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April 3, 2019

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Sunoco Pipeline L.P. Docket Number C-2018-3006534;
JOINT PETITION FOR APPROVAL OF SETTLEMENT

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Petition for Approval of Settlement between the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement and Sunoco Pipeline L.P. in the above-referenced proceeding.

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

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: David J. Brooman, Esquire
Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
Thomas Casey (Pro Se Petitioner)
Josh Maxwell (Pro Se Petitioner)
Vincent M. Pompo, Esquire
Alex J. Baumler, Esquire
Michael P. Pierce, Esquire
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Sunoco Pipeline L.P. a/k/a
Energy Transfer Partners,
Respondent

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Docket No. C-2018-3006534

JOINT PETITION FOR APPROVAL OF SETTLEMENT

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Bureau of Investigation and Enforcement ("I&E" or "Complainant") and the Sunoco Pipeline, L.P. ("SPLP" or "Respondent") hereby submit this Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") to resolve all issues related to the above-docketed I&E Formal Complaint ("Complaint") proceeding alleging violations of the United States Code, Code of Federal Regulations and Pennsylvania Public Utility Code, which were raised in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County, Pennsylvania. As part of this Settlement Agreement, I&E and SPLP (hereinafter referred to collectively as the "Parties" or "Joint Petitioners") respectfully request that the Commission approve the Settlement without modification for the compelling public interest reasons stated below. Statements in Support of the Settlement expressing the individual views of I&E and SPLP are attached hereto as **Appendix A** and **Appendix B**, respectively. As set forth in greater detail below, the Parties request that the Commission provide an opportunity for the public, in particular persons or entities who sought to

intervene in the matter, to submit Comments to the Settlement and permit Reply Comments by Joint Petitioners to be submitted.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, and Sunoco Pipeline L.P., a Texas Limited Partnership with its principal place of business in Dallas, Texas. SPLP has offices at 525 Fritztown Road, Sinking Spring, PA 19608 and 212 North Third Street, Suite 201, Harrisburg, PA 17101.

2. I&E is the entity established to prosecute complaints against public utilities. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E); *See also* 66 Pa.C.S. § 308.2(a)(11).

3. Respondent SPLP is a public utility pipeline owner and operator certificated in Pennsylvania by the Commission at Docket No. A-140111. It operates, *inter alia*, the Mariner East 1 pipeline ("ME1" or "pipeline"), which currently transports hazardous liquids intrastate.

4. Pursuant to Section 59.33(b) of the Commission's regulations, 52 Pa. Code § 59.33(b), I&E's Safety Division has the authority to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199.

5. A public utility transporting hazardous liquids may be subject to the civil penalties provided under Federal pipeline safety laws at 49 U.S.C.A. §§ 60122(a)(1) and 60118(a), as adjusted annually for inflation.

II. BACKGROUND

6. On April 1, 2017, at 3:57 PM, the ME1 pipeline segment identified as Twin Oaks to Montello experienced a leak near Morgantown Road, Morgantown, Berks County, Pennsylvania.

7. On April 1, 2017, at approximately 6:30 PM, SPLP notified I&E's Safety Division of the leak by telephone call to the manager of the Safety Division. SPLP filed an accident report with PHMSA and reported a total product loss of twenty (20) barrels.

8. On April 2, 2017, an I&E Safety Division pipeline safety inspector visited the leak site but was unable to inspect the facility because the pipeline was still being purged of the product. On April 3, 2017, I&E Safety Division pipeline safety inspectors visited the site again to examine the affected pipeline. SPLP crews excavated and exposed the pipeline, which was then cleaned. Visual examination of the pipe revealed localized corrosion at the bottom of the pipe in the six (6) o'clock position. SPLP cut out a portion of the pipe and an eight (8) foot section of this portion was sent to a laboratory for analysis. Laboratory analysis of this section of the pipeline attributed the leak and resulting product loss to corrosion. SPLP then repaired the pipeline by first hydrostatically testing eighty-three (83) feet of new pipe and welding that section into the existing pipeline replacing the portion of ME1 that had been removed. The new section of pipe consists of eight (8) inch coated steel with a wall thickness of 0.322 inches.

9. Following the leak, I&E conducted in 2017-2018 an in-depth investigation of the leak site, including SPLP's corrosion control practices and procedures relative to applicable regulations. SPLP's practices and procedures have since been revised and were examined by I&E as part of its investigation activities and regarding its Complaint.

10. On December 13, 2018, I&E filed its Complaint (**Attached as Appendix "C"**).

11. SPLP's Answer and New Matter to the Complaint (**Attached as Appendix "D"**) was filed January 31, 2019.¹

12. During January, February and early March of 2019, the Parties engaged in extensive negotiations regarding the complex and highly technical issues raised by the Complaint and SPLP's responsive pleadings thereto.

13. On March 1, 2019, the Parties achieved a Settlement in Principle that both sides agree promotes the public interest and adequately addresses I&E's concerns regarding SPLP's corrosion control program and engineering practices with respect to cathodic protection. Also on this date, the Parties requested by Joint Letter to the Commission that the matter be stayed or held in abeyance pending the submission of a Settlement Petition. Such request was granted March 4, 2019, and the Parties were advised that the matter would be held in abeyance for thirty (30) days.

III. SETTLEMENT TERMS

14. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,² the Parties held a series of extensive and comprehensive technical discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation.

15. The Settlement is without admission and it is understood that this Settlement is a compromise of the allegations in the Complaint, which I&E intended to prove, and that Respondent intended to disprove.

16. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the significant

¹ The Parties commenced a series of extensive settlement discussions and the due date for responding to the Complaint was agreed by the Parties and permitted to be extended to January 31, 2019.

