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October 22, 2021

Via Electronic Filing

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

RE: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129;
SUNOCO PIPELINE L.P.'S REPLY BRIEF

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Reply Brief in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact the undersigned counsel.

Respectfully submitted,

/s/ Thomas J. Sniscak

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BRB/das
Enclosures

cc: Honorable Joel Cheskis (via email jcheskis@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLEN RIDDLE STATION, L.P.	:	
	:	Docket No. C-2020-3023129
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

SUNOCO PIPELINE L.P.'S REPLY BRIEF

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Dated: October 22, 2021

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I. INTRODUCTION AND SUMMARY OF REPLY ARGUMENT

Complainant Glen Riddle Station (GRS) entirely failed to provide substantial evidence that Sunoco Pipeline L.P. (SPLP) violated the Public Utility Code, a Commission regulation, or a Commission order. Instead, GRS spins a web of inaccuracies and false and unsupported allegations, often in violation of Your Honor's evidentiary and jurisdictional rulings and well-established law regarding hearsay, conjecture, lack of expert status, and impermissible lay opinions in administrative proceedings. GRS's innuendo, conjecture, exaggerations, conflation of facts, and repeated misstatements or mischaracterizations of the record are not and cannot be a substitute for substantial evidence. GRS's use of the Commission's complaint process as a pretext to bolster its want for significant sums of money through leveraging settlements[1] or further ligation in existing civil matters[2] to recover financial damages should be disregarded, not rewarded. Its claims and manner of pursuing them constitute a blatant misuse of the parties' and this Commission's limited resources. The false narratives conveyed through unfounded and unnecessary innuendo, insinuation, and outright misrepresentation in GRS's Main Brief simply underscore the utter lack of merit in GRS's allegations.

As shown in Appendix 1 to this reply brief, these problems plague nearly every page of GRS's Main Brief (GRS M.B.). Some of the most egregious examples include:

- Repeatedly stating that there was a delayed response to a 911 call on December 12, 2020, at the GRS apartments due to SPLP's construction and that SPLP's construction delayed emergency response, where the sole support for these false claims is GRS's counsel's email in Ex. GRS-110, duplicated in Ex. GRS-171. Using this email for the truth of the matter asserted therein not only violates Your Honor's ruling when admitting GRS's counsel's emails over

[1] *See* examples of GRS's threats to weaponize the Commission's complaint or emergency order processes for monetary demands at SPLP St. No. 2-R, Amerikaner Rebuttal at 17:4-19:16; SPLP Exhibits DA-30-36.
[2] GRS is suing Sunoco in a civil proceeding seeking more money for the temporary easements. *See* SPLP St. No. 7-R, Rebuttal of McGinn at 4, citing JM-9 (discussing the compensation for easements and GRS's suing for valuation of the condemnation in Delaware County Court of Common Pleas).

SPLP's objections[3] but also violates the *Walker/Chapman* rule that hearsay is not competent evidence and cannot form the basis of a finding of fact.[4] Moreover, the competent record evidence shows this allegation is false. As emergency response expert Mr. Noll explained, he reviewed the emergency response to the December 12, 2020, 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.

- Repeatedly mischaracterizing and relying upon hearsay exhibits of alleged "resident complaints" which were not verified or testified to by the alleged person complaining. GRS presented seven exhibits with alleged resident complaints. GRS-6, GRS-8, GRS-23, GRS-24, GRS-25, GRS-26, GRS-137. Many are duplicative and from the same small group of residents. All of them, in addition to not being sworn or authenticated, are hearsay. Hearsay cannot corroborate hearsay,[5] and thus none of these emails either individually or as a whole constitute competent evidence. Moreover, contrary to GRS's assertions, no resident raised a bona fide safety concern about traffic in the parking lot, Calciment, emergency responder access, signage, or construction in general. Instead, these resident complaints demonstrate annoyance with the temporary inconveniences of SPLP's construction. SPLP recognized those inconveniences, tried to minimize them, and provided residents with rent relief. Moreover, the resident complaints wholly lack credibility as it was clear GRS was attempting to create evidence to use against SPLP. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight

[3] Order 1) Denying Motion in Limine of Glenn Riddle Station, L.P., 2), Granting in Part and Denying in Part Motion to Strike of Glen Riddle Station, L.P., 3) Denying Motion in Limine of Sunoco Pipeline L.P. (Entered Aug. 4, 2021) ("The statements and exhibits Sunoco seeks to strike will only be referenced to demonstrate that Glen Riddle attempted to communicate safety concerns to Sunoco's counsel and not that those safety concerns are in fact safety issues.").

[4] *Walker v. Unemployment Compensation Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) ("[h]earsay evidence, properly objected to, is not competent evidence to support a finding.") ("a finding of fact based solely on hearsay will not stand"); *Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n. 8 (Pa. Cmwlth. 2011).

[5] *See Sule v. Philadelphia Parking Authority*, 26 A.3d 1240, 1244 (Pa. Cmwlth. 2011), *citing J.K. v. Department of Public Welfare*, 721 A.2d 1127, 1133 (Pa. Cmwlth. 1998) (noting substantial evidence did not exist because there was no non-hearsay evidence to corroborate hearsay testimony).

during the monthly Township Meeting on Zoom") ("It's important that the township officials hear concerns directly from Glen Riddle Residents.").

- Repeatedly mischaracterizing testimony and other record evidence, such as:

  - Alleging Mr. Noll relied solely on a memorandum from Middletown Township ("Township") for his opinion, GRS M.B. at 16, when Mr. Noll in fact testified:

> On March 29, 2021 I conducted a 360-degree walk around of the construction site. Based upon my on-site review of the location of the sound barriers and the available road space, I did not see any issues that would not allow the fire department to either effectively position their apparatus or access a building that did not previously exist before the installation of the sound barrier. My assessment also included a review of the Google Earth maps of the pipeline right-of-way prior to the construction (see SPLP Exhibit GN-4), conversations with Robert Drennen, Middletown Township Emergency Coordinator, a review Mr. Culp's December 8, 2020 correspondence outlining Complainant's concerns (SPLP Exhibit GN-5), and a review of Mr. Drennen's memorandum to the Middletown Township Manager on December 10, 2020 outlining his recommendations (SPLP Exhibit GN-6).
>
> SPLP St. No. 1, Noll Rebuttal at 9:8-17.

  - Citing Mr. Becker's hearing testimony to support the allegation that a video depicted a construction vehicle driving "recklessly close to a pedestrian" GRS M.B. at 5, when in fact Mr. Becker testified: "It's hard to tell how far they were from that person." N.T. 609:13-18. After watching the video again, Mr. Becker did not change his testimony. N.T. 609:19-610:2. Moreover, when Mr. Fye was shown this video, he testified "I wouldn't say it came close to the person taking the video. I would assume he was probably on the curb or in the grass area. The orange barrels that Glen Riddle put up, it restricted the travel lane and made it tighter and in my opinion, a greater hazard. He [the truck driver] obviously stayed within the LOD, which was off the curb. So I would imagine the guy was most likely a minimum of five to six feet away unless for some odd reason he was on the road videotaping." N.T. 654:4-20.

  - Alleging Mr. Becker testified that SPLP failed to provide him communications from GRS raising specific safety concerns, when Mr. Becker in fact testified: "GRS never gave me enough to work with." N.T. 591:21-22. After this

response, Mr. Cortes proceeded to quickly scroll through various emails and Mr. Becker responded that while he may not remember specific emails, he did remember the general communications. N.T. 592:1-594:1 ("I was reviewing a lot of the information back and forth as part of trying to understand the real safety issues that were being discussed."); N.T. 594:8-11 ("I'll state again, Mr. Cortes, I don't recall this specific e-mail. But as I read through the content, the content looks familiar. I've heard of these issues."). Mr. Becker did state he was not engaged in the project until November, so he did not recall seeing the specific communication in Becker Cross 4, but:

> As soon as I got involved, I started receiving all of the communications. And those included in the listing of safety concerns that were raised that were shown in the other e-mails that you showed. And I spent a good portion of that first two months really trying to understand when that – that gets a lot of attention for me and for our company when safety issues are raised. I spent a good portion of my time during those first two months trying to understand, talking to others, talking to the construction folks, talking to the construction safety, whoever else might be involved, really trying to understand the issues.

N.T. 597:17-598:4.

- Repeatedly asserting SPLP failed to use flaggers, *e.g.* GRS M.B. at 5, when Mr. Fye explained that the ATSSA certified flaggers were either present, but not shown in GRS's skewed videos or were present in the videos, but were using radio communications with construction drivers for real time communication instead of waving flags. *See, e.g.*, N.T. 644:12-23, 653:10-23 (Fye).

In stark contrast to GRS's unsupported allegations, reliance on incompetent evidence, and mischaracterization of the record, SPLP's M.B. relies on competent record evidence proving SPLP acted reasonably and safely in all aspects of its construction, including communications, access for emergency response, sound mitigation, traffic safety, including temporary movement of school bus stops, use of construction materials, and response to a water line break. In Section II. A below, SPLP will further demonstrate why GRS has not met its burden of proof.

GRS's Main Brief also ignores Your Honor's jurisdictional rulings or "law of the case,"[6] urging that Your Honor and the Commission can and should determine whether SPLP's actions violated laws, regulations, permits and/or guidance from Pennsylvania Department of Transportation (PennDOT), the Federal Highway Administration (FHWA), Pennsylvania Department of Environmental Protection (DEP), Middletown Township (including the International Fire Code (IFC)), Occupational Safety and Health Administration (OSHA), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety & Health (NIOSH). *See, e.g.*, GRS M.B. at 26. Despite GRS making its sensationalized, exaggerated and incorrect self-serving allegations to many agencies, there is no record evidence that any of these entities have issued a finding or concluded that SPLP violated any of the matters over which each entity has jurisdiction regarding the construction at GRS. As detailed in Section II.B below, the Commission lacks jurisdiction to make a determination as to SPLP's compliance with these other laws, regulations, guidance, or permits. And even if the Commission had that jurisdiction over these issues, which it does not, GRS failed to meet its burden of demonstrating by substantial

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[6] "Although it is often said that the law of the case doctrine does not limit the power of trial judges to reconsider their prior decisions, ... the court must take appropriate steps so that the parties are not prejudiced by reliance on the prior ruling." *Bienert v. Bienert*, 168 A.3d 248, 254–55 (Pa. Super. 2017) (quoting *Williams v. Runyon*, 130 F.3d 568, 573 (3d Cir. 1997)).

> [T]he considerations that underlie the doctrine also strongly weigh in favor of adherence by a trial judge to a decision by that same judge earlier in the case:
>
> > [L]aw of the case doctrine ... saves both litigants and the courts from duplications of effort. If permitted to argue and brief the same issue repeatedly during the course of the same litigation, some litigants would be indefatigable in their efforts to persuade or to wear down a given judge in order to procure a favorable ruling. Such use of clients' finances, legal counsels' time and energy, and judicial resources is wasteful from a systemic perspective.

Bienert, 168 A.3d at 254.

evidence that any of these laws, regulations or permits were in fact violated by the pipeline construction activities, if they even were applicable, which many are not.

In short, the Commission's enforcement authority under Section 1501 is strictly limited to ensuring the adequacy, efficiency, safety, and reasonableness of the utility's service and facilities. 66 Pa. C.S. § 1501. The Commission cannot, however, determine that a utility's actions violate a statute, regulation, or ordinance that it otherwise does not have authority to administer to support a safety violation under Section 1501. *See Country Place Waste Treatment v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 75-76 (Pa. Cmwlth. 1995) (holding that the Commission did not have jurisdiction to find a wastewater utility violated Section 1501 on the basis that its sewage treatment plant was emitting offensive odors because it does not have jurisdiction over air quality standards).

Finally, attempting to repair its admittedly moot case, GRS inappropriately requests for the first time in its Main Brief a civil penalty and injunctive relief that is wholly unavailable. As detailed in Section II.C below, GRS never pled this relief, waived it, and thus SPLP never had a fair and meaningful opportunity to be heard on these new requests for relief. Issuing such relief in these circumstances would violate SPLP's due process rights. Moreover, the Complaint remains moot as SPLP detailed in its M.B. SPLP M.B. at 20-21. Since the Complaint is moot, GRS no longer has any direct, immediate or substantial interest in litigating its claims before the Commission; GRS lacks standing to pursue any relief. Even if the Commission were to consider issuing a penalty, no penalty is warranted under the *Rosi* standards, 52 Pa. Code § 69.1201, let alone the wildly excessive $2 million penalty GRS seeks. Finally, GRS is not entitled to mandatory injunctive relief. Even assuming it were justified (there is no basis) the relief requested is not narrowly tailored to abate the alleged (but unproved) harm. This ploy to pressure SPLP into submission in separate civil matters seeking money should be rejected.

II. REPLY ARGUMENT

A. GRS failed to show SPLP violated the Public Utility Code, a Commission regulation,[7] or a Commission order.

Below, SPLP will explain the legal evidentiary issues that plague GRS's case. First, GRS repeatedly relies upon incompetent evidence, such as hearsay, that is not corroborated by competent evidence. It similarly offers to attempt to use this evidence to plug huge holes in its burden of proof, opinions by lay witnesses who are not qualified experts, and experts it offered who, in many instances under cross, admitted flaws in their analysis or that they had no sufficient background on the matters testified to as an expert under Pennsylvania law. Thus, none of this evidence can form the basis of a finding of fact. Next, GRS completely failed to show any harm occurred. The failure to prove harm under any regulation or law is fatal to GRS's case.

Moreover, GRS attempts to establish new standards of behavior and then impermissibly retroactively impose those on SPLP. This attempt to adopt quasi-regulations outside of the Commission's existing rulemaking pending for HVLs[8] is clearly not allowed. Additionally, those new standards of behavior are moot as to GRS as construction has been completed.

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[7] GRS asserts that SPLP's actions generally violate Section 59.33(a) of the Commission's regulations without specifying any particular regulation or rule that SPLP's conduct allegedly violated. GRS MB at 26-27. Section 59.33(a) provides that a public utility shall use every reasonable effort to properly warn and protect the public from danger and exercise reasonable care to reduce the hazards to employees, customers, and others. 52 Pa. Code § 59.33(a). Notwithstanding that SPLP's action exceeded this standard of care, GRS's failure to identify a violation of any specific state or federal regulation or rule demonstrates that SPLP's actions are presumptively reasonable. To hold otherwise, would deprive SPLP of its due process rights by impermissibly and retroactively expanding the scope of punishable conduct, which should only be done through an agency rulemaking. *See Pa. St. Bd. of Pharmacy v. Cohen*, 292 A.2d 277, 282-83 (Pa. 1972), *Info Connections v. Pa. Pub. Util. Comm'n*, 630 A.2d 498, 502 (Pa. Cmwlth. 1993) (holding that a public utility cannot "be penalized for [an] omission when it was under no duty to take action"), *Cmwlth. v. Thur*, 906 A.2d 552, (Pa. Super. 2006) ("Due process demands that a statute not be vague. A statute is vague if it fails to give people of ordinary intelligence fair notice as to what conduct is forbidden, or they cannot gauge their future, contemplated conduct, or if it encourages arbitrary or discriminatory enforcement.")

[8] *See Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Notice of Proposed Rulemaking Order*, Docket No. L-2019-3010267 (Order entered July 15, 2021).

Similarly, just because GRS (with its so-called experts who admitted they had no experience in pipeline construction) preferred something be done a certain way, and SPLP (who constructs and maintains pipelines daily with its experts and seasoned contractors) did things differently does not establish a violation of anything. In reality, SPLP as a public utility enjoys managerial discretion under the Public Utility Code as the courts have recognized[9] which means complainants cannot seek to act as a super-manager or super-directors of the board and demand a utility do something a certain way that strikes its fancy.

In Sections II.A.1 - II.A.9, SPLP explains why GRS has failed to show a violation as to each specific issue raised in GRS's brief. The record, as demonstrated in SPLP's Main Brief, shows that SPLP acted safely and reasonably; SPLP will not repeat those arguments here.

1. <u>GRS repeatedly relies upon incompetent hearsay evidence.</u>

Throughout its Main Brief, GRS impermissibly cites to several hearsay exhibits, which consists of e-mail correspondence exchanged between SPLP and GRS counsel-of-record and other hearsay exhibits such as resident complaint submissions, for the truth of the matter asserted and in support of the contentions therein. For example, GRS relied upon these hearsay exhibits to support, *inter alia*, GRS's claims of the alleged Calciment release (*see* GRS M.B. at 12-14, 47-48), the purported lack of water testing after the water main break occurred (*see* GRS M.B. at 16-17), and the assertion that SPLP's construction impeded emergency vehicle access (*see* GRS M.B. at 4). GRS's reliance on these hearsay e-mail exchanges as proof of the allegations made in those emails violates Your Honor's order that conditionally allowed them into the record, and cannot support GRS's burden of proof. Arguments and assertions that rely upon these hearsay exhibits as proof must be disregarded.

[9] *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981).

SPLP previously objected to the introduction of these exhibits in its motion filed July 20, 2021, because these e-mail exchanges contain hearsay allegations by GRS's counsel-of-record, which cannot be accepted for the truth of the matters asserted or as any proof of the contentions therein. *See* SPLP's Stipulation on Authenticity and Completeness of GRS Counsel-Of-Record's Emails Offered Into Evidence and Motion in Limine on Unresolved Hearing Objections at 5-6 (Motion in Limine). SPLP identified numerous exhibits that included these hearsay e-mail exchanges. *See* Motion in Limine, App. A at 4.

In response to the objection, Your Honor entered an Order on August 4, 2021, denying SPLP's Motion in Limine, but limiting GRS's use of the emails to a showing that GRS communicated with SPLP; therefore, the emails cannot be used to show that what was said is true:

> these statements and exhibits are not being offered for the truth of the matter asserted but only for the fact that they were made. As a result, Sunoco has not satisfied the first step to have a hearsay objection sustained. **The statements and exhibits Sunoco seeks to strike will only be referenced to demonstrate that Glen Riddle attempted to communicate safety concerns to Sunoco's counsel and not that those safety concerns are in fact safety issues.** These statements and exhibits will be given the appropriate weight they are due when disposing of the underlying complaint.

Order 1) Denying Motion in Limine of Glen Riddle Station, L.P., 2) Granting in Part and Denying in Part Motion to Strike of Glen Riddle Station, L.P., 3) Denying Motion in Limine of Sunoco Pipeline L.P. (Entered Aug. 4, 2021) (emphasis added).

Your Honor entered this Order in direct response to averments made by GRS that such exhibits would not be relied upon for the truth of the matters asserted or in support of the statements therein. GRS stated as follows:

> "the exhibits and related testimony that Sunoco seeks to exclude are not offered to prove the truth of the matters asserted, but are offered to show that communications were made by GRS to Sunoco…. Accordingly, the exhibits themselves were not offered to prove the matters asserted therein… **Instead, the exhibits were offered**

to demonstrate GRS's counsel's attempts to communicate safety concerns to Sunoco's counsel…"

Complainant's Brief in Opposition to Respondent's Motion in Limine on Unresolved Hearing Objections at 7 (dated July 23, 2021) (emphasis added).

Reversing its previous position, GRS now seeks to rely on these out of court statements for the truth of the matters asserted therein, to prove its claims. More specifically, GRS relies on these hearsay allegations when making the following statements:

- "GRS explained to Sunoco the importance of maintaining this looped configuration long before Sunoco began its work." GRS. M.B. at 2 (citing Exs. GRS-158-161).
- "Sunoco's failure to implement a traffic plan also impeded emergency vehicles' access to the property." GRS M.B. at 4 (citing Ex. GRS-110).
- "Calciment is dangerous to human health, and may cause irritation in the eyes, skin, respiratory system, and gastrointestinal tract." GRS M.B. at 13 (citing Ex. GRS-135).
- "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 M.B. at 14 (citing Ex. GRS-135).
- Sunoco's counsel reported to counsel for GRS that the water was safe to use for all purposes. GRS M.B. at 16 (citing Ex. GRS-139).
- "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." GRS M.B. at 20 (citing Ex. GRS-128).
- "As set forth above, calciment is a hazardous substance that poses substantial risk in the event of exposure." GRS M.B. at 47 (citing Ex. GRS-135).
- "Sunoco failed to address the calciment release and, instead, only stopped using calciment after GRS raised concerns in writing though counsel." GRS M.B. at 48 (citing Ex. GRS-135).

These statements contribute nothing to GRS's burden to prove the allegations, as Your Honor has already ruled.

To the extent GRS offers these emails to prove the matters asserted, SPLP re-raises its hearsay objection. Rule 802 of the Pennsylvania Rules of Evidence ("Pa.R.E.") provides that hearsay evidence is not admissible. Pa.R.E. 802. Hearsay is defined as an unsworn statement made outside the current trial or hearing that is offered to prove the truth of the matter asserted. Pa.R.E. 801(c). The statements within these e-mails are unsworn hearsay allegations by GRS's counsel-of-record which cannot be accepted for the truth of the matters asserted. Indeed, these are precisely the types of communications that lack trustworthiness due to the bias involved. *Ganster v. Western Pa. Water Co.*, 504 A.2d 186, 190 (Pa. Super. 1985) ("[I]t is essential that no lack of trustworthiness appear in the source of information or the method or circumstances of preparation."); *see also Milano v. Commerce Square Partners*, 2017 WL 3037509 (Pa. Super. 2017) (unpublished) (affirming trial court's exclusion of hearsay e-mails lacking trustworthiness because it was based upon additional hearsay). The Commission has also previously found that e-mails exchanged between two parties constitutes hearsay evidence that is not sufficient to support the burden of proof. *See e.g. Ivan Yotov v. Duquesne Light Co.*, Docket No. C-2015-2479258, 2016 WL 2988858, at *7 (Order entered May 19, 2016) (agreeing with the presiding officers that e-mails between the complainant and utility constituted hearsay evidence and are not sufficient to support complainant's position); *Bedell v. Verizon Pa. Inc.*, Docket No. C-20016189, 2002 WL 31654715 (Opinion and Order entered Oct. 11, 2002). Thus, it would be improper to rely upon this biased and unsworn evidence to support the claims of GRS, particularly where GRS was given every opportunity through testimony and the hearing to present testimony under oath or evidence to support these claims.

Lastly, notwithstanding the foregoing arguments, the statements referenced by GRS cannot be relied upon to support a finding as the evidence does not meet the *Walker/Chapman* rule. Under

Pennsylvania's *Walker/Chapman* rule, it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." *Walker v. Unemployment Compensation Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*) (citations omitted). Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural probative effect and may only support a finding…if it is corroborated by any competent evidence in the record," as "a finding of fact based solely on hearsay will not stand. *Id*.; *see also Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n. 8 (Pa. Cmwlth. 2011) (*Chapman*).

