threatened the health and safety of the GRS Residents by creating or allowing for (A) traffic hazards, (B) fire hazards, (C) noise hazards, (D) the uncontrolled calciment release without notice; (E) the water main break; and (F) other communication and warning failures.

1. GRS Threatened The Safety Of The GRS Residents And Employees By Creating Avoidable Traffic Hazards

Sunoco unsafely mixed pedestrians, residential vehicles, delivery vehicles, and a heavy flow of construction vehicles without any planning or responsible safeguards. [GRS Stmt No. 7-SR, 8:11-13]. Sunoco injected its Pipeline Project into a densely populated residential community on top of 224 Pennsylvanians of all ages, without safety planning. Sunoco (1) refused to implement any written traffic safety plan; (2) failed to use proper signage, flaggers, and communication; (3) failed to communicate with RTMSD before moving a school bus stop to a more hazardous location and then refused to implement safeguards; and (4) failing to communicate with GRS and the Residents regarding traffic impacts. [GRS Stmt No. 7-SR, 3:7-18].

a. Sunoco threatened GRS Residents' and employees' safety by failing to implement a traffic plan and to communicate regarding traffic safety

GRS proved that Sunoco acted unsafely failing to implement a traffic plan. Sunoco failed to rebut the evidence that GRS presented regarding the threats to safety that Sunoco's planning failures caused.

i. GRS established that Sunoco failed to implement a traffic plan, which threatened the GRS Residents' and employees' safety

It is undisputed that Sunoco did not create a written traffic plan for the Property. [T.T. (Fye) 651:15-652:8; T.T. (Farabaugh) 672:12-673:5]. Sunoco's failure to prepare a traffic plan violated PennDOT and FHWA guidelines regarding traffic flow, pedestrian circulation, and signage, and was unreasonable and unsafe. [GRS Stmt No. 3, 10:12-14; GRS-29]. Sunoco's failure to follow PennDOT and FHWA guidelines – in and of itself - establishes that Sunoco created safety threats in violation of the Code. See 52 Pa. Code § 59.33; West Penn Power Co., 2019 WL 4858352, *7; Equitable Gas Co., LLC, 2010 WL 1975374, at *4; Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P., C-2020-3023129 (Pa. P.U.C.), Order Granting in Part and Denying in Part Preliminary Objections pp. 10-11.⁶

According to Jay Etzel, P.E., GRS's traffic engineering expert, Sunoco should have created and implemented a traffic plan for a work site such as Sunoco's here. [GRS Stmt No. 7-SR, 5:20-8:17; T.T. (Etzel) 375:6-19]. As he explained, it was imperative that a traffic circulation plan with good signage and visual deterrents be implemented to provide for the safety of all drivers and pedestrians. [GRS Stmt No. 7-SR, 10:1-14]. Sunoco never implemented such a plan. [T.T. (Fye) 651:15-652:8; T.T. (Farabaugh) 672:12-673:5].

During its initial phase of work, Sunoco did not use *any* signage, fencing, or markings to identify its work area, and left unguarded holes in areas frequented by GRS Residents.

[GRS Stmt No. 1-SR, 7:12-17; S.I. 10:11-20; GRS Stmt No. 1-SR, 22:7-12]. Similarly,

Sunoco's markings of its work area were inaccurate, and created dangerously narrow driving

⁶ Sunoco sought (unsuccessfully) to strike any reference to PennDOT and FHWA guidelines, but the ALJ correctly denied that request because evidence of community standards, guidelines, and laws are all relevant to the analysis of Sunoco's safety-related duties. [See Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P., C-2020-3023129 (Pa. P.U.C.), Order Granting in Part and Denying in Part Preliminary Objections pp. 10-11].

lanes on the Property. [GRS Stmt No. 3, 7:15-19; GRS-28]. Sunoco did not address these hazards until *after* GRS lodged several complaints about them. [GRS Stmt No. 1, 10:11-20]. GRS should not have been required to monitor Sunoco daily and submit multiple complaints to prompt Sunoco to adhere to fundamental tenets of traffic safety, but it was necessary for it to do so. [GRS Stmt No. 1, 10:11-20; GRS Stmt No. 3, 7:15-19; GRS-28]. Moreover, the lack of a traffic plan caused confusion and prompted complaints by GRS and its Residents, and resulted in several “near miss” accidents. [GRS-25; GRS-35].

Further, Sunoco’s barricades and work blocked the pre-construction, circular flow of traffic and narrowed driving aisles, forcing vehicles to make dangerous multi point k-turns to exit, and limiting access to and from the Property. [GRS Stmt No. 7-SR, 5:2-6:9; GRS Stmt No. 1, 8:2-23; J.C. 8:7-10]. This blocked and inhibited access by emergency response vehicles during at least one emergency response. [GRS-35]. Obstructing first responders is a clear and obvious hazard that Sunoco should have avoided. [T.T. (Becker), 603:2-13 (admitting that delaying and obstructing emergency response access to the Property could create a safety risk)].

Sunoco exacerbated already hazardous conditions by not communicating with the GRS Residents about what to expect, and when, and the proper means to navigate the Property during construction. [GRS Stmt No. 7-SR, 7:17-8:17]. These communication failures are particularly hazardous given that the Residents were not familiar with large construction projects and related traffic safety issues. [GRS Stmt No. 7-SR, 8:5-17].

Sunoco also failed to communicate with the GRS Residents regarding parking, including changes to parking lot patterns, and when parking spaces would be unavailable. [GRS Stmt No. 7-SR, 8:5-17]. This caused Residents to park in the public PennDOT roadway (Glen Riddle

Road), and dangerously walk back to their residence on an unlit public highway with no sidewalks. [GRS Stmt No. 1, 8:21-23; GRS-23].

To avoid the above dangerous scenarios, Sunoco easily could have provided communications (such as website platforms) to inform the public of a two-week look ahead schedule. [GRS Stmt No. 7-SR, 7:17-23]. This is exactly what GRS requested at the outset of Sunoco's work to allow GRS to put its employees and the Residents on notice and to plan for their safety. [GRS 101; GRS Stmt No. 1-SR, 12:8-11; GRS-117]. Sunoco refused to do so. [Id.].

ii. Sunoco failed to rebut GRS's evidence regarding the safety threats created by this failure

Sunoco viewed GRS's complaints more as issues of inconvenience. [T.T. (Becker) 600:1-603:8]. Yet, Joe Becker, Sunoco's Senior Director of Engineering and Construction, himself conceded that a delay in the response to an emergency could create a safety issue, not just a matter of inconvenience. [Id.].

As to flaggers, Sunoco's testimony was at best inconsistent, as Mr. Fye initially claimed that Sunoco had "flaggers on site at all times direct[ing] traffic." [T.T. (Fye) 642:2-643:6]. Yet, Mr. Fye also claimed that there is "no reason" to have flaggers in the travel lanes when Sunoco's large vehicles were entering or exiting the Property. [T.T. (Fye) 646:22-24]. He then testified, however, that a flagger "might" be required if Sunoco's vehicles were moving in reverse (as Sunoco's vehicles were depicted in the videos introduced as GRS-155 and GRS-173 *without* any flagger presence). [T.T. (Fye) 650:14-651].

Mr. Fye also claimed that Sunoco had "flaggers" at the Property, but then conceded that the individuals referred to as flaggers (in the video marked as GRS-155) did not possess flags and did not direct traffic when Sunoco's vehicle moved in reverse. [T.T. (Fye) 653:19-654:2].

Likewise, when presented with GRS-155, Mr. Becker conceded that he did not observe any “flagger.” [T.T. (Becker) 608:16-609:12].