² See 52 Pa. Code § 5.231(a).

and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

17. I&E and Respondent, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

A. Civil Penalty:

Respondent will pay a civil penalty in the amount of Two Hundred Thousand Dollars (\$200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Remaining Life Study:

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP's Integrity Management Plan ("IMP"), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

The Remaining Life Study should be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration ("PHMSA") or State Commissions, and the Pipeline Research Counsel International ("PRCI"), American Petroleum Institute ("API"), or the Interstate Natural Gas Association of America ("INGAA"). Within thirty (30) days of entry of a Commission Order approving any settlement of this matter, SPLP shall provide I&E with a list of three (3) proposed independent experts, along with contact information, a brief description of the expert's background and a disclosure as to whether the proposed expert performed any work in relation to ME1 as well as a description of that work. I&E will select one (1) expert from

the list provided by SPLP and SPLP will hire and pay the expert to complete and review the study. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. A summary of the expert's findings shall be made public (excluding proprietary or confidential security information).

The Parties agree that the Remaining Life Study will include the following:

- ME1 corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;
- Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;
- Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;
- Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;
- A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;
- A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;
- A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;
- A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;
- An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;
- A summary of the leak history on ME1 including a description of the size of each leak;
- A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and
- A discussion to illustrate how managing integrity lengthens pipeline life.

For so long as ME1 remains in Highly Volatile Liquid ("HVL") service, SPLP agrees to supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes SPLP's continual process of evaluation and assessment to maintain the pipeline integrity of ME1. The report will also include a list of the next year's planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. The public version of the report shall not contain information that is proprietary or contains information subject to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the PUC's regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

C. In-Line Inspection and Close Interval Survey Frequency of ME1:

a. In-Line Inspection

SPLP's two remaining In-Line Inspection ("ILI") runs in 2019 on the ME1 segments identified as: (1) Middletown-Montello & Montello-Beckersville; and (2) Beckersville – Twin Oaks, are in addition to the two proposed ILI runs of ME1 that will take place at agreed-upon intervals over the next three (3) calendar years ("ILI run #1" and "ILI run #2"). Thus, the Parties agree that SPLP will conduct the two remaining ILI runs in April 2019 or within 60 days of ME1 resuming service, then conduct ILI run #1 of ME1 eighteen (18) months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 eighteen (18) months after the completion of ILI run #1.

At the conclusion of the three-year ILI period, the Parties agree that SPLP shall retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and will meet with I&E to discuss SPLP's planned ILI inspection frequency. I&E is not required to wholly accept the interval recommendations proposed by SPLP's independent consultant. Should the ILI interval recommendation not be wholly accepted by I&E, I&E and SPLP agree to collaborate using best efforts to arrive at a mutually acceptable ILI interval period.

b. Close Interval Survey

SPLP further agrees to conduct a Close Interval Survey of ME1 at the same interval and frequency, once every eighteen (18) months, to evaluate the effectiveness of SPLP's corrosion control program for ME1 for the next three (3) calendar years.

D. Revision of Procedures:

The Parties agree that SPLP's May 2018 revisions to procedures Energy Transfer SOP HLD.22 have addressed I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

E. Implementation of Revised Procedures:

The Parties agree that SPLP has implemented the revised procedures and has fulfilled I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

F. Pipe Replacement as It Relates to Corrosion:

The Parties agree that I&E is not requesting that SPLP immediately replace pipe pursuant to Paragraph 47(e) of the Complaint. Instead, I&E understands that when SPLP detects anomalies, the Company maintains the discretion to initiate and/or utilize various remedial measures to preserve the integrity of the pipe or, if ultimately deemed necessary, to physically replace segments of the pipe. The Parties agree with SPLP's proposed approach as follows:

If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action consistent with its Corrosion Control Plans, Integrity Management Program and applicable Federal regulations.

18. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Respondent failed to comply with the obligations claimed in the Complaint for the time periods covered by I&E's Complaint.

19. I&E and Respondent jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, promotes public and facility safety, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix A** and **Appendix B** are Statements in Support submitted by I&E and Respondent, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

20. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

21. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary

of the Commission and served upon the other party within twenty (20) days after entry of an Order modifying the Settlement.

22. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

23. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

24. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

25. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

26. The Parties request that the Commission decide this matter directly and to permit comment by any interested entity or person within thirty (30) days of entry of any Commission Order that publishes this Settlement Agreement. The Parties further request that the Joint Petitioners be permitted to file Reply Comments within thirty (30) days of the due date for Comments.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and the Sunoco Pipeline L.P. respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the Third day of April 2019.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT:



Signature

Senior Prosecutor

Title

April 3, 2019

Date

FOR SUNOCO PIPELINE L.P.:



Signature

Counsel for Sunoco Pipeline L.P.

Title

April 3, 2019

Date

Respectfully submitted and filed by:



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Dated: April 3, 2019

APPENDICES

Appendix A	Investigation and Enforcement's Statement in Support of Settlement
Appendix B	Sunoco Pipeline L.P.'s Statement in Support of Settlement
Appendix C	Investigation and Enforcement's Complaint dated 12/13/18
Appendix D	Sunoco Pipeline L.P.'s Answer & New Matter

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-3006534
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Sunoco Pipeline, L.P. (“SPLP” or “Respondent” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. BACKGROUND

This matter involves alleged violations of the United States Code, Code of Federal Regulations and Pennsylvania Code, which I&E avers were discovered during the I&E Safety

¹ I&E and SPLP are collectively referred to herein as the “Parties.”

Division's investigation of an ethane and propane leak that occurred on SPLP's Mariner East 1 ("ME1") pipeline² on April 1, 2017, in Morgantown, Berks County, Pennsylvania. Pursuant to the Code of Federal Regulations, the leak was a reportable accident as it involved a release of hazardous liquids of approximately twenty (20) barrels. *See* 49 C.F.R. § 192.50(b) (relating to reporting accidents in which there is a release of five (5) gallons or more of hazardous liquids unrelated to a pipeline maintenance activity). The leak did not result in a fire, explosion or cause any personal injury.

