

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 16, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Glen Riddle Station, L.P.

C-2020-3023129

v.

Sunoco Pipeline, L.P.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Sunoco Pipeline, L.P. (Sunoco) on March 28, 2022, to the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (ALJ) Joel H. Cheskis issued on March 8, 2022, in the above-captioned proceeding. The Initial Decision dismissed the Formal Complaint (Complaint) filed by Glen Riddle Station, L.P. (Glen Riddle/ Complainant) on December 2, 2020. Glen Riddle filed Reply Exceptions on April 7, 2022. For the reasons stated below, we shall deny the Exceptions and adopt the ALJ's Initial Decision consistent with this Opinion and Order.

I. History of Proceeding

In its Complaint, filed December 2, 2020, Glen Riddle averred that on or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County that concerned various portions of the Glen Riddle property that contains 124 residential dwelling units. Glen Riddle further averred that, in the taking action, Sunoco condemned temporary workspace easements and a temporary access road easement over their property for purposes of completing a pipeline project. In addition, Glen Riddle averred that Sunoco is not complying with previous requirements of the Commission regarding its public awareness plan and standard operating procedures. Glen Riddle also identified several other alleged failures to comply by Sunoco, including, *inter alia*, parking and traffic safety concerns, creating an unsafe work site, failure to follow government-mandated pandemic safety protocols, failure to communicate regarding a potentially hazardous leak, and structural and storm drainage concerns. Glen Riddle averred that Sunoco's actions violated several provisions of the Public Utility Code (Code) and requested that the Commission enter an order restraining Sunoco from engaging in further work at the property until the safety concerns are resolved. Glen Riddle attached multiple documents to its complaint in support of its position.

On December 23, 2020, Sunoco filed an Answer and New Matter in response to the Complaint. In its Answer, Sunoco admitted or denied the various averments Glen Riddle made in its Complaint. Specifically, Sunoco expressly denied that it has not complied with the *required* public awareness plan or standard operating procedures and denied all allegation of failures by Sunoco regarding any statutory or regulatory duty that were averred in the Complaint. Sunoco provided significant detail in response to the averments made in the Complaint and concluded by requesting that the Complaint be dismissed with prejudice. In support, Sunoco attached multiple documents to its Answer. In its New Matter, accompanied by a Notice to Plead, Sunoco argued that the Commission lacks jurisdiction over Glen Riddle's allegations regarding

environmental law issues, permitting obligations, the validity and scope of easements, and Sunoco's compliance with municipal ordinances and the Governor's orders and regulations regarding Covid-19. Sunoco also argued that Glen Riddle has failed to state a claim upon which the Commission can grant relief. In part, Sunoco argued that Glen Riddle's allegations regarding construction means and methods, as well as relief seeking a work plan and schedule reflecting Glen Riddle's preferences, fail as a matter of law to state a claim upon which relief can be granted and should be dismissed.

Sunoco filed Preliminary Objections on December 23, 2020. Glen Riddle filed its Answer to the Preliminary Objections on January 4, 2021.

On January 28, 2021, an Order was entered granting, in part, and denying, in part, the Preliminary Objections filed by Sunoco. In that Order, the scope of the proceedings was framed by the determination that Glen Riddle has raised issues over which the Commission has jurisdiction, including allegations regarding the Public Awareness Plan and standard operating procedures ordered by the Commission in a prior proceeding. The Order also noted that the Commission has jurisdiction to hear claims that a utility is providing unsafe service, and, therefore, permitted those issues to proceed to hearing. The remaining issues, related to the scope and validity of an easement, claims regarding Municipal Law, the Governor's face covering mandates and environmental regulations were stricken from the Complaint on the basis that they are beyond the scope

of the Code, Commission order or Regulation. The Order further ruled that Glen Riddle's Complaint was legally sufficient.¹

Both Glen Riddle and Sunoco filed Main Briefs on September 24, 2021, and Reply Briefs on October 22, 2021.

Also, on September 24, 2021, Sunoco filed a request for a transcript correction seeking to change all 74 instances of "calcimate" in the transcript to "Calciment." The request was not opposed and therefore deemed granted pursuant to Section 5.253(f)(2) of the Commission's Regulations. 52 Pa. Code § 5.253(f)(2).

On November 9, 2021, Sunoco filed a Motion to Strike Portions of Glen Riddle's Reply Brief. On November 29, 2021, Glen Riddle filed an Answer to that Motion. That Motion was granted, in part, and denied, in part, by order dated December 2, 2021.

¹ The ALJ noted multiple pleadings and procedural matters occurred, consistent with Commission practice and procedure:

...including establishment of an initial telephonic hearing, a motion for a prehearing conference and procedural schedule, the filing of a petition for interim emergency relief, the withdraw of the petition for interim emergency relief, a prehearing conference, the rescheduling of the prehearing conference, the filing of a motion to compel by each party, the filing of a contested motion for a protective order, a motion *in limine*, a motion to enforce the order granting in part and denying in part the preliminary objections and striking Glen Riddle testimony, a motion for a final continuance, another motion to compel, a motion for a protective order and sanctions, and two motions to strike various portions of the parties' briefs. Each of these procedural matters was responded to with the necessary answer, order or hearing notice as appropriate.

I.D. at 2-3.

On December 7, 2021, Glen Riddle filed a Motion to Strike Portions of Sunoco's Main and Reply Briefs. On December 27, 2021, Sunoco filed its Answer to the Motion. Glen Riddle's Motion was granted, in part, and denied, in part, by Order dated December 29, 2021. The record in this case closed on December 29, 2021.

By Initial Decision issued March 8, 2022, Glen Riddle's Complaint was granted, in part, and, denied, in part.

As previously noted, Exceptions were filed by Sunoco on March 28, 2022. Replies to the Exceptions were filed by Glen Riddle on April 7, 2022. On April 29, 2022, Sunoco filed a Motion to Strike Portions of Glen Riddle's Reply Exceptions, and Glen Riddle filed its Response thereto on May 18, 2022.

II. Background

This case arises from the disruption to the Glen Riddle community caused by the pipeline construction project conducted by Sunoco pursuant to its certificated authority and the easements associated with the Mariner East Pipeline Project, a major pipeline construction project within the Commonwealth.

Glen Riddle is the owner of a residential apartment community known as the Glen Riddle Station Apartments in Middletown Township, Delaware County. The property includes five buildings closely located together with 124 units that house over 200 Pennsylvanians. Sunoco's pipeline project runs through the center of the Glen Riddle community.

Sunoco is a Texas limited partnership and certificated Pennsylvania public utility constructing a pipeline across Pennsylvania, including through the Glen Riddle apartment complex.

As this case involves gas pipeline construction, it is significant to note that, as acknowledged by the ALJ:

...[G]as safety is of critical importance to the Commission. Tragically, numerous Pennsylvanians have died, and property has been destroyed as a result of aging gas pipeline infrastructure, among other things, and there are significant public policy debates regarding environmental issues, energy independence and other related issues as well. Many cases involving gas safety are brought by the Commission's Bureau of Investigation and Enforcement, not consumers, and result in the imposition of civil penalties where violations are found. In addition, the disposition of this case is significantly impacted by the fact that the pipeline is being constructed immediately through the center of a 124-unit apartment complex where more than 200 Pennsylvanians live in close proximity to major construction activities. This complaint is also viewed in light of the need for Sunoco to show continuous improvement in its communications with the public. This is especially significant given that the construction occurred during a major pandemic when most of those 200 residents were working or attending school from their homes at the construction site. This is a major factor that colors the lens through which Glen Riddle's complaint is viewed.

I.D. at 32.

Further, it is of equal importance to note that Sunoco's construction projects are initiated under the authority of the easements which entitle it to do so. As the ALJ further noted:

Disposition of Glen Riddle's complaint is also colored by the underlying fact that Sunoco has easements to perform these construction activities. This includes both the permanent easements that has existed through the Glen Riddle property since 1931, as well as the construction easements recently obtained. Although the scope and validity of the easement is not at issue in this case because the

Commission lacks jurisdiction to hear such issues, it is nonetheless clear that Sunoco has an easement to perform these major construction activities and that implicit in the regulatory approval Sunoco received to perform these construction activities was the understanding that such activities would be performed in residential areas such as the Glen Riddle property with as much care as reasonable.

I.D. at 32.