Here, GRS cites to hearsay evidence, to which SPLP properly objected to, to support statements that are not otherwise corroborated or supported by competent evidence. *See e.g.* GRS M.B. at 4 (relying on Exh. GRS-110 to support the statement that Sunoco's failure to implement a traffic plan impeded emergency vehicle access to the Property), GRS M.B. at 2 (relying on Exh. GRS-158-161 and GRS-166 to support the statement that the looped configuration allows for faster emergency vehicle access to buildings), GRS M.B. at 14, 48 (relying on Exh. GRS-135 to support the statement that Sunoco failed to address the Calciment release claimed by GRS). Thus, given SPLP's objections and the lack of corroborating evidence supporting these hearsay statements, they cannot not support a finding under well settled precedent.

For all these reasons, GRS's reliance on hearsay exhibits for the truth of the matter asserted or to support the contentions therein constitutes inadmissible hearsay that should be disregarded.

2. <u>GRS inappropriately relies upon lay opinion testimony, conjecture, and unqualified expert testimony.</u>

In its Main Brief, GRS repeatedly violates well-established evidentiary principles that:

- Lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. Pa. R.E. 701(c) ("If a witness is not

testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.").[10]

- An expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff'd,* 840 A.2d 390 (Pa. Cmwlth. 2003), *appeal denied,* 859 A.2d 770 (Pa. 2004) ("Expert testimony based upon mere probability, however, e.g., "more probable than not", that the alleged cause "possibly" or "could have" led to the result, that it "could very properly account" for the result, or even that it "was very highly probable" that it caused the result, lacks the requisite degree of certainty to be accepted as competent evidence.").

- An expert may not testify beyond their specific expertise. *See Bergdoll v. York Water Co.*, No. 2169 C.D. 2006, 2008 WL 9403180 (April 1, 2008), at *8–9 (Pa. Cmwlth. 2008) (unreported) (prohibiting independent contractors from offering expert testimony on water source and cause of sewer blockage; while witnesses were qualified to offer certain testimony as to facts and the extent of damage at issue, the source of the water and cause of the sewer blockage at issue "was not within their expertise") (emphasis added) ("*Bergdoll*"); *see also Application of Shenango Valley Water Co.*, No. A-212750F0002, 1994 WL 932364, at *19 (Jan. 25, 1994) (President of water company was "not qualified to provide expert testimony regarding the ratemaking value of utility property" when, notwithstanding his skills and expertise as to the operation of a public utility, he was "not a registered professional engineer and has never been a witness concerning valuation of utility property in any proceeding before the Commission . . . lacks knowledge regarding standard ratemaking conventions concerning capital stock as an item of rate base, cash working capital and the ratemaking requirements of Section 1311 of the Public Utility Code.") (internal record citations omitted).

For example, GRS consistently relies upon the lay witness opinions of Mr. Stephen Iacobucci. *See, e.g.*, GRS M.B. at 7 (alleging SPLP did not plan "a safe system for picking up and dropping off school-aged students") (citing GRS St. No. 1-SR Stephen Iacobucci Surrebuttal at 16:1-6); 8 (alleging "Sunoco's work caused school bus drivers difficulty determining where to

[10] Although the Commission does not strictly adhere to the Pennsylvania Rules of Evidence, ***the Pennsylvania Supreme Court has recognized that any relaxation of the rules of evidence in administrative settings cannot permit lay witnesses to testify to technical matters "without personal knowledge or specialized training."*** *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602 (personal knowledge), 701 (opinion testimony by lay witnesses) and 702 (testimony by expert witnesses) are generally applicable in agency proceedings); *Nancy Manes v. PECO Energy Company*, Docket No. C-20015803, 2002 WL 34559041, at *1 (May 9, 2002) (the Commission abides by the Pennsylvania Supreme Court's standard "that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue").

stop and how to access the Property safely.") (citing GRS St. No. 1, Stephen Iacobucci Direct at 9:16-19); n.1 (alleging "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.") (citing GRS St. No. 1-SR Stephen Iacobucci Surrebuttal at 26:2-7); 29-30 (alleging walking on road is dangerous) (citing GRS St. No. 1, Stephen Iacobucci Direct at 8:21-23).

GRS likewise relies upon equivocal and speculative expert testimony. *See, e.g.*, GRS M.B. at 13 (presenting speculative testimony from Mr. Henry that Calciment "*could* cause severe irritation of the eye and repeated exposure *probably could* cause blindness) (citing N.T. 312:3-7); 51 (presenting speculative testimony from Mr. Burns that chemicals could have entered the water line when Mr. Burns admitted that he had no knowledge of actual events on site to opine that there was a possibility of hydrocarbons being present in the water after the water line break (N.T.393:21-25, 403:23-405:2, 410:5-24)).

GRS also relies upon experts that provided testimony outside of their field of expertise. On pages 51-52 of GRS's Main Brief, GRS relies upon the testimony of Mr. Burns, a hydrogeologist (not a toxicologist) who admitted he is not qualified to opine on the safety of drinking water or to opine upon what tests should be done to ensure the safety of drinking water. N.T. 393:21-25, 403:23-405:2, 410:5-24. GRS also relied upon an industrial hygienist (not a toxicologist) to opine on the alleged risks to human health of Calciment. GRS M.B. at 47-49. GRS also relies upon Mr. Culp, a general civil engineer (who is not an acoustical engineer, traffic engineer, emergency responder, fire safety engineer, hydrogeologist, toxicologist N.T. 457:7-458:23) for his opinions on various of these topics. *See generally,* GRS M.B..

3. GRS failed to show that SPLP did not reduce potential hazards or otherwise protect and warn the GRS residents from danger, or demonstrate any harm in fact occurred during pipeline construction.

There is no evidence that any harm occurred to any GRS resident or employee as a result of SPLP's now complete pipeline construction. GRS's claims of harm are speculative and insufficient under Pennsylvania law to support a finding that SPLP violated a statute, regulation, or Commission order. Throughout its Main Brief, GRS asserts that certain inconvenient and temporary changes to its property ***could*** have led to serious injury or death, thus insinuating that SPLP did not provide safe or reasonable service pursuant to Section 1501 of the Public Utility Code. This is not sufficient.

While the Commission's enforcement authority under Section 1501 of the Public Utility Code allows the Commission to address harm, where, as here, there is no ongoing activity complained of and thus no future harm (construction is complete), such an action requires a showing by a preponderance of the evidence that a utility's service or facilities are responsible for harm. To hold otherwise would have dire consequences to the daily functioning and operation of public utilities and the provision of utility services within the Commonwealth as well as to the Commission's execution of its safety oversight authority over public utility operations. *See Braughler v. Pa. Elec. Co.*, Docket No. C-00014799, 2002 WL 971905 (Opinion and Order entered Feb. 22, 2002) (holding that Section 1501 of the Public Utility Code does not require "a public utility to provide perfect service with no margin for human or computer error").

Moreover, in order to meet the burden of proof, a party must "establish its claim by more than unsupported opinion, hypothetical calculations, or conjecture. It must be concrete evidence of its actual experience. *Scranton-Spring Brook Water Service Co. v. Pub. Serv. Comm'n*, 181 A. 77 (Pa. Super. Ct. 1935); *see also Airlines Transp. Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1283, 1285 (Pa. Cmwlth. 1981) ("Our careful review of the record discloses nothing but speculative,

conjectural evidence of no probative value in support of…claim of unreasonable preference"). Ultimately, a party "is not entitled to an inference of fact which amounts to nothing more than a guess or conjecture." *Monaci v. State Horse Racing Comm'n*, 717 A.2d 612, 618, n. 19 (Pa. Cmwlth. 1998); *see also Flaherty v. Pa. R. Co.*, 231 A.2d 179, 180 (Pa. 1967).

In its Main Brief, GRS's arguments fail to meet the standard under Section 1501 because it has not shown that any of the hazards of now complete pipeline construction did in fact cause harm to GRS or any of its residents, or that the many precautions that SPLP took to prevent harm from predictable hazards were somehow insufficient under any regulation or law the Commission administers.

Inconvenience is not harm, just as highway construction, detours or delay are not harm. However inconvenient the temporary construction was to GRS and its residents—which SPLP took significant actions to mitigate-- the evidence demonstrates that reasonable care was taken by SPLP to minimize hazards and reasonably improve safety for GRS and its residents, consistent with the duty of care under 52 Pa. Code § 59.33(a). For instance, while GRS says it took noise level readings that exceeded 100 decibels based upon one photograph and limited written testimony (GRS M.B. at 40, citing GRS Stmt No. 1, 6:5-8; GRS Stmt No. 3, 4:23 – 5:1; GRS-5; GRS-33), SPLP provided evidence that it installed sound mitigation walls, which were not required by any law, regulation, or standard governing SPLP's construction activities, after having an acoustical engineering consultant evaluate and model the sounds construction would create. SPLP M.B. at 50 (citing SPLP St. No. 3-R, Becker Rebuttal at 11:18-24). SPLP also had its contractor, Michels, perform sound level readings twice a day and at no time did the sound levels within the work site exceed the threshold for levels above which ear protection must be worn, nor was there any evidence that sound levels exceeded any applicable threshold within a residential apartment

unit. SPLP M.B. at 51 (citing SPLP St. No. 4-R, Fye Rebuttal at 9:15-24; SPLP Exh. JF-1); *see also* SPLP M.B. at 51-53. Similarly, while GRS raises emergency access and school bus stop issues, SPLP presented substantial evidence that it communicated with Middletown Township emergency response officials and the Rose Tree Media School District to resolve ingress and egress concerns and establish temporary bus stop locations. SPLP St. No. 7-R, McGinn Rebuttal at 12:5-11. And while GRS complains about lack of communication, the evidence is overwhelming that SPLP communicated extensively with GRS prior to and during active construction. *See* SPLP M.B. at 31-37.

Additionally, in its Main Brief, GRS casually speculates without evidence that certain inconveniences could have resulted in injury, death, or property damage. For example, GRS implies that unavailable parking spaces (GRS M.B. at 4), potholing for underground utilities preconstruction in a grassy area where children play (GRS M.B. at 6), the temporary school bus stop (GRS M.B. at 8), and stormwater runoff that allegedly may have been caused by the placement of sound walls (GRS M.B. at 9, fn. 1) all could have led to serious injury, death, or property damage. But more is required than speculative "could haves," especially in the face of evidence of SPLP's careful and prudent precautions that had the desired effect.

Taken together, GRS's speculative claims that certain hazards might have but in fact did not result in any serious injury, death, or property damage are insufficient to demonstrate a violation of Section 1501. The record shows that SPLP took reasonable care to keep GRS and its residents safe and was successful in doing so.

4. GRS failed to show SPLP's actions regarding emergency responder access to the property were inadequate or unsafe.

GRS would have Your Honor ignore unrefuted evidence that SPLP carefully designed, evaluated, tested, redesigned, reevaluated[11] and implemented the placement of sound walls, working with the Township, who tested the ability for emergency responders to in fact access the GRS apartments (SPLP M.B. at 43-46), in favor of GRS's position that these efforts do not meet International Fire Code standards and thus created an unsafe condition. GRS's position is based entirely on the testimony of an expert witness who did not visit the site or take any of his own measurements and was not present for the Township's testing of fire apparatus ability to reach the GRS apartments. GRS M.B. at 35. The Commission lacks jurisdiction to determine violations of the IFC; that is the Township's domain, and the Township approved GRS's placement of the sound walls based on an iterative hands-on process. During the entirety of SPLP's construction, emergency responders had unimpeded access to the GRS apartments and the Township was satisfied that SPLP took appropriate precautions to keep residents and property safe. More is not required, especially where the evidence shows that SPLP's emergency access precautions received real-life validation when emergency responders needed access.

GRS's position further relies upon the false allegation that emergency response to the GRS apartments was in fact delayed, when the only support for that allegation is GRS's counsel's hearsay email, which as described above, is not competent evidence. In fact, as Mr. Noll explained,

[11] GRS also falsely asserts that SPLP told GRS that the sound walls would be placed within five feet of the apartment buildings and that SPLP only changed position once GRS complained. GRS MB at 8. This assertion relies solely on uncorroborated hearsay – Mr. Stephen Iocubucci's allegations of what SPLP allegedly said, two emails from GRS's counsel (Exs. GRS-7 and GRS-101) and Ex. GRS-131, which has nothing to do with sound wall placement at all. As Mr. Fye testified, as of the November 18 meeting, the sound wall location and design details were still in progress by the engineering firm and the final location of sound walls could not be made until the survey and utility location were complete. Thereafter, SPLP worked directly with the Township to ensure there would be adequate emergency response to the residential buildings. SPLP MB at 43-46. Even assuming for the purpose of argument that GRS's assertion is correct, this issue is entirely moot, because the sound walls were never actually installed or placed within five feet of any apartment building – and GRS presented no evidence to the contrary, nor could they.

he reviewed the emergency response to the December 12, 2020, 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.

GRS's rebuttal to SPLP's evidence that emergency response was not hindered is that: 1) the Township's unofficial letter is not an official variance; 2) SPLP's evidence just shows there was some level of access to each building; and 3) Mr. Noll lacks credibility. GRS M.B. at 36-39. Each of these arguments fails. First, the Commission lacks jurisdiction to determine whether a variance was necessary. Moreover, GRS misconstrues the Township's memo, which was based on actual testing of fire apparatus access to the GRS apartments and described that "placement of aerial apparatus would not be impacted for life safety with the width of the pathway and the width of the parking lots". SPLP Ex. GN-6. Further, contrary to GRS's assertions, Mr. Noll's opinion was not based solely on the Township's memo, but also on his own measurements, a 360-degree walk of the construction site, google earth maps of the pipeline right of way, conversations with Mr. Drennen, the Middletown Township Emergency Coordinator, and review of Mr. Culp's correspondence outlining GRS's concerns. SPLP St. No. 1, Noll Rebuttal at 9:8-17.

Second, SPLP's evidence is not merely that each building could be reached by fire apparatus. GRS M.B. at 36-38. The two emergency response events during construction proved that "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13. Further, Mr. Noll expressly testified that:

> to a reasonable degree of certainty that the temporary sound walls do not represent a fire hazard and not impact fire department access / egress from the five apartment buildings that make up the apartment complex at a level that is significantly different than what was present prior to their installation.

SPLP St. No. 1-R, Noll Rebuttal at 8:17-9:3.

Finally, the attack on Mr. Noll's credibility defies the evidence. GRS M.B. at 39. Mr. Noll's work speaks for itself – he, *inter alia*, helps both pipeline companies and emergency responders prepare for potential pipeline events. SPLP Ex. GN-1 (Noll CV). Townships and Counties have contracted him to provide training, not solely SPLP. N.T. 106:13-25 (Noll). GRS totally misconstrues the articles and presentation Mr. Noll authored, alleging he takes inconsistent positions. It is not inconsistent for Mr. Noll to state in an article that pipelines are the "safest mode of energy transportation" while also stating and educating people on the importance of being prepared in the unlikely event a pipeline emergency occurs.

5. GRS failed to show SPLP's actions regarding traffic safety and school bus stop relocation were inadequate or unsafe.

a. Parking and Traffic

GRS has completely failed to show that there was any safety issue related to parking. GRS's allegation that any resident had to park on Glen Riddle Road is solely based on a mischaracterization of hearsay. GRS M.B. at 29-30; Ex. GRS-23. This exhibit contains a total of two resident complaints out of approximately 200 residents from a platform GRS set up specifically to garner resident complaints about SPLP's construction. These are hearsay and cannot be relied upon for the truth of the matter asserted therein.[12] They are not records kept in the normal course of business, but instead a GRS attempt to create evidence to use against SPLP. GRS-23 (email from resident stating "You people are looking for support against this Pipeline BS"); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township

[12] *Supra Walker/Chapman.*

Meeting on Zoom") ("It's important that the township officials hear concerns directly from Glen Riddle Residents.").

Moreover, these hearsay assertions are highly unreliable on their face. The first complaint alleges SPLP "have taken over all available parking for residents." This is patently false[13] and inconsistent with GRS's own testimony and assertion in the brief. The second complaint has no date and merely makes assertions about parking spots being taken. It specifically acknowledges that this is only a convenience issue. Ex. GRS-23 at 2 ("This is an extreme inconvenience").

As to traffic, the crux of GRS's argument is that failure to provide a written traffic plan made things inherently unsafe because it allegedly violated PennDOT and FHWA guidelines. As explained below, the Commission lacks jurisdiction to make a finding that SPLP violated PennDOT or FHWA guidelines as the basis for a violation of 66 Pa. C.S. § 1501. Moreover, as Mr. Fye explained there was extensive and daily planning for safe traffic on site, tailored specifically to the site. *See, e.g.*, N.T. 651:21-652:8 (Fye). There is no evidence that any GRS resident complained about their safety when driving or walking on the property due to SPLP's pipeline construction. There is no evidence any GRS resident was harmed or "almost harmed." Instead, as detailed in SPLP's Main Brief, the evidence shows SPLP took reasonable and adequate steps to ensure that its construction site and vehicles did not cause safety issues to other vehicles or pedestrians. SPLP M.B. at 47-50.

GRS alleges there were not flaggers on site and that there were "near misses" of SPLP vehicles colliding with GRS employees. GRS M.B. at 30-32. This is based on skewed, unauthenticated videos, Mr. Stephen Iacobucci's secondhand allegations, and GRS's hyper

[13] Mr. Becker testified that ample parking remained at the GRS property, with dozens and up to 100 empty parking spots remaining available. While some parking spots were made unavailable, there was never a shortage of parking at the GRS apartments. SPLP St. No. 3-R, Becker Rebuttal at 14:17-16:5; SPLP Ex. JB-2 (photos showing plentiful empty parking spots at various times of day).

specific interpretation of the term "flagger" to mean someone with a flag in their hand, to the exclusion of someone coordinating traffic through direct radio communications to construction vehicles. Mr. Iacobucci's secondhand allegations are not substantial evidence. The videos in GRS-172 are unauthenticated, lack credibility, and regardless do not show any swerving or reckless driving. As Mr. Fye testified:

> I wouldn't say it came close to the person taking the video. I would assume he was probably on the curb or in the grass area. The orange barrels that Glen Riddle put up, it restricted the travel lane and made it tighter and in my opinion, a greater hazard. He [the truck driver] obviously stayed within the LOD, which was off the curb. So I would imagine the guys was most likely a minimum of five to six feet away unless for some odd reason he was on the road videotaping.

N.T. 654:4-20. As to videos allegedly showing a lack of flaggers, Mr. Fye testified: "We have flaggers out at Glen Riddle. I can't tell because the video's just in one small area so I don't know if there's flaggers further to the left, which would have been typical at the site." N.T. 649:20-650:13. Regarding Ex. GRS-155, there were flaggers present in the video, but instead of using flags they had direct radio communication with the construction vehicles, and there was no reason for the flaggers to come out into the travel lane and use flags in the scenario pictured in the video because there were no residents trying to back in or pull out. N.T. 653:10-23 (Fye). Mr. Fye explained the placement of the flaggers:

> So all of my travels throughout this parking lot is designated travel lanes that you would have anywhere there's a parking lot. A Walmart, a Home Depot. All these cars have a – you know, if you're going up the hill, you're in the right-hand side travel lane. If you're down the hill, you're on the other travel lane. It's just - we have an egress/ingress within our construction zones that were clearly marked - best marked working locations on the entire job.
> So there's no reason to have a flagger standing out in a travel lane whenever they're using the typical, normal travel lane. All that would do is create a greater hazard for everyone involved.

N.T. 646:12-25.

GRS next takes issue with SPLP not building a pedestrian walkway. But there never was a pedestrian walkway connecting the eastern and western portions of the property, so SPLP's construction did not block any pre-existing designated pedestrian pathway. SPLP St. No. 4-R, Fye Rebuttal at 12:20-21. There is no evidence that any GRS resident or employee in fact traversed Glen Riddle Road by foot. Notably, SPLP did offer to build a pedestrian walkway along the northern portion of the workspace, and even presented plans for the walkway to GRS, but GRS never accepted SPLP's offer. GRS St. No. 1-SR at 13:1; N.T. 466:24-467:11 (Culp).

b. <u>School Bus Stop Relocation</u>

GRS claims that SPLP created and failed to adequately address safety hazards relating to the school bus stops at GRS's property. Namely, GRS argues that SPLP began work on November 28, 2020, and interrupted bus service even before notifying Rose Tree Media School District (RTMSD). GRS M.B. at 33. GRS further stated that SPLP did not anticipate or plan for the confusion or disruption construction would cause and left bus drivers and students to fend for themselves. GRS M.B. at 33. GRS concludes that this confusion was ongoing through December 10th and that SPLP simply communicated with RTMSD as a damage control measure. GRS M.B. at 33-34.

Contrary to GRS's assertions, SPLP worked diligently with RTMSD to establish a plan prior to full construction began on the worksite. More specifically, the evidence demonstrates that as of Wednesday, November 25, 2020, SPLP was in the early stages of their construction activities. SPLP St. No. 6-R, Rebuttal Testimony of Packer at 5:9-10. At this point, as indicated by several photographs, through-access on GRS's property was not permanently blocked. SPLP Exh. CF-2; *see also* SPLP Exh. JP-1, pg. 3 (Confidential). The following week, on Tuesday, December 1, prior to full construction beginning, Joe Massaro reached out to RTMSD writing:

> I am reaching out to discuss the school bus schedule and locations on Glenn Riddle Road, specifically for the Turnbridge and Glenn Riddle apartments. Heavy construction on the Mariner East Pipeline project will be starting soon…and I want to make sure we are not impeding access to bus stops for kids living in the area…

SPLP Ex. CF-7. The evidence demonstrates that it was not until Friday, December 4, that SPLP's construction area interfered with the typical bus stop locations. Ex. GRS-109 at 2. GRS then communicated its concerns to the school district on Sunday, December 6. Ex. GRS-167. Recognizing the continued importance of finding suitable, temporary bus stops, SPLP was in frequent contact with RTMSD throughout the following week and resolved the situation by Thursday, December 10, with SPLP paying for the crossing guard services beginning on Monday, December 14. GRS Ex. Etzel Re-Direct 1 at 3; *see also* SPLP Ex. CF-7.

Thus, contrary to GRS's claims, SPLP took diligent and quick efforts to establish the temporary bus stop locations and secure crossing guards while it was still in early construction that did not impact the bus stop locations, and reasonably resolved the matter within several days after the worksite began impacting the bus stop locations.

6. <u>GRS failed to show SPLP created unsafe sound levels.</u>

GRS completely misconstrues the evidence it presented versus the evidence required to show that SPLP created sound at a level that could damage someone's hearing outside of its construction zone. GRS repeatedly references the decibel readings it took that show sound levels dropping and spiking repeatedly, alleging this is enough proof to show sound levels were unsafe. GRS M.B. at 40-41. Yet GRS witness Mr. Wittman admitted neither he nor GRS undertook the continuous multi-hour long sampling that is necessary and needed to make this determination. N.T. 425:24-428:13. That continuous sampling is necessary to show likelihood of harm because the OSHA standard (which the PUC does not have jurisdiction to administer), is based on a 24-hour noise exposure level. SPLP St. No. 8, Harrison Rebuttal at 6:17-22. The momentary point-

in-time measurements that GRS presented are not indicative of the sound levels over the course of the workday. *Id.* GRS witness Mr. Wittman provided no likelihood of harm occurring to anyone due to construction noise, and there is no evidence anyone suffered any harm to their hearing.