SPLP voluntarily excavated, exposed and cleaned the affected area of the pipe after which inspectors in the I&E Safety Division observed localized corrosion at the bottom of the pipe in the six (6) o'clock position. SPLP sent an eight (8) foot section of this portion of ME1 to an independent laboratory for testing. Laboratory analysis of this section of the pipeline attributed the failure to corrosion.

As a result of I&E's preliminary investigation and findings at the site of the leak, the I&E Safety Division expanded its investigation to include an in-depth investigation of SPLP's then current corrosion control practices and procedures that applied to all of ME1. The I&E Safety Division's investigation took place from April 2017 to May 2018, and consisted of sending multiple data requests and reviewing data request responses, as well as numerous meetings and inspections. I&E's investigation included a review of SPLP's operations and maintenance procedures, corrosion control procedures, corrosion control records, maintenance records, and integrity management program that were in existence at the time of the April 1, 2017 leak. It is

² ME1 is approximately 300 miles long and traverses the Commonwealth from the Mark West Houston processing plant in Washington, PA to the Marcus Hook facility in Delaware County, PA. The original ME1 pipeline was installed in or about 1931 and primarily consists of eight (8) inch bare steel.

important to note that since April 1, 2017, SPLP's corrosion control procedures have been revised and that these revised procedures have been implemented.

On December 13, 2018, I&E filed a Formal Complaint against SPLP alleging that SPLP failed to demonstrate that it achieved cathodic protection³ at the site of the leak in violation of 49 U.S.C.A. § 60118(a)(1), 49 CFR § 195.571 and 52 Pa. Code § 59.33(b). I&E further alleged that SPLP's procedures pertaining to corrosion control that were in effect at the time of the April 1, 2017 leak were deficient in: (1) providing for the application of the criteria used to determine the adequacy of cathodic protection; (2) documenting that SPLP achieved adequate cathodic protection; (3) including detail on how SPLP would accomplish close interval potential survey ("CIPS") metrics; and (4) providing how SPLP would design, operate, maintain or test rectifiers and rectifier ground beds in violation of 49 U.S.C.A. § 60118(a)(1), 49 CFR § 195.402 and 52 Pa. Code § 59.33(b). Additionally, I&E alleged that SPLP failed to adequately monitor external corrosion control, correct deficiencies that had been identified in SPLP's corrosion control program, and maintain corrosion control records in violation of 49 U.S.C.A. § 60118(a)(1), 49 CFR §§ 195.573(a) and (e), and 195.589(c), and 52 Pa. Code § 59.33(b). I&E also alleged that since SPLP had not demonstrated the adequacy of its cathodic protection system on ME1, it did not operate ME1 in compliance with the Federal pipeline safety regulations in violation of 49 U.S.C.A. § 60118(a)(1), 49 CFR § 195.401(a) and 52 Pa. Code § 59.33(b).

For relief, I&E requested in its Formal Complaint that SPLP be ordered to pay a total civil penalty of Two Hundred Twenty-Five Thousand Dollars (\$225,000) and perform various corrective actions including conducting a remaining life study of ME1, increasing the frequency

³ Cathodic protection is a method of controlling corrosion on the surface of a metal pipeline by supplying electrical current.

of in-line inspections (“ILI”), revising SPLP’s corrosion control procedures, developing procedures to determine the adequacy of cathodic protection through testing and performance methods, and implementing all new and revised cathodic protection procedures within one (1) year.

On January 31, 2018, SPLP filed a timely Answer and raised New Matter to I&E’s Complaint.⁴

The Parties engaged in extensive settlement negotiations during the first quarter of 2019, and on March 1, 2019, the Parties announced by letter that they had achieved a settlement-in-principle on that same day. The Parties requested that the matter be stayed or held in abeyance pending the submission of a Settlement Agreement. On March 4, 2019, the Parties were advised that the matter would be held in abeyance for thirty (30) days to permit time for the Parties to draft and file a Joint Settlement Petition.

Several persons and entities sought to intervene in this matter. In their letter dated March 1, 2019, I&E and SPLP requested that any interested entity or person be permitted to file Comments to the Settlement Agreement within thirty (30) days of entry of any Commission Order publishing the Agreement, and that the Parties be permitted to file Reply Comments within thirty (30) days of the due date for Comments.

On April 3, 2019, I&E and SPLP filed a Joint Petition for Approval of Settlement resolving all issues between I&E and SPLP in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

⁴ SPLP was granted an extension of time until January 31, 2019, to file a response to I&E’s Complaint.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Complaint proceeding.

I&E intended to prove the factual allegations set forth in its Complaint at hearing, to which SPLP would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and SPLP may disagree with respect to I&E's factual allegations, SPLP recognizes the need to prevent similar allegations from reoccurring.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation. As such, I&E respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement without modification.

Moreover, I&E and SPLP jointly request that any interested persons or entities, including those who have filed Petitions to Intervene in this matter, be provided with the opportunity to file Comments to the Settlement Agreement followed by an opportunity for I&E and SPLP to submit Reply Comments.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and SPLP have agreed as follows:

A. Civil Penalty:

SPLP will pay a civil penalty in the amount of Two Hundred Thousand Dollars (\$200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Remaining Life Study:

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP's Integrity Management Plan ("IMP"), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

The Remaining Life Study should be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration ("PHMSA") or State Commissions, and the Pipeline Research Counsel International ("PRCI"), American Petroleum Institute ("API"), or the Interstate Natural Gas Association of America ("INGAA"). Within thirty (30) days of entry of a Commission Order approving any settlement of this matter, SPLP shall provide I&E with a list of three (3) proposed independent experts, along with contact information, a brief description of the expert's background and a disclosure as to whether the proposed expert performed any work in relation to ME1 as well as a description of that work. I&E will select one (1) expert from the list provided by SPLP and SPLP will hire and pay the expert to complete and review the study. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. A summary of the expert's findings shall be made public (excluding proprietary or confidential security information).