As a result of Sunoco's pipeline construction project in its right of way, which dissects the Glen Riddle Community, Glen Riddle filed its Complaint against Sunoco alleging unsafe and unreasonable conditions to the inhabitants of the Glen Riddle community caused by Sunoco's construction project including: (1) creating fire hazards; (2) unreasonably high noise levels; (3) inadequate communications with the public; (4) traffic hazards; (5) the use of a dangerous product (Calciment) at the property; and (6) causing a water line break.

After the hearing and based upon a fully developed record, the ALJ's Initial Decision sustained the Complaint as to the averments of fire hazards, noise levels and inadequate communications with the public, directed that Sunoco pay a civil penalty in the amount of \$51,000, and denied the Complaint as to the averments of traffic hazards, the use of Calciment at the property and a water line break.

The Exceptions raised by Sunoco challenge the ALJ's Initial Decision as entirely without merit. Specifically, Sunoco challenges those portions of the Initial Decision which sustained the Complaint as to the averments of fire hazards, noise levels and inadequate communications with the public.

III. Discussion

A. Legal Standards

Section 332(a) of the Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa. C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Code, the Commission’s Regulations, or an outstanding order of the Commission. 66 Pa. C.S. § 701.

In the present case, Glen Riddle has the burden of proof as the Complainant seeking relief associated with Sunoco’s pipeline construction project.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *see also, Burlson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is

required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

In the present case, the overarching statutory and regulatory provisions applicable to the conduct of the utility include Section 1501 of the Code and Section 59.33 of the Commission's Regulations. Section 1501 provides in pertinent part:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.

66 Pa. C.S. § 1501. In addition, Commission Regulations at Section 59.33 provides in pertinent part:

§ 59.33. Safety.

- (a) *Responsibility.* Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

52 Pa. Code § 59.33.

Prior relevant holdings of the Commission regarding Sunoco's pipeline construction projects within the Commonwealth include *West Goshen Township v. Sunoco Pipeline, L.P.*, Docket Number C-2017-2589346 (Opinion and Order entered October 1, 2018) (*West Goshen*) (enjoining Sunoco from constructing or locating a valve or its appurtenances in the township without first consulting with and obtaining the express written consent of the township and requiring Sunoco to provide engineering documents and plans to the township for safety reviews), *Dinniman v. Sunoco Pipeline, L.P.*, Docket Number C-2018-3001451 (Opinion and Order entered June 15, 2018) (*Dinniman*) (establishing conditions upon which construction could resume, subsequently overturned and dismissed on lack of standing of Dinniman by order of the Commonwealth Court at *Sunoco Pipeline, L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019)), and *Baker v. Sunoco Pipeline, L.P.*, Docket Number C-2018-3004294 (Opinion and Order entered Sept. 23, 2020) (*Baker*) (granting the complaint, in part, and, denying, in part, the Commission affirmed the ALJ's decision that deficiencies in the public awareness program required the imposition of a \$1,000 civil penalty and corrective measures in the form of the scheduling of a public awareness/education meeting in which Sunoco was directed to participate. The Commission denied the requests for injunctive relief regarding public outreach and emergency response training practices beyond the relief directly responsive to the allegations in the complaint). Finally, in *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3006116, *et al.* (Opinion and Order entered Nov. 18, 2021) (*Flynn*) (directing that, pursuant to the utility's duty to provide adequate, safe and reasonable service and facilities under Section 1501 of the Code, Sunoco take certain reasonable actions to protect public safety, including, *inter alia*: (1) supplementing public awareness information; (2) sharing the results of inspection reports; (3) providing advance notification prior to proposed excavation; and (4) scheduling public awareness meetings to discuss additional communications and training).

As the Commission noted in *Baker, supra*, the Commission Regulations at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. The Commission Regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans. 49 CFR § 195.440 (relating to public awareness).

B. ALJ's Initial Decision

The ALJ made fifty-five Findings of Fact (FOF) and reached twenty-one Conclusions of Law (COL). I.D. at 5-11; 86-90. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Order, either expressly or by necessary implication.

The ALJ's Initial Decision reviewed each of the outstanding issues of the Complaint *seriatim*, including averments related to traffic hazards, fire hazards, noise levels, Calciment, water main break, and communication with the public. The ALJ concluded substantial record evidence supported a finding that Glen Riddle had satisfied its burden of proof that Sunoco's conduct regarding fire hazards, noise levels and communications to the public violated the Code and Commission Regulations or Commission Order regarding the standard and duty of reasonable care in utility operations. As a result of the violations regarding fire hazards, noise levels and communications, the ALJ found that a civil penalty of \$51,000 was warranted in the circumstances. However, the ALJ also concluded that Glen Riddle's claims regarding Sunoco's responsibility for creating traffic hazards, the alleged dangerous use of

Calciment during construction, and causing a water line break, failed to satisfy the burden of proof and were, therefore, denied. Accordingly, the ALJ's Initial Decision granted, in part, and denied, in part, the Complaint filed by Glen Riddle.

With respect to traffic hazards created by Sunoco's construction activities, the ALJ declined to find a violation of the Code or Commission Regulations. The ALJ's analysis turned on the fact that Sunoco has an easement to perform the major construction activities in the Glen Riddle community. The ALJ reasoned that it was implicit in the regulatory approval Sunoco received to perform these construction activities was the understanding that such activities would be performed in residential areas such as the Glen Riddle property where the easement runs through the apartment complex and apartment buildings were built within feet of the easement boundary. The ALJ concluded that nothing in the evidence submitted by Glen Riddle establishes that Sunoco acted with less than as much care as possible regarding the traffic issues during the pendency of this major construction project in a residential area. I.D at 36-38.

The ALJ acknowledged that the use of a port-a-potty occupying five parking spaces, "reflects a less than ideal situation but does not represent a violation of applicable laws." Reasoning that, while it is reasonable for residents to be offput by the inconvenience of reduced parking availability, such temporary inconvenience is not unreasonable given the scope of the construction project to be performed. The ALJ concluded that such allegations do not support a finding that Sunoco's activities violated any applicable law. I.D. at 33-38.

With respect to fire hazards created by Sunoco's construction activities, the ALJ found Sunoco's conduct to be in violation of the Code and Commission Regulations. The ALJ's analysis turned on the conclusion that record evidence demonstrated that fire hazards were created or exacerbated at the Glen Riddle property due to Sunoco's construction activities, in particular erection of sound walls. The ALJ noted, for

example, a plain review of the pictures admitted into the record demonstrates that these walls are approximately 30 feet high and often very close to the buildings. The ALJ reasoned:

This is *prima facie* evidence that new or different hazards have been created at the construction site either by an emergency responder not being able to access a building because the looped access is blocked, the wall is too close to the building or for some other reason. When viewing the videos submitted as GRS-155 and GRS172, it is clear, for example, that if an emergency responder would have had to access the property while a large construction vehicle was maneuvering on the property, that emergency responder would have been delayed as a result. Sunoco's argument that "during the entirety of [Sunoco's] construction, emergency responders had unimpeded access to the GRS apartments," is not credible. *See, e.g.*, Sunoco R.B. at 18.

I.D. at 40.

The ALJ also found there were a substantial number of other exhibits admitted into the record that show multiple ways in which emergency responders would, at a minimum, be impeded or slowed. The ALJ noted that, as this was a major construction site which necessarily involved impeding or slowing vehicular access whether by residents or emergency responders, such delays were to be anticipated. However, given that such delays may be anticipated, the ALJ concluded that in failing to take reasonable action to alleviate the issue, Sunoco's inactions to address such issues were unreasonable. The ALJ specifically noted that record evidence demonstrates that some of the sound walls were not movable to allow for emergency vehicles access, that the western side of the Glen Riddle property did not have a turnaround space for emergency vehicles, the project entailed high levels of truck traffic, delay and stacking on an incline on the property occurred; and Sunoco's construction made a fire or emergency

response more difficult and the property less safe. *Id.* citing, GRS St. 3 at 14; GRS St. 1-SR at 6; and, GRS St. 6-SR at 6.

In rejecting Sunoco's position on the issue of fire hazards, the ALJ noted that this Commission possesses irrefutable authority to exercise its jurisdiction where issues of community safety are concerned. I.D. at 41, *citing* Re: Consolidated Rail Corp., 56 Pa. P.U.C. 367 (1974). The ALJ concluded that in the circumstances, where Sunoco's major construction project was conducted in the heart of a residential area, Sunoco was required to take extra efforts that Sunoco failed to take.