GRS also repeatedly states that noise levels inside the GRS apartments exceeded safe levels. GRS M.B. at 40-41. This misrepresents sound levels inside the apartments. In fact, the only sound readings that were taken inside the apartment buildings were point-in-time measurements shown in unauthenticated videos taken by GRS, which demonstrated that the sound readings taken inside apartment buildings with windows closed showed readings below 75 dBA, which is below not only the OSHA standard, but also the CDC guidance and the NIOSH guidance. N.T. 727:11-15 (Harrison). GRS also falsely implies that sound levels would have been higher than that shown in Ex. GRS-146 in the absence of the sound walls. But the sound readings in GRS-146 were taken on December 12, 2020, prior to the sound walls being in place, so the sound readings in that video were unmitigated – and, regardless, still did not exceed safe levels. N.T. 716:10-18, 717:6-12 (Harrison).

SPLP did not create sound levels at unsafe levels, and mitigated the construction sound it did create to minimize inconvenience to residents. SPLP M.B. at 50-53.

7. <u>GRS failed to show SPLP's use of Calciment was unsafe.</u>

GRS spins SPLP's sporadic use over ten days at the GRS site of Calciment, a common construction material used by both contractors and homeowners, completely out of proportion. There is no evidence of any resident or employee coming into direct contact with Calciment, no evidence of Calciment entering any of the apartment homes, and no evidence anyone was harmed by Calciment.

GRS's own witness, Mr. Henry, who is an industrial hygienist, not a toxicologist, only concluded that Calciment "could cause irritation [sic] the eyes, skin, respiratory system and

gastrointestinal tract". GRS St. No. 5-SR, Henry Surrebuttal at 4:15-16. Aside from lacking expert qualifications on toxicology,[14] his statement is speculative and uncertain and thus is not substantial evidence. It should be rejected. *See Vertis Group supra* (expert testimony that alleges mere possibility or concern lacks requisite degree of certainty to be accepted as competent evidence).

Mr. Henry admitted he did not have the information necessary to form a conclusion that Calciment as used here was harmful; he had no information on the amount of Calciment used and his only review of potential exposure was based on the GRS videos that Dr. Magee explained showed water vapor, not Calciment. N.T. 322:7-13, 322:20-323:3. Mr. Henry's attempt to offer expert testimony outside his area of expertise is not substantial evidence and may not be accepted. Moreover, as the Commission does not have jurisdiction over any of these allegations regarding air quality or environmental materials used on site, these unsupported and unqualified allegations or conclusions should be dismissed.

Ignoring their own witnesses' lack of expert conclusion, GRS again misrepresents the record. For example, GRS alleges "dust plumes indicate a calciment dust concentration of ten-milligrams per cubic meter, which is twice the workplace standard limit recommended by OSHA. GRS M.B. at 47 (citing N.T. 311:9-20 (Henry), 158:10-12 (Magee). In fact, Dr. Magee testified:

> You'll also notice that the workplace standards are listed there, 5,000 micrograms per cubic meter. And ***there was no way you were anywhere near 5,000 micrograms per cubic meters at this particular site.***

N.T. 158:10-14 (Magee) (emphasis added). GRS alleges "Sunoco attempts to evade responsibility for its Calciment release by arguing that Calciment does not pose a danger to human health." GRS M.B. at 49. But SPLP does not make that claim – what SPLP did is present substantial evidence

[14] *See, e.g.*, *Bergdoll v. York Water Co. supra* (witness's expert testimony is limited to those issues within his or her specific expertise).

and expert testimony demonstrating that Calciment in fact did not pose that danger to the residents or employees at GRS, as the unrefuted evidence shows. N.T. 137:18-143:8; SPLP M.B. at 56-58.

8. GRS failed to show SPLP's actions regarding the water line break were inadequate or unsafe.

SPLP took all reasonable steps to locate and protect underground utilities on the GRS property. SPLP M.B. at 58. GRS falsely asserts SPLP failed to show it took any measure to ensure the integrity of the water line. To the contrary, SPLP used flume pipe and straps to protect all utilities that were exposed in the construction workspace, including the water line. N.T. 482:3-9 (Fye).

GRS argues the water line break equates to a violation of the Public Utility Code. GRS M.B. at 51. Where, as here, SPLP took reasonable steps to prevent the water line break from occurring, but simply could not foresee whatever unusual circumstances caused the line to break, there is no violation. *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 Recommended Decision at (RD entered April 22, 2014) Final via Act 294 (May 29, 2014) ("A public utility cannot be held to have provided inadequate or unreasonable service because it failed to anticipate unforeseen or unusual circumstances or occurrences."); *see also Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494, 2002 WL 31060581 (Order entered Jun. 14, 2002). Moreover, a water line break or water outage is not an uncommon event.

SPLP also took all reasonable steps in response to the water line break. SPLP M.B. at 58-59. An Aqua-certified master plumber was called to the site, and the line was repaired within 5 hours. SPLP St. No. 4-RJ, Fye Rejoinder at 3:4-6. In the meantime, SPLP provided bottled water and porta-potties to minimize inconvenience to residents. SPLP St. No 4-RJ at 3:6-8. Contrary to GRS's assertions that "SPLP failed to pursue testing," GRS M.B. at 51, SPLP did attempt to test the water, but GRS's counsel stalled granting permission for SPLP to collect samples for so long that Aqua was already on site collecting samples for testing and there was no reason to complete

duplicative testing.[15] The Aqua tests quickly confirmed there was no bacteria in the water, and the water could have been turned back on immediately. Instead, GRS relied upon Mr. Burns, an unqualified hydrogeologist, not a toxicologist, and chose to perform a host of unwarranted testing. N.T. 147:10-148:14, 149:11-16 (Magee). GRS continues to rely on this hydrogeologist and his unwarranted conclusions in its Main Brief, asserting that there could have been Calciment, Bentonite, or hydrocarbons in the water, when there is no competent evidence for this assertion. Mr. Burnes testified:

> Q. COULD THE PRESENCE OF THESE CHEMICALS CAUSE ADDITIONAL ISSUES OUTSIDE WHAT A WATER AUTHORITY WOULD NORMALLY TEST FOR AFTER A DRINKING WATER LINE BREAK?
> A. Yes, *it is possible*, which is why I advised additional testing.

GRS St. No. 8-SR, Burns Surrebuttal at 7:14-17 (emphasis added). But Mr. Burns admitted upon cross examination that he was completely unaware that the incident did not involve a release of petroleum products – which was his misunderstanding of the nature of the pipeline being constructed on the GRS property. N.T. 403:23-405:2. Nonetheless, SPLP provided bottled water to GRS residents until GRS's tests confirmed the water was safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4.

GRS also misconstrues two emails to allege that SPLP ignored its own plumber's advice "that Sunoco's plumbing contractor told Sunoco that the water was not safe for all purposes" and

[15] Mr. Iacobucci testified SPLP requested GRS to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party, was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May 27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), *id.* at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), *id.* at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).

"told GRS to notify its residents that the water was safe to use 'for all purposes'": GRS M.B. at 17, 52. Both of these allegations are inaccurate. Horn Plumbing never said the water was "not safe." Instead: "Horn Plumbing suggested that residents of the Glen Riddle Apartments were safe to use the potable [sic] water supplied by the main for showers and other conventional use aside from drinking for the night until the water is tested by Aqua America the next day." Horn Cross Ex. 1 at 4. As Mr. Horn explained, this advice was not due to outside contamination concerns, but instead because:

> when you've emptied the water out of the piping what happens is when you turn the water back on real slow in the piping that all the old scaling that's in that piping might just have a little bit of rust look to it and not be as clear as could be. And Sunoco had already brought in a tractor trailer load of cases of water and delivered them to all the units. So we just suggested, they had bottled water use that for the night until they could test it the following morning.

N.T. 183:19-184:3. Regarding Mr. Amerikaner's email to GRS's counsel, he never told GRS to tell its residents anything. Instead, he stated:

> Water must be run through taps to clear any sediment that has collected while the water was not flowing. Once those things occurred last night, the water was safe to use for all purposes, *although Horn recommended that if Glen Riddle was concerned about contamination, the water should be tested to confirm potability*.

Ex. GRS-139 at 4 (emphasis added).

In fact, all of the testing showed the water was perfectly safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23. There was no risk or safety concern for GRS residents.

9. GRS failed to show SPLP's communications were inadequate or unreasonable.

Continuing its pattern of inappropriately skewing the record, GRS in its Main Brief patently misrepresented the record to concoct a story that SPLP failed to communicate with GRS

regarding the construction at the property. GRS M.B. at 17-20, 53-57. Nothing can be further from the truth. As SPLP proved in its Main Brief at 26-39, SPLP: 1) communicated regarding its new pipeline construction with GRS beyond what was required by all applicable statutes, regulations, and SPLP's SOPs, exceeding a reasonable standard of care in dealing with a difficult and litigious landowner (SPLP M.B. at 27-31); 2) proved that SPLP had a continuous and open line of communication with GRS and GRS counsel within the rules established by GRS – counsel to counsel communications only – for the entirety of pre-construction and active construction at the property (SPLP M.B. at 31-37); 3) proved that SPLP took all reasonable efforts to communicate with and satisfy GRS, as well as actively and routinely communicating with Middletown Township and other governing agencies; and 4) that SPLP provided regular updates on construction, safety information, and rent relief to GRS's residents (SPLP M.B. at 37-39). GRS failed to meet its burden to show that any of the communications between the parties violated SPLP's duty under 66 Pa C.S. § 1501 or any other governing standards. To limit repetition, those facts proved by SPLP as stated above will not be restated in this reply.

a. <u>GRS's reliance on 49 C.F.R. § 195.440 and SPLP's Public Awareness Plan is misplaced – those regulations and SPLP's Public Awareness Plan only apply to operating pipelines under their plain language and as shown in PHMSA enforcement actions under the Part 192 and 195 Public Awareness Sections.</u>

In its Main Brief, GRS relies on 49 C.F.R. § 195.440 and SPLP's public awareness plan created thereunder for the premise that "Sunoco's failure to communicate with GRS or the 224 Residents also violates the Public Awareness Plan, which requires Respondent to 'educate the public on [] [Respondent's] ongoing pipeline integrity management activities.'" GRS M.B. at 53 (brackets in GRS M.B.). SPLP detailed why 49 C.F.R. § 195.440 and SPLP's public awareness plan created under this regulation do not apply to SPLP's new pipeline construction and GRS's reliance thereon is unsupported. SPLP M.B. at 27-31. However, GRS's continued and troubling

reliance on clearly inapplicable sections of 49 C.F.R. as the basis for claims that SPLP was not in compliance with its public awareness obligations requires further reply.

While there are limited rulings on Public Awareness Programs under 49 C.F.R. part 195 by the Commission, PHMSA has addressed these regulations and public awareness plans through enforcement actions which clearly show 49 C.F.R. § 195.440 is inapplicable to new pipeline construction and that the requirement to maintain a public awareness program falls clearly within PHMSA's operation and maintenance requirements and, therefore, does not apply to new pipeline construction. In two enforcement actions, PHMSA expressly determined the date of an operator's compliance with public awareness requirements by considering when the pipeline became operational. *See Nova Chemicals, Inc.*, *Final Order, CPF No. 3-2018-5005 (May 16, 2019)* (finding that an operator violated § 195.440 because the operator "did not have a public awareness program until 2016, even though the [pipeline] has been in operation and transporting product since 2014"); *Paradigm Energy Partners, Warning Letter, CPF No. 3-2019-6009W (Nov. 26, 2019)* (finding that an operator failed to comply with § 195.440 because the operator's program "was developed and implemented in January 2017, approximately 18 months after [the] pipeline facility went into operation"). Additionally, PHMSA has issued enforcement against operators for failing to have public awareness programs under regulations at both Part 192 (49 C.F.R. § 192.605) and 195 (49 C.F.R. § 195.402) that require operators to develop and implement procedural manuals related to operations and maintenance requirements. *See, e.g., Penn Octane Corp., Final Order, CPF No. 4-2002-5001 (Mar. 15, 2004)* (finding that an operator violated § 195.402 by failing to establish "a continuing educational program that enables the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or carbon dioxide pipeline emergency and to report it . . . in

accordance with § 195.440"); *Bentley-Simonson, Inc., Final Order, CPF No. 5-2004-0008 (Feb. 16, 2006)* (concluding that an operator violated § 192.605 by failing to maintain procedures in its operator's manual for "operations, maintenance and emergencies," including "procedures addressing educational programs for the public for the purpose of recognizing and reporting gas pipeline emergencies to public officials" required by § 192.616); *Amerigas Propane, L.P., Warning Letter, CPF No. 2-2012-0003W (Apr. 17, 2021)* (finding that the operator's procedures were deficient under § 192.605 because they did not provide "public awareness messages as required by § 192.616").

Finally, PHMSA enforcement actions have held that these regulations are operations and maintenance related, and expressly found that an operator's procedures were deficient because the procedures did not provide a process for communicating messages to the public about "pipeline ***maintenance-related*** construction activities" (emphasis added). *See, e.g., Delaware Storage & Pipeline Co., Warning Letter, CPF No. 1-2013-6001W (July 9, 2013); Interstate Storage and Pipeline Corp., Warning Letter, CPF No. 1-2013-5009W (July 12, 2013); Delaware Pipeline Co., LLC, Notice of Amendment, CPF No. 1-2013-5030M (Nov. 26, 2013)*. PHMSA's deliberate reference to ***maintenance-related*** construction activities further demonstrates that public awareness requirements do not apply to new construction, reinforcing the plain language of the regulations and API 1162 which state that the public awareness regulations and guidelines do not apply to new pipeline construction. SPLP M.B. at 28. 49 C.F.R. § 195.440 simply does not apply to new pipeline construction activities.

b. <u>GRS's Main Brief mischaracterizes and misrepresents the communications that occurred between the parties.</u>

GRS creates a skewed narrative in its Main Brief regarding the communications that occurred prior to and during active construction at the Property. GRS first claims that SPLP

"outright dismiss[ed]… GRS and GRS Residents' concerns…" and that SPLP provided "no substantive response" to GRS's "detailed concerns and requested specific information." GRS M.B. at 17-18. As detailed in Appendix 1, at page 20, these assertions could not be further from the truth. The record contains ample testimony and exhibits proving that SPLP did not dismiss GRS's concerns and, in fact, SPLP replied and provided significant and continuous responsive information to each and every one of GRS's inquiries, no matter how frivolous or litigious they were. *See generally* SPLP M.B. at 31-37; SPLP St. No. 2-R, SPLP St. 7-R, SPLP St. No. 2-RJ, SPLP St. No. 7-RJ; See also Exs. GRS-103, GRS-111, GRS-159, GRS-160, GRS-163 – GRS-165; *see also*, *e.g.*, SPLP Exs. DA-1 – DA-29.

Next, GRS asserts that "[a]lthough Sunoco promised at times to provide the requested information, it never followed through…" and identified three biased, inaccurate, and ultimately hearsay allegations to support their claim. GRS M.B. at 18. As detailed in Appendix 1, at page 20-21, these hearsay statements, with no corroborating substantial evidence of record, cannot be relied upon to form the basis of a finding of fact.[16] Additionally, GRS cites hearsay in an attempt to corroborate hearsay – such hearsay to support hearsay allegations cannot serve met GRS's burden to present substantial and reliable evidence of record.[17] These hearsay allegations must be dismissed for what they are – uncorroborated and biased statements entirely unsupported by substantial evidence of record that cannot be relied upon to form the basis of a finding of fact.

GRS next claims that SPLP allegedly failed to provide GRS's communications to SPLP's witness Joseph Becker. GRS M.B. at 18. As described in Appendix 1 at 22, GRS brazenly

[16] *Supra Walker/Chapman.*

[17] Hearsay cannot corroborate hearsay. See *Sule v. Philadelphia Parking Authority*, 26 A.3d 1240, 1244 (Pa. Cmwlth. 2011), citing *J.K. v. Department of Public Welfare*, 721 A.2d 1127, 1133 (Pa. Cmwlth. 1998) (noting substantial evidence did not exist because there was no non-hearsay evidence to corroborate hearsay testimony).

misrepresents the record. While the testimony of Mr. Becker speaks for itself, it is clear that Mr. Becker did not testify that SPLP failed to provide him with communications from GRS. *See* N.T. 591:21-22, 592:1-594:1, 594:8-11, 597:17-598:4. Such meritless and mischaracterized argument cherry-picking and skewing the record cannot be given any weight.

Additionally, GRS delves into another escapade of misrepresentation, improper citations to withdrawn pleadings, and mischaracterizations regarding the Emergency Petition filed by GRS regarding signage and the subsequent February 23, 2021 Town Hall agreed to by the parties to resolve the Emergency Petition. GRS M.B. at 18-20. As described in Appendix 1 at 23-24, this entire argument based on the Emergency Petition pleading is improper as the Emergency Petition 1) is not record evidence and cannot form the basis of a finding of fact as it is only a pleading containing baseless assertions to which SPLP was not required to file a response, thus the allegations are deemed denied,[18] and 2) the parties stipulated that in fact "there is no danger zone associated with SPLP's construction activities at GRS's property outside of Sunoco's worksite."[19] Additionally, GRS asserts various falsehoods regarding the February 23, 2021 Town Hall. GRS M.B. at 18-19. To support its argument, GRS once again relies on GRS counsel of record's hearsay emails for the truth of the matter contained therein which were barred by Your Honor and GRS's own representations. *See* Section II.A.1. Overall, SPLP presented significant safety information, updated construction timelines, and addressed numerous residents' questions during the Town Hall which is a publicly posted recording that speaks for itself. SPLP St. No. 3-R, Rebuttal of Joe Becker at 11.[20] Additionally, SPLP provided significant follow-up and updates to GRS and its residents after the Town Hall. *See, e.g.,* SPLP Exs. JM-5, JM-6

[18] 52 Pa Code § 3.6(c)
[19] Petition Pursuant to 52 Pa. Code § 5.94 to Withdraw the Petition of Glen Riddle Station L.P. for Interim Emergency Relief as Moot Due to Resolution at ¶ 2
[20] Link to recording provided therein: https://vimeo.com/516385012/b8760dd9cd

GRS further misrepresents the communications SPLP had with Middletown Township as well as between the parties regarding sound walls, clean fill certificates, and groundwater concerns raised by GRS. GRS M.B. at 19-20. As described in Appendix 1 at 24-25, each of these assertions are either provably false by the evidence of record and/or are blatant mischaracterizations of the testimony and exhibits. See GRS-131, 145 (Twp. Communications); SPLP St. No. 7, McGinn Rebuttal at 11:16-18 and SPLP JM-9 (Twp. Communications); SPLP St. No. 4, Fye Rebuttal at 16:7-9 and JF-2 (clean fill); and GRS-128 (groundwater and stormwater).

Finally, GRS again makes demonstrably false allegations regarding communications on initial plans for sound walls, fencing, minor "leaks" during construction, and other matters. GRS M.B. at 55-56. SPLP responded to and provided sufficient responses to each of these events, yet nothing could ever satisfy GRS's litigious and monetary focused demands. See Appendix 1 at 50-51. Regarding the initial plans for sound walls, SPLP has addressed this issue at length above and in the record. SPLP St. No. 4, Fye Rebuttal at 7:22-8:3; *see also* SPLP St. No. 2-R, Amerikaner Rebuttal at 13:11 – 14:12; Exhibit No. DA-19, DA-20, DA-21, DA-22, DA-23. Regarding the placement of fencing and demarcation of SPLP's worksite, SPLP's contractor, Jayme Fye, testified at length that the worksite was properly marked and that the sound walls rendered GRS the most demarcated worksite he knows. SPLP St. No. 4, Fye Rebuttal at 13:19-24. Regarding minor leaks, Jayme Fye also explained at length the notification and information provided to GRS clearly refuting GRS's baseless allegation. SPLP St. No. 4, Fye Rebuttal at 14:13-15:18. These examples are, once again, simply misrepresentations of or skewing the record to create GRS's desired story while ignoring the entire record and refuting evidence.

As argued in SPLP's Main Brief, SPLP patiently, reasonably, meaningfully, and substantively responded to GRS on each occasion – no matter how frivolous the claim or litigation-

driven GRS's allegations or accusations were. SPLP's communications with GRS were reasonable and prudent, and GRS's cherry-picked and concocted story based on hearsay, half-truths and outright lies when misconstruing the evidence in the case must be given no weight.

c. GRS's Main Brief mischaracterizes and misrepresents prior Commission proceedings on Public Awareness for operational pipelines which do not apply here.

In its Main Brief, GRS cites, mischaracterizes, and misapplies three Commission proceedings involving SPLP to support its various baseless arguments regarding SPLP's Public Awareness Plan, applicable only to operational pipelines,[21] not SPLP's new pipeline construction at the GRS property. GRS M.B. at 23-24, 53-54; *citing Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3001453, C-2018-3001451, Opinion and Order (Order entered June 15, 2018) ("*Dinniman*"); *Flynn et al. v. Sunoco Pipeline*, L.P., Docket No. C-2018-3006116, Initial Decision (Initial Decision entered April 12, 2021)(ALJ Elizabeth Barnes)("*Flynn Initial Decision*"); *Baker v. Sunoco Pipeline L.P.*, Docket No. C-2018-3004294, Opinion and Order (Order entered Sept. 23, 2020)("*Baker*"). Each of these cases which dealt with concepts involving SPLP's Public Awareness Program for its operational pipelines have no application to the instant complaint and are entirely distinguishable.

First, GRS cites *Dinniman* for the argument that "the Commission ordered Sunoco to prepare [a public awareness plan] after it failed to communicate responsibly with those affected by its work" and that the Commission ordered Sunoco to submit its public awareness plan to the Commission. GRS M.B. at 23. These arguments are wholly inaccurate. First, the Commission in *Dinniman* did not find that SPLP had failed to communicate with the public and simply ordered SPLP to file its existing plans and procedures with the Commission as a condition prior to the

[21] *See* SPLP MB at 27-31; *supra* Section (A)(8)(a).

resumption of construction of ME2 and ME2X. *See Dinniman*, Ordering Paragraph 6. The Commission notably did not find the SPLP's public awareness plan was non-complaint with the requirements of 49 C.F.R. § 195.440. *Dinniman*. Additionally, the Commission's Order in *Dinniman* was ultimately reversed by the Commonwealth Court on September 9, 2019, and the Commission dissolved the interim emergency injunction and dismissed the Complaint. See *Dinniman*, Secretarial Letter issued September 19, 2019. *Dinniman,* therefore, holds no precedential or persuasive value in this proceeding and GRS's reliance thereon must be given no weight.