Sunoco sought to distract from the central safety issues by arguing that its work on the Property is not subject to PennDOT and FHWA guidelines, which, by its own admission, it ignored here. Chard Farabaugh, Sunoco’s expert on traffic safety issues, however, himself conceded that PennDOT and FHWA guidelines are a “useful reference” for an engineer developing a traffic plan for a worksite such as Sunoco’s here. [T.T. (Farabaugh) 671:21-672:11; GRS-29 (PennDOT and FHWA guidelines)]. Moreover, as detailed above, the ALJ already decided (correctly) that it may consider Sunoco’s failure to comply with PennDOT and FHWA guideline as evidence of Sunoco’s non-compliance with the Code and the Commission’s safety regulations. See Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P., C-2020-3023129 (Pa. P.U.C. Jan. 28, 2021), Order Granting in Part and Denying in Part Preliminary Objections pp. 10-11. As set forth above, Sunoco violated the PennDOT and FHWA guidelines by failing to prepare a traffic plan that accounted for traffic flow, pedestrian circulation, and signage. [GRS Stmt No. 3, 10:12-14; GRS-29]. Accordingly, Sunoco failed to rebut GRS’s proof of these safety violations.

b. Sunoco threatened GRS Residents’ safety by creating pedestrian hazards

GRS established that Sunoco created, and failed to address, the safety hazards relating to the interaction with pedestrians at the Property. [GRS Stmt No. 7-SR, 13:1-19]. Sunoco failed to rebut the evidence GRS presented on this topic.

i. GRS established that Sunoco created pedestrian hazards, thereby threatening pedestrian safety

Sunoco should have minimized the hazards identified in Section II(A)(2) above that its work created for pedestrians through adequate signage, markings, and positive reinforcement.

[GRS Stmt No. 7-SR, 3:3-14, 5:1-19; T.T. (Etzel) 376:6-24; T.T. (Etzel) 377:1-12]. It failed to do so. [See Section II(A)(2), *supra*].

ii. Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the pedestrian hazards

Sunoco mainly relies upon its claim that it requires all of its on-site employees to submit to defensive driving courses to rebut the overwhelming evidence of its unsafe conduct. [SPLP Statement No. 5-R (Rebuttal Testimony of Chad Farabaugh, P.E.) (“SPLP Stmt No. 5-R”), 4:4-13]. Notably, however, Mr. Fye, had no idea whether the subcontractors Sunoco retained to work on site completed defensive driving courses or submitted to any other safety training with regard to traffic planning. [T.T. (Fye), 655:1-657:22]. Moreover, Sunoco’s reliance upon defensive driving courses misses the point—Sunoco’s training of its employees means nothing absent real-world implementation. Despite Sunoco’s unsubstantiated efforts to train its workforce, Sunoco fundamentally failed to protect pedestrians.

Although Sunoco agreed to explore some pedestrian safety options, Sunoco never followed through with actual measures to do so. [GRS Stmt No. 1, 4:10-17, 11:20-22]. As evidenced by the Emergency Access Problem, the multiple “near miss” accidents, and Sunoco’s reckless drivers swerving near pedestrians (GRS-171, 172), Sunoco’s alleged “common sense” approach did not avoid real safety threats. [GRS Stmt No. 1, 4:10-17, 11:20-22].

Instead of the greater visual deterrence to slow pedestrian traffic from crossing into the work area requested by GRS, Sunoco asserted that it had “no control over what residents, visitors, or other members of the public do” when on the Property. [GRS Stmt No. 3, 9:20-23; GRS Stmt No. 1-SR, 13:3-8; SPLP Stmt 5-R, 8:11-19]. Mr. Etzel explained, however, Sunoco can at least influence pedestrian behavior through safety mechanisms like a traffic plan, signage, flaggers, and good communication. [GRS Stmt No. 3, 9:17-10:11; GRS-29]. The education that

GRS asks the Commission to require here will help Sunoco understand the power it has to reduce the likelihood of an avoidable tragedy in these circumstances.

c. Sunoco threatened GRS Residents' safety by creating hazards for school children at bus stops at the Property

GRS established that Sunoco created, and failed to adequately address, safety hazards relating to the school bus stops at the Property. [GRS Stmt No. 7-SR, 13:20-14:5]. Sunoco failed to rebut the substantial evidence GRS presented on this topic.

i. GRS established that Sunoco created hazards at the bus stops at the Property, thereby threatening the safety of GRS Residents and local school children

Sunoco began work on November 28, 2020, and interrupted bus service before even notifying RTMSD that it had begun work at the Property. [GRS Smt No. 1-SR, 16:1-16]. As Mr. Etzel explained, "Sunoco clearly did not anticipate or plan for the confusion and disruption it would cause to the buses. When Sunoco realized the problem, Sunoco did not stop or delay its work. Rather, Sunoco forged on, leaving the bus drivers and students to fend for themselves." [GRS Stmt No. 7-SR, 9:15-22].

Sunoco's lack of planning caused confusion amongst school bus drivers and Resident – with at least one Resident running into traffic to flag down a school bus. [GRS Smt No. 1, 9:16-19; GRS-23]. GRS requested that Sunoco implement bus stop signage or a delineated, lighted area for children to stand while they waited for a bus, but Sunoco refused to do so. [GRS Smt No. 1, 11:20-22].

ii. Sunoco failed to rebut GRS's evidence regarding the safety threats created by the bus stop hazards

Sunoco claimed that the change in school bus stop location was made in coordination with RTMSD before Sunoco started work, but subsequent testimony proved that to be false— Sunoco began construction work (on November 28, 2020) **prior to its initial contact with**

RTMSD on December 1, 2020. [GRS Stmt No. 7-SR, 9:3-14; T.T. 584:17-587:13 (cross of Farabaugh)]. Confusion regarding impacts to school bus service was ongoing through December 10th – **weeks into Sunoco’s work on the Property.** [GRS Stmt No. 1-SR, 16:1-16].

Sunoco simply failed to communicate and plan with RTMSD regarding bus stops, and then sought to rewrite the history of communications as a damage control measure. It even withheld from its own expert what its actual communications were with RTMSD, presumably so Sunoco’s own negligence would not influence his opinion. [T.T. (Becker) 589:7-591:11].

2. Sunoco Threatened The GRS Residents’ Safety By Creating The Fire Hazards

Sunoco’s actions/inactions with respect to fire safety at the Property violate Sunoco’s legal obligation to provide safe and reasonable service (66 Pa. C.S. § 1501), to reduce the hazards to which customers and others may be subjected to by reason of its equipment and facilities (52 Pa. Code § 59.33), and to communicate in accordance with its Public Awareness Plan.

a. GRS established that Sunoco created the fire hazards, thereby threatening the safety of the GRS Residents

GRS established that Sunoco’s Sound Wall Plan created an unreasonable, dangerous condition, which was exacerbated by Sunoco’s poor communication with GRS and the GRS Residents. This violates Sunoco’s obligations under the Code.

Sunoco could have mitigated the fire hazards and achieved the critical safety measure of looped access at the Property by utilizing a gravel logging road. [GRS Statement No. 6-SR (Surrebuttal Testimony of James S. Davidson, Jr., P.E.) (“GRS Stmt No. 6-SR”), 6:10-7:15]. Sunoco’s failure to do was unreasonable and unsafe, and created an environment that could have cost lives unnecessarily. [Id.]. Here, as in West Penn Power Co., 2019 WL 4858352, at *6, Sunoco’s failures with respect to the fire hazards were “unquestionably serious” and

unreasonable – and should be addressed by the Commission under Section 1501 of the Code and 52 Pa. Code § 59.33.