The Parties agree that the Remaining Life Study will include the following:

- ME1 corrosion growth rate based on the most recent ILI run, sectionalized as appropriate;
- Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;
- Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;
- Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;
- A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;
- A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;
- A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;
- A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;
- An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;
- A summary of the leak history on ME1 including a description of the size of each leak;
- A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and
- A discussion to illustrate how managing integrity lengthens pipeline life.

For so long as ME1 remains in Highly Volatile Liquid (“HVL”) service, SPLP agrees to supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes SPLP’s continual process of evaluation and assessment to maintain the pipeline integrity of ME1. The report will also include a list of the next year’s planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. The public version of the report shall not contain information that is proprietary or contains information subject to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the PUC’s regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

C. In-Line Inspection and Close Interval Survey Frequency of ME1:

a. In-Line Inspection

SPLP's two remaining ILI runs in 2019 on the ME1 segments identified as: (1) Middletown-Montello & Montello-Beckersville; and (2) Beckersville-Twin Oaks, are in addition to the two proposed ILI runs of ME1 that will take place at agreed-upon intervals over the next three (3) calendar years ("ILI run #1" and "ILI run #2"). Thus, the Parties agree that SPLP will conduct the two remaining ILI runs in April 2019, then conduct ILI run #1 of ME1 eighteen (18) months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 eighteen (18) months after the completion of ILI run #1.

At the conclusion of the three-year ILI inspection period, the Parties agree that SPLP shall retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and will meet with I&E to discuss SPLP's planned ILI inspection frequency. I&E is not required to wholly accept the interval recommendations proposed by SPLP's independent consultant. Should the ILI interval recommendation not be wholly accepted by I&E, I&E and SPLP agree to collaborate using best efforts to arrive at a mutually acceptable ILI interval period.

b. Close Interval Survey

SPLP further agrees to conduct a Close Interval Survey of ME1 at the same interval and frequency, once every eighteen (18) months, to evaluate the effectiveness of SPLP's corrosion control program for ME1 for the next three (3) calendar years.

D. Revision of Procedures:

The Parties agree that SPLP's May 2018 revisions to procedures have addressed I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

E. Implementation of Revised Procedures:

The Parties agree that SPLP has implemented the revised procedures and has fulfilled I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

F. Pipe Replacement as It Relates to Corrosion:

The Parties agree that I&E is not requesting that SPLP immediately replace pipe pursuant to Paragraph 47(e) of the Complaint. Instead, I&E understands that when SPLP detects anomalies, the Company maintains the discretion to initiate and/or utilize various remedial measures to preserve the integrity of the pipe or, if ultimately deemed necessary, to physically replace segments of the pipeline. The Parties agree with SPLP's proposed approach as follows:

If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action consistent with its Corrosion Control Plans, Integrity Management Program and applicable Federal regulations.

In consideration of SPLP's payment of a monetary civil penalty and performance of the agreed-upon measures as noted above, I&E shall be deemed to have released Respondent from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Respondent failed to comply with the obligations claimed in the Complaint for the time periods covered by I&E's Complaint.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000).

The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations averred in I&E's Complaint allege that SPLP's *former* corrosion control program relative to ME1 was not based on sound engineering practices and the requirements set forth in the Federal pipeline safety regulations. It is important to note that the violations alleged in I&E's Complaint were with regard to an inadequate corrosion mitigation procedure that had been used by SPLP prior to its adoption of an improved procedure utilized by Energy Transfer Company ("ETC"), which had acquired the SPLP infrastructure, including ME1. As such, at the time I&E's Complaint was filed, I&E was well aware that ETC was in the process of correcting the inadequacies of the prior SPLP corrosion procedure.

Obviously, corrosion is not a pipeline's friend. Unless properly mitigated, the consequences could have serious implications on the life of the infrastructure and to surrounding life and property.

The violations asserted by I&E in its Complaint allege, in pertinent part, that SPLP's procedures in place up to the time of the leak failed to demonstrate that it had achieved adequate cathodic protection on ME1 at the site of the April 1, 2017, leak in Morgantown, Berks County, PA. Further, the leak itself was attributed to corrosion and was a reportable accident pursuant to Section 195.50(b) of the Federal pipeline safety regulations, 49 C.F.R. § 195.50(b), due to the volume of product that was released, although relatively minimal. Thus, I&E submits that Respondent's alleged conduct was of a serious nature and was considered in arriving at the civil penalty and measures demanded to be undertaken as set forth in the Settlement Agreement.

The second factor considered is whether the resulting consequences of the Respondent's alleged conduct 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. 52 Pa. Code § 69.1201(c)(2). No serious consequences, such as personal injury or damage to buildings, occurred with respect to the allegations advanced by I&E in its Complaint.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether the Respondent's alleged conduct was intentional or negligent does not apply since this matter is being resolved by a Settlement Agreement.

The fourth factor to be considered is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As previously mentioned, prior to the initiation of the instant I&E enforcement proceeding, SPLP had already revised its procedures pertaining to corrosion control and cathodic protection. Such revisions occurred in 2017 and SPLP fully implemented the revised procedures

by the second quarter of 2018. Nevertheless, given the serious nature of corrosion and I&E's duty to ensure safe and reliable utility service, I&E's Complaint boldly sought swift and decisive action by the Company to address this serious issue, including the preparation of a "remaining life study" relating to SPLP's nearly nine decades-old ME1 pipeline.

Such a demand was really unheard of in this industry, but the public outcry regarding ME1 warranted, in I&E's view, this extraordinary relief on the part of the Company. Although this demand was incorporated into I&E's Complaint, a fully litigated proceeding may well have resulted in this demand being denied as not required by and in excess of any applicable law or regulation. By reaching an amicable resolution of I&E's Complaint in lieu of litigation, I&E has achieved a welcomed outcome that is highlighted by the Company's acquiescence to complete an unprecedented integrity study of ME1.