The ALJ rejected Sunoco's argument that expert testimony was required and a showing of violations of specific fire safety standards stating:

Whether the township approved of Sunoco's activities or not does not impact whether such additional hazards violate the Public Utility Code. The Township did not consider the Public Utility Code when making that determination. The fact that Sunoco may have had the Township's permission to conduct those activities does not negate the fact that new and different hazards were created as a result of Sunoco's activities. The factors that the Township may have used to determine whether Sunoco's operations were safe is not the final determination of whether Sunoco's operations were safe pursuant to the Public Utility Code. The Township may have considered other factors that are not relevant to an analysis under the Public Utility Code.

The Township's approval is not the end of the analysis for purposes of determining whether Sunoco's activities violated the Public Utility Code.

I.D. at 41.

The ALJ noted that, while Sunoco has an easement through the property to perform the construction, Sunoco's assertion that "nothing about the construction work

has created a new or different hazard than the hazards that already pre-existed at the property” is not credible or supported by the evidence of record. To the contrary the ALJ noted that, but for the construction, there would not be the additional hazards created by, *inter alia*, the presence of large construction vehicles, the erection off 30-foot sound barrier walls, and additional traffic congestion. The ALJ concluded that Sunoco’s conduct of the construction project created new and different hazards at the property, including the creation of the fire hazards within the worksite itself. I.D. at 41-44.

The ALJ further noted, however, that the creation of new hazards, however, is not entirely dispositive of the issue, but rather, whether Sunoco took any reasonable actions to reduce or minimize the new and different hazards created at the property by Sunoco’s construction activities. The ALJ concluded that there is nothing in the record to demonstrate that Sunoco took the necessary reasonable action to address the new and different hazards present at the construction site. I.D. at 41-42.

The ALJ noted his agreement with Glen Riddle’s witness James Davidson who testified:

Fire personnel are generally hard working, brave, careful and thorough. They can overcome challenges and problems, though it typically will take more time than it otherwise would in a fire response to overcome challenges and problems. *Fire personnel shouldn’t have to overcome avoidable challenges and problems created by Sunoco and may not have the luxury of the time necessary to do so.* The passage of time, in my experience, can mean the difference between life and death in a fire response.

I.D. at 42, *citing* Glen Riddle St. 6-SR at 9 (*emphasis added*). The ALJ concluded that expert testimony is not required to find that fire personnel should not be required to overcome avoidable challenges and problems created by Sunoco’s placement of, at certain points immovable, sound walls.

With respect to unreasonable noise levels created by Sunoco's construction activities, the ALJ found Sunoco's conduct to be in violation of the Code and Commission Regulations. The ALJ's analysis turned on the conclusion that substantial record evidence demonstrated that unreasonable noise levels were experienced in the Glen Riddle Community based upon the expert testimony of Glen Riddle's witness Jason Culp, which the ALJ found to be credible, and 30 noise level readings demonstrated by video evidence taken of noise level measurements of construction activity from various locations and times within the Glen Riddle Community, on a sound level meter device (BAFX Products BAFS3608 Digital Sound Level Meter with a range of 30- 130 decibels). I.D. at 44-51.

With respect to the use of Calciment, a dangerous chemical, by Sunoco's construction activities, the ALJ declined to find a violation of the Code or Commission Regulations. The ALJ's analysis turned on the conclusion that Glen Riddle had failed to present sufficient evidence to show that Sunoco's activities at the construction site violate the Code. The ALJ noted that, while Calciment was used at the construction site, and while the evidence was that construction caused plumes of some substance rising in the air, and a white substance to cover many cars at the Glen Riddle property, there was no evidence to establish the substance in the air and settling on the cars was Calciment, and, if so, that the substance jeopardized public safety, and therefore was a violation of the Code. I.D. at 51-55.

With respect to the water main break caused by Sunoco's construction activities, the ALJ declined to find a violation of the Code or Commission Regulations. The ALJ's analysis turned on the fact that, while there was no dispute that Sunoco's actions caused the water line break on Glen Riddle's property, Sunoco took all reasonable steps to protect underground utilities and, when a water line broke, took all reasonable steps to ensure its repair while minimizing inconvenience to the residents. Therefore, the ALJ concluded no record evidence demonstrates that Sunoco's actions constitute a

violation of the Code, a Commission Order or a Commission Regulation. 66 Pa. C.S. § 1501. I.D. at 56-60, citing, *See*, Sunoco St. 4-R at 6; Sunoco St. 4-RJ at 3.

The ALJ reasoned that the fact the water line broke because of Sunoco's construction activities does not, in and of itself, constitute a violation of the Code, a Commission Order or a Commission Regulation. Rather, the ALJ concluded that there is no evidence to support a finding that Sunoco's response to the water line break was inadequate. There, the inconvenience caused by the water line break, while not to be minimized, is nevertheless, reasonable under the circumstances, as contrasted with the unreasonable inconvenience caused by the other issues complained of by Glen Riddle which the ALJ found *did* constitute violations under the Code. I.D. at 56-60.

With respect to Sunoco's communication with the public regarding Sunoco's construction activities, the ALJ found Sunoco's conduct to be in violation of the Code and Commission Regulations. The ALJ's analysis turned on the conclusion that the Public Awareness Plan, and other applicable law, apply to construction, regardless of whether it is "new construction."

The ALJ concluded that several provisions of the Public Awareness Plan pertain to construction of pipelines, not just operation of pipelines. The ALJ noted that in the Public Awareness Communication Summaries, Section 7.4.5 of the plan, Tables 1, 2, and 3 each entitled "Public Awareness Communications for the Affected Public," provided that residents located along the pipeline right-of-way and "places of congregation" are to be given "supplemental messages" regarding "any planned major maintenance/construction activity" including print materials, personal contact, telephone calls, group meetings and open houses "as determined by specifics of the pipeline segment or environment." The ALJ reasoned that, as its plan was effective April 1, 2018, and references "49 CFR 195.440; RRC 8.235, 8.310, 8.315," Sunoco's Public Awareness

Plan applies, at least in part, to the construction activities performed by Sunoco at the Glen Riddle property and includes the citizens of the public which reside there.

The ALJ further concluded that irrespective of the applicability of the Public Awareness Plan or federal regulations to construction at the Glen Riddle community, Section 1501 of the Code and Section 59.339(a) of the Commission's Regulations are applicable. I.D. at 60-69. The ALJ found that:

In viewing the evidentiary record in light of these applicable laws, either in addition to or instead of the Public Awareness Plan and federal regulations, it is clear that Sunoco's construction activities at the Glen Riddle property violate the Public Utility Code or a Commission regulation and, again, do not constitute the reasonable and continuous improvement in communications efforts that is required of Sunoco, in the present circumstances.

Id.

Having concluded that substantial record evidence supported a finding that Glen Riddle had satisfied its burden of proof that Sunoco's conduct regarding fire hazards in two instances, noise levels in forty-six instances, and communications to the public in three instances, violated the Code and Commission Regulations for a total of fifty-one violations regarding the standard and duty of reasonable care in utility operations, the ALJ's analysis then turned to application of the policy statement outlined at Section 69.1201 of the Commission's Regulations, set out as "factors" to be considered in such cases in *Rosi v. Bell Atl.-Pa., Inc. § Sprint Commc'ns Co.*, Docket No. C-0092409 (Final order entered February 19, 2000), otherwise known as the "Rosi factors." 52 Pa. Code. § 69.1201(a) 1)-10). I.D. at 75.

The ALJ reviewed each of the ten factors, to determine whether the imposition of a civil penalty for the violations would warrant a higher or lower range of

penalty. The ALJ concluded that seven of the ten factors weighed in favor of imposition of a higher penalty under the circumstances. On that basis, the ALJ imposed a penalty of \$1,000 per violation found, for a total civil penalty of \$51,000. I.D. at 85.

C. Motion to Strike, Response and Disposition

As a preliminary procedural matter, we shall address Sunoco's Motion to Strike Portions of Glen Riddle's Reply Exception (Motion to Strike), filed on April 29, 2022, and Glen Riddle's Response thereto filed on May 18, 2022 (GRS Response). Based upon our review of Sunoco's Motion to Strike and Glen Riddle's Response thereto, we shall deny the Motion.