The IFC provides minimum safety standards for the protection of the buildings and their occupants. [T.T. (J.D.), 331:21-332:8]. These IFC requirements are not, as Sunoco suggests, mere technicalities, particularly as they apply to a garden apartment community. [Id.]. They set a minimum floor as to what the fire safety experts consider to be minimally “safe.” [Id.]. It is undisputed that Sunoco’s work on the Property blocked the loop road. This violated the IFC. [T.T. (J.D.), 334:13-19 (testifying that the Sound Wall Plan fails to comply with IFC paragraphs D103, D106.1, and D102.1); GRS Stmt No. 3, 6:9-10; 13:11-14].

Eliminating the looped access hindered fire apparatus access to the GRS apartment buildings. [Id. 6:3-7:15]. This created potential delay that posed a serious danger to human life because “the passage of time . . . can mean the difference between life and death in a fire response.” [Id. 7:12-13]. These risks were made apparent during the Emergency Access Problem, when the Sound Walls blocked fire trucks from accessing parts of the Property and caused difficulty for firetrucks exiting the Property. [GRS Stmt No. 1, 14:7-10; GRS-20 (diagram showing the Sound Walls in relationship to the Property); GRS Stmt No. 3, 13)]. Additionally, the positioning of the Sound Walls delayed ground level fire department nozzle operations. [GRS SR-4 (J.D.) 5:15-6:2].

b. Sunoco failed to rebut GRS’s evidence regarding the safety threats created by the fire hazards

Sunoco asserts that it complied with an unofficial memorandum prepared by a Township employee, and that as long as there was *some way* for first responders to access each residential building on the Property – regardless of the potential delay and risk involved – Sunoco satisfied the Code. This “evidence” does not carry the same weight as that presented by GRS because

(i) Sunoco’s reliance on the unofficial Township letter is insufficient, (ii) Sunoco’s conclusion that the mere ability to reach each building in some manner – no matter how long it takes - is sufficient needlessly endangers the GRS Residents and employees, and (iii) Sunoco’s “expert” has a history of tailoring his opinions to match those of his benefactors.

i. The unofficial Township letter does not protect the GRS Residents’ or employees safety

Sunoco’s “emergency planning, emergency response and emergency response/planning training” expert, Gregory Noll, relied solely on a December 10, 2020 informal memorandum prepared by Township employee, Robert Drennen for his opinion. [SPLP Stmt No. 1-R, 9:5-17]. Although local townships have some authority to assess fire code compliance, the informal memorandum prepared by Mr. Drennan is not a variance to the relevant portion of the IFC. [T.T. (J.D.), 336:20-228:4; 340:1-342:4.] In addition, Mr. Drennan’s informal letter is substantively flawed for the reasons set forth below and because Mr. Drennan and the Township never tested the western side of the Property. [GRS Stmt No. 1-SR, 17:9-17].

ii. Sunoco’s conclusion that the mere ability to reach each building in some manner is sufficient needlessly endangers the GRS Residents

Sunoco asserted that compliance with the IFC was unnecessary because some level of access to each building could still be achieved and the Project was “temporary.” This argument is flawed.

As Sunoco’s Senior Director of Engineering & Construction, Joe Becker, admitted, any delay in the amount of time it takes emergency response personnel from reaching the worksite could be a safety concern:

- Q: So if there were a delayed fire or emergency safety response due to site conditions, would you classify that as an inconvenience or safety concern?
- A: Certainly, if there is an inability to respond to an emergency, I would put that in the safety category.

Q: I'm not asking about inability. I'm asking about delay. **If there was a delayed response, a fire or emergency safety response due to site conditions, is that an inconvenience or safety concern?**

A: **That could be a safety concern.**

[T.T. (Becker), 603:2-13 (emphasis added)].

GRS's expert shared Mr. Becker's opinion as to the importance of eliminating avoidable delay, opining that compliance with the IFC here was absolutely necessary to maintain a "safe" site. [GRS Stmt No. 6-SR, 9:8-13]. Sunoco's attempt to justify its noncompliance with the IFC because it was required *possible* to access all buildings is reckless, especially because if the one access point is blocked by anything – which Sunoco's expert, Mr. Noll admits is "quite common" [T.T. (Noll) 95:19-96:19] – the resulting delay could cause the fire to become much larger resulting in a preventable "life safety danger." [T.T. (J.D.), 339:12-15; 345:1-346:10; 347:1-5]. This danger is exacerbated at the Property because the buildings do not have sprinkler systems and have wooden roofs. [Id.]

The dangers at the Property are also exacerbated by its garden apartment layout. Although Mr. Noll testified that "access issues are not unique to garden apartment complexes," he conceded that garden apartment complexes, like the GRS Property, can have access issues because of setbacks and soft surface areas making it impossible to take fire apparatus vehicles off of the hard surface roads. [T.T. (G.N.), 82:24-83:4]. Garden apartments often have open spaces that can allow fire to get into walls and spread quickly throughout the structure. [Id., 83:4-12].

Additionally, Mr. Noll wrote a chapter in the Fire Protection Handbook, which he described as "certainly recognized within the Fire Protection community as a reference." [T.T., 56:9-25, 73:11-13; Noll Cross Examination Exhibit 4]. One of the chapters in the Fire Protection Handbook pertains to the fire safety challenges presented by apartment communities

like GRS's Property. [Noll Cross Examination Exhibit 4, pp. 20-37]. These dangers underscore the absolute need for Sunoco to eliminate preventable delay. [T.T. (J.D.), 339:12-15; 345:1-346:10; 347:1-5].

As Mr. Davidson opined, Sunoco's placement of the Sound Walls hindered ground level fire department nozzle operations for at least three of the GRS apartment buildings. [Id.] This also allowed for the above-described preventable delay, which could result in a tragedy. [Id.]. All of the potential delay created by Sunoco's failure to adequately plan its work to accommodate emergency response poses a serious danger to human life because "the passage of time . . . can mean the difference between life and death in a fire response." [GRS Stmt No. 6-SR, 8:22-9:13].

Finally, Sunoco's suggestion that its work on the Property was "temporary" and, therefore, the IFC does not apply is absurd. [SPLP Statement No. 1-R (Rebuttal Testimony of Gregory G. Noll) ("SPLP Stmt No. 1-R"), 12:3-6]. Sunoco's work on the Property lasted for almost one year, which is not "temporary" by any measure. [T.T. (Etzel) 369: 14-370:23 (testifying that, according to PennDOT guidelines, a "temporary" project is 72 hours or less)].

Sunoco's avoidable failures here demonstrate a callous disregard for the lives of GRS employees and Residents. Sunoco knowingly played the odds that no fire or other major catastrophe would occur at the Property from November 2020 through June 2021 and risked the lives of GRS employees and Residents in the name of project efficiency. Had Sunoco's own executives lived at the Property, one imagines that Sunoco would have undertaken its work differently.

iii. Sunoco’s purported “expert” in fire safety lacks credibility

Mr. Noll’s ongoing business relationship with Sunoco should be considered when weighing his testimony. Mr. Noll works for Sunoco, conducting Sunoco’s Mariner Emergency Response Training – an ongoing role at the time of trial. [T.T. (Noll), 47:8-49:14.] Mr. Noll has testified for Sunoco on four other occasions and he expects additional engagements. [*Id.*; 49:18-50:7.]