Specifically, SPLP has agreed to retain an independent expert, selected by I&E, to perform a Remaining Life Study of ME1 that is intended to assess the longevity of the pipeline using specific calculations and metrics that were suggested by I&E and agreed-to by SPLP. A summary of the independent expert's findings will be publicly available, excluding proprietary or confidential security information ("CSI").⁵ Furthermore, the Remaining Life Study will be supplemented on an annual basis for as long as ME1 transports highly volatile liquids and an annual summary report will be publicly available, excluding proprietary or CSI. The Remaining Life Study serves to continually enhance the evaluation of the integrity of ME1 in addition to the

⁵ The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, prohibits disclosure of material that could compromise security or endanger life, safety, or public utility facilities. Government agencies are prohibited from releasing, publishing or disclosing a public utility record that contains CSI, pursuant to 35 P.S. § 2141.5(a). Any public official or employee who knowingly or recklessly releases such information commits a misdemeanor of the second-degree carrying penalties including imprisonment for up to one year, a fine of up to \$5,000 and loss of office or employment. 35 P.S. § 2141.6.

requirements pertaining to integrity management of a pipeline as set forth in the Federal pipeline safety regulations. Importantly, there is no current requirement under Federal law or regulation for a pipeline operator to perform a Remaining Life Study.

Moreover, SPLP agreed to perform ILI runs and Close Interval Surveys once every eighteen (18) months for the next three (3) calendar years, which is an interval in excess of the Federal regulatory requirements. *See* 49 C.F.R. § 195.452(j)(3) (requiring a pipeline operator to establish five-year assessment intervals not to exceed sixty-eight (68) months for assessing the pipeline's integrity. Such assessment may be performed by using an internal inspection tool capable of detecting corrosion. 49 C.F.R. § 195.452(j)(5)(i)). *See also* 49 C.F.R. § 195.573(a)(2) (permitting a pipeline operator to determine when a close interval survey or comparable technology is practicable and necessary). These remedial measures, which include implementation of SPLP's revised and improved cathodic protection procedures and increased ILI runs and Close Interval Surveys, are designed to mitigate and reduce corrosion as well as the severity of leaks on ME1.

Had this matter been fully litigated, I&E likely would not have been able to obtain relief outside of what the law and regulations prescribe. For this reason alone, I&E submits that the Settlement Agreement is in the public interest.

The fifth factor to be considered relates to the number of customers affected by the Respondent's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). The April 1, 2017 leak led to a brief shut-down of ME1, which impaired the ability of SPLP's customers to ship product using the pipeline.

The sixth factor to be considered relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in

a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* The safety of SPLP's ME1, Mariner East 2 ("ME2") and Mariner East 2X ("ME2X") have been the subject of various recent Commission proceedings and, at times, the Commission has ordered SPLP to cease operations. *See Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket No. P-2018-3001453 and *Pa. State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3001451 (Order entered June 15, 2018) (prohibiting construction, including drilling activities, on the ME2 and ME2X pipelines in West Whiteland Township, Chester County, PA). *See also Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm'n for the Issuance of an Ex Parte Emergency Order* at Docket No. P-2018-3000281 (Ratification Order entered March 15, 2018) (prohibiting SPLP from reinstating hazardous liquids transportation service on ME1 until SPLP completed a number of corrective actions designed to address subsidence around the pipeline). To I&E's knowledge, the Commission has not expressly found SPLP in violation of any law or regulation, or directed SPLP to pay a civil penalty in connection with a violation.

The seventh factor to be considered relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* SPLP has been forthcoming with information and has cooperated with the I&E Safety Division and prosecutory staff.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty of Two Hundred Thousand Dollars, (\$200,000), which may not be claimed as a tax deduction by operation of law,

is substantial and sufficient to deter SPLP from committing future violations especially when considering civil penalties that have been previously imposed by the Commission for pipeline failures related to corrosion as discussed in further detail below.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement, which resolves allegations relating to cathodic protection and corrosion control issues on ME1, provides comparable relief, or, at times, greater relief, to enforcement matters involving pipeline failures attributable to corrosion that were decided by the Commission over the past ten (10) years.

In *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. Columbia Gas of PA, Inc.*, Docket No. C-20077249 (Order entered December 7, 2009), the Commission directed Columbia Gas of PA, Inc. ("Columbia Gas") to pay Fifty Thousand Dollars (\$50,000) to the Dollar Energy Fund in relation to a fire and explosion caused by a small leak in a natural gas pipe wherein a 76-year old occupant of a house sustained second degree burns. The Law Bureau Prosecutory Staff attributed the leak to Columbia Gas' failure to follow policy and procedures pertaining to corrosion and demonstrating, through records, that it properly monitored its system for corrosion. Significantly, in the instant matter, no fire, explosion or injuries occurred and the agreed-upon civil penalty is four (4) times greater.

In *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. T.W. Phillips Gas and Oil Co.*, Docket No. M-2010-2037210 (Order entered June 7, 2010), the Commission approved a settlement agreement between prosecutory staff and T.W. Phillips Gas and Oil ("T.W. Phillips") that originated from an investigation into an explosion of a home, which resulted in property damage but no injuries. The source of the explosion was from a one-inch diameter hole in a gas main. It was determined that the leak was caused by corrosion. The Commission-approved

settlement agreement directed T.W. Phillips to perform a number of corrective measures, which, *inter alia*, were designed to enhance and improve the overall effectiveness of its corrosion control program. Contrary to the instant matter, no civil penalty was imposed.