1. Sunoco's Motion to Strike Portions of Glen Riddle's Reply Exception

In its Motion to Strike (M.S.), Sunoco moves to strike portions of Glen Riddle's Reply Exceptions on the alleged grounds of impermissible references to and inclusion of extra-record materials, in violation of either 52 Pa. Code § 5.431(b) (pertaining to close of the record), 52 Pa. Code § 5.535(a) (pertaining to content of replies limited to responding to arguments or issues in the exception), 52 Pa. Code § 1.36 (pertaining to verification of formal complaint), and/or issued waived or improperly raised by Reply Exceptions, and/or Sunoco's constitutional right of due process. M.S. at 2-4.

Specifically, Sunoco moves to strike portions of Glen Riddle's Reply Exceptions, specifically at pages 1, 5 and 9, and Exhibit A, on the alleged grounds of impermissible references to and inclusion of extra-record materials in violation of 52 Pa. Code § 5.431(b) and Sunoco's constitutional right of due process. Sunoco argues that Glen Riddle's discussion and attachment of Exhibit A, which is Sunoco's Reply Brief as *Amicus Curiae* filed in the United States District Court for the Eastern District of

Pennsylvania in RE: *Glen Riddle Station L.P., v. Middletown Township*, Case No. 2:21-cv-00286-PSD, is an impermissible inclusion of, and reference to, materials not entered into the record of the instant proceeding, which, if permitted, would preclude Sunoco's adequate response and opportunity to be heard, in violation of Sunoco's due process rights. M.S. at 5-8.

In addition, Sunoco moves to strike portions of Glen Riddle's Reply Exceptions at pages 1, 7, 18, and 24, on the alleged basis that Glen Riddle improperly attempts to: (1) introduce new facts after the close of the record in violation of 52 Pa. Code §5.431(b); (2) present new arguments in violation of 52 Pa. Code § 5.535(a); (3) misrepresent record documents regarding verification in violation of 52 Pa. Code §1.36, and/or in violation of Sunoco's due process rights by what Sunoco describes as "various inappropriate and provocative statements, gross mischaracterizations of the record evidence and intro[duction] of facts wholly unsupported by the record..." M.S. at 8.

Finally, Sunoco moves to strike portions of Glen Riddle's Reply Exceptions at pages 10-11 as alleged issues that were waived and improperly raised in the Reply Exceptions. Sunoco avers that Glen Riddle's Reply Exceptions "takes issue" with certain findings contained in the Initial Decision, and therefore, without having filed Exceptions on those issues, is precluded from contradicting the Initial Decision in its Reply Exceptions. M.S. at 11-14.

2. Glen Riddle's Response

In its Response to Sunoco's Motion to Strike (GRS Response.), Glen Riddle asserts that Sunoco's Motion itself constitutes impermissible surreptitiousness, which the Commission should ignore. GRS Response at 1, *citing, See*, 52 Pa. Code §§ 5.533-5.535. Glen Riddle avers that Sunoco's motion is without merit and that Sunoco mischaracterizes Glen Riddle's responsive argument as including "extra-record material."

Glen Riddle avers that, contrary to Sunoco’s assertions of improper “provocative statements,” Glen Riddle asserted only responsive argument to Sunoco’s assertions in Exceptions, which rely upon record evidence. With respect to Glen Riddle’s inclusion of citation and discussion of *Glen Riddle Station, L.P. v. Middletown Twp.*, No. 21-286, 2021 WL 1141964, at *8 (E.D. Pa., Mar. 25, 2021) and attachment of Sunoco’s brief filed at that public docket, Glen Riddle asserts that reference to precedential case law and the arguments asserted in that precedential case law is not “extra-record material,” but rather, properly made responsive legal argument. Finally, Glen Riddle asserts that Sunoco mischaracterizes Glen Riddle’s argument as including “issues waived.” by Glen Riddle. GRS Response at 1-9.

3. Disposition

Based upon our review of Sunoco’s Motion to Strike and Glen Riddle’s Response thereto, we shall deny the Motion. We agree with Glen Riddle that the Motion constitutes surreply and will be disregarded. Glen Riddle’s Reply to the Exceptions, which at times may be characterized as “zealous advocacy,” nevertheless consists of properly made responsive arguments to Sunoco’s Exceptions, and where relevant, relies upon record evidence.

Specifically, with regard to Sunoco’s argument that reference to *Glen Riddle Station, L.P. v. Middletown Twp.* and attachment of Sunoco’s brief in that matter, we agree with Glen Riddle that the references and attachment of Sunoco’s brief are appropriate in these circumstances, in the context of the Glen Riddle’s legal argument that Sunoco should be estopped from arguing a position before the Commission which contradicts the position Sunoco asserted before the Eastern District Court. *See* R. Exc. at 5-6, 9, *citing Marazas v. W.C.A.B. (Vitas Healthcare Corp.)*, 97 A.3d 854, 859 (Pa. Commw. Ct. 2014) (a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was

successfully maintained.). As Glen Riddle argued, a litigant, like Sunoco, cannot successfully argue one position to a tribunal and later argue the opposite to another.

Glen Riddle's reference to case law which is directly responsive to Sunoco's arguments throughout its Exceptions, *i.e.*, that the Commission lacks jurisdiction over the pipeline safety matters at issue, is arguably relevant to our disposition of Sunoco's Exceptions, since Glen Riddle's reference is to a legal position taken by Sunoco before another tribunal upon consideration of the same set of underlying facts, the Sunoco pipeline construction at the Glen Riddle community.

Moreover, there is a distinction to be drawn between the case law and general rule relied upon by Sunoco in its arguments to strike material relied upon by Glen Riddle. In those cases, the records to be stricken were record evidence such as a witness' statement or expert's report, to which a party might otherwise be deprived of cross examination. *See* Sunoco Motion to Strike at 6. Here, unlike a witness statement or expert report, a "brief" is not *evidence* entered into the record. A brief, while made part of the record, is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues. Here, the brief in question was submitted by Sunoco to the Court of Common Pleas for the Eastern District of Pennsylvania, in a separate matter involving Glen Riddle and Middletown Township arising out of the same set of circumstances, Sunoco's construction project through Glen Riddle community. In that case, Sunoco's brief states Sunoco's legal position, *which the Court ultimately adopted*, that safety matters at issue were within the Commission's jurisdiction. This position directly contradicts the position taken repeatedly by Sunoco in its Exceptions.

Sunoco maintained before the Eastern District Court that the Commission retained jurisdiction over the relevant safety issues related to the Glen Riddle construction project. Now, before the Commission, Sunoco maintains that the Commission lacks jurisdiction over the same safety issues. We conclude that Glen

Riddle's reference to the conflicting legal position asserted by Sunoco before a separate court, arising from the same circumstances presently before the Commission was permissible in the circumstances, and does not warrant striking either the reference to the case before the Eastern District, Sunoco's position, or the brief filed by Sunoco in that matter. We note that, here, Sunoco is not effectively precluded from "having its say" with regard to its own brief, as may be argued regarding witness' testimony or expert's report, since the brief itself was Sunoco's "say" on the legal issue of Commission jurisdiction regarding the safety matters at issue.

Finally, while we deny Sunoco's Motion to Strike Portions of Glen Riddle's Reply Exceptions, we also note that our disposition of Sunoco's Exceptions, discussed more fully, *infra.*, was not rendered based upon *any* of the portions of Glen Riddle's Reply Exceptions which Sunoco sought to strike, but rather is based upon our adoption of the ALJ's analysis and disposition of the issues.

D. Exceptions, Replies and Dispositions

Based upon our review of the record evidence in this proceeding, the positions of the Parties and the ALJ's Initial Decision, as discussed more fully, *infra.*, we shall deny Sunoco's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order.

We remind the Parties that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *See Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also, see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. **Sunoco Exception No. 1: The I.D. infringes upon Sunoco’s due process rights, violates the regulatory rulemaking process, and acts beyond the Commission’s jurisdiction and expertise in holding that construction activities that are not proscribed by Commission or PHMSA regulations violate 66 Pa. C.S. § 1501 or 52 Pa. Code § 59.33(a). I.D. at 38-51, FOF Nos. 12-37, 48-55, COL No. 20.**

- a. **Exceptions and Replies Thereto**

In its Exception No. 1, Sunoco avers that the ALJ exceeded the Commission’s authority in finding that Sunoco’s conduct regarding construction noise levels and the hazardous traffic conditions at the construction site was unreasonable and in violation of the provisions of 66 Pa. C.S. § 1501 or 52 Pa. Code § 59.33(a). Sunoco avers that the ALJ’s findings establish “vague and newly created “regulations” through adjudication” which, thereby violate Sunoco’s due process rights. Sunoco Exc. 5-9. Sunoco asserts that the Commission may not find a violation based on the application of the standard of reasonableness, but rather must demonstrate that Sunoco’s actions violated an existing federal or state standard or regulation. Otherwise, Sunoco asserts that the ALJ’s findings violate the fundamental right to due process. *Id.* at 7 *citing, FCC v. Fox*, 132 S. Ct. at 2309.