Further, Mr. Noll has taken conflicting positions regarding pipeline safety – depending on who funded those positions. For example, Mr. Noll authored an article for Sunoco dated September 25, 2020, espousing the safety of pipelines. [*Id.* 58:23-59:22; Noll Cross Examination Exhibit 1]. Yet, Mr. Noll also authored an article and gave presentations that focus on the dangers of pipelines – particularly transportation pipelines, such as the Pipeline Project. [T.T. (Noll), 61:20-64:15, 69:1-4; Noll Cross Examination Exhibits 2 and 3]. Mr. Noll also explained that “incomplete, inadequate or unclear communication” can create hazards in the context of pipeline transportation. [T.T. (Noll), 66:23-67:4]. Mr. Noll’s history of tailoring his opinions should be considered when evaluating his testimony.

3. Sunoco Threatened The GRS Residents’ Safety By Creating The Noise Hazards

GRS established that Sunoco’s actions/inactions with respect to noise at the Property violated Sunoco’s obligation to provide safe and reasonable service (66 Pa. C.S. § 1501), to reduce the hazards to which customers and others may be subjected to by reason of its equipment and facilities (52 Pa. Code § 59.33), to warn and to communicate in accordance with its Public Awareness Plan. Sunoco’s failures with respect to the noise hazards were “unquestionably serious” and unreasonable – and should be addressed by the Commission under Section 1501 of the Code. See West Penn Power Co., 2019 WL 4858352, at *6.

a. GRS established that Sunoco created the noise hazards, thereby threatening the safety of the GRS Residents and employees

GRS established that (i) Sunoco's work produced unsafe noise levels on the Property and (ii) the noise hazards resulted from Sunoco's failures to take basic mitigation measures and its poor communication.

i. GRS established that Sunoco's work produced unsafe noise levels on the Property

GRS conducted sound monitoring during Sunoco's work on the Property and consistently obtained noise readings in the 80s, 90s, and over 100 decibels directly outside and, in some cases, inside the GRS Residents' homes and at "point source mitigation" locations. [GRS Stmt No. 1, 6:5-8; GRS Stmt No. 3, 4:23 – 5:1; GRS-5; GRS-33]. GRS's expert in construction noise monitoring and engineering, Joseph J. Wittman, P.E. ("Mr. Wittman"), reviewed the noise readings taken in GRS-5 and GRS-33 and concluded that the readings were accurate and that the calibration of the device used to take them should not be questioned. [GRS Statement No. 4-SR, (Surrebuttal Testimony of Joseph J. Wittman, P.E.) ("GRS Stmt No. 4-SR"), 5:19-6:8].

As board certified otolaryngologist, Dr. Davis, testified, Sunoco should have followed the guidelines established by the CDC and NIOSH here. [GRS Stmt No. 10-SR, 4:3-8]. At 80-85 decibels, CDC indicates that hearing loss can occur after only 2 hours of exposure. [*Id.*, 3:18-19]. At 95-100 decibels, hearing loss can occur after just 15 minutes of exposure. [*Id.*, 3:19-20]. NIOSH recommends ear protection whenever noise exceeds 85 decibels for any time period because of sensitivities to noise. [*Id.*, 3:21-23].

Yet, Sunoco never communicated to any GRS employees or Residents the need for ear protection at any time, despite the CDC and NIOSH guidelines. [*Id.*, 3:17-23; GRS-177 (NIOSH Guidelines)]. As such, Sunoco violated its duty to warn and deprived GRS employees and

Residents of the opportunity to avoid the Property or obtain protective equipment when Sunoco exposed them to this damage-causing noise. See 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33; Public Awareness Plan.

ii. GRS established that the noise hazards resulted from Sunoco’s failures to take basic mitigation measures and its poor communication

Sunoco’s entire “plan” (if it can be called that) for addressing noise on the Property began and ended with the installation of the Sound Walls. The installation of the Sound Walls themselves, however, and the unnecessary means by which Sunoco installed them, created the most deafening noise during construction.

Sunoco used a hydrovac truck to install the Sound Walls. [T.T. (Harrison) 714:24-715:7 (admitting that the hydrovac truck was used to install the sound walls)]. Sunoco operated hydrovac trucks on the Property for the majority of the day on November 25, 2020, November 28, 2020, December 8, 2020, December 12, 2020, December 22, 2020, and January 5 and 6, 2020. [GRS Stmt No. 1-SR, 21:18-22:6; GRS-124, GRS-146-49]. It is undisputed that the hydrovac trucks produced loudest noise on the Property, with measurements resulting in decibel ranges in the 90s. [T.T. (Harrison) 713:19-21 (admitting that the hydrovac truck “was the loudest noise-wise.”); 462:7-14 (Culp) (“[T]here clearly was a disconnect between the sound mitigation and the interim work that needed to be done. One of the loudest pieces of equipment on the site was the vacuum truck, which was used to install the sound walls. It seems kind of counterintuitive.”)]. Thus, Sunoco performed the loudest work on the Property for extended periods without any sound mitigation in place at all. [Id.].

Sunoco’s own witness, Seth Harrison of Harrison Acoustics, admitted that without the Sound Walls, the hydrovac trucks would produce noise at levels even higher than the readings that he reviewed:

- Q: Are you aware that the hydrovac trucks operating without the sound walls in place?
- A: I became aware of that in reviewing the exhibits in preparation for testimony.
- Q: And that would make the sound at the residences much louder? Is that fair to say?
- A: Right. The sound barrier wall does provide sound reduction. And so if the hydrovac or other operations, construction were occurring prior to the installation of the sound wall, ***presumably the sound levels would be higher than these limits.***

[T.T. (Harrison), 716:19-717:5 (emphasis added)].

Beyond failing to protect against the noise generated by the installation of the Sound Walls, Sunoco also failed to accurately assess the anticipated sound sources for purposes of creating its Sound Wall Plan, as described above. [See *supra*]. Sunoco also failed to provide a sound mitigation strategy and sound source data, despite requests from GRS. [GRS Stmt No. 3, 4:12-20]. Sunoco also declined sound monitoring measures requested by GRS, which included sound decibel metering during construction. [T.T. (Amerikaner) 548:13-19].

Sunoco's counsel, Mr. Amerikaner, testified that Sunoco declined to monitor the sound levels because the Project was "standard open trench pipeline construction." [T.T. (Amerikaner) 548:13-550:15]. Although Sunoco asserts that the pipeline construction on the Property is "standard," Mr. Amerikaner provided no estimates of the sound levels at the Property to GRS either prior to or during construction. [Id.]. Nor could Mr. Amerikaner identify even one of Sunoco's other open trench pipeline construction projects as close in proximity to so many residences as here, where the work occurred all less than 100 yards of 224 Pennsylvanians' homes.

The noise hazards adversely affected the Residents' work and their children's schooling, during a time in which many of the GRS Residents were working and attending school from

home because of the pandemic. [GRS Stmt No. 4-SR, 7:18-21; GRS Stmt No. 4, 1:16-2:5].

Sunoco's poor communication exacerbated the noise hazards. [GRS Stmt No. 4-SR, 7:18-21]

b. Sunoco failed to rebut GRS's evidence regarding the safety threats created by the noise hazards

Sunoco failed to present evidence of co-equal or greater value than that presented by GRS for the following reasons: (i) the noise readings presented by Sunoco were flawed; (ii) the Behrens Report, prepared by Sunoco, is flawed; (iii) Sunoco failed to follow the Behrens Report; and (iv) Sunoco's purported noise expert, Seth Harrison of Harrison Acoustics, failed to assess the impact of the noise hazards on human health and safety.

i. The noise readings presented by Sunoco were flawed

Unlike GRS, neither Harrison Acoustics nor Behrens presented evidence of their calibration units. [GRS Stmt No. 4-SR, 5:19-6:8]. Additionally, neither the Behrens Report, nor the data provided by Harrison Acoustics, specify which pieces of equipment actively produced noise during the "sampling" periods. [GRS Stmt No. 4-SR, 6:9-20]. This renders the "expert" opinions offered unreliable, at best.