In *Pa. Pub. Util. Comm'n v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. C-2009-2027991 (Order entered January 14, 2011), the Commission ordered The Peoples Natural Gas Company d/b/a Dominion Peoples ("Peoples Natural Gas") to pay an Eighty Thousand Dollar (\$80,000) civil penalty for an explosion caused by a circumferential crack around a steel pipeline. The explosion caused one fatality, injuries to a child, the destruction of three (3) homes and damage to eleven (11) surrounding homes. Laboratory analysis of the pipeline revealed external corrosion in the crack initiation area. In the instant matter, no injuries or property damage occurred and the agreed-upon civil penalty is greater.

In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. PECO Energy Company*, Docket No. M-2012-2205782 (Order entered November 8, 2012), the Commission ordered PECO Energy Company ("PECO") to pay a Seventy-Five Thousand Dollar (\$75,000) civil penalty for a low level explosion and house fire caused by a circumferential crack in a four-inch natural gas pipeline. The ensuing investigation found that PECO failed to remediate an underlying corrosion problem that caused approximately twenty (20) leaks in the area surrounded by the impacted house. The instant matter involves one (1) leak that did not result in an explosion or fire and the agreed-upon civil penalty is greater.

In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, Docket No. C-2012-2308997 (Order entered February 19, 2013), the Commission imposed

the then-maximum civil penalty of Five Hundred Thousand Dollars (\$500,000)⁶ upon UGI Utilities, Inc. (“UGI”) for a natural gas explosion that caused five (5) fatalities, one (1) injury and destroyed or damaged six (6) residences. The cause of the explosion was a twelve-inch cast iron gas main with a circumferential crack. The twelve-inch main was supported by wooden blocks. After excavating the affected pipe, 80% wall loss of the main just above the wood was discovered and attributed to corrosion. While the severity of the UGI explosion is not comparable to the instant matter, it is included in this analysis to illustrate the relief being obtained here versus the magnitude of the leak.

In *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Order entered August 11, 2016), the Commission approved a settlement agreement that imposed a One Million Dollar (\$1,000,000) civil penalty upon continental Communities, LLC and Hickory Hills MHC, LLC (“Hickory Hills”) in connection with a propane explosion in a mobile home community that resulted in one fatality, injury to another person and substantial property damage. I&E had alleged that the results of the ensuing investigation revealed that the cause of the propane leak was localized corrosion on a steel pipe riser. I&E further alleged, *inter alia*, that Hickory Hills failed to have a manual that included procedures for controlling corrosion. The agreed-upon civil penalty in the instant matter is proportionally lower given that the instant SPLP leak did not result in the evident serious consequences in Hickory Hills.

I&E submits that the instant Settlement Agreement should be viewed on its own merits

⁶ Effective April 16, 2012, the Public Utility Code was amended to increase civil penalties for gas pipeline safety violations to the current standard of \$200,000 per violation for each day that the violation persists subject to a maximum civil penalty of \$2,000,000 for any related series of violations, as adjusted annually for inflation. 66 Pa.C.S. § 3301(c).

and is fair and reasonable. However, in looking at the relevant factors that are comparable to other pipeline matters involving failures attributable to corrosion, the instant Settlement is consistent with past Commission actions in that a substantial civil penalty will be paid and numerous corrective actions to address the alleged violations will be performed.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions. Significantly, I&E asserts that it was able to obtain relief by virtue of this Settlement that it would not have otherwise been successful in obtaining had this matter been fully litigated as SPLP has agreed to perform measures above and beyond what the applicable laws and regulations require.

In addition, I&E submits that another factor should be considered when evaluating whether the instant Settlement is in the public interest. The Parties have requested that interested persons and entities, especially those who sought to intervene in this matter, be afforded with the opportunity to review and provided feedback on the Settlement Agreement prior to the entry of any final Commission ruling concerning the Agreement.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement.

The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission, after consideration of Comments submitted by interested persons and Reply Comments filed by the Parties, approve the Joint Petition for Approval of Settlement, including all the terms and conditions set forth therein, without modification.

Respectfully submitted,



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Dated: April 3, 2019

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-3006534
	:	
Sunoco Pipeline L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

**SUNOCO PIPELINE L.P. STATEMENT IN SUPPORT OF JOINT PETITION FOR
APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231 and 5.232 Sunoco Pipeline L.P. (SPLP) submits this Statement in Support of the Joint Petition for Approval of Settlement (Joint Petition or Settlement) of the Formal Complaint that the Commission's Bureau of Investigation and Enforcement (BI&E) filed on December 13, 2018 (Complaint). BI&E and SPLP are the only parties to this proceeding.¹ The Settlement resolves all issues related to the Complaint and promotes public safety. SPLP has agreed to undertake various actions that go well above and beyond statutory and regulatory requirements concerning pipeline safety to ensure its Mariner East 1 pipeline (ME1) continues to provide safe public utility service. The Settlement terms and conditions are in the public interest as explained below.

¹ While various persons have sought to intervene in this proceeding, none have been granted intervenor status. SPLP and BI&E, as described in the Joint Petition and consistent with the Commission's statute and regulations 66 Pa. C.S. § 331(b)(2); 52 Pa. Code § 5.232(g), the Joint Petitioners request a comment period for interested persons, including those who have sought to intervene.

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I. THE COMMISSION SHOULD APPROVE THE SETTLEMENT

The Settlement proposes safety and integrity features that are “above and beyond” what is required under prevailing and applicable regulations which SPLP is willing to do to amicably resolve this matter before the commencement of formal legal proceedings. For that public interest reason, and because the Commission has the clear ability to do so under its statute and its regulation at 66 Pa. C.S. § 331(b)(2); 52 Pa. Code § 5.232(g), the Commission should decide this matter directly without assigning this matter to an Administrative Law Judge (ALJ). Moreover, under Pennsylvania law an intervenor has no right to proceed to separately pursue claims made by a complainant when the complaint has been resolved. *See Petition of the Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 at 10 (Order entered May 3, 2018) (citing 52 Pa. Code § 5.75(c)) (“Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.”). Indeed, an intervenor possesses no right to appeal and its participation is contingent upon a complainant proceeding to litigation. *Id.*

The Commission’s regulations expressly allow this procedure.