In its Replies to the Exceptions, Glen Riddle avers that Sunoco’s reading of Sections 1501 of the Code and Commission Regulation at Section 59.33 would render those provisions meaningless, since, per Sunoco’s argument, those sections would have *no application* where no other specific law or regulation applies, *and* when another specific law or regulation does apply. Thus, Glen Riddle avers, following Sunoco’s reasoning, there is no circumstance under which Sunoco must comply with Sections 1501 or 59.33. Glen Riddle R. Exc. at 3-4 *citing, See Sunoco Exc.* at 2, 9. Glen Riddle avers that the ALJ’s findings and conclusions were supported by substantial evidence of record and within the scope of the Commission’s authority under Section 1501 and other

relevant provisions of Commission Regulations and prior Orders. Glen Riddle R. Exc. at 2-11.

b. Disposition

As an initial matter, we note that the ALJ was careful to establish and reiterate throughout the analysis of the issues presented that Section 1501 provides that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.” 66 Pa. C.S. § 1501. The disposition of Glen Riddle’s Complaint in this case regarding alleged unreasonable service or unsafe conditions by Sunoco at the construction site is based solely on Section 1501 of the Code and any other applicable statutes or regulations over which the Commission has jurisdiction to consider. We note that Sunoco’s Exceptions, as a general matter, challenge the Commission’s authority to render case-by-case determinations of what constitutes unsafe conditions or unreasonable service in the context of Sunoco’s performance of pipeline construction activity within the Commonwealth, and more importantly, within the heart of a residential community during the pendency of the Covid-19 Pandemic.

Upon review of Sunoco’s Exception No. 1, which challenges the ALJ’s conclusion that the construction sound levels and hazardous traffic conditions resulted in unsafe conditions and unreasonable provision of service by Sunoco in the execution of its construction activities within the Glen Riddle Community, we agree with the position of Glen Riddle, that the ALJ’s findings and conclusions were supported by substantial evidence of record and within the scope of the Commission’s authority under Section 1501 and other relevant provisions of Commission Regulations and prior Orders.

Specifically, we reject Sunoco’s premise that the Commission is prohibited from conducting a case-by-case analysis of what is “safe” and “reasonable” service within the given facts. We note, as Glen Riddle pointed out, that this argument was

previously raised by Sunoco and rejected by the Commission in its decision in the *Flynn* case. In *Flynn* the Commission expressly rejected Sunoco’s argument that the Commission could not regulate the safe and reasonable conduct of pipeline construction activity, including, *inter alia*, as in that case, the utility’s public outreach.

In adopting the ALJ’s determination of “reasonable service” in *Flynn*, the Commission held:

... any determination of what is “reasonable service” under Section 1501 is done on a case-by-case analysis and is subject to ***the Commission’s broad authority to make such determinations to assure that the public utility service and facilities are safe and reasonable.***

In implementing [the] directive [in Section 59.33], the Commission is not precluded from exercising its power and authority simply because Sunoco has complied with certain minimum standards or because related public awareness issues are being considered in a pending rulemaking proceeding. ***Such a restrictive reading of the Code would unduly tie our hands when dealing with potentially unreasonable, unsafe, or dangerous public utility services or facilities.*** We cannot allow such a low bar to be set to preclude us from exercising our power and authority under the Code and our Regulations to protect public utility customers, employees, and the public at large.

...

Nor is Sunoco’s argument [that the Commission is restrained in its regulation of Sunoco by specific minimum standards] supported by any reasonable interpretation of the CFR. ***Nowhere in the CFR does it state that operators may meet minimum standards and nothing more is required of them.*** To the contrary, the CFR, which incorporates the guidance provided in API RP 1162, states that “[t]he [public awareness] program and the media used must be as comprehensive as necessary to reach all areas in which the

operator transports hazardous liquid or carbon dioxide.” 49 C.F.R. § 195.440(f) (emphasis added).

Additionally, the CFR expressly requires enhancement of a public awareness program where the pipeline is located in a high consequence area.

Flynn at 85 (emphasis added).

While the Commission’s analysis in *Flynn* pertained to public outreach, the general analysis of the Commission’s authority under both Section 1501 and Section 59.33 of Commission Regulations is applicable in the present circumstances to refute Sunoco’s position that the ALJ was precluded from finding that construction noise levels and the hazardous traffic conditions at the construction site were unreasonable and in violation of the provisions of 66 Pa. C.S. § 1501 or 52 Pa. Code § 59.33(a).

Therefore, upon review of Sunoco’s Exception No. 1, Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

2. **Sunoco Exception No. 2: The I.D. infringes upon Sunoco’s due process rights in holding that Sunoco’s communication and outreach to residents regarding new pipeline construction violates 66 Pa. C.S. § 1501, 52 Pa. Code § 59.33(a) or the Commission’s *Dinniman Order*, which was reversed and dismissed on appeal. I.D. at 63-69; FOF Nos. 45, 46, 53, 54, 55; COL Nos. 17, 20.**

- a. **Exceptions and Replies Thereto**

In its Exception No. 2, Sunoco avers that the ALJ exceeded the Commission’s authority in finding that Sunoco’s conduct regarding communication and outreach regarding pipeline construction was unreasonable and in violation of the

provisions of 66 Pa. C.S. § 1501 or 52 Pa. Code § 59.33(a). Sunoco avers that it complies with its Public Awareness Plan under 49 C.F.R. §195.440 and API RP 1162, and that:

neither the federal regulation nor the adopted guidance, the Public utility Code, the PUC’s regulations, or the 2018 *Dinniman* Order mandate or require any particular communication requirements or standards *whatsoever* apply to the new pipeline construction activities at issue here.

Sunoco Exc. at 10 (emphasis added).

Sunoco asserts that the Commission is prohibited from applying reasonable public outreach requirements to “new” construction. Sunoco reiterates its argument that the ALJ’s findings are in violation of Sunoco’s constitutional due process rights. *Id.*

In its Replies to the Exceptions, Glen Riddle avers as it did in Reply to Exception No.1, that Sunoco’s position is inconsistent with the plain meaning of Section 1501 of the Code and the Commission Regulations at Section 59.33(a), and in conflict with the Commission’s prior holding in *Flynn*. Glen Riddle R. Exc. at 10-11.

b. Disposition

In its Exception No. 2, Sunoco raises the identical arguments raised in the *Flynn* case, which the Commission has previously concluded to be without merit. It is already established that for purposes of public outreach, the Commission treats the Mariner East pipelines consistently, and as noted by the ALJ, Section 1501 itself establishes the necessary authority to render a determination on the reasonableness of Sunoco’s public outreach in the circumstances. In addition, as noted by the ALJ, “there are several provisions of the Public Awareness Plan that pertain to the construction of pipelines, not just operation of pipelines.” I.D. at 63.

Therefore, upon review of Sunoco’s Exception No. 2, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

3. Sunoco Exception No. 3: The I.D. erred in creating *ex post facto* standards that essentially make any utility construction or maintenance a violation of 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33(a). I.D. at 38, 51, FOF Nos. 12-37, 48-55, COL No. 20.

a. Exceptions and Replies Thereto

In its Exception No. 3, Sunoco reiterates its position that by rendering a determination of reasonable conduct by a utility on a case-by-case basis, pursuant to Section 1501, the Commission effectively imposes “new” standards in a manner that violates the constitutional rights of the utility. Sunoco further argues that the Initial Decision, if allowed to stand, established a precedent that:

any momentary loud sounds from construction equipment or any theoretical delays for emergency responder access caused by traffic disruption or the presence of construction equipment at a utility construction site is a violation of Section 1501.

Sunoco Exc. at 11-12.