Next, GRS cites *Baker* for the premise that SPLP is required to hold "additional public awareness meetings" even though the Commission declined to require SPLP to expand or modify its Public Awareness Program in resolution of that Complaint. GRS M.B. at 53-54. GRS's argument, by design, explicitly ignores the unique circumstances of *Baker* that are wholly unrelated and not binding on the instant case. In *Baker*, the complainant raised issue with SPLP not attending a public Township meeting to discuss public awareness with Lower Frankford Township related to operational aspects of SPLP's facilities. Ultimately, the Commission ordered SPLP attend a Township meeting to discuss aspects of its operational pipelines and emergency response programs and procedures. *Baker*. However, the record in the instant proceeding is distinct from the holding of *Baker*, and GRS's reliance on *Baker* to argue that SPLP must have additional public awareness meetings for its new pipeline construction has no evidentiary support. First, this proceeding deals only with new pipeline construction and SPLP's public awareness plan and 49 C.F.R. § 195.440 do not apply.[22] Second, regardless of this fact, the record shows that SPLP in fact does meet ***bi-weekly*** with townships across Delaware County, including Middletown

[22] See SPLP M.B. at 27-31; *supra* Section (A)(9)(a).

Township, to discuss all aspects of SPLP's construction, operations and maintenance work, and public awareness within the Township. SPLP St. No. 7-R, McGinn Rebuttal at 9:12-13. Simply put, GRS's reliance on *Baker* is misplaced and the Commission's holding is inapplicable to this proceeding.

In a final mischaracterization, GRS cites the *Flynn Initial Decision* for the inaccurate points that "the Commission" found that Sunoco unreasonably withheld information for emergency response planning and that "the Commission" required SPLP to undertake remedial action. *Flynn Initial Decision*. As Your Honor is aware, the *Flynn Initial Decision* is not a Commission issued Opinion and Order and carries no precedential or persuasive value and indeed "the Commission" has not affirmed or denied the Initial Decision to date. That matter is currently pending disposition after the parties' filed exceptions to ALJ Barnes' Initial Decision issued April 12, 2021. *Flynn Initial Decision*. Regardless, GRS's reliance on the *Flynn Initial Decision* is similarly flawed to the cases cited above. The *Flynn Initial Decision* dealt with SPLP's public awareness program as it exists for operational pipelines under 49 C.F.R. § 195.440 unrelated to SPLP's new pipeline construction. Here, SPLP provided unrefuted evidence that it is in compliance with all applicable standards regarding public awareness for GRS and GRS residents, including SPLP's mailing of public awareness brochures to all GRS residents who live or work near SPLP's pipelines in September of 2020. SPLP St. No. 7-R, McGinn Rebuttal at 7:9-21; SPLP Exhibit JM-3. As stated above, the record shows that SPLP also meets ***bi-weekly*** with townships across Delaware County, including Middletown Township, to discuss all aspects of SPLP's construction, operations and maintenance work, and public awareness within the Township. SPLP St. No. 7-R, McGinn Rebuttal at 9:12-13. GRS's reliance on the *Flynn Initial Decision* is again misplaced and inapplicable to GRS's allegations regarding SPLP's new pipeline construction at its property.

B. The Commission lacks jurisdiction over PennDOT, Federal Highway Administration, DEP, Middletown Township (including the International Fire Code), OSHA, CDC statutes, regulations, guidance and/or permits.

GRS argues that "[c]ommunity standards, guidelines, and laws can be relevant to the duty of safety that a public utility owes under the [Public Utility] Code." GRS M.B. at 25 (citing *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, No. 1548 C.D. 2018, 2019 WL 4858352 (Pa. Cmwlth. 2019) (*West Penn Power Co.*)). Moreover, GRS concludes that "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 [Public Utility] Code." GRS M.B. at 26. As an example, GRS contends that SPLP's "failure to prepare a traffic plan violated [the Pennsylvania Department of Transportation ("PennDOT")] and [Federal Highway Administration ("FHWA")] guidelines," which "in and of itself – establishes that [SPLP] created safety threats in violation of the Code." GRS M.B. at 28.

GRS's argument, however, fundamentally misrepresents the nature of the Commission's jurisdiction and its enforcement authority under the Public Utility Code. It is axiomatic that the power and authority of agencies must be conferred by clear and unmistakable legislative language and agencies can only "act within the strict and exact limits defined." *Process Gas Consumers Grp. v. Pa. Pub. Util. Comm'n*, 511 A.2d 1315, 1319 (Pa. 1986) (citations omitted). A doubtful power does not exist. *Id*. Here the Commission's enforcement authority under Section 1501 is strictly limited to ensuring the adequacy, efficiency, safety, and reasonableness of the utility's service and facilities. 66 Pa. C.S. § 1501. The Commission cannot, however, determine that a utility's actions violate a statute, regulation, or ordinance that it otherwise does not have authority to administer to support a safety violation under Section 1501. *See Country Place Waste Treatment v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 75-76 (Pa. Cmwlth. 1995) (holding that the Commission

did not have jurisdiction to find a wastewater utility violated Section 1501 on the basis that its sewage treatment plant was emitting offensive odors because it does not have jurisdiction over air quality standards).

There are limited circumstances where the Commission can apply the laws of another agency, but only where its regulatory authority is co-extensive with another agency and such regulations are properly incorporated into the Commission's regulations by rulemaking. *See e.g.*, 52 Pa. Code § 59.33(b) (incorporating the pipeline safety laws as found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195, and 199); *see also Harrisburg Taxicab & Baggage Co. t/a Yellow Cab v. Pa. Pub. Util. Comm'n*, 786 A.2d 288 (Pa. Cmwlth. 2001) (holding that the Commission could find a violation of Section 1501 where a common carrier violated PENNDOT's vehicle inspection regulations, as incorporated by 52 Pa. Code § 29.402(1), because the taxis were part of the common carrier's 'facilities'). Thus, contrary to GRS's statements, the Commission does not have general authority to interpret or make a finding that a utility violated the community standards, guidelines, or laws of municipalities or other state agencies to support a safety violation under Section 1501.

GRS's cited caselaw does not support the arguments it seeks to make that the Commission should extend its jurisdiction beyond the safety of public utilities in the Commonwealth. *See* GRS M.B. at 25-26. The case GRS relies upon, *West Penn Power Co*, is an unpublished decision from the Commonwealth Court, where the court found that the Commission had authority to consider the reasonableness of vegetation management practices under Section 1501 because vegetation management was a public utility service as defined under Section 102 of the Public Utility Code. *West Penn Power Co.*, 2019 WL 4858352, at *6. The Court, however, noted that the Commission "did not and could not prohibit use of herbicides at the subject location under the [Clean Stream

Laws] or the Pesticide Control Act," for which it did not have jurisdiction over. *Id*. at *7. The *West Penn Power Co.* decision reinforces the Commission's limited jurisdiction and recognizes that the Commission's authority does not extend to issues within the purview of other state and federal agencies, like the DEP.

Accordingly, GRS's argument that the Commission should interpret and determine whether SPLP violated PennDOT and FHWA guidelines, IFC provisions, Township Ordinances (such as requiring a variance), DEP and Township permits, OSHA or CDC noise guidelines, to support a safety violation under Section 1501 of the Public Utility Code should be dismissed as the Commission does not have the authority to make such a finding. *See* GRS M.B. at 28.

C. GRS's inappropriate, new request for penalty or injunctive relief must be denied.

1. GRS cannot seek relief it never pled

For the first time in its Main Brief GRS requests that the Commission (1) direct SPLP to pay civil penalties in the amount of $2,000,000, and (2) require at least fifty (50) hours of safety training, at Sunoco's expense, for Sunoco and its employees, as well as Sunoco's contractors' employees that work on behalf of Sunoco in residential areas. GRS M.B. at 1-2, 20-21, 58-60. Such relief is necessary, GRS claims, "[t]o deter Sunoco from engaging in similar conduct and to avoid preventable tragedies." GRS M.B. at 1-2. Putting aside the utter lack of a basis for the requested relief, GRS's eleventh hour request violates SPLP's due process rights and SPLP's right to a fair and meaningful opportunity to be heard. GRS has waived these requests for relief that were not made in its Complaint or any amendment thereto, were not raised in testimony by GRS, and were not requested by any oral motion at the hearing, but instead are requested now for the very first time in its Main Brief. What GRS is attempting to do is add an entirely new claim to this case well after the evidentiary record is closed, without any basis or justification in law or in

fact, without following the proper procedures, and without offering any excuse as to why it did not seek such relief at the outset of this case, or at any time during the nearly year-long period the case has been pending, which has been rife with docket entries and motion practice. GRS's newly-requested relief must be denied.

The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by principles of common fairness. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014). Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. *Id*. Moreover, "the right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them." *Morgan v. United States*, 304 U.S. 1, 18 (1938) (*Morgan*). Thus, the "requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps." *Id*.

To that end, Section 5.431 of the Commission's regulations further prescribes that "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission. 52 Pa. Code. § 5.341(a). Particularly relevant here, it states that "[a]fter the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." *Id*. Furthermore, petitions to reopen the record can only be granted "if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding." 52 Pa. Code § 5.571.

Here, at this late stage of the proceeding, GRS attempts to introduce additional matter by seeking new requests for relief that were not previously pled or requested. GRS, however, has had several opportunities to raise these new requests for relief through written testimony and at the evidentiary hearings, but chose not to do so at any proper time since it filed its Complaint on December 2, 2020. Moreover, GRS was fully aware that construction was complete, and the property restored, as of the close of the evidentiary hearings, leaving its initial claims for relief moot. *See* SPLP M.B. at 20-23. GRS then had the opportunity to raise these new requests for relief prior to the close of the record but failed to raise them. GRS has not proffered any reason for its delay in raising these requests until well after the close of the pleadings and the evidentiary record and cannot show any change of fact or of law to warrant the Commission to consider its new, untimely relief sought which SPLP has no opportunity left to present responsive evidence.

To now consider GRS's request for a civil penalty and mandatory injunctive relief would fundamentally violate SPLP's due process rights. SPLP lacks any opportunity to respond to this new, never-pled requested relief, let alone adequate notice that GRS intended to hide the ball and attempt to litigate these claims before the Commission by raising new relief requests for the very first time in its Main Brief. Considering such relief would deny SPLP an opportunity for a fair and meaningful opportunity to be heard. Put simply, GRS's late-hour attempt to seek entirely new relief it never before requested cannot and should not abridge the due process rights of SPLP.

2. <u>The Complaint remains moot and GRS lacks standing for the relief now sought.</u>

Notwithstanding that GRS's new requests for relief violate the due process rights of SPLP, GRS does not have standing to pursue these claims before the Commission. As discussed in SPLP's Main Brief, the active construction work, which was GRS's entire basis for the instant proceeding, has since concluded and is no longer ongoing. SPLP M.B. at 20-21. Thus, GRS's

complaint is moot and it no longer has any direct, immediate, or substantial interest in litigating its claims before the Commission. Moreover, there is no right of private attorney general in Pennsylvania generally and specifically in Commission proceedings and GRS' attempt to represent the interests of others as to what they allegedly want or what GRS thinks others should have, is legally prohibited. *See George v. Pa. Pub. Util. Comm'n*., 735 A.2d 1282 (Pa. Cmwlth. 1999) (holding that standing requires an adequate causal relationship between the claimed injury and the action in question and an individual lacks a substantial personal interest to pursue claims on behalf of others); *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 2269, 282 (Pa. 1975) ("Thus, the requirement of a 'substantial' interest simply means that the individual's interest must have substance—***there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law***.") (emphasis added).

To have standing to seek judicial relief, the plaintiff must show that it is aggrieved by the action or matter it challenges. *Americans for Fair Treatment, Inc. v. Philadelphia Federation of Teachers*, 150 A.3d 528, 533 (Pa. Cmwlth. 2016) (citations omitted) (*Americans for Fair Treatment*). A plaintiff is aggrieved only if it is adversely affected and has a substantial, direct, and immediate interest in the matter at issue. *Id*. To be 'substantial,' the plaintiff's interest must be distinct from and surpass the interests of all citizens in procuring compliance with the law. *Id*. To be 'direct,' there must be a causal connection between the harm to the plaintiff's interest and the alleged violation of law that is the subject of the action. *Id*.; *see also Pamela Giacomel Luke v. Columbia Gas of Pa., Inc., et al*., Docket No. C-2014-2425948, 2014 WL 3834555 at *5 (Initial Decision entered Jul. 18, 2014) ("Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding"). The interest is 'immediate' if the causal

connection is not remote or speculative. *Americans for Fair Treatment* at 533; *see also Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1287-88 (Pa. Cmwlth. 2019) (*Dinniman Appeal*).

In addition, the complaining party must show some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. *Wm. Penn. Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) ("In particular, it is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law."). In other words, there is no private right to act as an attorney general on behalf of a general concern for compliance with the law. Ultimately, standing requires the complainant to be negatively impacted in some real and direct fashion. *Dinniman Appeal*, 217 A.3d at 1288 (citations omitted). Absent that negative impact, the moving party lacks standing to pursue a formal complaint before the Commission. *Id*.

Importantly, standing must exist at the time of and throughout the legal proceeding – a past interest that is no longer affected cannot confer standing. *Tishok v. Dep't of Educ.*, 133 A.3d 118, 124 (Pa. Cmwlth. 2016) (citations omitted); *see also Application of Philadelphia Suburban Water Co. for Approval to Begin to Offer, Render, Furnish, and Supply Water Service to the Public in an Additional Portion of Honey Brook Township, Chester County, PA*, Docket No. A-212370F0052, 2000 WL 35798002 (Order entered Sept. 14, 2000) (dismissing citizen protest to service territory expansion because their property was later removed from the proposed service area).

Similarly, under the mootness doctrine, "an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Brouillette v. Wolf*, 213 A.3d 341, 366 (Pa. Cmwlth. 2019); *see also Mistich v. Commonwealth*, 863 A.2d 116, 121 (Pa. Cmwlth. 2004) ("[M]ootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so. We are not in the business

of pronouncing that past actions which have no demonstrable continuing effect were right or wrong.") (citations omitted); *see also* SPLP M.B. at 20-23.

GRS's claims should be dismissed because the initial complaint is now moot and GRS lacks standing to proceed any further with its desire to act as a private attorney general. First, it is undisputed that the construction complained of has since concluded and the property has since been restored to its original condition. N.T. 640:7-11; Davidson Cross Exh. No. 1. Thus, because GRS's initial claims for relief have already occurred, *i.e.*, cessation of construction, there is no demonstrable continuing effect of the conduct at issue, leaving GRS's initial complaint and request for relief moot. *See also* SPLP M.B. at 20-23. Likewise, GRS counsel acknowledged that the entire Complaint would be moot once construction concluded. *See* N.T. 10:19-22.

Moreover, because GRS's complaint and request for relief are now moot, GRS lacks standing to proceed any further with litigation before the Commission. As GRS stated in its Main Brief, GRS requests that the Commission direct SPLP to pay a civil penalty and require employee training in an effort "[t]o deter Sunoco from engaging in similar conduct and to avoid preventable tragedies." GRS M.B. at 1-2. In this regard, recognizing that its initial complaint and request for relief have been rendered moot, GRS now seeks to assert the common interests of all parties in penalizing Sunoco, which it simply cannot do. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975); *see e.g. Mistich*, 863 A.2d at 121 ("Petitioner's allegations of detrimental consequences to the general public, including 'the bench and bar,' rather than to a party to this case, are likewise insufficient. Petitioner does not speak for the public. These allegations fail to breathe life into the mooted controversy of credit applied to a sentence that has been completed."). Simply put, GRS has no right to act as a private attorney general to pursue general civil penalties or unfounded companywide employee training requests wholly

unrelated to the allegations contained within the four corners of its complaint or within the scope of the now closed evidentiary record of this proceeding. For these reasons, GRS lacks standing before the Commission to pursue these new requests for relief and the new relief must be denied.

3. A civil penalty is not warranted.

In addition, notwithstanding that GRS has failed to prove SPLP violated any statute, regulation, or Commission order, when applying the factors set forth under Section 69.1201 of the Commission's regulations, 52 Pa. Code § 69.1201, GRS has not demonstrated that any civil penalty is warranted even if it had properly raised this issue—which it did not—and by such failure precluded SPLP from introducing evidence regarding the *Rosi* standards.

When evaluating violations of the Public Utility Code and Commission regulations, the Commission considers the following factors:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201. It should be noted that GRS does not address any of these factors in its Main Brief. Nevertheless, SPLP will address each factor below.

With respect to the first and third factors, as SPLP demonstrated in its Main Brief and above, GRS failed to prove that SPLP's conduct violated any specific statute, regulation, or Commission order, let alone any conduct that is of a serious nature, such as willful fraud or misrepresentation. Rather, the evidence demonstrates that SPLP acted reasonably at all stages of construction. For example, SPLP utilized sounds walls to prevent unauthorized personnel from accessing the worksite and to mitigate sound levels of the construction (SPLP St. No. 4-R, Fye Rebuttal at 14:3-10), worked closely with Middletown Township to ensure emergency vehicle access (SPLP St. No. 3-R, Becker Rebuttal at 16:13-19), provided financial mitigation to residents/renters at GRS (SPLP St. No. 7-RJ, McGinn Rejoinder at 2:16-18; SPLP Exh. JM-5; N.T. 243:2-9), and communicated extensively with GRS residents during the construction period (SPLP St No. 7-R, McGinn Rebuttal at 11:10-12:23). Taken as a whole, these actions, as well as SPLP's general conduct throughout construction demonstrate that SPLP's conduct was reasonable.

With respect to the second factor, GRS only provides evidence that demonstrates a speculative possibility of harm that never actually occurred. As the Commission stated previously, in applying these factors it "will evaluate the actual harm sustained rather than engaging in any amount of speculation about the potential for harm." *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*,

Docket No. M-0051875, 2007 WL 7232875, at *6 (Order entered Nov. 29, 2007). That is, the Commission declines to speculate about the possibility of potential, and not actual harm, to third parties. *Id*., at *7; *see e.g. David W. Williams v. West Penn Power Co.*, Docket No. C-2013-2345879, 2014 WL 2427084 at *5 (Opinion and Order entered May 22, 2014) ("We agree with the ALJ that the Complainant failed to establish that the low voltage caused damage to his air condition unit, nor did the Complainant establish that the low voltage caused any other property damage.") (*Williams*). In this proceeding, the evidence demonstrates that:

- Emergency responders were able to access the property within the same response time during construction as prior to construction;
- There were no traffic or pedestrian incidents on the property;
- School children accessed the temporary bus stop without incident;
- No resident's hearing was damaged from construction noise;
- Vibrations from construction did not cause injury or damage;
- No construction materials or chemicals harmed anyone;
- While water service was temporarily disrupted, the water was safe to consume; during the interim between the break in the water line and confirmation of the safety of the water, SPLP provided bottled water for residents.

SPLP M.B. at 42. In other words, no harm to any residents of GRS occurred and the GRS property has since been restored to its pre-construction condition. Additionally, since the 2012 amendment to 66 Pa. C.S. § 3301(c) which increased the maximum civil penalty for gas pipelines to not exceed a maximum of $2,000,000,[23] the Commission has issued civil penalties to gas pipeline utilities where accidents caused fatalities, injuries, and substantial property damage at significantly lower than GRS's requested maximum civil penalty request here, in a case where no actual harm was established. *See e.g. PA PUC v. Continental Communications, LLC, and Hickory Hills MHC, LLC*,

[23] Notably, this statutory maximum for any related series of violations is the same amount sought for the first time in GRS's main brief.

Docket No. C-2015-2468131, Order (Order entered August 11, 2016) (adopting in full the Initial Decision of ALJ Joel Cheskis entered June 7, 2016 finding the settlement civil penalty of $1,000,000 was in the public interest where a propane distribution system explosion resulted one fatality, one injury, and significant property damage). Therefore, when applying the second factor, it does not weigh in favor of issuing a civil penalty as there were no resulting consequences of any of SPLP's conduct that were of a serious nature established in the record.

With respect to the fourth factor, the record shows that SPLP was responsive to the concerns of GRS, trying to accommodate each and every concern raised by GRS and its residents prior to and throughout construction. For example, SPLP directly communicated with GRS representatives extensively prior to and during construction to remedy concerns, including responses to hundreds of emails, demands, threats, phone calls, in-person meetings, and other requests. SPLP M.B. at 26. SPLP also provided financial mitigation to the residents/renters at GRS (SPLP M.B. at 38; *see also* SPLP St. No. 7-RJ, McGinn Rejoinder at 2:16-18; SPLP Exh. JM-5; N.T. 243:2-9), hosted a virtual town hall meeting to answer concerns of residents (SPLP M.B. at 4), provided letters, fact sheets, construction updates, a 24/7 community hotline, and refrigerator magnets with contact information (SPLP St. No. 7-R, McGinn Rebuttal at 11:10-12:23), communicated with the local school district regarding temporarily moving the school bus stop and paid for the provision of additional crossing guards (SPLP M.B. at 50; *see also* SPLP St. No. 3-R, Becker Rebuttal at 16:20-23), worked directly with the Township to ensure sound wall placement would not interfere with emergency response to the property (SPLP MB at 43-46), and provided bottled water for residents when the water main break occurred (SPLP M.B. at 58, *see also* SPLP St. No. 4-R, Fye Rebuttal at 6:13-23, SPLP St. No. 4-RJ, Fye Rejoinder at 3:2-16).

Thus, at every stage of construction, SPLP went above and beyond by ameliorating the inconveniences or concerns raised by GRS or residents as reasonably well as it could.[24]

With respect to the fifth factor, GRS has failed to allege any harms that were actually suffered by GRS or any of its residents. Rather, GRS seems to extrapolate any inconvenience it can find to argue potential, speculative harms that could have occurred during construction. *See e.g.* GRS M.B. at 4 (speculating that unavailability of parking spaces could lead to injury or death), GRS M.B. at 6 (speculating that potholes in a grassy area where children play could lead to serious injury), GRS M.B. at 8 (speculating that the temporary change to the school bus stop could lead to injury), GRS M.B. at 9, fn. 1 (speculating that the sound walls could have resulted in runoff that could result in apartment units flooding and other damage). Mere speculation, however, is not sufficient for the Commission to issue a civil penalty. *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 2007 WL 7232875, at *6. The truth is that no harm to GRS or its residents actually occurred or was in danger of occurring. Indeed, very few residents themselves directly raised any concerns during construction. SPLP M.B. at 38-39, *see also* SPLP St. No. 7-R, McGinn Rebuttal at 12:15-23, SPLP St. No. 4-R, Fye Rebuttal at 5:4-5. Thus, this factor weighs against the imposition of a civil penalty.