Review of a settlement petition by the Commission. When no presiding officer has been assigned, the Commission will review the settlement. Parties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.

52 Pa. Code § 5.232(g).

The Commission has recently directly reviewed and issued for comment a settlement of a BI&E formal complaint without assignment to an ALJ. *Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission v. Burgly Gas and Oil*, Docket No. C-2014-

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2411284. There is no reason to treat this settlement differently. Moreover, direct Commission review will be the most timely and efficient procedure for consideration of the Settlement. Timely and efficient approval promotes the public interest because the Settlement contains terms that require SPLP to go above and beyond regulatory and statutory requirements and promote public safety. Timely approval will ensure timely implementation of these Settlement terms and is in the public interest. Both the Commission's regulations and the facts here support direct Commission decision on the Joint Petition without assignment to an ALJ.

To the extent there is any concern regarding process for persons that petitioned to intervene, the process SPLP and BI&E are proposing allows such persons to voice their opinions regarding the Settlement through comments. Moreover, a party petitioning to intervene has no rights that survive the discontinuance of a case. As the Commission has recently reiterated, "An intervenor's role in proceedings before this Commission is on a non-party basis, meaning that the initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors." *Petition of the Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 at 10 (Order entered May 3, 2018) (citing 52 Pa. Code § 5.75(c)) ("Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.").

Accordingly, the Commission should directly consider the Joint Petition here because it is expressly allowed under the Commission's regulations, it is the process used for similar proceedings, it will promote the public interest by allowing for more timely implementation of

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Settlement provisions both parties agree are in the public interest and should not be delayed, and potential intervenors will be given the opportunity to be heard through comments.

II. BACKGROUND

This matter involves a pin-hole leak that occurred on April 1, 2017 on the ME1 pipeline segment identified as Twin Oaks to Montello near Morgantown Road, Morgantown, Berks County, Pennsylvania. The pin-hole leak resulted in the release of 20 barrels of product. SPLP notified BI&E of the leak on April 1, 2017. Thereafter, BI&E conducted an investigation of this matter, including site visits and review of SPLP's corrosion control practices and procedures relative to applicable regulations.

On December 13, 2018, BI&E filed the Complaint. The Complaint alleged that SPLP's corrosion control practices and procedures were not compliant with Federal pipeline safety laws and regulation. The Complaint requested the following relief:

- A civil penalty of \$225,000.00;
- That SPLP perform a "remaining life study" of ME1;
- That SPLP increase frequency of inline inspections (ILI) to occur at least once per year;
- That SPLP revise its corrosion control procedures;
- That SPLP develop procedures to determine the adequacy of cathodic protection through testing and performance methods;
- That SPLP implement the new and revised cathodic protection procedures and perform all cathodic protection measurements within one year.

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SPLP filed its Answer on January 31, 2019.² The Answer explains that SPLP disagrees that its cathodic protection practices and procedures were not compliant with applicable law and regulations. SPLP likewise explained that just because a pin-hole leak occurred, does not mean SPLP violated any law or regulation. *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-239661 1 (Final Order entered April 10, 2014); *see also Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-000 15494, 2002 WL 31060581 (June 14, 2002). SPLP argued that the allegations that SPLP violated federal pipeline safety law and regulations was based on BI&E's after-the-fact subjective interpretations of federal regulations and that applying such interpretations to SPLP was akin to retroactive rulemaking that violates due process.

SPLP also explained that the Federal pipeline safety regulations that the Pipeline and Hazardous Materials Safety Administration (PHMSA) has promulgated are performance based, intended to establish minimum safety standards that are then tailored within the discretion of the pipeline operator to individual systems. Under these regulations, each operator is required under the regulations to prepare a variety of manuals, specific to its own system, in a manner that will meet or exceed the minimum federal standards. Those manuals, in turn, become enforceable by PHMSA. *See e.g., Interpretation Letter from J. Caldwell, Director, OPS to H. Garabrant* (April 22, 1974) ("the procedures of an operating and maintenance plan are as binding on the operator as the federal standards").

Rather than telling operators what to do, the regulations tell them what level of safety to achieve. [...] There is tremendous variation between pipeline operators and between pipeline facilities. In order for one set of regulations to be comprehensive in scope, it would have to be quite lengthy and detailed. It would

² The Parties commenced a series of extensive settlement discussions and the due date for responding to the Complaint was agreed by the Parties and permitted to be extended to January 31, 2019.

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have to prescribe what operating, maintenance and emergency procedures are appropriate for all conceivable scenarios. The performance-based regulations reject this approach. They tell operators what level of safety must be achieved but do not spell out all of the steps necessary to get there.

Final Order, In re: Kaneb Pipe Line, CPF No. 53509 (Feb. 26, 1998).

Accordingly, the relevant PHMSA regulations are not prescriptive in nature as to what details SPLP's procedures had to contain, as long as those procedures were within the bounds of the guidelines set forth in those regulations and industry guidelines incorporated therein, such as portions of NACE SP0169.

Moreover, PHMSA and BI&E conduct inspections and audits of the procedures and manuals and within that process may make suggestions as to how such materials should be modified if the agency or bureau believes they are inadequate. PHMSA conducted integrated inspections on ME1 in 2010 and 2013, including intensive review of SPLP's procedures. The procedures in place during that inspection were the same procedures BI&E alleged were in violation of the regulations. During those inspections PHMSA had no negative findings related to SPLP's corrosion procedures or criteria.

As to the relief requested, SPLP explained that it had already revised various procedures and that the revision of those procedures is not an admission that the prior SPLP procedures were inadequate or non-compliant.