Mr. Harrison took his first noise readings on April 1, 2021. [GRS Stmt No. 1, 21:3-6]. Before he arrived at the Property, GRS took sound readings in the 90s (decibels), which lowered into the 60s while Mr. Harrison was on the Property, and then climbed back into the 80s and 90s upon his departure. [GRS Stmt No. 1-SR, 21: 3-8; GRS-123]. When Mr. Harrison returned on May 7, 2021, the direct bore work, i.e., the work that generates the most noise, had been completed. [GRS Stmt No. 1-SR, 22:15-17].

Additionally, Mr. Harrison failed to capture the impact of what he admits was the largest noise generator on the Property, i.e., the hydrovac truck. [T.T. (S.H.) 713:19-714:23; 715:4-11]. He incorrectly concluded that it only visited the Property "for a few minutes at a time" based on

his observations from one visit to the Property and information from Sunoco's contractor. [SPLP Statement No. 8-R (Rebuttal Testimony of Seth Harrison, P.E.) ("SPLP Stmt No. 8-R"), 6:13-17, 9:20:10:4; T.T. (S.H.) 713:19-714:23; 715:4-11]. Mr. Harrison did not know, until he prepared for trial, that Sunoco actually used the hydrovac truck to install the Sound Walls and that the hydrovac trucks were often on the Property for hours at a time and sometimes with more than one hydrovac truck operating at a time. [GRS Stmt No. 1-SR, 21:18-20; T.T. (Harrison), 712:23-714:23].

In fact, Sunoco ran the hydrovac trucks on the Property for the majority of the days on November 25, 2020, November 28, 2020, December 8, 2020, December 12, 2020, December 22, 2020, and January 5 and 6, 2020. [GRS Stmt No. 1-SR, 21:18-22:6; GRS-124, GRS-146-49] The presence of the hydrovac trucks on the property for longer durations is consistent with Mr. Wittman's experience with the duration of hydrovac truck work. [GRS Stmt No. 4-SR, 13:8-13].

Although Mr. Harrison never took readings of the hydrovac truck from inside the GRS residences, he reviewed a reading taken by GRS showing approximately 75 decibels inside a GRS residence and found that to be representative of the noise a hydrovac truck would cause. [T.T. (Harrison) 716:10-18]. He admitted that if the hydrovac truck was operating without sound barriers – which it undeniably was when used to install the Sound Walls – the sound would have been “much louder” and “higher than these limits” [Id. 716:10-717-18 (referring to the OSHA and CDC limits)].

Sunoco provided no warnings regarding the excessive sound and no mitigation measures when it engaged in this harmful conduct. [GRS Stmt No. 1-SR 12:11-13; GRS-117]. Sunoco even failed to notify the GRS Residents and employees to obtain ear protection. [GRS Stmt No. 10-SR, 3:17-23].

ii. The Behrens Report is flawed

As set forth above, Sunoco did not obtain any input from GRS before having the Behrens Report prepared. [GRS Stmt No.1-SR, 15:6-21; GRS Stmt No. 3 4:12-20]. A responsible study and impact assessment, however, would have presented the project concept to, and solicits input from, all stakeholders, which includes the public most impacted by the work (in this case the GRS Residents, management, and employees). [GRS Stmt No. 4-SR, 12:14-13:5]

In addition, the Behrens Report did not include a plan for staging the work to avoid the most sensitive hours for operating loud equipment or modifying the means and methods of the work, including, without limitation not utilizing the hydrovac truck for locating underground utilities or the Sound Wall installation. [GRS Stmt No. 4-SR, 12:1-13]. The Behrens Report also failed to consider the timing of operating the loudest pieces of equipment, which proved to be a major source of the damage causing sound at the Property. [Id.].

Additionally, the Behrens Report incorrectly assumed a receiver location of 5 feet above grade even though many of the apartments adjacent to the site, however, are three to four stories above grade closer to the top of the noise walls. [GRS Stmt No. 4-SR, 8:10-9:11]. Noise levels are higher as the receiver elevation increases from 5 feet above grade, approaching the limits of the Sound Wall. [Id.]. GRS presented evidence of this is in recording 5529 (GRS-5), which evidenced noise levels in excess of 80 decibels on a second or third floor apartment balcony adjacent to the Sound Wall. [Id.] The Behrens Report should have considered the upper-level apartments' noise exposure. [GRS Stmt No. 4-SR, 8:16-22]. The Behrens Report is, at best, unreliable.

iii. Mr. Harrison failed to fully assess the impact of the noise hazards on human health and safety

Sunoco relied on Mr. Harrison to evaluate the safety of the noise levels on the Property. [SPLP Stmt No. 8-R; T.T. (S.H.) 709:8-12] Mr. Harrison, however, only reviewed local noise ordinances and OSHA standards, along with the flawed Behrens Report, as the basis for his opinions. [Id., 712:8-17; SPLP Stmt No. 8-R, 4:4-21, 7:18-8:4]. Mr. Harrison did not consider the guidelines issued by the CDC and NOISH, both of which support the conclusion that the noise levels produced by Sunoco at the worksite were dangerous to the health and safety of the GRS Residents and employees. [GRS Stmt No. 10-SR, 3:18-19]. Dr. Davis, a licensed medical doctor specializing in otolaryngology, testified that Sunoco should have followed CDC and NOISH guidelines here. [Id.].

iv. Sunoco failed to follow the Behrens Report

Although the Behrens Report was flawed, Sunoco's expert, Mr. Harrison relied on it as "in-line with the standard of care for noise control engineering." [SPLP Stmt No. 8-R, 8:20-21]. Although he relied on it, Mr. Harrison failed to confirm whether Sunoco actually followed the Behrens Report. This is likely because Sunoco did not actually follow the plan specified in its own Behrens Report. [GRS Stmt No. 4-SR, 11:11-13]. Sunoco's failure to do so resulted in an exorbitant level of noise imparted on the GRS Residents and employees. [GRS Stmt No. 4-SR, 10:9-12]. Thus, even by its own standards, Sunoco failed to act safely with respect to the excessively loud noise produced by Sunoco's construction at the Property.

4. Sunoco Threatened GRS Residents' Safety By Releasing Calciment Into The Air At The Property Without Any Warning

GRS established that Sunoco released calciment – a dangerous compound – into the air at the Property, without warning GRS or the GRS Residents of its use, endangering the health, safety, and welfare of the GRS Residents, in violation of 66 Pa. C.S. § 1501 and 52 Pa. Code

§ 59.33. Additionally, here, as in West Power Co., 2019 WL 4858352, at **7-9, the Commission should find that the use of a dangerous chemical compound on the Property without any warning to those affected is “too substantial to ignore” and is unreasonable in violation of Section 1501 of the Code. Sunoco failed to submit evidence of co-equal value or weight to refute GRS’s evidence of the significant safety concerns raised by Sunoco’s release of calciment at the Property. See id.

a. GRS established that Sunoco released calciment into the air at the Property, which threatened the safety of the GRS Residents

As set forth above, calciment is a hazardous substance that poses substantial risk in the event of exposure. [See GRS-135]. Sunoco conceded that it used this hazardous substance during construction at the Property for at least 10 days between March 1st and March 17, 2020. [T.T. (Magee), 133].