Regarding the sixth factor, SPLP has a demonstrated history of complying with the Public Utility Code, Commission regulations and orders, and providing adequate, efficient, safe, and reasonable service and facilities. Sunoco has operated its Mariner East 1 pipeline since 2014, and recently placed its Mariner East 2 and 2x pipelines into service. SPLP has never been found in violation of the Public Utility Code, Commission regulations, or a Commission order regarding its

[24] As SPLP indicated in its Main Brief, SPLP's actions were even more reasonable when viewed in light of the actions taken by other contractors that GRS hired for other work to be done on the premises. SPLP MB at 47-48, fn. 15.

new pipeline construction. SPLP's compliance history shows it is in compliance with all applicable statutes and regulations and has no prior findings of violations for consideration under the sixth factor.

Regarding the seventh factor, SPLP notes that this was not a Commission investigation, but rather a fully litigated private party complaint, which the Commission has stated weighs against a high civil penalty. *See e.g. Williams*, 2014 WL 2427084 at *6.

With respect to the last three factors, which are inter-related, these factors do not weigh in favor of the Commission imposing a civil penalty. For example, past Commission proceedings involving similar customer service situations have not resulted in a civil penalty. *See e.g. Audrey McKee Orr v. Peoples Natural Gas Company, LLC*, 2018 WL 6931970 at *7 (violation of notice provision does not warrant civil penalty because Peoples' representatives were on-site at the residence the day of the water leak and the homeowner's representatives agreed to meter relocation in oral discussions with Peoples), *Anthony Encarnacion v. PPL Electric Utilities Corp.*, Docket No. C-20078087, 2008 WL 8014612 at *4 (Opinion and Order entered Sept. 25, 2008) (finding that a civil penalty is not warranted because, while the utility's handling of the errant billing issue was initially inadequate, the utility made later efforts to explain the matter to the customer); *Nakanishi v. Verizon Pa. LLC*, Docket No. C-2017-2633962, 2018 WL 4466827 (Initial Decision entered Aug. 8, 2018) (finding that simple communication issues do not constitute unreasonable service warranting a civil penalty), *aff'd*, Docket No. C-2017-2633962 (Final Order entered Oct. 5, 2018), *David Oliver v. PECO Energy Co.*, Docket No. F-2012-2305431, 2013 WL 4761270 at *7 (Opinion and Order entered Aug. 29, 2013) (reversing an ALJ decision to impose a civil penalty because the utility's actions were reasonable, it was able to adequately explain and resolve complainant's concerns, and the fact that complainant was not satisfied with the utility's answers

and filed a formal complaint does not mean the utility provided unreasonable service). In this instance, SPLP has reasonably responded to the concerns raised by GRS. Thus, these factors weigh against imposing a civil penalty on SPLP.

For all these reasons, when applying the ten factors set forth in 52 Pa. Code § 69.1201, a civil penalty is not warranted.

4. GRS is not entitled to injunctive relief.

GRS's request for employee safety training should also be denied because it has not demonstrated that it is entitled to such mandatory injunctive relief. The Commonwealth Court plainly summarized the requirements for obtaining mandatory injunctive relief in *Big Bass Lake Community Ass'n v. Warren*:

> An injunction is a court order that can prohibit or command virtually any type of action. It is an extraordinary remedy that should be issued with caution and 'only where the rights and equity of the plaintiff are clear and free from doubt, and where the harm to be remedied is great and irreparable.' The required elements of injunctive relief are: a clear right to relief; an urgent necessity to avoid an injury that cannot be compensated in damages; and a finding that greater injury will result from refusing, rather than granting, the relief requested. Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury. It has often been said that 'the decree of a chancellor is of grace, not of right. This does not, of course, mean that decree is to be granted or withheld merely at the whim or caprice of the chancellor.' The power to grant or to refuse an injunction 'rests in the sound discretion of the court under the circumstances and the facts of the particular case....'
>
> Although every injunction is extraordinary, the injunction that commands the performance of an affirmative act, a mandatory injunction, is the rarest, described as an 'extreme' remedy. The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction.

950 A.2d 1137, 1144 (Pa. Cmwlth. 2008) (citations omitted); *see also West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, Recommended Decision at 42 (Barnes, J.)

(adopted in full by Commission by Order dated Oct. 1, 2018). With respect to a permanent or final injunction, while the party need not establish irreparable harm or immediate relief, such relief must be necessary to prevent a legal wrong for which there is no adequate redress at law. *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002).

GRS, however, has not met this standard. First, GRS has not demonstrated a clear right to relief. It has failed to prove a violation of any statute, regulation, or Commission order. *See* SPLP M.B. *passim*. Instead, the evidence of record demonstrates that SPLP's conduct was reasonable prior to and during the active construction at GRS's property, and that SPLP's construction produced no legitimate safety events despite GRS's hollow cries to the contrary. It is also notable that GRS still has a legal remedy available – to seek monetary damages in a civil action in a court of competent jurisdiction – should it be able to present sufficient evidence of such damages in a proper forum, which it cannot. The Commission, however, is not the appropriate forum. *Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 375 (Pa. 1980).

Lastly, the injunctive relief that GRS requests is not narrowly tailored to abate the alleged harm. Requiring safety training for all SPLP employees and its contractor's employees, at SPLP's sole expense, goes well beyond the narrow scope of this proceeding and the harms alleged by GRS. *See e.g. Baker v. Sunoco Pipeline, L.P.,* Docket No. C-2018-3004294, 2020 WL 5877007 at *16 (Opinion and Order entered Sept. 23, 2020) (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record keeping, and complete an audit of the public awareness program by a third-party "were not justified on the basis of the finding of a violation of the duty to satisfy public awareness and outreach obligation under 49 C.F.R. § 195.440").

Accordingly, GRS has failed to meet its burden of demonstrating that it is entitled to the extreme remedy of Commission ordered employee safety training as injunctive relief and the newly requested relief must be denied.

III. CONCLUSION

SPLP respectfully requests that Your Honor conclude that the complaint is moot and that GRS failed to meet its burden of proof and the Complaint should be dismissed and denied.

Respectfully submitted,

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APPENDIX 1
Incorrect, Inaccurate, and Improper Citations in GRS Main Brief

Page	GRS Assertion/ Statement	Citation in GRS Brief	Contrary Statement/Evidence/Legal Principles
2	GRS explained to Sunoco the importance of maintaining this looped configuration long before Sunoco began its work.	GRS-158 - 161, 166.	GRS's statement has no evidentiary basis. GRS cites 5 exhibits, none of which "explained" the alleged importance of the looped configuration. Only one exhibit, GRS-166 mentioned the issue and it simply stated: "Please explain why no emergency vehicle connection was provided between the west and east sides of the property." The temporary absence of the looped road configuration did not create a safety issue for emergency vehicle access. SPLP MB at 43-46.
2	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	GRS-171 does not discuss the looped access configuration. Instead, it is GRS's counsel's hearsay email allegation (that cannot be the basis of a finding of fact and violates Your Honor's ruling on admission of emails authored by GRS' counsel)[1] of events surrounding a 911 call and emergency responder access to the GRS property on December 12, 2020. Contrary to GRS counsel's hearsay,[2] secondhand assertions, as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
2-3	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) 19:3-5	GRS Statement No. 1 does not support this sentence. To the extent GRS is referring to GRS Statement No. 1-SR, the testimony merely makes a hearsay allegation that an independent contractor, Mr. Fye, represented the upper parking lot would not be blocked. This hearsay statement cannot be the basis for a finding of fact.[3] Moreover, as explained above, Mr. Noll testified the temporary road configuration

[1] Order 1) Denying Motion in Limine of Glenn Riddle Station, L.P., 2) Granting in Part and Denying in Part Motion to Strike of Glen Riddle Station, L.P., 3) Denying Motion in Limine of Sunoco Pipeline L.P. (Entered Aug. 4, 2021) ("The statements and exhibits Sunoco seeks to strike will only be referenced to demonstrate that Glen Riddle attempted to communicate safety concerns to Sunoco's counsel and not that those safety concerns are in fact safety issues.").
[2] *Walker v. Unemployment Compensation Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) ("[h]earsay evidence, properly objected to, is not competent evidence to support a finding.") ("a finding of fact based solely on hearsay will not stand"); *Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n. 8 (Pa. Cmwlth. 2011).
[3] *Supra Walker/Chapman.*

Page	GRS Assertion/ Statement	Citation in GRS Brief	Contrary Statement/Evidence/Legal Principles
			during construction at the GRS property did not present safety issues for emergency response. SPLP MB at 43-46.
3	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 (Jay Etzel), 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.	These are merely allegations by Mr. Stephen Iacobucci for which he lacks firsthand knowledge. GRS St. No 2 at 8:18-20 (admitting Mr. Marquardt, who did not testify in this proceeding, took photographs allegedly supporting Mr. Stephen Iacobucci's assertions). This is not evidence. GRS also cites in support of this allegation SPLP St. No. 3-SR [sic], Mr. Becker's Rebuttal testimony. Mr. Becker's testimony does not support these assertions. In fact, Mr. Becker testified that ample parking remained at the GRS property, with dozens and up to 100 empty parking spots remaining available. While some parking spots were made unavailable, there was never a shortage of parking at the GRS apartments. SPLP St. No. 3-R, Becker Rebuttal at 14:17-16:5; SPLP Exhibit JB-2. GRS also cites GRS-23 "resident complaints." This exhibit contains a total of two resident complaints out of approximately 200 residents from a platform GRS set up specifically to garner resident complaints about SPLP's construction. These are hearsay and cannot be relied upon for the truth of the matter asserted therein.[4] They are not business records, as they are not records kept in the normal course of business, but instead a GRS attempt to create evidence to use against SPLP. GRS-23 (email from resident stating "You people are looking for support against this Pipeline BS"); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents."). Moreover, these assertions are highly unreliable on their face. The first complaint alleges SPLP "have taken over all available parking for residents." This is patently false and inconsistent with

[4] *Supra Walker/Chapman.*

Page	GRS Assertion/ Statement	Citation in GRS Brief	Contrary Statement/Evidence/Legal Principles
			GRS's own testimony and assertion in the brief. SPLP St. No. 3-R, Becker Rebuttal at 14:17-16:5; SPLP Exhibit JB-2. The second complaint has no date and merely makes assertions about parking spots being taken. It specifically acknowledges that this is only a convenience issue. GRS-23 at 2 ("This is an extreme inconvenience").
4	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)	GRS-25 is a hearsay email exhibit that cannot be used as the basis for a finding of fact.[5] The email does not discuss anything about traffic concerns, just the inconvenience of some parking spots being unavailable, placement of a port a potty, and a dumpster. It is clearly unreliable as it admits that GRS was fishing for resident support to create evidence to use against SPLP. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
4	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	There is no evidence that any resident had a reason to or in fact did park on the roadway. The testimony cited is a mischaracterization of a hearsay complaint from a resident, which cannot form the basis of a finding of fact.[6] The resident does not state that she or any other resident has in fact parked on the roadway. This resident complaint wholly lacks credibility, stating all parking spaces would be taken, which is patently false. SPLP St. No. 3-R, Becker Rebuttal at 14:17-16:5; SPLP Exhibit JB-2. Moreover, the resident complaints wholly lack credibility as it was clear GRS was attempting to create evidence to use against SPLP. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").

[5] *Supra Walker/Chapman.*
[6] *Supra Walker/Chapman.*

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4	Sunoco's failure to implement a traffic plan also impeded emergency vehicles' access to the Property.	GRS-110	GRS-110 is a hearsay allegation (that cannot be the basis of a finding of fact and violates Your Honor's ruling on admission of emails authored by GRS' counsel)[7] of events surrounding a 911 call and emergency responder access to the GRS property on December 12, 2020. Contrary to GRS counsel's hearsay,[8] secondhand assertions, as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
4-5	On December 12, 2021 [*sic*], a Resident made a 911 emergency call. Rocky Run Fire Department, Middletown Fire Department, and EMS responded to the call. 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"). 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.	GRS-110	GRS-110 is a hearsay allegation (that cannot be the basis of a finding of fact and violates Your Honor's ruling on admission of emails authored by GRS' counsel)[9] of events surrounding a 911 call and emergency responder access to the GRS property on December 12, 2020. Contrary to GRS counsel's hearsay,[10] secondhand assertions, as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
5	Instead, Sunoco installed only minimal signage.	T.T. (Farabaugh) 670:8-671:18	This assertion mischaracterizes Mr. Farabaugh's testimony. He testified that signs were placed as needed, at the entrances to the work

[7] *Supra* n.1.
[8] *Supra Walker/Chapman.*
[9] *Supra* n. 1.
[10] *Supra Walker/Chapman.*

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			space directing construction traffic to yield to residents. Mr. Farabaugh further explained that other signage was unnecessary because the area is a parking lot, and drive aisles obviously exist where cars are not parked, just like any other parking lot. The existing drive aisles through the parking lot were utilized. Moreover, there were barriers defining the work space and only three access points for the work space. N.T. 670:8-671:18.
5	Sunoco also failed to use flaggers.	T.T. (Fye) 653:19-654:2	This mischaracterizes and takes out of context Mr. Fye's testimony and relies upon unauthenticated, unreliable video footage. Mr. Fye in fact testified that there were ATSSA certified flaggers present in the video, but instead of using flags they had direct radio communication with the construction vehicles, and that there was no reason for the flaggers to come out into the travel lane and use flags in the scenario pictured in the video because there were no residents trying to back in or pull out. N.T. 653:10-23.
5	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; GRS-171 and 172 (videos showing a tanker truck making a k-turn and traversing the parking lot in reverse without traffic flaggers)	This mischaracterizes and takes out of context Mr. Fye's testimony and relies upon unauthenticated, unreliable video footage. Mr. Fye in fact testified that there were ATSSA certified flaggers present in the video, but instead of using flags they had direct radio communication with the construction vehicles, and that there was no reason for the flaggers to come out into the travel lane and use flags in the scenario pictured in the video because there were no residents trying to back in or pull out. N.T. 653:10-23.
5	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	GRS-155 is an unauthenticated video that obviously has a skewed perspective. The person who took the video was not identified or offered as a witness and SPLP was denied its right to cross examination of whoever shot this footage. It is not substantial or credible evidence. GRS completely misrepresents Mr. Becker's testimony. In fact, Mr. Becker testified "It's hard to tell how far they were from that person." N.T. 609:13-18. After watching the video again, Mr. Becker did not change his testimony. N.T. 609:19-610:2. Moreover, when Mr. Fye was shown this video, he testified "I wouldn't say it came close to the person taking the video. I would

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			assume he was probably on the curb or in the grass area. The orange barrels that Glen Riddle put up, it restricted the travel lane and made it tighter and in my opinion, a greater hazard. He [the truck driver] obviously stayed within the LOD, which was off the curb. So I would imagine the guy was most likely a minimum of five to six feet away unless for some odd reason he was on the road videotaping." N.T. 654:4-20.
7	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	There is no substantial evidence for the assertion that residents traversed the public highway. The GRS witness has no legal right to speak for or to represent residents, who could have, but did not testify as to where they walked or did not walk.
7	Sunoco never provided a pedestrian walkway.	GRS Stmt No. 1-SR (Stephen Iacobucci), 13: 1-2	There was never a pre-existing sidewalk or designated pedestrian pathway connecting the east and west side of the apartment complex. SPLP St. No. 4-R, Fye Rebuttal at 12:20-21. In fact, SPLP did offer to build a pedestrian walkway. GRS St. No. 1-SR at 13:1; N.T. 466:24-467:11 (Culp).
7	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	This statement mischaracterizes SPLP's approach to pedestrian safety. First, there was never a sidewalk for pedestrians to safely cross the property. SPLP St. No. 4-R, Fye Rebuttal at 12:20-21. Second, SPLP had flaggers in place whenever construction vehicles were present to help drivers identify any and all pedestrians in the area. These flaggers had direct radio communication with the construction vehicle drivers and thus did not have to rely on waving around a flag to communicate what was happening in the parking lot to the construction vehicle drivers. N.T. 644:12-23. Fourth, all construction vehicle drivers are trained in defensive driving, meaning they always yield to non-construction traffic and all pedestrians. SPLP St. No. 4, Fye Rebuttal at 11:9-11.
7	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	This statement completely mischaracterizes Mr. Fye's testimony. In fact, he stated: Q. Does Michel's require that those subcontractor drivers also take defensive driving courses? A. Yes. …

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			I know all of my drivers, which would be 95 percent of the people on this site, were required and do take it. The subs, I would assume that my safety personnel has vetted them. Otherwise, they wouldn't let me have them out here going. But I can't tell you that for 100 percent fact." N.T.655:1-657:22.
7	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 (Stephen Iacobucci), 16:1-16	This is false. SPLP did not begin any construction activities that interrupted use of the regular bus stops until December 4, 2020. Ex. GRS-109. SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7.
7-8	Sunoco did not contact the Rose Tree Media School District ("RTMSD") before it began its work.	GRS Stmt No. 7-SR (Jay Etzel), 9:3-14	This is false. SPLP did not begin any construction activities that interrupted use of the regular bus stops until December 4, 2020. Ex. GRS-109. SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7.
8	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 (Jay Etzel), 9:3-14	SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7. SPLP did not begin any work that interfered with use of the regular bus stop until December 4, 2020. SPLP Exhibit CF-7.
8	GRS learned that Sunoco had done nothing to provide for the safety of these children.	Id.; GRS-167	This is merely a hearsay statement based on a December 6, 2020 email that Mr. Stephen Iacobucci authored. It is not substantial or competent evidence and cannot be relied upon as the basis of a finding of fact.[11] Tellingly, the School District's response is redacted. In fact, SPLP had been in contact with the Rose Tree Media School District since December 1, 2020 to make alternate bus stop and crossing guard arrangements. SPLP Ex. CF-7 at 1 (December 1, 2020 email from Energy Transfer to Rose Tree Media School District Superintendent).
8	GRS then asked Sunoco to implement bus stop signage or a delineated, lighted area	GRS Stmt No. 1-SR (Stephen Iacobucci), 11:20-22	Energy Transfer asked the Rose Tree Media School District their preference on the bus stops and they wanted to move stops and use crossing guards. The school district, who is in charge of the students'

[11] *Supra Walker/Chapman.*

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	for children to stand while they waited for the school bus, but Sunoco refused.		safety, never made these requests. SPLP Ex. CF-7; Etzel Redirect Exhibit 1.
8	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	This mischaracterizes Mr. Becker's testimony. Mr. Becker was unaware of whether Mr. Farabaugh had seen the emails in question. Those emails do not change the fact that SPLP reached out to Rose Tree Media School District beginning December 1, 2020. N.T. 680:1-4. SPLP Ex. CF-7 at 1 (December 1, 2020 email from Energy Transfer to Rose Tree Media School District Superintendent).
8	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 allegation relies solely on GRS-23, as GRS Stmt No. 1 is merely a recitation of that exhibit. First, GRS-23 at page 2 is hearsay within hearsay and cannot be used as the basis of a finding of fact.[12] It is wholly unreliable and lacks even a date. Therein a resident alleges his wife and another child in the building had issues getting on the bus. The author of the email did not have firsthand knowledge of these events. Moreover, GRS was soliciting negative comments about SPLP to use as evidence in this proceeding from residents. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
8	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	This allegation relies solely on GRS-23, as GRS Stmt No. 1 is merely a recitation of that exhibit. First, GRS-23 at page 2 is hearsay within hearsay and cannot be used as the basis of a finding of fact.[13] It is wholly unreliable and lacks even a date. Therein a resident alleges his wife and another child in the building had issues getting on the bus. The author of the email did not have firsthand knowledge of these events. Moreover, GRS was soliciting negative comments about SPLP to use as evidence in this proceeding from residents. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your

[12] *Supra Walker/Chapman.*
[13] *Supra Walker/Chapman.*

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			concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
8-9	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	SPLP did not refuse to provide a written plan for the sound walls. GRS's own testimony shows SPLP did in fact provide GRS with a plan in early December 2020 and in January 2021. SPLP St. No. 2, Amerikaner Rebuttal at 16:5-11; SPLP Ex. DA-25. GRS Stmt No. 1, 13:9-11; 13:12-17. As Mr. Fye testified, "As of the November 18 meeting the sound wall location and design details were still in progress by the engineering firm and the final location of sound walls could not be made until the survey and utility location were completed. We explained that the edge of SPLP's temporary workspace easement would typically be where the sound walls would be erected minus a few feet for environmental control devices, but I do not recall providing an exact distance from the apartment buildings." SPLP St. No. 4, Fye Rebuttal at 7-8.
9	Mr. Culp testified that Sunoco would have installed the Sound Walls with no access for emergency personnel if he had not raised his concerns.	GRS Stmt No. 3, 13:8-10	This is false. SPLP worked directly with the Township to ensure there would be adequate emergency response to the residential buildings. SPLP MB at 43-46.
9	Sunoco eventually agreed not to install the Sound Walls five feet from the buildings.	GRS Stmt No. 3, 13:8-10	This is false. As Mr. Fye testified, as of the November 18 meeting, the sound wall location and design details were still in progress by the engineering firm and the final location of sound walls could not be made until the survey and utility location were complete. Thereafter, SPLP worked directly with the Township to ensure there would be adequate emergency response to the residential buildings. SPLP MB at 43-46.
9	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	SPLP did not refuse to provide a written plan for the sound walls. GRS's own testimony shows SPLP did in fact provide GRS with a plan in December 2020 and January 2021. GRS Stmt No. 1, 13:9-11; 13:12-17. SPLP St. No. 2, Amerikaner Rebuttal at 16:5-11; SPLP Ex. DA-25.

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9	Instead, Sunoco unilaterally installed the Sound Walls around the perimeter of its work area, causing the above-referenced problems.	Id.	The temporary road configuration during construction at the GRS property did not present safety issues for emergency response. SPLP MB at 42-46. Moreover, Mr. Noll reviewed the emergency response to the December 12, 2020 911 call and testified "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
9	Although Sunoco represented to GRS that it would maintain this looped access road, Sunoco failed to do so.	GRS Stmt No. 1-SR (Stephen Iacobucci), 19:3-5	GRS Statement No. 1-SR merely makes a hearsay allegation that Mr. Fye represented the upper parking lot would not be blocked. This hearsay statement cannot be used to support a finding of fact.[14] Moreover, as explained above, Mr. Noll testified the temporary road configuration during construction at the GRS property did not present safety issues for emergency response. SPLP MB at 42-46.
9FN	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	The Commission lacks jurisdiction over this issue, and in raising this argument in their brief, GRS has violated Your Honor's ruling on preliminary objections. N.T. 472:10-15 (Culp) (admitting stormwater management at site during and post construction subject to DEP permits and Middletown Township permits). *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction).
9FN	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 alleged stormwater impacts)	The Commission lacks jurisdiction over this issue, and in raising this argument in their brief, GRS has violated Your Honor's ruling on preliminary objections. N.T. 472:10-15 (Culp) (admitting stormwater management at site during and post construction subject to DEP permits and Middletown Township permits). *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction).