In its Replies to the Exceptions, Glen Riddle avers that the cases upon which Sunoco relies for the proposition that no “new condition” may be imposed absent regulation, or that application of a new standard violates due process, are easily distinguishable and inapplicable to the present circumstances. Glen Riddle R. Exc. at 8, citing *South Hills Movers, Inc. v. Pa. PUC*, 601 A2d 1308, 1310 (Pa. Cmwlth. 1992) and *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2310 (2012). Glen Riddle notes that the “safe” and “reasonable” standards are “plain on their face and have been applied

to Sunoco before.” *Id.*, citing *Flynn* and *Baker*. Accordingly, Glen Riddle avers the Commission should reject Sunoco’s reading of the Initial Decision and deny the Exception.

b. Disposition

Upon review, we agree with Glen Riddle that Sunoco’s reading of the Section 1501 and the Initial Decision’s application under these circumstances, is without merit and will be rejected. Clearly, the plain reading of the language of Section 1501 and the Commission orders applying the standard of reasonable and safe service to Sunoco, including *Flynn* and *Baker*, demonstrate that the Commission’s application is restrained to the case-by-case analysis of what is reasonable in the given circumstances. Contrary to Sunoco’s assertions, that any momentary loud noise or traffic congestion would establish a violation of Section 1501, the ALJ’s analysis in this very case distinguished between conduct that while, troublesome or inconvenient, could not rise to the level of being *unreasonably so*. See I.D. at 56-60 (finding that significant inconvenience due to a water line break caused by Sunoco’s construction was nevertheless reasonable in the circumstances of a such major construction project and given Sunoco had taken all reasonable steps prior to and following the break). In fact, the ALJ’s well- reasoned opinion demonstrates that the “reasonable” standard was construed in several instances in Sunoco’s favor. For example, given that the magnitude of the construction project could foreseeably involve a main break and despite Sunoco’s reasonable action to avoid negative occurrences, such as a water main break, the Glen Riddle Community experienced a water main break which resulted in a major disruption to the daily life of the Glen Riddle Community. As such, the ALJ found that there was no violation of Section 1501. *Id.*

Therefore, upon review of Sunoco's Exception No. 3, and Glen Riddle's Replies thereto, we shall deny the Exception and adopt the ALJ's findings and conclusions.

4. Sunoco Exception No. 4: The I.D. erred in finding Glen Riddle could bring this Complaint on behalf of its tenants. I.D. generally, FOF Nos. 18, 41-45, 48-55, COL No. 20.

a. Exceptions and Replies Thereto

In its Exception No. 4, Sunoco avers that Glen Riddle, the owner of the property upon which Sunoco's construction was performed, lacks standing to file a Complaint with the Commission regarding allegations of unsafe conditions experienced by the residents which live on the property owned by Glen Riddle. Sunoco avers that the ALJ improperly granted relief based upon harm allegedly suffered by the residents of the community and not the property owners which had brought the Complaint. As such, Sunoco argued that the relief was granted improperly where the property owner, Glen Riddle, lacks standing to bring the claim on behalf of residents who live on the property. Sunoco Exc. at 13-15

In its Replies to the Exceptions, Glen Riddle avers that Sunoco's claim that a property owner lacks standing to assert claims regarding activity on its property must fail. Glen Riddle further avers that it was not error of the ALJ to reach the obvious conclusion that the unsafe and unreasonable conditions caused by Sunoco's conduct of the construction negatively impacted the more than 200 residents of the Glen Riddle community. Glen Riddle R. Exc. at 11-13.

b. Disposition

Upon review we agree with Glen Riddle's position that, as the property owner, Glen Riddle has clear standing to bring the Complaint and the ALJ was within his discretion to consider the impact of the unreasonable and unsafe construction by Sunoco upon the more than 200 residents of the Glen Riddle community. Such evidence is clearly relevant to the determination, both as the finding of a violation under Section 1501 and the application of the *Rosi* factors in calculation of the penalty.

As noted by Glen Riddle, Sunoco made a similar argument in *Baker*, to preclude evidence related to the Complainant's neighbors, who were non-parties, arguing lack of "standing" related to claims of lack of communication with "non-parties." The Commission rejected the argument and found it was within the ALJ's discretion to consider such relevant evidence as the ALJ deemed appropriate, including all relevant evidence regarding Sunoco's conduct. *See* Glen Riddle R. Exc. at 11-13, *citing Baker* at 11.

We conclude that, as Glen Riddle has clear standing as the property owner to file the Complaint, it was within the ALJ's discretion to hear such relevant evidence as deemed necessary to render a determination regarding the issues presented. Therefore, upon review of Sunoco's Exception No. 4, and Glen Riddle's Replies thereto, we shall deny the Exception and adopt the ALJ's findings and conclusions.

5. **Sunoco Exception No. 5: The I.D. erred in holding that construction sound violated 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33(a) because its finding was not based on substantial evidence, and because the ID capriciously disregarded and failed to mention key competent evidence. I.D. at 44-51, 70, FOF Nos. 12-27, 48, COL No. 20.**

a. Exceptions and Replies thereto

In its Exception No. 5, Sunoco avers that the ALJ relied on unauthenticated videos and other incompetent evidence and ignored the competent expert evidence of record in determining whether hazardous sound levels existed. Sunoco argues that the ALJ's findings with respect to sound levels represent a capricious disregard of the record evidence and should not be adopted. Sunoco Exc. at 15, *citing* 2 Pa. C.S. § 704; *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), appeal denied, 602 A.2d 863 (Pa. 1992) (*Lansberry*). "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

In its Replies to the Exceptions, Glen Riddle avers Sunoco's Exception No. 5 should be denied because: (1) Sunoco waived any objection to the authenticity of GRS-5 and GRS-33 (*i.e.*, videos depicting Sunoco's dangerous noise) by failing to raise an objection based on "authenticity" at the time the videos were admitted into the record; and (2) the ALJ's determination that Sunoco's construction noise levels violated Section 1501 and Section 59.33 of Commission Regulations is based on substantial evidence. Glen Riddle R. Exc. at 13-14.

b. Disposition

Upon review, we conclude that the ALJ's findings and conclusions related to sound levels were supported by substantial credible evidence of record and will be adopted. We reject Sunoco's arguments which fail to consider that the ALJ undertook a

detailed analysis and relied upon multiple findings in reaching his determination that the noise levels at Sunoco's construction site were unreasonable and unsafe in the circumstances. For example, the ALJ expressly found:

- The sound mitigation measures undertaken by Sunoco allowed for unhealthy levels of sound to permeate the residences and offices at the [Glen Riddle property] and put [Glen Riddle] residents and employees at increased risk of hearing loss. *I.D.* at 48;
- ...in many of the videos there is either no sound wall present or the sound wall is open for some reason *Id.*;
- ...in some of the videos, readings were taken indoors, on a balcony or close to a building *Id.*; and,
- Most of the readings in the videos that are admitted into the record show the high decibel readings with the sound walls in place *Id.*, at 49.

In the present case, the ALJ stressed that the conclusion that Sunoco's construction noise levels were unreasonably high and unsafe in violation of Section 1501 and Section 59.33 of Commission Regulations was based on the totality of the evidence, not on any one specific video or reading. *Id.*, at 48-51. Therefore, we find Sunoco's arguments to be without merit, and conclude that the ALJ's findings and conclusions regarding noise levels at Sunoco's construction site are supported by substantial credible evidence.

Therefore, upon review of Sunoco's Exception No. 5, and Glen Riddle's Replies thereto, we shall deny the Exception and adopt the ALJ's findings and conclusions.

6. **Sunoco Exception No. 6: The I.D. erred in holding that Sunoco created a “fire hazard” in violation of 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33(a) because its finding was not based on substantial evidence and capriciously disregards or fails to mention key competent evidence. I.D. at 38-44, 70, FOF Nos. 29-37, 48, COL No. 20.**

a. Exceptions and Replies Thereto

In its Exception No. 6, Sunoco avers the ALJ’s findings regarding fire safety at Sunoco’s construction lacked substantial evidence, and, further, ignored the competent expert evidence of record in determining whether hazardous fire safety conditions existed. Sunoco argues that the ALJ’s findings with respect to fire safety represent a capricious disregard of the record evidence and should not be adopted. Sunoco Exc. at 19-22.

In its Replies to the Exceptions, Glen Riddle avers Sunoco’s Exception No. 6 should be denied because the ALJ’s determination that Sunoco’s actions and inaction with respect to fire safety violated Section 1501 and Section 59.33 of Commission Regulations is based on substantial evidence. Glen Riddle R. Exc. at 17-19.

b. Disposition

Upon review, we conclude that the ALJ properly found that Sunoco’s actions and inaction with regard to fire safety issues at the construction site resulted in unsafe and unreasonable provision of service in violation of Sections 1501 of the Code and Section 59.33 of Commission Regulations, which was supported by substantial credible record evidence. *See* I.D. at 38-44.