It is undisputed that the calciment Sunoco used at the Property became airborne and turned into dust. [T.T. (Magee), 137-139, 141-142; GRS-182; GRS-135; GRS-136; GRS-137]. Sunoco, in fact, released so much calciment into the air at the Property that it left a visible layer of dust on GRS Residents’ cars. [T.T. (Magee), 140-141; GRS-136]. Video recordings taken at the Property show plumes of calciment released into the air as a result of Sunoco’s construction. [T.T. (Henry), 311:9-312:20; GRS-182]. The dust plumes indicate a calciment dust concentration of ten-milligrams per cubic meter, which is twice the workplace standard limit recommended by OSHA [T.T. (Henry), 311:9-20; T.T. (Magee) 158:10-12]. The amount of calciment released by Sunoco at the Property constitutes an “uncontrolled release.” [T.T. (Henry) 312:13-20].

At the hearing, Mr. Henry testified regarding Sunoco’s uncontrolled calciment release. Mr. Henry is a board certified industrial hygienist with over 40 years’ experience and was

qualified at the hearing without objection as an expert in industrial hygiene. [T.T. (Henry) 307:24 – 308: 3]. Due to calciment’s hazardous effects, Mr. Henry testified that Sunoco should have warned GRS and the Residents in advance of Sunoco’s use of calciment at the Property. [GRS Stmt No. 5-SR, 4:18-20].⁷

Yet, Sunoco did not warn GRS or the GRS Residents about its use of calciment before it released the dangerous compound into the air at the Property. [GRS Stmt No. 1-SR, 32:7-10]. Sunoco’s failure to warn GRS and the Residents about its calciment use endangered the health and safety of the GRS Residents and employees for all of the reasons addressed above. [GRS Stmt No. 5-SR, 4:18-20]. Additionally, Sunoco never should have allowed the calciment to become airborne, particularly within such a close proximity to densely populated residential buildings, as here. [Id.].

Mr. Henry testified that anytime calciment becomes airborne, the safety officer on site must immediately stop work and contain the release. [T.T. (Henry) 313:3-5]. The reason for the immediate need to control the release is twofold. First, the airborne calciment could be inhaled or ingested by those nearby, as well as cause property damage to the cars and buildings in the immediate vicinity of the release. [T.T. (Henry) 313:3-15]. Second, the calciment that lands on the ground can be tracked on the shoes of persons in the worksite, which can then be tracked throughout the Property, including the residences themselves. [T.T. (Henry) 313:16-24]. Sunoco failed to address the calciment release and, instead, only stopped using calciment after GRS raised concerns in writing through counsel. [GRS-135].

⁷ OSHA requires that all construction projects create and maintain Worker Environmental and Waste Handling Plans for site that comply with all local, state and federal regulations codes and guidelines. [GRS Stmt No. 5-SR, 5:8-16]. For the health and safety of the GRS Residents, Sunoco should have provided these plans to GRS before the work on the Property began, including Sunoco’s work involving calciment. [Id.].

GRS further proved that Sunoco did not employ the necessary remedial safety measures for a calciment release, such as installing an eye-wash station on-site. [T.T. (Magee), 157]. Instead, Sunoco simply offered GRS Residents car wash certificates. Sunoco's own witness called to rebut Mr. Henry, testified that he has no idea what Sunoco's "rationale" was for the car wash certificates. [T.T. (Magee), 160:2-10].

Finally, in an apparent acknowledgment of the dangers presented by its use of calciment, Sunoco eventually stopped using calciment at the Property after GRS objected to the uncontrolled release. [T.T. (Henry), 311:24 – 312:3; GRS-135]. No actual remedial measures, however, were ever taken by Sunoco. [GRS Stmt No. 1-SR, 32:12-33:2].

For the foregoing reasons, GRS established that Sunoco endangered the health and safety of the GRS Residents by uncontrollably releasing hazardous calciment at the Property, failing to warn GRS and the GRS Residents of the safety concerns raised by its use of calciment, and failing to implement industry-standard precautionary and remedial safety measures regarding the use of calciment. See West Power Co., 2019 WL 4858352, at **7-9.

b. Sunoco failed to rebut GRS's evidence regarding the safety threats created by the uncontrolled calciment release

Sunoco attempts to evade responsibility for its calciment release by arguing that calciment does not pose a danger to human health. Sunoco's argument ignores the OSHA and NFPA guidance, both of which conclude that calciment is extremely hazardous and should not be inhaled or ingested in any amount. [GRS 135; T.T. (Henry), 310:15-311:25].

Additionally, the conclusions offered by Sunoco's purported calciment expert, Dr. Magee, lack a reasonable basis. Dr. Magee based his opinions on unspecified readings taken by Sunoco employees. [T.T. (Magee), 164-165]. Dr. Magee had no idea where on the worksite

Sunoco's employees took these readings and he never asked how far away from the center of the worksite the readings were taken. [T.T. (Magee) 164:14-166:1].

Dr. Magee also could not opine that the videos taken from the worksite were something other than a calciment release. [T.T. (Magee) p. 167]. Dr. Magee offered only conjecture that the videos showing clouds of dust could be water vapor. [T.T. (Magee) p. 167]. Then, in response to the testimony of GRS's expert, Mr. Henry, who testified unequivocally that the videos depicted an uncontrolled calciment release, Sunoco's purported expert testified that he did not know what the videos depicted. [Id.].

Accordingly, Sunoco failed to rebut the overwhelming evidence presented by GRS regarding Sunoco's uncontrolled calciment release and how the release jeopardized GRS employees and Residents' health and safety. The ALJ should, therefore, find in GRS's favor regarding the safety concerns raised by Sunoco's unannounced and uncontrolled calciment release. Again, some education about the dangers of calciment would help Sunoco and those working on its behalf to understand the danger that they are creating for people within the vicinity of their work, including themselves.

5. Sunoco Threatened The GRS Residents' Safety By Breaking A Major Water Main At The Property.

GRS proved that Sunoco broke a major water main on the Property during its construction of the pipeline, which raised serious safety concerns regarding the water at the Property, which Sunoco ignored. Sunoco failed to submit *any* evidence disputing that it caused the water main break and failed to submit evidence of co-equal weight or value to refute the evidence Sunoco presented regarding the safety concerns caused by the water main break.

a. GRS established that Sunoco broke a main water line at the Property, thereby threatening the safety of the GRS Residents

GRS proved that Sunoco caused the water main break by failing to properly backfill the water line pipe to secure it during Sunoco's work on the pipeline, which lays directly underneath the water line. [GRS Stmt No. 3-SR, 10:15-12:17; GRS-183]. Sunoco concedes this issue by offering *no evidence* disputing Mr. Culp's testimony.

Sunoco's breaking of the water line, combined with its use of chemicals (including, bentonite, calciment, and grout) at the Property, threatened the health and safety of the GRS Residents. [GRS Stmt No. 8-SR, 7:14-21, 8:1-8]. The health effects from long-term or chronic exposure to petroleum hydrocarbons in drinking water include decreased immune function, breathing problems, severe kidney and liver damage, skin irritation, eye irritation, dizziness, headaches, nausea, and in extreme cases, even death. [Id.].

As most water main breaks do not occur in pipeline construction worksites, local water authorities (such as Aqua, here), do not normally test for the presence of these petroleum hydrocarbons. [GRS Stmt No. 8-SR, 7:4-6; 7:11-21]. Accordingly, given the circumstances presented by its breaking of the water line within the worksite – where hazardous substances are admittedly being used by Sunoco – Sunoco should have ensured the safety of the GRS Residents by appropriately testing the water beyond the single bacteria test performed by Aqua. [GRS Stmt No. 8-SR, 7:14-21].

Sunoco, however, failed to pursue any testing. [T.T. (Amerikaner), 222:22-223:2; GRS-139]. Sunoco exposed GRS Residents to potentially contaminated water by notifying GRS that the water was safe for human consumption before *any* testing was performed –in direct contradiction to the advice offered by its own plumbing contractor. [Horn Cross Examination 1].