[14] *Supra Walker/Chapman.*

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9FN	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 (Stephen Iacobucci), 26:2-7	The Commission lacks jurisdiction over this issue, and in raising this argument in their brief, GRS has violated Your Honor's ruling on preliminary objections. N.T. 472:10-15 (Culp) (admitting stormwater management at site during and post construction subject to DEP permits and Middletown Township permits). *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction).
10	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	The Commission lacks jurisdiction to determine alleged violation of the IFC. Appendix D is a guide for local officials who have jurisdiction over this issue. IFC, Appendix D, User Note ("This Appendix, like Appendices B and C, is a tool for jurisdictions looking for guidance in establishing access requirements"). In raising this argument in their brief, GRS has violated Your Honor's ruling on preliminary objections. *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction). Moreover, the local officials with jurisdiction over the IFC in Middletown Township reviewed SPLP's construction plans and approved them ensuring that there were no concerns regarding emergency access or fire safety during the construction activities. *See* SPLP Ex. GN-6.
10	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 (Stephen Iacobucci), 11:13-19	In fact, SPLP evaluated and re-evaluated the placement and design of its sound walls and other sound mitigating measures. Regarding emergency access, SPLP worked directly with the Township to ensure there would be adequate emergency response to the residential buildings. SPLP MB at 43-46. Regarding sound mitigation, as Mr. Becker testified: "Before construction began, we hired an acoustical engineering consultant from the sound wall manufacturer, Behrens and Associates,

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			Inc. to evaluate the potential levels of sound generated by the construction operations, and to model the potential sound created by the construction operations. A copy of that assessment has been provided to GRS. SPLP also then had Behrens perform subsequent measurements of the sound levels during active construction operations at the Property on two separate occasions to verify the effectiveness of the sound walls, and to evaluate potential improvements." SPLP St. No. 3, Becker Rebuttal at 11:18-12:1.
11	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	This is a misrepresentation of sound levels inside the apartments. GRS's sound readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
11	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"),	GRS Stmt No. 10-SR (Surrebuttal Testimony of Jeffrey A. Davis, M.D, 3:18-19	This is an inaccurate citation to the Davis testimony at 3:18-19, which states "my testimony will focus on impact that certain decibels of sound can have on human hearing."
11	Sunoco refused to communicate its sound mitigation plans, if any, or sound readings to GRS.	GRS Stmt No.1-SR (Stephen Iacobucci), 15:6-21; GRS Stmt No. 3 4:12-20	This statement mischaracterizes GRS's own testimony, which in fact shows SPLP did provide information regarding sound mitigation plans. GRS St. No. 3 at 4:14-16 ("Through my review of the website links GRS received from Sunoco, it appears that there is different sound reduction provided by the sound walls depending on the sound frequency"); GRS St. No. 1-SR at 15:9-10 ("we eventually received a sound study Sunoco purportedly had performed").
11	Sunoco also refused sound monitoring measures requested by GRS, which included sound decibel metering during construction.	T.T. (Amerikaner) 548:13-19	This is false. In the October 16, 2020 email referenced in the testimony GRS cited, Mr. Amerikaner only stated "Sunoco is not inclined to do this." SPLP Ex. DA-10. In fact, decibel metering did occur during construction on a daily basis. SPLP St. No. 4, Fye Rebuttal at 9 (Michels performs sound level readings within the work site twice a day, which our safety department monitors), SPLP Ex. JF-

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			1 (log of Michels' twice-a-day sound readings); SPLP Exs. SH-2, SH-3 (Behrens reports comparing anticipated sound levels with actual sound levels during construction of various pieces of construction equipment).
11	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	While it is unclear what "Sound Wall Plan" Mr. Culp is referring to in his March 15, 2021 testimony, as of August 20, 2020 SPLP had Behrens and Associates Inc. perform a site noise impact assessment report, SPLP Ex. SH-2 that reflects details regarding anticipated sound sources. SPLP Ex. SH-2 at 5.
12	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	This testimony relies on hearsay emails and other communications that cannot form the basis of a finding of fact.[15] Moreover, these statements wholly lack credibility as GRS was clearly attempting to solicit residents to create evidence to use against SPLP. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* at 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
12	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	GRS Stmt No. 4 (Direct Testimony of Johanna Rincon) ("GRS Stmt No. 4"), 1:16-2:5.	These are issues of convenience, not safety. SPLP acknowledged that its work on the property could present inconveniences to residents from the noise. SPLP provided rent relief to residents. SPLP St. No. 7-R, McGinn Rebuttal at 11:6-12:23; *see also* SPLP St. No. 7-RJ, McGinn Rejoinder at 2:16-18; N.T. 243:2-9.

[15] *Supra Walker/Chapman.*

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	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.		
12	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 (Stephen Iacobucci), 31:4-11; GRS-182 (videos); GRS-135; GRS-136 (photographs); GRS-137 (photographs)	This is a mischaracterization of the testimony. There is no evidence Calciment was released into the homes of GRS residents.
12	Sunoco characteristically shrugged off GRS Residents' concerns.	GRS Statement No. 1-SR (Stephen Iacobucci), 32:15-22	SPLP did not "shrug off resident concerns." These concerns were raised by management, not residents. There is no evidence of a resident having "concerns" regarding calciment.
13	Exposure of calciment to the eyes can cause severe injuries including, but not limited to, total blindness.	T.T. (Henry) 312:3-7.	This mischaracterizes the testimony, which was speculative. Mr. Henry actually stated "It heats up and *could* cause severe irritation of the eye and repeated exposure *probably could* cause blindness." Moreover, there was no evidence presented that any resident was physically impacted or sought medical treatment for any alleged exposure to Calciment.

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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	This statement mischaracterizes Dr. Magee's cited testimony, which stated: "Based on my 35 years of experience, I know that SDS forms always say avoid this, avoid that, don't touch, don't look, but that's not what is required for incidental exposure. It's what they want workers to do who work with the product day in and day out for their entire lifetime."
13	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	This statement mischaracterizes Dr. Magee's cited testimony, where he simply acknowledged what the SDS said. Notably the SDS does not say "every work site using Calciment must be equipped with readily available eye-washing stations" but instead "an eyewash station should be readily available."
13	None were present here.	T.T. (Magee) 157:5-8	Dr. Magee did not state this. Instead, he testified he was unaware of whether there was an eyewash station on site.
14	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	Mr. Henry did not testify that "a single, short term exposure can cause irreversible eye damage." Instead he testified: "It heats up and *could* cause severe irritation of the eye and repeated exposure *probably could* cause blindness." N.T. 312:5-7. Moreover, there was no evidence presented that any resident was physically impacted or sought medical treatment for any alleged exposure to Calciment.
14	This resulted in plumes of Calciment released into the air surrounding and entering into the homes on the Property.	GRS Stmt No. 1-SR (Stephen Iacobucci), 31:4-11; GRS-182; GRS-135; GRS-136); GRS-137	This is a mischaracterization of the evidence. First, there is no evidence of Calciment entering into homes. Second, the videos are not substantial evidence – they are unauthenticated and Mr. Stephen Iacobucci did not shoot them or testify to their authenticity. Mr. Iacobucci never testified he in fact saw the alleged Calciment release. Moreover, SPLP disputes that the videos show a release of Calciment, but instead the videos show water vapor. N.T. 141:19-142:23.
14	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.	There is no record evidence that any resident or home was exposed to Calciment.

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14	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 (Stephen Iacobucci), 32:19-22	There is no record evidence that any resident or home was exposed to Calciment. There is no record evidence that any resident complained about Calciment.
14	Sunoco never responded to GRS's concerns.	See Record, generally	This is false. SPLP responded to and addressed GRS's concerns regarding the use of Calciment at the property. SPLP St. No. 2-RJ, Amerikaner Rejoinder at 8:7-10.
15	Sunoco's own expert, Brian Magee, Ph.D., could not explain Sunoco's "rationale" for its response.	T.T. (Magee), 160:2-10	This mischaracterizes and takes out of context Dr. Magee's testimony: "Q. And these are pictures, referring to GRS-136, of cars in the parking lot with Calciment caked on them. Is that right? A. No, we do not know what that is but it is some visible, large particulate matter. Q. And is it your understanding that Sunoco offered a car wash certificate to the residents of GRS because of the use of, or the calciment getting on their vehicles? A. I don't know what the rational [sic] was, but I did hear that there had been a car wash certificate issued, yes." N.T. 159:23-160:10.
16	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 (Stephen Iacobucci), 34:4-6	This is false. Mr. Iacobucci relies on hearsay of what a GRS employee allegedly said. GRS St. No. 1-SR at 34:7-19. That is not competent evidence.[16] As Mr. Horn, the master plumber who returned to turn the water back on testified: "The maintenance man, Glen Riddle, showed me where the valves were in the storage or the mechanical room. Q. Now did that maintenance man, did he ever - so he showed you where the valves were. Did he ever object to you turning the water back on?

[16] *Supra Walker/Chapman.*

Page	GRS Assertion/ Statement	Citation in GRS Brief	Contrary Statement/Evidence/Legal Principles
			A. No. Q. Did Glen Riddle ever tell you that you did not have permission to turn the water back on after your job was completed? A. No." N.T. 171:15-23, 173:15-21 (Horn).
16	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 (Kevin Burns), 6:1-9	This is only because GRS demanded that communications occur through counsel and not directly to residents. On November 20, 2020, GRS sent a list of questions to SPLP and demanded that SPLP no longer communicate directly to GRS personnel, thereby requiring all future SPLP communications with GRS occur through counsel. SPLP St. No. 2-R, Amerikaner Rebuttal at 14:13-18.
16	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 (Stephen Iacobucci), 35 ln. 17-22	This statement mischaracterizes the testimony and SPLP's ability to test the water. Mr. Iacobucci testified *SPLP requested GRS* to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May 27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), *id.* at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), *id.* at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).
16	Sunoco rebuffed GRS's requests.	GRS Stmt No. 1-SR (Stephen Iacobucci), 35:17-36:8	This statement mischaracterizes the testimony and SPLP's ability to test the water. Mr. Iacobucci testified *SPLP requested GRS* to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was

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			going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May 27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), *id.* at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), *id.* at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).
16	Sunoco conducted ***no testing***.	T.T. (Amerikaner), 222:22-223:2; GRS-139	This statement mischaracterizes the testimony and SPLP's ability to test the water. Mr. Iacobucci testified SPLP requested GRS to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May 27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), id. at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), id. at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).
17	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	This mischaracterizes what Horn Plumbing stated in its email. Horn Plumbing never said the "water was ***not*** safe for all purposes", instead Horn plumbing stated: "Horn Plumbing suggested that residents of the Glen Riddle Apartments were safe to use the potable water supplied by the main for showers and other conventional use aside from drinking for the night until the water is tested by Aqua America the

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			next day." Horn Cross Ex. 1 at 4. As Mr. Horn explained, this advice was not due to outside contamination concerns, but instead because: "when you've emptied the water out of the piping what happens is when you turn the water back on real slow in the piping that all the old scaling that's in that piping might just have a little bit of rust look to it and not be as clear as could be. And Sunoco had already brought in a tractor trailer load of cases of water and delivered them to all the units. So we just suggested, they had bottled water use that for the night until they could test it the following morning." N.T. 183:19-184:3. In fact, the testing showed the water was perfectly safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23.
17	On May 26, 2021, after inspecting the Property, Horn Plumbing advised Sunoco that the GRS Residents "for safety should use the portable [sic] 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)	This quote is inaccurate. Horn Plumbing's email does not state "for safety should use". Instead, they stated: "Horn Plumbing suggested that residents of the Glen Riddle Apartments were safe to use the potable water supplied by the main for showers and other conventional use aside from drinking for the night until the water is tested by Aqua America the next day." Horn Cross Ex. 1 at 4. As Mr. Horn explained, this advice was not due to outside contamination concerns, but instead because: "when you've emptied the water out of the piping what happens is when you turn the water back on real slow in the piping that all the old scaling that's in that piping might just have a little bit of rust look to it and not be as clear as could be. And Sunoco had already brought in a tractor trailer load of cases of water and delivered them to all the units. So we just suggested, they had bottled water use that for the night until they could test it the following morning." N.T. 183:19-184:3.

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			In fact, the testing showed the water was perfectly safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23.
17	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	This takes Mr. Amerikaner's statement out of context. He actually said: "When that happens, the pressure in the system must be re-established, and pockets of air must be purged. Water must be run through taps to clear any sediment that has collected while the water was not flowing. Once those things occurred last night, the water was safe to use for all purposes, *although Horn recommended that if Glen Riddle was concerned about contamination, the water should be tested to confirm potability*." Ex. GRS-139 at 4 (emphasis added).
17	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.	While Horn's specific email may not have been provided to GRS counsel until June 18, 2021, Mr. Amerikaner's statements to GRS were not inaccurate. He stated: "When that happens, the pressure in the system must be re-established, and pockets of air must be purged. Water must be run through taps to clear any sediment that has collected while the water was not flowing. Once those things occurred last night, the water was safe to use for all purposes, *although Horn recommended that if Glen Riddle was concerned about contamination, the water should be tested to confirm potability*." Ex. GRS-139 at 4 (emphasis added).
17	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	This testimony misrepresents the situation. GRS was not "forced" to do anything. They were fully aware that Aqua was testing the water. Ex. GRS-139 at 3 (Beach email to Amerikaner stating "Aqua is actually on the property testing it right now."). GRS performed its own testing in a process that dragged on for more than two weeks, based on recommendations from a hydrogeologist who admitted he is not qualified to opine on the safety of drinking water and who recommended a host of unnecessary testing because he assumed with no evidence that there was a petroleum related release or spill associated with the water line break. SPLP St. No. 4-RJ, Fye

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			Rejoinder at 3:14-15; GRS St. No. 8-SR, Burns Surrebuttal at 3:10-12; N.T.393:21-25, 403:23-405:2, 410:5-24.
17	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.	Contrary to GRS's assertion, the exhibits cited, in fact, show SPLP did reply and provide information. Exs. GRS-103, GRS-111, GRS-159 (agreeing to hold on-site meeting with engineers), GRS-160, GRS-163 – GRS-165; *see also*, *e.g.*, SPLP Exs. DA-1 – DA-29.
17-18	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	Contrary to GRS's assertion, SPLP did reply and provide information. Exs. GRS-103, GRS-111, GRS-159 (agreeing to hold on-site meeting with engineers), GRS-160, GRS-163 – GRS-165; *see also*, *e.g.*, SPLP Exs. DA-1 – DA-29.
18	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 (Stephen Iacobucci), 9:3-6; 30:3-7; 11:10-13	This is inaccurate hearsay. First, the only citation to testimony about occurrences in February 2021 is GRS St. No. 1-SR at 11:10-13. The other citations are all about events pre-dating February 2021. Moreover, Mr. Iacobucci's assertion that SPLP agreed to provide these communications is hearsay and cannot be relied upon to form the basis of a finding of fact.[17]
18	Sunoco committed to providing safety information to GRS and, again, failed to follow through.	Id. 13:8-18; GRS-117	These are hearsay allegations and cannot be relied upon as the basis of a finding of fact.[18] Moreover, hearsay cannot corroborate hearsay, so just because GRS cites two different people's hearsay allegations does not mean they have met their substantial evidence burden.[19]
18	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	Id., 12:19-22.	These are hearsay allegations and cannot be relied upon as the basis of a finding of fact.[20] Moreover, hearsay cannot corroborate hearsay, so just because GRS cites two different people's hearsay allegations does not mean they have met their substantial evidence burden. [21]

[17] *Supra Walker/Chapman.*
[18] *Supra Walker/Chapman.*
[19] *Supra Walker/Chapman.*
[20] *Supra Walker/Chapman.*
[21] *Supra Walker/Chapman.*

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	would be on the Property and the purpose of their visit. This, too, never happened.		
18	Sunoco failed to provide the communications from GRS raising specific safety concerns to the person in charge of the worksite, Joe Becker. As a result, he operated under the misunderstanding that GRS had not raised specific concerns.	T.T. (Becker) 591:18-599:16 Id.	This is a misrepresentation of Mr. Becker's testimony. He never testified that he was not given communications from GRS raising specific safety concerns. Instead, he testified "GRS never gave me enough to work with." N.T. 591:21-22. Mr. Cortes proceeded to quickly scroll through various emails and Mr. Becker responded that while he may not remember specific emails, he did remember the general communications. N.T. 592:1-594:1 ("I was reviewing a lot of the information back and forth as part of trying to understand the real safety issues that were being discussed."); N.T. 594:8-11 (I'll state again, Mr. Cortes, I don't recall this specific e-mail. But as I read through the content, the content looks familiar. I've heard of these issues."). Mr. Becker did state he was not engaged in the project until November, so he did not recall seeing the specific communication in Becker Cross 4, but: "As soon as I got involved, I started receiving all of the communications. And those included in the listing of safety concerns that were raised that were shown in the other e-mails that you showed. And I spent a good portion of that first two months really trying to understand when that – that gets a lot of attention for me and for our company when safety issues are raised. I spent a good portion of my time during those first two months trying to understand, talking to others, talking to the construction folks, talking to the construction safety, whoever else might be involved, really trying to understand the issues." N.T. 597:17-598:4.
19	Sunoco held this meeting only after Sunoco forced GRS to file an Emergency Petition with the Commission.	Id.	This is a misrepresentation. GRS chose to file an Emergency Petition. SPLP did not "force" GRS to do so.
19	On February 10, 2021, Sunoco posted signs demanding that all persons avoid	See GRS's Emergency Petition,	The Emergency Petition is not record evidence and cannot form the basis of a finding of fact. It is a pleading containing assertions.

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	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").	filed February 11, 2021, at ¶ 37	Moreover, SPLP was not required to file a response to the Petition, the allegations therein are deemed denied, and therefore SPLP did not make any admissions as to the representations within the Petition. 52 Pa. Code § 3.6(c).
19	It was impossible for the GRS Residents to avoid the Danger Area because their homes fell within it.	Id., ¶ 38	The Emergency Petition is not record evidence and cannot form the basis of a finding of fact. It is a pleading containing assertions. Moreover, SPLP was not required to file a response to the Petition, the allegations therein are deemed denied, and therefore SPLP did not make any admissions as to the representations within the Petition. 52 Pa. Code § 3.6(c). Moreover, the parties stipulated that "there is no danger zone associated with Sunoco's construction activities at GRS's property outside of Sunoco's worksite." Petition Pursuant to 52 Pa. Code § 5.94 to Withdraw the Petition of Glen Riddle Station L.P. for Interim Emergency Relief as Moot Due to Resolution at ¶ 2.
19	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	The Emergency Petition is not record evidence and cannot form the basis of a finding of fact. It is a pleading containing assertions. Moreover, SPLP was not required to file a response to the Petition, the allegations therein are deemed denied, and therefore SPLP did not make any admissions as to the representations within the Petition. 52 Pa. Code § 3.6(c). Also, this is hearsay and likewise cannot form the basis of a finding of fact.[22]
19	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.	None	GRS does not even attempt to provide record support for this allegation which is an argument, not a citation of a fact or evidence presented in this case, because there is none.
19	At the Town Hall, Sunoco failed to address the GRS Residents' concerns.	Id. 14:22-152; GRS-120; GRS-121.	GRS-120 is an email from Mr. Cortes. It is hearsay and cannot be used for the truth of the matters asserted therein, which is exactly what GRS has done, in violation of Your Honor's ruling.[23] GRS-121 is likewise a string of hearsay emails that cannot be used as the basis of a

[22] *Supra Walker/Chapman.*
[23] *Supra* n.1.

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			finding of fact.[24] It is unclear what "Id" is intended to reference. Regardless, the allegation that SPLP failed to address GRS Residents' concerns is false. As Mr. Becker testified, there were only approximately 35 out of 200 residents that chose to attend, questions were only received from 6 people and it appeared 3 of those people were GRS management. SPLP St. No. 3, Becker Rebuttal at 11:4-9; *see also id.* at 10:19-20 ("we welcomed and responded to residents' questions and concerns").
19	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 (Stephen Iacobucci), 27:5-11	This testimony is false. After the February 23, 2021 meeting, SPLP provided various updates to GRS and its residents. *See, e.g.*, SPLP Exs. JM-5, JM-6.
19	Sunoco also failed to communicate the information through counsel or through its direct line of communications with GRS.	GRS Stmt No. 1-SR (Stephen Iacobucci), 32:3-15	This is false. SPLP maintained continuous communications with GRS through counsel. *See, e.g.*, SPLP Exs. DA-1 – DA-29.
19	Sunoco even failed to communicate regularly with Middletown Township.	GRS Stmt No. 1-SR (Stephen Iacobucci), 27:15-21, 37:6-11; GRS-131; GRS-145	This is false. The exhibits GRS cites, GRS-131 and GRS-145 are communications from Middletown Township that in fact show SPLP was in communication with the Township. *See also* SPLP St. No. 7, McGinn Rebuttal at 11:16-17 (explaining various contacts with Middletown Township and provision of information to the Township to post on the Township's website); SPLP JM-9 (Middletown Township meeting minutes noting numerous Township site visits and reviews of SPLP's activities at the GRS property).
20	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	This is false. SPLP provided GRS with clean fill certificate example well before the July 2021 hearings. *See, e.g.*, SPLP St. No. 4, Fye Rebuttal at 16:7-9 (May 12, 2021 testimony providing SPLP Ex. JF-2 clean fill certificate). Moreover, GRS witness Mr. Culp admitted to stating in his Surrebuttal testimony, after he had reviewed Mr. Fye's rebuttal testimony that he did not review SPLP Ex. JF-2 when continuing to make the unfounded assertion that SPLP had not provided a clean fill certificate. N.T. 469:12-471:1.
20	In response to GRS's inquiries about Sunoco's impact on groundwater,	GRS-128	This mischaracterizes SPLP's response in GRS-128, wherein Mr. Amerikaner responded to GRS's counsel that:

[24] *Supra Walker/Chapman.*

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	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.		"what Sunoco Pipeline is doing at the Glen Riddle property is permitted and regulated by the Department of Environmental Protection. Various forms of geological evaluations, including hydrogeologic evaluation, were performed in this area when the permits were modified to change the installation methodology from horizontal directional drilling to a series of bores and open cut. Your client was given notice of the permit modification application and could have raised questions with DEP or objected; it did not do so. The current activity is required by our permits, the issuance of which was based in part on the geologic studies performed in this area. The contractor is using a DEP-approved grout for the specific purpose of preventing a conduit for groundwater. Any groundwater that has been produced is being managed according to our permits. This is common practice at every site across the project where a direct pipe bore was used to install the casing. … The assertions in your email also appear to have been informed by the input of someone with an incomplete understanding of pipeline construction methodology, DEP permitting requirements, and geology. Please let us know who that person is. We do not plan to respond in the future to emails with such baseless, underinformed accusations without expert support for the assertions." GRS-128 at 1.
20FN	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	It is true that SPLP signed the permit for SPLP's work on SPLP's easement, which it owns. The allegation that SPLP made a material or any misrepresentation in signing the permit is completely untrue. Moreover, GRS could have raised issues regarding Middletown Township permits to the Township, but apparently did not. The Commission has no jurisdiction over the validity, scope, or enforcement of Middletown Township permits.