Like the ALJ, we reject Sunoco’s position, as set forth by its expert that “nothing about the construction work created a new or different [fire] hazard than the

hazards that already pre-existed at the property.” I.D. at 42, citing Sunoco St. 1-R, at 15016. To the contrary, we find that substantial record evidence supports the ALJ’s rejection of Sunoco’s witness as not credible, where new hazards impacting fire safety were introduced “ through the presence of large construction vehicles, large sound barriers, additional traffic congestion, etc,” in the center of a densely populated residential community in the midst of the Covid-19 Pandemic. I.D. at 42. The ALJ did not conclude that Sunoco did not take any measures to mitigate safety issues, rather, the ALJ concluded that whatever measures that were taken were *insufficient under the circumstances*, and that Sunoco was required to do more to establish reasonable and safe conditions with respect to fire safety. We agree.

Therefore, upon review of Sunoco’s Exception No. 6, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

7. **Sunoco Exception No. 7: The I.D. erred in holding that public awareness requirements apply to new pipeline construction, setting up a *de facto* regulation and retroactively penalizing Sunoco, ignoring that there is no statute, regulation or Order requiring new construction public awareness, and then fining Sunoco when Sunoco undertook a level of communications that was unparalleled, despite no legal requirement to do so in this construction context. I.D. at 63-69; FOF Nos. 45, 46, 53, 54, 55; COL Nos. 17, 20.**

- a. **Exceptions and Replies Thereto**

In its Exception No. 7, Sunoco avers that the ALJ erred in applying public awareness requirements to new pipeline construction projects, and, as it argued in its Exceptions Nos. 1, 2, and 3, that the imposition of public awareness standards in the absence of a statute, regulation, or order requiring such standards, exceeds the scope of

the Commission's authority under Section 1501 of the Code and Section 59.33 of Commission Regulations. Sunoco Exc. at 22-25.

In its Replies to the Exceptions, Glen Riddle avers as it did in Reply to Exception No.1, that Sunoco's position is inconsistent with the plain meaning of Section 1501 of the Code and the Commission Regulations at Section 59.33(a), and in conflict with the Commission's prior holding in *Flynn*. Glen Riddle R. Exc. at 2-11.

b. Disposition

Upon review of Sunoco's Exception No. 7, and Glen Riddle's Replies thereto, for the reasons discussed more fully above, *supra.*, at D. 1. B. Disposition, we shall deny the Exception and adopt the ALJ's findings and conclusions.

- 8. Sunoco Exception No. 8: The I.D. erred in holding that Sunoco's communications and outreach to Glen Riddle residents violated 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33(a) because it capriciously disregarded or failed to mention key substantial evidence of record. I.D. at 63-69; FOF Nos. 45, 46, 53, 54, 55; COL Nos. 17, 20.**

a. Exceptions and Replies Thereto

In its Exception No. 8, Sunoco avers that the ALJ ignored the competent evidence of record in determining whether Sunoco's public outreach and communication was sufficient. Sunoco argues that the ALJ's findings with respect to public outreach and communication represent a capricious disregard of the record evidence and should not be adopted. Specifically, Sunoco notes that the deficiencies found in public outreach and communication were in relation to Sunoco's communication with Glen Riddle, as opposed to Glen Riddle residents. Sunoco Exc. at 25-30

In its Replies to the Exceptions, Glen Riddle avers that Sunoco's Exception No. 8 should be denied because the ALJ's determination that Sunoco's communication and outreach was insufficient and unreasonable and therefore violated Section 1501 and Section 59.33 of Commission Regulations is based on substantial evidence. Glen Riddle further avers that, contrary to Sunoco's assertions, the ALJ considered and found unpersuasive, the evidence which Sunoco asserts the ALJ "capriciously disregarded." Glen Riddle further notes that the ALJ was within his discretion to accept the credible testimony offered to establish that Sunoco's communications required prompting from Glen Riddle and failed to provide a reasonable level of information to the affected public. R. Exc. at 13-14, citing, I.D. at 67 (citing GRS St. 1-SR at 5, 31-34; GRS St.2-SR at 3, GRS St.3 at 3).

b. Disposition

Upon review, we conclude that the ALJ's findings and conclusions related to public outreach and communication are supported by substantial credible evidence of record and will be adopted. We reject Sunoco's arguments which fail to consider the ALJ's discretion in considering all relevant evidence in reaching his determination that the public outreach and communication by Sunoco regarding the major construction project to be performed in the center of the Glen Riddle community were insufficient and unreasonable in the circumstances. We further conclude that the ALJ was within his discretion to determine the relative weight of the evidence presented. In weighing the evidence, the ALJ considered the evidence offered by Sunoco and found it to be less persuasive than that offered by Glen Riddle.

Therefore, upon review of Sunoco's Exception No. 8, and Glen Riddle's Replies thereto, we shall deny the Exception and adopt the ALJ's findings and conclusions.

9. Sunoco Exception No. 9: The I.D. erred in determining the appropriate civil penalty when applying the *Rosi* factors. I.D. at 75-82.

a. Exceptions and Replies Thereto

In its Exception No. 9, Sunoco avers that Sunoco was not given notice of or a fair opportunity to be heard regarding the imposition of civil penalties and the application of the *Rosi* factors to forty-nine of the fifty-one violations found by the ALJ, where the Complaint did neither expressly set forth the violations ultimately found by the ALJ, nor expressly request penalties. Sunoco avers that the ALJ's reliance upon the boilerplate language of the Commission's Secretarial Letter serving the Complaint in this matter, which advises of a potential imposition of penalties, is insufficient notice for purposes of due process. Sunoco further avers that the ALJ erred by finding that Sunoco failed to move to reopen the record if it wished to present evidence on application of the *Rosi* facts. Finally, Sunoco avers that the ALJ applied the *Rosi* factors in an arbitrary manner. Sunoco Exc. at 30-35.

In its Replies to the Exceptions, Glen Riddle avers that the ALJ thoroughly addressed the *Rosi* factors in the Initial Decision. Further, Glen Riddle avers that Sunoco's primary argument, that it was not on notice of the consequences of violating the Code and related obligations, is without merit for the reasons discussed thoroughly in the Initial Decision. Glen Riddle R. Exc. at 21, *citing* I.D. at 75-85.

b. Disposition

Upon review, we conclude that the ALJ properly applied the *Rosi* factors in calculating the civil penalty in this case. We reject Sunoco's averment that it was not provided sufficient notice and opportunity to be heard on the issue of civil penalties. As noted by the ALJ, the Parties briefed the issue of civil penalties and Sunoco was advised

at the initial filing of the Complaint that the matter may result in the imposition of penalties. *See* I.D. at 75-85. We note that throughout Sunoco’s Exception, it references the prior pleadings in which it presented argument on the issue of the application of the *Rosi* factors to the ALJ. *See, e.g.,* Sunoco Exc. at 30-35, incorporating by reference its Reply Brief at 47-53. It strains credibility to claim to have been deprived of the opportunity to be heard, while simultaneously incorporating the entire content of an argument previously set forth “fully” in a reply brief before the ALJ.

Therefore, upon review of Sunoco’s Exception No. 9, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

10. Sunoco Exception No. 10: The I.D. erred in failing to dismiss the complaint as moot. I.D. at 70-71.

a. Exceptions and Replies Thereto

In its Exception No. 10, Sunoco avers that the ALJ erred when holding the Complaint was not rendered moot by the completion of construction. Sunoco Exc. at 35-37, *citing* I.D. at 70-71. Sunoco avers that because Glen Riddle only alleged and requested relief regarding Sunoco’s *active* construction being enjoined and restrained, the Complaint was rendered moot when the construction was completed. *Id., citing, See Pa. PUC v. Continental Communications, LLC, and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131, Initial Decision at 20-21 (Decision entered June 7, 2016) (adopted in full by Opinion and Order dated Aug. 11, 2016).

In its Replies to the Exceptions, Glen Riddle avers that, contrary to Sunoco’s assertion, the completion of construction in the Glen Riddle community does not negate Sunoco’s numerous serious violations of the Code. Further, Glen Riddle

averred that the ALJ correctly concluded, those violations were not negated or absolved simply because construction was completed, and that the “ability to impose a civil penalty or some other corrective measure remains regardless of whether Sunoco has completed the construction project.” Glen Riddle R. Exc. at 21-22, citing I.D. at 71.

b. Disposition

Upon review, we agree with the ALJ’s conclusion that Sunoco’s argument that the Complaint is moot is without merit. As the ALJ noted, while Sunoco argued that Glen Riddle’s arguments are related to *active* construction at the work site, it is irrelevant that the construction has been completed when determining whether a violation occurred *during* the construction. As the ALJ stated:

To hold such a standard would significantly impair the Commission’s ability to find any violations of the Public Utility Code if such violations were to disappear as soon as construction on any project by a utility is completed.