In fact, Sunoco told GRS to notify its residents that the water was safe to use “for all purposes,” which was knowingly false. [Horn Cross Examination 1]. Sunoco then sat on the guidance that it received from its own plumbing contractor (i.e., the guidance stating that the Residents should not drink the water) for **three** weeks, and only produced it to GRS after GRS and its counsel repeatedly pressed Sunoco’s counsel for even basic information regarding what occurred (which Sunoco, to date, has never communicated to GRS) – i.e., what measures Sunoco took to ensure GRS Residents’ safety; whether other utility lines may have been impacted, and when and who was opining on the safety of the water for Sunoco. [GRS Stmt No. 1-SR, 35: 1-7; GRS-139, GRS-141, GRS-142 (depicting activity upstream from the water break, which concerned GRS with respect to contamination/safety of the line)]. Counsel for Sunoco was so cavalier when the water was turned off on May 26 – which was a 90 degree day – that he advised GRS to have its 224 Residents make do with two portable toilets and water bottles. [GRS Stmt No. 1-SR, 35:5-7; GRS-140].

b. Sunoco failed rebut GRS’s evidence regarding the safety threats created by the water line break

As set forth above, Sunoco did not offer evidence to rebut GRS’s proof that Sunoco caused the water main break at the Property. [GRS Stmt No. 3-SR, 10:15-12:17; GRS-183]. Moreover, Sunoco failed to introduce any evidence establishing that it took reasonable measures (or any measures) to ensure the integrity of the water line. [GRS Stmt No. 3-SR, 12:18-13:2]. These facts, alone, warrant a finding in GRS’s favor.

As with all of the safety hazards proven by GRS, Sunoco dismisses GRS’s complaints by arguing that the water main break was “not a big deal.” Sunoco called Dr. Magee (the same witness who admitted that calciment – a substance Sunoco used at the Property – is classified as a hazardous substance by OSHA) to testify that “if a little [calciment, bentoninte, and/or grout]

gets in the water, it would not be harmful.” [T.T. (Magee), 147: 14-23]. Dr. Magee offered no support for his conclusion, other than his contention that these chemicals are “widely used construction materials.” [T.T. (Magee), 147:10-13]. As with his testimony on calciment, Dr. Magee’s conclusory opinions cannot be reconciled with the recommendations issued by OSHA and the NFPA – both of which state that calciment is not safe for human consumption in any quantity (even in trace amounts). [T.T. (Henry), 309:9-312:8].

6. Sunoco Threatened The GRS Residents’ And Employees Safety By Failing To Communicate With, And Warn, GRS Throughout Sunoco’s Work On The Property

GRS’s evidence demonstrates that Sunoco’s actions/inactions with respect to communication with the GRS Residents and GRS violated Sunoco’s legal obligation to provide safe and reasonable service (66 Pa. C.S. § 1501), and to reduce the hazards to which customers and others may be subjected to by reason of its equipment and facilities (52 Pa. Code § 59.33), and to warn of dangers (66 Pa. C.S. § 1501; 52 Pa. Code § 59.33). Sunoco’s failure to communicate with GRS or the 224 GRS Residents also violates its Public Awareness Plan, which requires Respondent to “educate the public on [] [Respondent’s] ongoing pipeline integrity management activities.” [See Public Awareness Plan, at p. 1, at Section 1.0, Purpose, p. 6 at Procedure No. HLA.17, 7.1 (relating to targeting audiences for public awareness education and including residents living near the pipelines), p. 11, at Procedure No. HLA.17, 7.4.1 (relating to communication actions for the affected public), and pp. 12-15, at Procedure No. HLA.17, 7.4.5 (relating to public awareness communication summaries)]; see also 49 C.F.R. § 195.440 (requiring pipeline operators to “develop and implement a written continuing public education program”). [49 C.F.R § 195.440 and Public Awareness Plan).]

In Baker, Sunoco argued that public awareness regulations and standards are “performance based, not prescriptive,” and Sunoco could achieve the “required regulatory

objectives without attending or holding [public] meetings.” Baker, 2020 WL 5877007, at *12. The ALJ found, however, that “although Sunoco’s witnesses have testified that they have a public awareness program that engages the community, utilizing a variety of methods, including meetings, mailings, and specialized training” those activities were insufficient to absolve Sunoco of its responsibility to hold public outreach meetings. Baker, 2020 WL 5877007, at *17. The ALJ found that “Sunoco is avoiding media presence and potential litigation” and as a result it cancelled at least two meetings without “good cause,” and in violation of its obligations under Section 1501 of the Code requiring Sunoco to “act in a reasonable manner in the performance of its public outreach duties.” Id.

With respect to the purpose behind the Public Awareness Plan, the ALJ explained that “a public utility should want to meet with the public and use the media to get its message out to the public. The utility is a private company benefitting from easements upon and the condemnation and construction activities on some private citizens’ land...,” and, as such, Sunoco’s attempt to defend its actions by asserting that they comply with the “minimum current federal regulations,” was insufficient. Id. at **17-18. Although the Commission ultimately declined to require Sunoco to expand its Public Awareness Plan, *at that time*, because Complainant did not request such relief and because the Commission was already engaged in a relevant regulatory rulemaking proceeding,⁸ the Commission upheld the ALJ’s directive for Sunoco to hold additional public awareness meetings. Baker, 2020 WL 5877007, at *16.

⁸ The Commission found that the relief requested in Baker with respect to the expansion of the Public Awareness Plan should be considered at the Rulemaking Docket Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards; 52 Pa. Code Chapter 59, Docket No. L-2019-3010267 (Order entered June 13, 2019).

Here, Sunoco's failure to adequately communicate with GRS and warn GRS and the Residents' regarding its construction activities at the Property demonstrate the need for the public outreach required by the Code. This is another area where education should help Sunoco. Its employees, contractors, and representatives clearly do not understand or appreciate the importance of proactive communication to those its work puts within a zone of danger.

a. GRS established that Sunoco failed to adequately communicate with and warn GRS regarding Sunoco's work on the Property, thereby threatening the GRS Residents' and employees' safety

As set forth above, GRS presented numerous examples of attempts by GRS or its counsel to obtain critical safety information from Sunoco both before and during construction – all of which went unanswered. [GRS Stmt No. 1-SR, 29:7-17]. GRS raised detailed concerns and requested specific information pertaining to the safety of the site – with no substantive response from Sunoco. [Id.; GRS Stmt No. 1-SR, 29:7-17]

Due to Sunoco's refusal to engage with GRS and respond to its questions and concerns, the following safety issues were rectified, at least in part, only either by GRS itself or after repeated requests and/or legal action initiated by GRS:

- After repeated requests from GRS, Sunoco changed its initial plan for installing the Sound Walls five feet from the GRS apartment egress points [GRS Stmt No. 3, 13:8-10];
- After repeated complaints from GRS, Sunoco began roping or fencing off its work areas to prevent GRS Residents from injuring themselves [GRS Stmt No. 1, 10:10-22; GRS-14];
- After repeated requests for information by GRS, Sunoco provide limited information regarding a leak of materials at the Property. Sunoco failed to ever provide information about other leaks [GRS Stmt No. 1-SR, 11:3-13:7; GRS-16, GRS-17];
- A cessation of the use of airborne, hazardous, Calciment [GRS-135];

- The removal of inaccurate “warning” signage that caused a panic from the Property [See Emergency Petition filed February 11, 2021]; and
- The prevention of GRS Residents from consuming potentially contaminated water [T.T. (Amerikaner) 213:3-217:11; GRS-136; Horn Cross 1].