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27	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 (Jay Etzel), 8:11-13	The record clearly demonstrates that SPLP did plan and put in place responsible safeguards for traffic at the GRS property. SPLP MB at 47-50.
27	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 (Jay Etzel), 3:7-18	The record clearly demonstrates that SPLP did plan and put in place responsible safeguards for traffic at the GRS property and that SPLP communicated with RTMSD regarding relocation of the bus stop. SPLP MB at 47-50.
28	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	The Commission has no jurisdiction to make this determination. No agency with jurisdiction has made such determination. Arguments encouraging the Commission to go beyond its jurisdiction violate Your Honor's ruling on SPLP's preliminary objections. *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction). Moreover, the testimony demonstrated that neither PennDOT or FHWA guidelines are enforceable or applicable to the construction of a utility pipeline that is not within a public road. *See* SPLP St. No 5, Farabaugh Rebuttal at 9:15-19; N.T. 370:7-8 (Etzel).
28	Sunoco never implemented such a plan.	T.T. (Fye) 651:15-652:8;	SPLP did have plans in place regarding traffic and pedestrians and implemented them. As Mr. Fye explained:

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		T.T. (Farabaugh) 672:12-673:5.	"all our drivers get trained in defensive driving, which goes through a slue of issues. We use ATSSA certified flaggers, which PennDOT recognizes. We create job safety analysis, plans every day for each specific site and location to where the foreman would go over the exact hazards and what everyone needs to be doing for the exact day. So as I agree with you there was no direct written plan, there's definitely standard operating procedures and policies in place to ensure it's done correctly. And as I said, we've logged over 120,000 hours with no incidents and I'm very proud of that fact." N.T. 651:21-652:8. *See also* SPLP MB at 47-50.
28-29	Similarly, Sunoco's markings of its work area were inaccurate, and created dangerously narrow driving lanes on the Property.	GRS Stmt No. 3, 7:15-19; GRS-28	This citation does not support the assertion.
29	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.	GRS Stmt No. 1. 10:11-20; GRS Stmt No. 3, 7:15-19; GRS-28	The citations do not support this assertion.
29	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	This is false and unsupported. There are no documents in the record of this case demonstrating a resident complaining about traffic. Moreover, there is no exhibit provided to the court reporter or entered into the record as "GRS-35". There is also no substantial evidence that a "near miss" accident or accidents occurred. GRS appears to be referring to the unauthenticated video taken by someone who was not a witness in this case. When Mr. Fye was shown this video, he testified "I wouldn't say it came close to the person taking the video. I would assume he was probably on the curb or in the grass area. The orange barrels that Glen Riddle put up, it restricted the travel lane and made it tighter and in my opinion, a greater hazard. He [the truck driver] obviously stayed within the LOD, which was off the curb. So I would imagine the guys was most likely a minimum of five to six feet

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			away unless for some odd reason he was on the road videotaping." N.T. 654:4-20.
29	This blocked and inhibited access by emergency response vehicles during at least one emergency response.	GRS-35	This is false. First, there is no exhibit provided to the court reporter or entered into the record labeled "GRS-35". Assuming GRS intended to refer to GRS-171, that exhibit is a hearsay allegation (that cannot be the basis of a finding of fact and violates Your Honor's ruling on admission of emails authored by GRS' counsel)[25] of events surrounding a 911 call and emergency responder access to the GRS property on December 12, 2020. Contrary to GRS counsel's hearsay, secondhand assertions, as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
29	Obstructing first responders is a clear and obvious hazard that Sunoco should have avoided.(admitting that delaying and obstructing emergency response access to the Property could create a safety risk).	T.T. (Becker), 603:2-13	This is a total mischaracterization of Mr. Becker's testimony. Mr. Becker only agreed that *if* there were a delayed response, that could be a safety concern. N.T. 603:2-13. The allegation that there was any delayed response is totally false. Contrary to GRS counsel's hearsay, secondhand assertions,[26] as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
29-30	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	There is no evidence that any resident had a reason to or in fact did park on the roadway. The testimony cited is a mischaracterization of a hearsay complaint from a resident that cannot form the basis of a finding of fact.[27] The resident does not state that she or any other resident has in fact parked on the roadway. This resident complaint wholly lacks credibility, stating all parking spaces would be taken,

[25] *Supra* n.1 and *Walker/Chapman.*
[26] *Supra* n.1 and *Walker/Chapman.*
[27] *Supra Walker/Chapman.*

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			which is patently false. [SPLP St. No. 3-R, Becker Rebuttal at 14:17-16:5; SPLP Exhibit JB-2. Moreover, the resident complaints wholly lack credibility as it was clear GRS was attempting to create evidence to use against SPLP. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* At 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
30	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 (Jay Etzel), 7:17-23	There were no "dangerous scenarios." The allegations characterized "dangerous scenarios" were proven false as detailed above.
30	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.	There was no evidence there was any delayed response to an emergency as detailed multiple times above. Moreover, as Mr. Noll explained, SPLP worked with the Township to ensure adequate and timely emergency response could occur with SPLP's construction site modifications. SPLP MB at 43-46.
30	As to flaggers, Sunoco's testimony was at best inconsistent, as Mr. Fye initially claimed that Sunoco had "flaggers on site at all times directing traffic."	T.T. (Fye) 642:2-643:6	Mr. Fye's testimony was not inconsistent. GRS continues to take the term "flagger" too literally. The flaggers had radio communications with the construction vehicles so they could communicate in real time what was occurring and what the driver should or should not do and what factors to be aware of when moving. N.T. 653:10-23 (Fye).
30	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	This completely mischaracterizes Mr. Fye's testimony and takes it out of context. After Mr. Cortes showed Mr. Fye a video that did not show flaggers because "you have the video directed away from where the flaggers are," N.T. 645:6-11, Mr. Fye explained the placement of the flaggers: "So all of my travels throughout this parking lot is designated travel lanes that you would have anywhere there's a parking lot. A Walmart, a Home Depot. All these cars have a – you know, if you're going up the hill, you're in the right-hand side travel lane. If you're down the

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			hill, you're on the other travel lane. It's just – we have an egress/ingress within our construction zones that were clearly marked – best marked working locations on the entire job. So there's no reason to have a flagger standing out in a travel lane whenever they're using the typical, normal travel lane. All that would do is create a greater hazard for everyone involved." N.T. 646:12-25.
30	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	These videos are unauthenticated, misleading, lack credibility and are not substantial evidence. As Mr. Fye explained, the video in GRS-155, failed to show the flaggers because the camera was aimed away from the flaggers. N.T. 643:17-645:11. Regarding GRS-173, Mr. Fye testified: "We have flaggers out at Glen Riddle. I can't tell because the video's just in one small area so I don't know if there's flaggers further to the left, which would have been typical at the site." N.T. 649:20-650:13.
30	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	This mischaracterizes and takes out of context Mr. Fye's testimony and relies upon unauthenticated, unreliable video footage. Mr. Fye in fact testified that there were ATSSA certified flaggers present in the video, but instead of using flags they had direct radio communication with the construction vehicles, and that there was no reason for the flaggers to come out into the travel lane and use flags in the scenario pictured in the video because there were no residents trying to back in or pull out. N.T. 653:10-23.
31	Likewise, when presented with GRS-155, Mr. Becker conceded that he did not observe any "flagger."	T.T. (Becker) 608:16-609:12	There were flaggers present in the video, but instead of using flags they had direct radio communication with the construction vehicles, and that there was no reason for the flaggers to come out into the travel lane and use flags in the scenario pictured in the video because there were no residents trying to back in or pull out. N.T. 653:10-23 (Fye).
31	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;	The Commission has no jurisdiction to make this determination. No agency with jurisdiction has made such determination. Arguments encouraging the Commission to go beyond its jurisdiction violate Your Honor's ruling on SPLP's preliminary objections. *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129,

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		GRS-29	Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction). Moreover, the testimony demonstrated that neither PennDOT or FHWA guidelines are enforceable or applicable to the construction of a utility pipeline that is not within a public road. *See* SPLP St. No 5, Farabaugh Rebuttal at 9:15-19; N.T. 370:7-8 (Etzel).
32	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, 4:4-13	SPLP does not "mainly" rely upon the fact that all construction drivers on site are trained in defensive driving. That is just one safety factor SPLP relies upon. In addition, SPLP presented evidence of the extensive and daily planning for safe traffic on site, tailored specifically to the site. *See, e.g.*, N.T. 651:21-652:8 (Fye). *See also* SPLP MB at 47-50.
32	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	This statement completely mischaracterizes Mr. Fye's testimony. In fact, he stated: Q. Does Michel's require that those subcontractor drivers also take defensive driving courses? A. Yes. … I know all of my drivers, which would be 95 percent of the people on this site, were required and do take it. The subs, I would assume that my safety personnel has vetted them. Otherwise, they wouldn't let me have them out here going. But I can't tell you that for 100 percent fact." N.T.655:1-657:22.
32	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	Contrary to Mr. Iacobucci's assertions, SPLP did in fact draw up plans for a temporary pedestrian walkway and gave them to GRS. N.T. 466:24-467:3 (Culp)
32	As evidenced by the Emergency Access Problem, the multiple "near miss"	GRS-171, 172	This statement is unsupported and unsupportable. There was no emergency access problem. GRS-171 is GRS's counsel's hearsay

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	accidents, and Sunoco's reckless drivers swerving near pedestrians, Sunoco's alleged "common sense" approach did not avoid real safety threats.	GRS Stmt No. 1, 4:10-17, 11:20-22	email allegation (that cannot be the basis of a finding of fact and violates Your Honor's ruling on admission of emails authored by GRS' counsel)[28] of events surrounding a 911 call and emergency responder access to the GRS property on December 12, 2020. Contrary to GRS counsel's hearsay,[29] secondhand assertions, as Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13. There is no evidence of a "near miss" accident or reckless drivers swerving near pedestrians. Mr. Iacobucci's secondhand allegations are not substantial evidence. The videos in GRS-172 are unauthenticated, lack credibility, and do not show any swerving or reckless driving.
32	Sunoco's alleged "common sense" approach did not avoid real safety threats.	GRS Stmt No. 1, 4:10-17, 11:20-22	GRS failed to show any "real" safety threats as detailed above. Moreover, GRS takes the statement "common sense" approach out of context. There was significant planning, training, and daily examination and discussion specific to the site each day regarding traffic and pedestrian safety. N.T. 651:21-652:8 (Fye).
32	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 (Stephen Iacobucci), 13:3-8; SPLP Stmt 5-R, 8:11-19	This sentence and quote mischaracterizes and takes out of context Mr. Farabaugh's testimony (and also cites the wrong page of his testimony). He testified: "Furthermore, other than requiring that Sunoco's contractors and their employees take appropriate precautions and implement industry standard practices – including driving slowly through the parking lot – Sunoco or its contractors have no control over what residents, visitors, or other members of the public do when driving through the Glen Riddle Station Apartment complex. For example, during my site visit, I witnessed a USPS delivery truck that traveled to the vicinity of Buildings I and J, and it appeared to be traveling at a faster rate than

[28] *Supa* n. 1.
[29] *Supra Walker/Chapman.*

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			any residential or construction traffic that I observed. But, *I did not witness any condition caused by the construction activity that would make general traffic through the parking lot by the public, including residents, visitors, and deliveries like the USPS truck, inherently unsafe*." SPLP St. No. 5 at 7:11-19 (emphasis added).
33	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 (Stephen Iacobucci), 16:1-16	This is false. SPLP did not begin any construction activities that interrupted use of the regular bus stops until December 4, 2020. Ex. GRS-109. SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7.
33	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 (Jay Etzel), 9:15-22	SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7. SPLP did not begin any work that interfered with use of the regular bus stop until December 4, 2020. SPLP Exhibit CF-7.
33	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	This allegation relies solely on GRS-23, as GRS Stmt No. 1 is merely a recitation of that exhibit. First, GRS-23 at page 2 is hearsay within hearsay and cannot be used as the basis of a finding of fact.[30] It is wholly unreliable and lacks even a date. Therein a resident alleges his wife and another child in the building had issues getting on the bus. The author of the email did not have firsthand knowledge of these events. Moreover, GRS was soliciting negative comments about SPLP to use as evidence in this proceeding from residents. GRS-25 at 1 ("You people are looking for support against this Pipeline BS."); *see also id.* At 3 (GRS encouraging residents to "consider expressing your concerns or questions about the Pipeline to Middletown Township tonight during the monthly Township Meeting on Zoom" "It's important that the township officials hear concerns directly from Glen Riddle Residents.").
33	GRS requested that Sunoco implement bus stop signage or a delineated, lighted area	GRS Smt No. 1, 11:20-22	This citation does not support the assertion. Moreover, SPLP asked the Rose Tree Media School District their preference on the bus stops

[30] *Supra Walker/Chapman.*

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	for children to stand while they waited for a bus, but Sunoco refused to do so		and they wanted to move stops and use crossing guards. The school district, who is in charge of the students safety, never made these requests. SPLP Ex. CF-7; Etzel Redirect Exhibit 1.
33	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 Smt No. 7-SR (Jay Etzel), 9:3-14; T.T. 584:17-587:13 (cross of Farabaugh)	This is false. SPLP did not begin any construction activities that interrupted use of the regular bus stops until December 4, 2020. Ex. GRS-109. SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7.
34	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 (Stephen Iacobucci), 16:1-16	This is false. SPLP did not begin any construction activities that interrupted use of the regular bus stops until December 4, 2020. Ex. GRS-109. SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7.
34	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	SPLP was in contact on a daily basis with the Rose Tree Media School district since December 1, 2020 regarding relocation of the bus stop and hiring crossing guards. SPLP Exhibit CF-7. SPLP did not begin any work that interfered with use of the regular bus stop until December 4, 2020. SPLP Exhibit CF-7. There is no evidence that information was withheld from any expert, as this allegation asserts.
35	Eliminating the looped access hindered fire apparatus access to the GRS apartment buildings.	Id. 6:3-7:15	This citation does not support the assertion. Moreover, the temporary absence of the looped road configuration did not create a safety issue for emergency vehicle access. SPLP MB at 43-46.
35	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	This citation does not support the assertion. Moreover, the temporary absence of the looped road configuration did not create a safety issue for emergency vehicle access. SPLP MB at 43-46.
35	Additionally, the positioning of the Sound Walls delayed ground level fire department nozzle operations.	GRS SR-4 (J.D.) 5:15-6:2	This mischaracterizes Mr. Davidson's testimony and is false. Mr. Davidson testified in his opinion ground level fire department nozzle operations "will be delayed." There in fact was no delay. Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the

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			property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
36	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	This is false and misrepresents Mr. Noll's testimony. Mr. Noll did not solely rely on an interview with Robert Drennan, who is the Township Emergency Management Coordinator, not just a general Township employee. Mr. Noll stated here: "On March 29, 2021 I conducted a 360-degree walk around of the construction site. Based upon my on-site review of the location of the sound barriers and the available road space, I did not see any issues that would not allow the fire department to either effectively position their apparatus or access a building that did not previously exist before the installation of the sound barrier. My assessment also included a review of the Google Earth maps of the pipeline right-of-way prior to the construction (see SPLP Exhibit GN-4), conversations with Robert Drennen, Middletown Township Emergency Coordinator, a review Mr. Culp's December 8, 2020 correspondence outlining Complainant's concerns (SPLP Exhibit GN-5), and a review of Mr. Drennen's memorandum to the Middletown Township Manager on December 10, 2020 outlining his recommendations (SPLP Exhibit GN-6)." SPLP St. No. 1, Noll Rebuttal at 9:8-17.
36	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.	GRS admits that IFC enforcement is in the Township's jurisdiction. Thus, GRS has violated Your Honor's ruling by arguing for the Commission to exceed its jurisdiction. There is no evidence the Township found SPLP in violation of the IFC. *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting in Part and Denying in Part Preliminary Objections at 7 (Order entered January 28, 2021); N.T. 749:13-750:7 (admonishing parties regarding briefing issues over which the Commission lacks jurisdiction). Moreover, the Commission does not have jurisdiction to determine whether an official variance was necessary, that is the jurisdiction of the Township.

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36	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 (Stephen Iacobucci), 17:9-17	The citation does not support this assertion.
37	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 (James Davidson), 9:8-13	Mr. Davidson did not opine that compliance with the IFC here "was absolutely necessary to maintain a 'safe' site." *See generally* GRS St. No. 6-SR.
36-37	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	This statement mischaracterizes and misquotes Mr. Noll's testimony. Mr. Noll was explaining that a car or other blockage on the road, which is "not uncommon" is something emergency responders are prepared to deal with: "I'm either moving the car, I'm going around it, I'm looking at where I'm at and where I have to get to, do I – do I extend lines from there or I call for another unit. The – the – the idea that somehow a hypothetical scenario of a road being blocked is a showstopper, that happens every day." N.T. 95:19-96:19 (Noll).
38	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	There was no substantial evidence of actual delay. As Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.
38	This also allowed for the above-described preventable delay, which could result in a tragedy.	Id.	There was no substantial evidence of actual delay. As Mr. Noll explained, he reviewed the emergency response to the December 12, 2020 911 call and "emergency responders were able to access the property and respond to the emergency events within their normal response time and without any access issues into the apartment complex." SPLP St. No. 1, Noll Rebuttal at 16:4-13.

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38	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	This is not absurd. The sound walls were temporary, they were only present for approximately 6 months. SPLP St. No. 1-R, Noll Rebuttal at 9:21-10:2, 11:19-12:6.
38	Sunoco's work on the Property lasted for almost one year, which is not "temporary" by any measure. [] (testifying that, according to PennDOT guidelines, a "temporary" project is 72 hours or less)	T.T. (Etzel) 369:14-370:23	The sound walls were temporary, they were only present for approximately 6 months. SPLP St. No. 1-R, Noll Rebuttal at 9:21-10:2, 11:19-12:6. Moreover, PennDOT guidelines do not apply to a utility pipeline construction project.
39	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.	This mischaracterizes Mr. Noll's role. Mr. Noll is a contractor to SPLP providing Mariner Emergency Response Training. Mr. Noll provides this training as a contractor to other entities, including on behalf of Chester County, and Middletown Township, Delaware County. 106:13-25 (Noll).
39	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 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.	Id. 58:23-59:22; Noll Cross Examination Exhibit 1 T.T. (Noll), 61:20-64:15, 69:1-4; Noll Cross Examination Exhibits 2 and 3	This completely mischaracterizes the evidence. Mr. Noll has not taken "conflicting positions regarding pipeline safety." Noll Cross Examination 1 is titled: "The Value in First Responder Pipeline Safety Trainings." Therein, Mr. Noll restates the fact that pipelines are "the safest mode of energy transportation" and then goes on to discuss the importance of being prepared in the unlikely event a pipeline event occurs. That is not conflicting and does not conflict with the other article and presentation Mr. Noll authored, which also focus on preparing for a pipeline event.
39	Mr. Noll also explained that "incomplete, inadequate or unclear communication" can	T.T. (Noll), 66:23-67:4	This case has nothing to do with pipeline transportation, but instead pipeline construction.

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	create hazards in the context of pipeline transportation.		
40	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	This is inaccurate. The readings GRS took from inside the GRS residents' homes never exceeded 80 dBA inside the apartments when the windows were closed. N.T. 725:19-729:23, 730:7-732:14 (Harrison). All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
40	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)	There was no need for ear protection or to communicate to residents regarding hearing protection – all readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
41	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) ("There 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	Even prior to the sound walls being installed, the hydrovac did not show sound levels inside the apartment buildings with the windows closed that exceeded regulatory guidance. All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).

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		walls. It seems kind of counterintuitive")	
41	Thus, Sunoco performed the loudest work on the Property for extended periods without any sound mitigation in place at all.	Id.	Even prior to the sound walls being installed, the hydrovac did not show sound levels inside the apartment buildings with the windows closed that exceeded regulatory guidance. All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
42	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	SPLP did assess sound sources. As of August 20, 2020 SPLP had Behrens and Associates Inc. perform a site noise impact assessment report, SPLP Ex. SH-2 that reflects details regarding anticipated sound sources. SPLP Ex. SH-2 at 5.
42	Sunoco also failed to provide a sound mitigation strategy and sound source data, despite requests from GRS.	GRS Stmt No. 3, 4:12-20	This statement totally mischaracterizes GRS's own testimony, which in fact shows SPLP did provide information regarding sound mitigation plans. GRS St. No. 3 at 4:14-16 ("Through my review of the website links GRS received form Sunoco, it appears that there is different sound reduction provided by the sound walls depending on the sound frequency"); GRS St. No. 1-SR at 15:9-10 ("we eventually received a sound study Sunoco purportedly had performed").
42	Sunoco also declined sound monitoring measures requested by GRS, which included sound decibel metering during construction.	T.T. (Amerikaner) 548:13-19	This is false. In the October 16, 2020 email referenced in the testimony GRS cited, Mr. Amerikaner only stated "Sunoco is not inclined to do this." SPLP Ex. DA-10. In fact, decibel metering did occur during construction on a daily basis. SPLP St. No. 4, Fye Rebuttal at 9 (Michels performs sound level readings within the work stie twice a day, which our safety department monitors), SPLP Ex. JF-1 (log of Michels' twice-a-day sound readings); SPLP Exs. SH-2, SH-3 (Behrens reports comparing anticipated sound levels with actual sound levels during construction of various pieces of construction equipment).
42	Sunoco's counsel, Mr. Amerikaner, testified that Sunoco declined to monitor the sound levels because the Project was	T.T. (Amerikaner) 548:13-550:15	This mischaracterizes Mr. Amerikaner's testimony. In the October 16, 2020 email referenced in the testimony GRS cited, Mr. Amerikaner only stated "Sunoco is not inclined to do this." SPLP Ex. DA-10. In fact, decibel metering did occur during construction on a daily basis.