I.D. at 70-72.

We, therefore, reject Sunoco’s argument that completion of the construction rendered the Complaint moot.

Therefore, upon review of Sunoco’s Exception No. 10, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

11. Sunoco Exception No. 11: The I.D. erred when holding that 66 Pa. C.S. § 1501 or 52 Pa. Code § 59.33 does not require actual harm to have occurred for a violation to be found. I.D. at 71.

a. Exceptions and Replies Thereto

In its Exception No. 11, Sunoco avers: (1) that as there is no evidence that any harm occurred to any Glen Riddle resident or employee because of Sunoco’s construction; and (2) that Glen Riddle’s claims of “harm” are speculative and insufficient to support a finding that Sunoco violated a statute, regulation or Commission order, based upon Sunoco’s reading of the holding in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020), *appeal granted*, 253 A.3d 220 (Pa. 2021) (*Povacz*). Sunoco Exc. at 37-38.

In its Replies to the Exceptions, Glen Riddle avers that Sunoco misconstrues the holding in *Povacz* to conclude that a “showing of harm” is required to establish a claim under Section 1501. Glen Riddle R. Exc. at 22-23.

b. Disposition

Upon review, we agree with the ALJ’s finding that neither Section 1501 of the Code nor Section 59.33 of Commission Regulations requires actual harm to have occurred for a violation to be found and reject Sunoco’s position to the contrary.

We expressly reject Sunoco’s argument that, as there is no evidence that any harm occurred to any Glen Riddle resident or employee because of Sunoco’s construction, that Glen Riddle’s claims of “harm” are speculative and insufficient to support a finding that Sunoco violated a statute, regulation or Commission order, based upon the holding in *Povacz*.

Sunoco’s argument misconstrues the holding in *Povacz*, which is distinguishable from the present case. In *Povacz*, electric consumers filed complaints with the Commission to preclude PECO from installing wireless smart meters, alleging that the meters were dangerous to their health. The complainants argued that emissions of radiofrequency electromagnetic energy (RF) from the smart meters would cause them harm and given their health issues, PECO’s installation of the wireless smart meters was unsafe and in violation of Section 1501. The Court rejected the claims because the allegations related to RF waves were found to be insufficient. The Court in *Povacz* did *not* hold that a complainant must prove that they in fact suffered harm as a result of the utility’s unsafe service. Contrary to Sunoco’s reading of *Povacz* to require a showing of harm, the Court held that the Commission’s “***authority extends to claims seeking to prevent harm.***” *See Povacz*, 241 A.3d at 493-94 (emphasis added).

We further note that the ALJ properly applied Section 1501 to matters involving public convenience. While Sunoco dismissed inconvenience to the public as an issue, Section 1501 includes “convenience” as a utility’s duty to the public. *See* 66 Pa. C.S. § 1501 (providing “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, *convenience* and safety of its patrons, employees and the public.” (*emphasis added*)). A complaint which characterizes some allegations in terms of “inconvenience” is not *per se*, legally insufficient. The inconvenience to the public caused by a utility can at times rise to the high level of an unreasonable inconvenience, in violation of Section 1501.

Therefore, upon review of Sunoco’s Exception No. 11, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

12. Sunoco Exception No. 12: The I.D. erred in exercising jurisdiction over sound and fire safety. I.D. at 16, 3851, 70, FOF Nos. 12-27, 29-37, 48-55, COL No. 20.

a. Exceptions and Replies Thereto

In its Exception No. 12, Sunoco avers that the ALJ erred as it argued in its Exceptions Nos. 1, 2, 3, and 7, that exercising jurisdiction in the absence of a statute, regulation, or order requiring such standards, exceeds the scope of the Commission's authority under Section 1501 of the Code and Section 59.33 of Commission Regulations. Sunoco Exc. at 38-39.

In its Replies to the Exceptions, Glen Riddle avers, as it did in Reply to Exception No. 1, that Sunoco's position is inconsistent with the plain meaning of Section 1501 of the Code and the Commission Regulations at Section 59.33(a), and in conflict with the Commission's prior holding in *Flynn*. Glen Riddle R. Exc. at 2-11.

b. Disposition

Upon review of Sunoco's Exception No. 12, and Glen Riddle's Replies thereto, for the reasons discussed fully, *supra.*, at D. 1. B. Disposition, we shall deny the Exception and adopt the ALJ's findings and conclusions.

13. Sunoco Exception No. 13: The I.D. erred in failing to dismiss the Complaint for lack of valid verification. I.D. at 71-73.

a. Exceptions and Replies Thereto

In its Exception No. 13, Sunoco avers that the entire proceeding is null based upon the flawed verification attached to the Glen Riddle Complaint, which Sunoco avers was not signed by a properly authorized individual on behalf of Glen Riddle. Sunoco Exc. at 30-31.

In its Replies to the Exceptions, Glen Riddle avers that by failing to file preliminary objections to the verification, Sunoco effectively waived any challenge to the lawfulness of the verification. In addition, Glen Riddle avers that the ALJ properly disregarded the procedural defect, if any, considering the fully litigated proceeding. Glen Riddle R. Exc. at 23-25.

b. Disposition

Upon review, we agree with the ALJ's disposition of the issue of whether Glen Riddle failed to properly verify the Complaint, pursuant to 52 Pa. Code § 1.36(a), and rejection of Sunoco's argument that due to Glen Riddles' alleged failure to properly verify the Complaint, the action must be dismissed.

As noted by the ALJ, Commission Regulations provide:

Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed

written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

52 Pa. Code § 1.36(a).

The ALJ also noted, although the regulation uses the mandatory term “must” instead of the permissive term “may,” it would be unreasonable at the close of years of litigation, upon a fully developed record, to preclude a determination on that record based upon an alleged defect in the verification. Especially where, as here, there was a verification, but the verification may have been signed by the wrong person.

We find that the ALJ properly concluded that, pursuant to the discretion of the Commission or presiding officer at any stage of an action or proceeding to disregard an error or defect of procedure which does not affect the substantive rights of the parties, that the alleged defect in the verification in this matter would be disregarded. *See* 52 Pa. Code § 1.2(a). In the present case, it is appropriate to disregard the alleged defect in procedure, because Sunoco’s substantive rights have not been harmed in any manner. I.D. at 72-73.

Therefore, upon review of Sunoco’s Exception No. 13, and Glen Riddle’s Replies thereto, we shall deny the Exception and adopt the ALJ’s findings and conclusions.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny both the Motion to Strike Portions of Glen Riddle’s Reply Exceptions and the Exceptions of Sunoco, and therefore adopt the ALJ’s Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Motion to Strike Portions of Glen Riddle Station, L.P.'s Reply Exceptions filed by Sunoco Pipeline, L.P. on April 29, 2022, at Docket Number C-2020-3023129, is denied.

2. That the Exceptions filed by Sunoco Pipeline, L.P. on March 28, 2022, at Docket Number C-2020-3023129, are denied.

3. That the Formal Complaint filed by Glen Riddle Station, L.P., against Sunoco Pipeline, L.P. on December 2, 2020, at Docket Number C-2020-3023129 is granted, in part, and, denied, in part.

4. That the Formal Complaint filed by Glen Riddle Station, L.P. against Sunoco Pipeline, L.P., is sustained as to the averments of fire hazards, noise levels and inadequate communications with the public.

5. That the Formal Complaint filed by Glen Riddle Station, L.P. against Sunoco Pipeline, L.P. is denied as to the averments of traffic hazards, the use of Calciment at the property and a water line break.

6. That Sunoco Pipeline, L.P., shall pay a civil penalty of \$51,000 due to the violation of Section 1501 of the Public Utility Code, Section 59.33 of the Commission's Regulations and past Commission Orders.

7. That Sunoco Pipeline, L.P., shall pay a total of \$51,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

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

8. That Sunoco Pipeline, L.P., shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

9. That this matter be marked closed upon payment by Sunoco Pipeline, L.P., of the \$51,000 civil penalty.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022