Sunoco’s failure to respond to these legitimate safety concerns is unacceptable and violates Sunoco’s obligations to reduce the safety risks caused by its actions. 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33. GRS had to spend substantial sums to obtain those changes, all of which would have been unnecessary if Sunoco acted responsibly.

b. Sunoco failed to rebut GRS’s evidence regarding Sunoco’s communication failures

Although Sunoco’s expert, Mr. McGinn, devotes an entire section of his testimony to “Construction Communications,” he sets forth only the following communications with GRS and/or the GRS Residents: (1) the existence of a hotline for GRS Residents; (2) the February 2021 virtual Town Hall; (3) updates Sunoco purportedly shared for GRS to publish on its website. [SPLP Statement No. 7-R (Rebuttal Testimony of Joseph McGinn) (“SPLP Stmt No. 7-R”) 8:7-12:23]. Significantly, neither Mr. McGinn, nor any other witness on behalf of Sunoco, identified even one alleged “update” sent for GRS to publish on its website. [Record, generally.] No such updates were ever provided. [Id.].

Further, although Mr. Amerikaner testified to providing “voluminous information” in response to the questions and concerns raised in GRS’s November 20, 2020 letter [GRS-161/DA-24], he conceded, or could provide no evidence to contradict, the following communication failures:

- The only timeline for work that Sunoco communicated to GRS estimated that Sunoco’s work on the Property would take approximately 100 days [T.T. (Amerikaner) 545:23-547: 21];
- Sunoco refused to provide work schedules [Id. 204:4-8];

- Sunoco failed to provide a written traffic access and safety plan to GRS or the GRS Residents [Id., 206:16-18];
- Sunoco failed to communicate a Sound Wall Plan to GRS until the Sound Walls were installed. [Id., 551:5-556:5.] The Sound Wall Plan initially discussed did not account for the looped access road being closed for the duration of the construction – i.e., six months [Id.];
- Sunoco failed to respond to GRS’s request for additional abatement of sound or rearrangement of Sound Walls for safety reasons [Id., 556:20-557:7];
- Sunoco failed to provide a written plan to GRS to address what would happen if a utility line broke within the easement (which, of course, happened). [Id., 558:21-560:12 (Mr. Amerikaner states that some “assurances” about how a utility break would be handled were “probably” conveyed to GRS in writing but no such plan was produced and he testified that he did not know if a “specific plan was prepared [by Sunoco].”)]; and
- Sunoco sent an email to GRS on May 27, 2021, informing GRS that the drinking water on the Property was “safe for all purposes” when Sunoco had information from its contractor at that time that the water should not be consumed [Id., 213:3-217:11; GRS-136; Horn Cross 1].

In short, Sunoco dismissed GRS and its Residents’ concerns regularly, even after significant threats to safety were realized. The law requires Sunoco to meaningfully communicate with the communities in which it operates, which clearly did not occur here.

III. CONCLUSION

The law obligates all public utilities, including Sunoco, to operate safely and to reduce the hazards to which others may be subjected to by reason of its equipment and facilities. See 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33. The evidence presented establishes that Sunoco regularly flouted its obligations by failing to implement reasonable safety measures. Moreover, Sunoco ignored GRS’ and its Residents’ legitimate safety concerns – even after Sunoco prevented emergency personnel from accessing the Property during an emergency, released plumes of a hazardous compound into the air at the Property (and on Residents’ cars) without notice, and

broke the Property's main water line. Sunoco's reckless approach toward safety must be addressed.

The Commission has already punished Sunoco and ordered it to consider the interests of the communities it affects. [See The Safety 7 Case, *supra*]. Yet, Sunoco continues to thumb its nose at Pennsylvania regulators and citizens. [See Consent Decree (defined above)]. Sunoco will continue to choose its business interests and profits over the safety of our citizens whenever confronted with the choice. The Commission must give Sunoco a business reason – a severe civil penalty – to put the interests of our citizens first.

Accordingly, for these reasons and all of those presented at the hearing, GRS respectfully requests that the ALJ find in GRS's favor and order Sunoco to pay civil penalties in the amount of \$2,000,000.00 and require mandatory safety training for all of Sunoco's contractors and its/theirs employees that work in residential areas on the Pipeline Project in Pennsylvania

IV. FINDINGS OF FACT

1. Sunoco threatened the safety of the GRS Residents and employees by engaging in the following unsafe practices and conduct (collectively, the "Safety Hazards") during its construction of the Pipeline Project on GRS's Property:

- a. Creating avoidable traffic hazards at GRS's Property by, among other things, failing to implement a traffic plan that complies with PennDOT regulations [see Section III(B)(1), *supra*];
- b. Creating avoidable fire hazards by failing to follow the requirements of the IFC [see Section III(B)(2), *supra*];
- c. Creating avoidable noise hazards by producing noise in excess of safe limits as determined by the CDC, and NIOSH, without any sound mitigation in place [see Section III(B)(3), *supra*];
- d. Releasing a hazardous chemical, calciment, into the air without any warning to those within the zone of danger or any attempts to mitigate the damage [see Section III(B)(4), *supra*];

- e. Breaking the main water line owned by GRS at the Property and notifying GRS and its Residents that the water was safe to drink for all purposes, when Sunoco knew that was not true [see Section III(B)(5), *supra*]; and
- f. Failing to communicate with and properly warn GRS and its Residents regarding the construction activities Sunoco was engaging in at the Property [see Section III(B)(6), *supra*].

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over unsafe conditions relating to Sunoco’s Pipeline Project and its related construction at GRS’s Property. Baker, 2019 WL 7403546, at **12-13 (holding, the Commission has jurisdiction over unsafe conditions relating to Sunoco’s Pipeline Project).

2. GRS satisfied its burden by establishing that Sunoco’s Safety Hazards each violate the Public Utility Code, the Commission’s Regulations, and Sunoco’s Public Awareness Plan. See 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33; Public Utility Plan.

VI. ORDERING PARAGRAPHS

1. With respect to Respondent, Sunoco Pipeline L.P.’s (“Sunoco”) construction of the Marine East 2 pipeline on Complainant, Glen Riddle Station, L.P.’s (“GRS”) property located in Middletown Township, Delaware County, Pennsylvania, Sunoco violated the Code, the Commission’s Regulations, and its Public Awareness Plan by failing to do the following: provide safe and reasonable service [66 Pa. C.S. § 1501]; warn and protect the public from danger [66 Pa. C.S. § 1501; 52 Pa. Code § 59.33]; exercise reasonable care to reduce the hazards to which customers and others may be subject to be reason of its equipment and facilities [52 Pa. Code § 59.33]; and educate the public on Sunoco’s ongoing pipeline construction activities [See Public Awareness Plan, p. 1] (collectively, the “Violations”).

2. As a result of the Violations, the Commission orders Sunoco to pay civil penalties in the collective amount of \$2,000,000.00.

3. Additionally, as a result of the Violations, all of Sunoco's employees and contractors (and its/their employees) that work on Sunoco's behalf in Pennsylvania shall undergo at least 50 hours of safety training at Sunoco's expense before such employees and/or contractors can begin work on the Mariner East 2 pipeline in any residential areas. Sunoco shall file with the Commission evidence of the completion of this mandatory education requirement for each individual performing work in Pennsylvania in a residential area before any such individual may perform such work.

Respectfully submitted,

FOX ROTHSCHILD LLP

September 24, 2021

By:



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**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
GRS,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that, on September 24, 2021, I served a true and correct copy of Complainant’s Main Brief upon the persons listed below and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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