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	"standard open trench pipeline construction."		SPLP St. No. 4, Fye Rebuttal at 9 (Michels performs sound level readings within the work stie twice a day, which our safety department monitors), SPLP Ex. JF-1 (log of Michels' twice-a-day sound readings); SPLP Exs. SH-2, SH-3 (Behrens reports comparing anticipated sound levels with actual sound levels during construction of various pieces of construction equipment).
42	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.	While Mr. Amerikaner may not have provided estimates of sound levels, SPLP did provide such information to GRS. SPLP St. No. 4, Fye Rebuttal at 9 (Michels performs sound level readings within the work stie twice a day, which our safety department monitors), SPLP Ex. JF-1 (log of Michels' twice-a-day sound readings); SPLP Exs. SH-3, SH-4 (Behrens reports comparing anticipated sound levels with actual sound.
43	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 (Stephen Iacobucci), 21: 3-8; GRS-123	This ignores that Mr. Harrison's opinion was based not just on the sound level readings he took, but also on GRS's sound level readings. SPLP St. No. 8, Harrison Rebuttal at 6:5-8:4; N.T. 725:19-729:23, 730:7-732:14 (Harrison).
43	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 (Stephen Iacobucci), 22:15-17	This ignores that Mr. Harrison's opinion was based not just on the sound level readings he took, but also on GRS's sound level readings. SPLP St. No. 8, Harrison Rebuttal at 6:5-8:4; N.T. 725:19-729:23, 730:7-732:14 (Harrison).
43	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	This ignores that Mr. Harrison's opinion was based not just on the sound level readings he took, but also on GRS's sound level readings, including those created during operation of the hydrovac truck prior to installation of the sound walls. SPLP St. No. 8, Harrison Rebuttal at 6:5-8:4; N.T. 725:19-729:23, 730:7-732:14 (Harrison). All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
43-44	He incorrectly concluded that it only visited the Property "for a few minutes at a time" based on his observations from one	SPLP Statement No. 8-R (Rebuttal Testimony of Seth Harrison, P.E.)	This ignores that Mr. Harrison's opinion was based not just on the sound level readings he took, but also on GRS's sound level readings, including those created during operation of the hydrovac truck prior to installation of the sound walls. SPLP St. No. 8, Harrison Rebuttal at

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	visit to the Property and information from Sunoco's contractor.	("SPLP Stmt No. 8-R"), 6:13-17, 9:20:10:4; T.T. (S.H.) 713:19-714:23; 715:4-11	6:5-8:4; N.T. 725:19-729:23, 730:7-732:14 (Harrison). All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSHA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
44	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 (Stephen Iacobucci), 21:18-20; T.T. (Harrison), 712:23-714:23	This ignores that Mr. Harrison's opinion was based not just on the sound level readings he took, but also on GRS's sound level readings, including those created during operation of the hydrovac truck prior to installation of the sound walls. SPLP St. No. 8, Harrison Rebuttal at 6:5-8:4; N.T. 725:19-729:23, 730:7-732:14 (Harrison). All readings taken inside apartment buildings with windows closed showed readings below 75dBA, which is below the OSBA standard, the CDC guidance, and the NIOSH guidance. N.T. 727:11-15 (Harrison).
44	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)	This takes Mr. Harrison's testimony out of context and ignores that he was testifying about a video where GRS took sound readings *before* the sound walls were installed and that the video showed sound levels did not exceed regulatory guidance limits inside the apartment with the window closed. Ex. GRS-146 (videos all dating December 12, 2020). He did testify to the obvious assertion that without the sound walls, sound levels would have been higher. However, he explained: "[I]n preparing for testimony, I did see **Exhibit 146**, which was a video on a cell phone on a windowsill in an apartment measuring the sound levels using some sound level meter. And it showed that the sound level inside the apartment was approximately 75 dBA, if I'm not mistaken. And I don't know if that was when a hydrovac was operating. But *that would probably be representative, at least as far as I'm aware, of the worst case scenario was from the hydrovac trucks*." N.T. 716:10-18. "In preparing for testimony, I inquired about these videos of the hydrovac trucks that were – the videos that were taken by GRS earlier on in the project before I was engaged. And what I learned is that the

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			hydrovac trucks are part of a process to look for underground utilities that needed to be located before the sound wall could be installed." N.T. 717:6-12.
44	Sunoco provided no warnings regarding the excessive sound and no mitigation measures when it engaged in this harmful conduct.	GRS Stmt No. 1-SR (Stephen Iacobucci) 12:11-13; GRS-117	There was no harmful conduct of which to warn. Even in the absence of the sound walls, the hydrovac truck did not create sound levels that exceeded regulatory guidance limits inside the apartments with the windows closed. Ex. GRS-146 (videos all dating December 12, 2020); N.T. 716:10-18, 717:6-12 (Harrison).
44	Sunoco even failed to notify the GRS Residents and employees to obtain ear protection.	GRS Stmt No. 10-SR (Jeffrey Davis), 3:17-23	Ear protection was not necessary, so there was no reason to notify GRS residents or employees to obtain ear protection. As demonstrated above, even in the absence of the sound walls, the hydrovac truck did not create sound levels that exceeded regulatory guidance limits inside the apartments with the windows closed. Ex. GRS-146 (videos all dating December 12, 2020); N.T. 716:10-18, 717:6-12 (Harrison).
46	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	SPLP did not rely solely on Mr. Harrison to evaluate the safety of the noise levels on the property. SPLP prior to construction engaged Behrens and Associates to study and issue a report on sound levels and mitigation. SPLP Ex. SH-2 (August 20, 2020 Behrens Report).
46	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	This is completely false. As Mr. Harrison testified, he reviewed multiple sources of data, including his own sound readings, GRS's sound readings, the Behrens Reports, and other regulatory guidance, including EPA standards and CDC studies. *See, e.g.*, SPLP St. No. 8-R, Harrison Rebuttal at 12:15-22 (testifying sound pressure levels Harrison measured outside of the active construction area are well below the noise limits in these regulations and standards, referencing EPA standards and CDC studies).
46	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 (Jeffrey Davis), 3:18-19	This is false. Mr. Harrison did consider these guidelines and opined "to a reasonable degree of engineering certainty that the sound levels outside the active construction area are not loud enough to cause hearing damage to the residents in their apartments." *See, e.g.*, SPLP St. No. 8-R, Harrison Rebuttal at 12:15-22 (testifying sound pressure levels Harrison measured outside of the active construction area are well below the noise limits in these regulations and standards, referencing EPA standards and CDC studies).

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47	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	This is false and unsupported. Dr. Magee in fact testified: "You'll also notice that the workplace standards are listed there, 5,000 micrograms per cubic meter. And ***there was no way you were anywhere near 5,000 micrograms per cubic meters at this particular site.*****"** N.T. 158:10-14 (Magee) (emphasis added).
48	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 (Norman Henry), 4:18-20	This is false. There is no evidence that any resident or employee in fact came into contact with Calciment. There is no evidence that any resident or employee was harmed or likely to be harmed by Calciment.
48	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	This citation is inaccurate. The cited page and lines do not contain any testimony regarding inhalation or ingestion.
49	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	Dr. Magee did not state this. Instead, he testified he was unaware of whether there was an eyewash station on site.
49	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	This mischaracterizes and takes out of context Dr. Magee's testimony: "Q. And these are pictures, referring to GRS-136, of cars in the parking lot with Calciment caked on them. Is that right? A. No, we do not know what that is but it is some visible, large particulate matter. Q. And is it your understanding that Sunoco offered a car wash certificate to the residents of GRS because of the use of, or the Calciment getting on their vehicles? A. I don't know what the rational was, but I did hear that there had been a car wash certificate issued, yes."

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			N.T. 159:23-160:10
49	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	SPLP did stop using Calciment at the site. GRS's speculation that SPLP stopped using Calciment because of GRS's complaints is not supported.
49	No actual remedial measures, however, were ever taken by Sunoco.	GRS Stmt No. 1-SR (Stephen Iacobucci), 32:12-33:2	The only issue to potentially remediate was dust that settled onto cars, for which SPLP issued car wash certificates to residents. There is no evidence any resident was exposed to or harmed by Calciment.
49	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	SPLP did provide substantial evidence that the hazards associated with Calciment did not pose a risk to the safety of the residents or employees at GRS. N.T. 137:18-143:8. Moreover, there is no evidence that any resident was exposed to or harmed by Calciment.
49	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's conclusions do not "lack a reasonable basis" and the measurements he opined upon were not "unspecified." Dr. Magee testified: "I asked specifically do the drillers or whatever contractors are on site, *do they measure the respirable particles in the air at the site*? And the answer was *yes, they measure it every day*, a couple of days the instrument wasn't working, but in general they measured it almost every day. And I said, *well I would like to see those date. So they sent them to me* and I'm sure they're available to you if you ask for them. … Where were the readings taken? On site, sir? A. Well, I saw a map with a circle but I can't tell you where that was in terms of north, south, east and west. *It was on the edge of the site*, but I'm sorry. That's about the best I can tell you because, you know, I don't know exactly, you know, what was the north side versus the south side.

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			Q. And did you ask how far away the readings were taken from the actual center of the work site itself? Where the dust was being generated? A. Well no, I didn't ask. *I just saw that it was at the edge which would be of most interest because you're worried about the material as it's leaving the site*. Not in the middle of the site." N.T. 164:14-165:22.
49- 50-	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	This takes Dr. Magee's testimony out of context. He did not need to know more than the fact that the readings were taken on the edge of the worksite, because he was opining about the material as it leaves the site. N.T. 164:14-165:22.
50	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	This is false. In fact, Dr. Magee testified that the videos appear to show a release of water vapor. "So this could be like water vapor. I can't prove it, but that's what it looks like to me. Knowing that I do, and it heats up to boiling and creates steam and that's a well-known fact." N.T. 167:4-7.
50	Dr. Magee offered only conjecture that the videos showing clouds of dust could be water vapor.	T.T. (Magee) p. 167	Dr. Magee's testimony was not mere conjecture. He testified that he knows Calciment heats up to boiling and creates steam, informing his opinion that the videos showed water vapor. N.T. 167:4-7. Moreover, as an expert witness, Magee is allowed to offer opinions based on his knowledge, expertise, and experience, which is not "conjecture," but rather proper expert testimony in accordance with the rules of evidence.
50	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.	This is false. In fact, Dr. Magee testified that the video appears to show a release of water vapor. "So this could be like water vapor. I can't prove it, but that's what it looks like to me. Knowing that I do, and it heats up to boiling and creates steam and that's a well-known fact."

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			N.T. 167:4-7.
51	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 (Kevin Burns), 7:14-21, 8:1-8	This is pure speculation. There was no evidence showing or reason to believe that any chemicals used on site had entered the water line. SPLP St. No. 4-RJ, Fye Rejoinder at 3:14-15; GRS St. No. 8-SR, Burns Surrebuttal at 3:10-12; N.T.393:21-25, 403:23-405:2, 410:5-24.
51	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.	There is absolutely no evidence, and Mr. Burns admitted he had no knowledge of, actual events on site to opine that there was a possibility of hydrocarbons being present in the water after the water line break. He apparently heard the word Sunoco and jumped to an unfounded conclusion that the incident in question involved a release of petroleum products. SPLP St. No. 4-RJ, Fye Rejoinder at 3:14-15; GRS St. No. 8-SR, Burns Surrebuttal at 3:10-12; N.T.393:21-25, 403:23-405:2, 410:5-24. In fact, there were no hydrocarbons in the water. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23.
51	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 (Kevin Burns), 7:4-6; 7:11-21	Mr. Burns testimony was speculative, does not rise to the level of substantial evidence, and cannot support a finding of fact. He stated: "Q. COULD THE PRESENCE OF THESE CHEMICALS CAUSE ADDITIONAL ISSUES OUTSIDE WHAT A WATER AUTHORITY WOULD NORMALLY TEST FOR AFTER A DRINKING WATER LINE BREAK? A. Yes, *it is possible*, which is why I advised additional testing." GRS St. No. 8-SR, Burns Surrebuttal at 7:14-17 (emphasis added). Moreover, Mr. Burns admitted upon cross examination that he was completely unaware that the incident did not involve a release of petroleum products – which was his misunderstanding of the nature of the pipeline being constructed on the GRS property. *See* N.T. 393:21-25, 403:23-405:2, 410:5-24.

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51	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 (Kevin Burns), 7:14-21	Mr. Burns was unqualified to give advice on the issue and admitted he had no clue about what was going on at the site and what alleged contaminants could be present when he gave GRS the advice for the unnecessary and lengthy testing they chose to unnecessarily perform. SPLP St. No. 4-RJ, Fye Rejoinder at 3:14-15; GRS St. No. 8-SR, Burns Surrebuttal at 3:10-12; N.T.393:21-25, 403:23-405:2, 410:5-24.
51	Sunoco, however, failed to pursue any testing.	T.T. (Amerikaner), 222:22-223:2; GRS-139	This statement mischaracterizes the testimony and SPLP's ability to test the water. Mr. Iacobucci testified SPLP requested GRS to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party, was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May 27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), id. at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), id. at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).
51	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	This mischaracterizes what Horn Plumbing stated in its email. Horn Plumbing never said the "water was ***not*** safe for all purposes", instead Horn plumbing stated: "Horn Plumbing suggested that residents of the Glen Riddle Apartments were safe to use the potable water supplied by the main for showers and other conventional use aside from drinking for the night until the water is tested by Aqua America the next day." Horn Cross Ex. 1 at 4. As Mr. Horn explained, this advice was not due to outside contamination concerns, but instead because:

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			"when you've emptied the water out of the piping what happens is when you turn the water back on real slow in the piping that all the old scaling that's in that piping might just have a little bit of rust look to it and not be as clear as could be. And Sunoco had already brought in a tractor trailer load of cases of water and delivered them to all the units. So we just suggested, they had bottled water use that for the night until they could test it the following morning." N.T. 183:19-184:3. In fact, the testing showed the water was perfectly safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23.
52	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	SPLP did not tell GRS to notify its residents that the water was safe to use for all purposes. In fact, Mr. Amerikaner's email stated: "When that happens, the pressure in the system must be re-established, and pockets of air must be purged. Water must be run through taps to clear any sediment that has collected while the water was not flowing. Once those things occurred last night, the water was safe to use for all purposes, *although Horn recommended that if Glen Riddle was concerned about contamination, the water should be tested to confirm potability*." Ex. GRS-139 at 4 (emphasis added).
52	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	GRS Stmt No. 1-SR (Stephen Iacobucci), 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	SPLP did not "sit" on the guidance received from its plumber. The evidence showed SPLP attempted to do its own testing the next day, but GRS stalled allowing SPLP permission to do testing and in the meantime, Aqua was already on site collecting samples for testing. Mr. Iacobucci testified SPLP requested GRS to coordinate on testing. GRS refused, instead seeking information to contact TetraTech. GRS St. No. 1-SR at 35:17-19. SPLP had TetraTech personnel on site and gave the name of the person who was going to collect the samples to GRS. GRS then asked for the name that was already provided. While GRS's counsel was stalling SPLP's attempts to collect the water samples, Aqua, an independent third party was already on-site collecting samples, so there was no reason for SPLP to also collect and test samples. N.T. 222:3-223:2, Ex. GRS-139 at 5 (Amerikaner May

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	and who was opining on the safety of the water for Sunoco.		27, 2021 11:05 AM email providing GRS counsel Cortes and Beach with name of technician on site and lab that would perform sampling), id. at 2-3 (Beach May 27, 2021 12:04 PM email to Amerikaner seeking name of technician on site to do testing), id. at 2 (Amerikaner May 27, 2021 2:03 PM email to Beach explaining since Aqua was already collecting samples, testing efforts did not need to be duplicated).
52	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 (Stephen Iacobucci), 35:5-7; GRS-140	This mischaracterizes the steps SPLP took to address the issue. SPLP provided bottled water beginning on the date of the water line break through the date GRS received results to its testing. SPLP St. No. 4-RJ, Fye Rejoinder at 3:15-16. SPLP had a plumber on site almost immediately to remedy the issue and the water was turned back on within approximately five hours. SPLP St. No. 4-RJ, Fye Rejoinder at 3:4-6. In the meantime, it also provided porta potties. SPLP St. No. 4-RJ, Fye Rejoinder at 3:15-16. It was GRS's decision to turn the water back off even though there was no reason it could not be used for flushing toilets. *See* N.T. 500:1-507:25 (Deisher).
52	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 (J. Culp), 12:18-13:2	This is false. SPLP did take reasonable steps to ensure the integrity of the water line. SPLP used flume pipe and straps to protect all utilities that were exposed in the construction workspace, including the water line. N.T. 482:3-9 (Fye). Additionally, Sunoco requested from GRS any plans or drawings showing the location of these GRS water lines on the property, and GRS did not provide them and stated it had none. SPLP St. No. 4-R, Fye Rebuttal at 6:13-19.
52	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	This mischaracterizes and takes out of context Dr. Magee's testimony. Dr. Magee's conclusion is fully supported and credible. Dr. Magee explained that Mr. Burns testing recommendations were based on Mr. Burns opinion that Calciment, bentonite, and grout were "unique chemicals." Dr. Magee explained these are not unique materials, they are widely used by both the construction industry and homeowners. Dr. Magee then explained even if any of those materials had traveled into the repaired water line, there was no concern for human health because they would only be in trace amounts and are made of ingredients meant for human consumption. In fact, none of these materials were present in the water.

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			N.T. 147:10-148:14, 149:11-16 (Magee).
52	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	The testimony cited does not support this assertion.
55	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 (Stephen Iacobucci), 29:7-17	This is false. SPLP engaged in numerous communications providing GRS with information regarding its concerns. SPLP MB at 31-39.
55	GRS raised detailed concerns and requested specific information pertaining to the safety of the site – with no substantive response from Sunoco.	Id.	This is false. SPLP provided numerous communications providing GRS with information. SPLP MB at 31-39.
55	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	This is false. SPLP repeatedly explained to GRS the initial plans were preliminary and still in progress. SPLP St. No. 4, Fye Rebuttal at 7:22-8:3; *see also* SPLP St. No. 2-R, Amerikaner Rebuttal at 13:11 – 14:12; Exhibit No. DA-19, DA-20, DA-21, DA-22, DA-23. SPLP worked with the Township to ensure adequate emergency responder access to residential buildings. SPLP MB at 43-46.
55	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	SPLP fenced off its work area once GRS allowed SPLP to have full access to the work site. As Mr. Fye testified: "Mr. Iacobucci also states that Sunoco has since attempted to mark and rope off its work areas. This statement is incorrect. Since we have been allowed to have full access to the work site the LOD has either been marked off with orange safety fence and/or panel fencing with

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			geotextile fabric and later with the sound walls. There is no work site I am aware of that is more demarcated than the GRS area. The only people that ever attempted or did come onto our workspace were the management and employees of GRS." SPLP St. No. 4, Fye Rebuttal at 13:19-24.
55	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 (Stephen Iacobucci), 11:3-13:7; GRS-16, GRS-17	SPLP did provide information regarding all alleged "leaks" at the GRS property. First, the hydraulic truck fluid leak, which was less than the threshold reportable to DEP, was reported as a courtesy to DEP, and was immediately cleaned up and remediated. SPLP St. No. 4, Fye Rebuttal at 14:13-15:7. As Mr. Fye testified: "we have strict procedures in place to contain any disturbance within the work site and prevent leaks. We have a checklist that requires the equipment to be inspected for problems, including potential leaks, multiple times daily. Whenever we are filling tanks we have a spotter whose job it is to watch for spillage or leaks that may occur. *Id.* at 15:8-12. As to the alleged "leaks" purportedly shown in GRS-16 and GRS-17, Mr. Fye testified that GRS-16 shows fresh water that escaped in March 2021. Approximately 20 gallons of fresh water leaked off of the site and was addressed by the crew immediately. GRS-17 does not show a leak, but just shows a sweeper truck cleaning the parking lot which is typical of all sites. *Id.* at 15:13-18.
55	A cessation of the use of airborne, hazardous, Calciment.	GRS-135	This is pure speculation. There is no evidence as to why SPLP stopped using Calciment at the site, that it was hazardous to GRS residents or employees —which it is was not—or that anyone was injured.
56	The removal of inaccurate "warning" signage that caused a panic from the Property.	See Emergency Petition filed February 11, 2021	There is no evidence the warning signs placed in error caused "a panic." The Emergency Petition is not record evidence and an allegation is no substitute for hard evidence of record and thus cannot form the basis of a finding of fact. It is a pleading containing assertions. Moreover, SPLP was not required to file a response to the

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			Petition, the allegations are deemed denied, and therefore SPLP did not make any admissions as to the representations within the Petition. 52 Pa. Code § 3.6(c).
56	The prevention of GRS Residents from consuming potentially contaminated water.	T.T. (Amerikaner) 213:3-217:11; GRS-136; Horn Cross 1	The water was not contaminated. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23.
56	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	This is inaccurate. SPLP also extensively communicated with the Township and provided updates to the Township to post on its website. SPLP St. No. 7-R, McGinn Rebuttal at 8-11; Exhibit SPLP JM-4. Mr. McGinn also provided an exhibit of letters mailed to GRS residents. SPLP Ex. JM-5. As to GRS management, SPLP engaged in voluminous communications through counsel. SPLP MB at 31-39.
57	Sunoco failed to communicate a Sound Wall Plan to GRS until the Sound Walls were installed.	Id., 551:5-556:5	This is false and mischaracterizes Mr. Amerikaner's testimony. He stated: "I'm trying to remember exactly when the sound walls were installed because we did provide the diagram showing where the sound walls would be installed. I believe that was in mid-December. I don't believe the sound walls were fully erected by then. We then provided final drawings showing when the sound walls would be erected. That was in, I think, early to mid-January. I believe the sound walls were either in place or close to being totally in place by that point. But, you know, there were adjustments in those plans, as we all know, during the process of putting them up." N.T. 552:12-24.
57	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.	The testimony cited does not support this allegation.

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57	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	The testimony cited does not support this allegation. Mr. Amerikaner instead stated he did not know if GRS's specific request in its November 20, 2020 letter was addressed, but that the sound walls were constructed higher than originally proposed to provide the maximum sound mitigation for the construction site. N.T.556:21-558:4.
57	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). 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.")	Id., 558:21-560:12	SPLP did make GRS aware that there could be interruptions to utility service and how SPLP would address any potential outages. SPLP St. No. 2-R, Amerikaner Rebuttal at 10:19-20, 15:11-12; SPLP Ex. DA-25 (last page).
57	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	Horn plumbing stated: "Horn Plumbing suggested that residents of the Glen Riddle Apartments were safe to use the potable water supplied by the main for showers and other conventional use aside from drinking for the night until the water is tested by Aqua America the next day." Horn Cross Ex. 1 at 4. As Mr. Horn explained, this advice was not due to outside contamination concerns, but instead because: "when you've emptied the water out of the piping what happens is when you turn the water back on real slow in the piping that all the old scaling that's in that piping might just have a little bit of rust look to it and not be as clear as could be. And Sunoco had already brought in a tractor trailer load of cases of water and delivered them to all the units. So we just suggested, they had bottled water use that for the night until they could test it the following morning." N.T. 183:19-184:3.

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			In fact, the testing showed the water was perfectly safe to drink. SPLP St. No. 4-RJ, Fye Rejoinder at 6:3-4, GRS St. No. 8-SR, Burns Surrebuttal at 6:20-23. Moreover, Mr. Amerikaner's May 27, 2021 email stated: "When that happens, the pressure in the system must be re-established, and pockets of air must be purged. Water must be run through taps to clear any sediment that has collected while the water was not flowing. Once those things occurred last night, the water was safe to use for all purposes, *although Horn recommended that if Glen Riddle was concerned about contamination, the water should be tested to confirm potability*." Ex. GRS-139 at 4 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated: October 22, 2021