Finally, SPLP explained that portions of the requested relief were inconsistent with Federal safety regulations, or not required by such regulations, and/or impeded SPLP's managerial discretion and that the Commission could not unilaterally order SPLP to engage in the requested actions as a matter of preemption and due process. Regarding the remaining life study, SPLP explained that there is no requirement under federal law or regulation for an operator of an oil or

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gas pipeline to determine a retirement age for a pipeline. Moreover, the concept is wholly inconsistent with the federal safety regulations because it presumes there is a finite life span of the ME1 pipeline. There is no legal requirement to determine ‘retirement age’ for any pipelines, including natural gas liquids (NGL), pipelines. Instead, federal law requires pipeline operators to develop O&M and integrity management programs to inspect and monitor pipelines on an ongoing basis, and when anomalies are detected, federal law prescribes various corrective measures and timetables to maintain or restore system integrity. Such corrective measures may include pipe replacement where appropriate.

SPLP explained that there is likewise no requirement for annual ILI inspection and that such inspections on an annual basis would not provide meaningful information in terms of corrosion control. SPLP also explained that there is no requirement that SPLP replace segments of pipe based solely on initial measurements and this request is inconsistent with federal regulations. Federal regulations specify generally what type of action should be taken in response and on what timetable when anomalies, such as low IR free potentials or inadequate depolarization are found. Corrective measures to be taken can include iterative measures to remediate the issue, including site specific repair, enhanced cathodic protection, re-coating, and if the operator concludes necessary or appropriate, pipeline replacement.

III. THE SETTLEMENT

After extensive negotiations, SPLP and BI&E agreed to the following settlement terms, which in large part are consistent with BI&E’s requested relief and thus are above and beyond statutory and regulatory requirements. These provisions also involve significant expenses to SPLP.

APPENDIX B

A. Civil Penalty:

Respondent will pay a civil penalty in the amount of Two Hundred Thousand Dollars (\$200,000) pursuant to 49 U.S.C.A. §§ 60122(a)(1) and 60118(a). Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2018-3006534, shall be indicated with the certified check or money order and the payment shall be sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Remaining Life Study:

SPLP agrees to retain an independent expert to conduct a Remaining Life Study that will consist of a summary of SPLP's Integrity Management Plan ("IMP"), a remaining life evaluation of ME1, calculations that are described in more detail in the bullet paragraphs that appear below, and will be forward-looking in manner, and intended to assess the longevity of ME1.

The Remaining Life Study should be conducted by a qualified independent expert that has conducted independent studies for, but not limited to, governmental entities, such as the Pipeline and Hazardous Materials Safety Administration ("PHMSA") or State Commissions, and the Pipeline Research Counsel International ("PRCI"), American Petroleum Institute ("API"), or the Interstate Natural Gas Association of America ("INGAA"). Within thirty (30) days of entry of a Commission Order approving any settlement of this matter, SPLP shall provide I&E with a list of three (3) proposed independent experts, along with contact information, a brief description of the expert's background and a disclosure as to whether the proposed expert performed any work in relation to ME1 as well as a description of that work. I&E will select one (1) expert from the list provided by SPLP and SPLP will hire and pay the expert to complete and review the study. The expert shall complete the Remaining Life Study within six (6) months from being contracted by SPLP. A summary of the expert's findings shall be made public (excluding proprietary or confidential security information).

The Parties agree that the Remaining Life Study will include the following:

- ME1 corrosion growth rate based on the most recent In-Line-Inspection run, sectionalized as appropriate;

APPENDIX B

- Supporting documentation to demonstrate the corrosion growth rate. This may include a graph estimating corrosion growth from installation of ME1 to the present time;
- Retirement thickness calculations that consider: (1) pressure design thickness; and (2) minimum structural thickness;
- Remaining life calculations by: (1) segment; (2) age; (3) coating type; and (4) soil conditions;
- A schedule identifying portions of the pipeline to be replaced or remediated over the next five (5) years;
- A summary of the portions of ME1 that were previously retired with an explanation of the characteristics of the pipeline sections that led to the replacements;
- A listing and description of threats specific to ME1, with a summary of how each threat and the associated risks are mitigated;
- A summary of the top ten (10) highest risks identified on ME1 with an explanation as to how the risks are mitigated;
- An explanation of how anomalies, dents and ovalities are formed on the pipeline and addressed by mitigative measures;
- A summary of the leak history on ME1 including a description of the size of each leak;
- A discussion of the history of ME1, including when cathodic protection was installed, when coating was applied, and the various measures performed by SPLP, including the implementation of new procedures; and
- A discussion to illustrate how managing integrity lengthens pipeline life.

For so long as ME1 remains in Highly Volatile Liquid (“HVL”) service, SPLP agrees to supplement the Remaining Life Study by providing a summary report on an annual basis that summarizes SPLP’s continual process of evaluation and assessment to maintain the pipeline integrity of ME1. The report will also include a list of the next year’s planned preventative and mitigative actions (such as system improvements) and a list of integrity enhancements that were performed on ME1 the prior year, as required by and consistent with the applicable 49 C.F.R. Part 195 requirements. The public version of the report shall not contain information that is proprietary or contains information subject to The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, and the PUC’s regulations implementing such Act at 52 Pa. Code §§ 102.1 -102.4.

C. In-Line Inspection and Close Interval Survey Frequency of ME1:

a. In-Line Inspection

SPLP’s two remaining In-Line Inspection (“ILI”) runs in 2019 on the ME1 segments identified as: (1) Middletown-Montello & Montello-Beckersville; and (2) Beckersville – Twin Oaks, are in addition to the two proposed ILI runs of ME1 that will take place at agreed-upon intervals over the next three (3) calendar years (“ILI run #1” and “ILI run #2”). Thus, the Parties agree that SPLP will conduct the two remaining ILI runs in April 2019 or within 60 days of ME1 resuming service, then conduct ILI run #1 of ME1 eighteen

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(18) months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 eighteen (18) months after the completion of ILI run #1.

At the conclusion of the three-year ILI period, the Parties agree that SPLP shall retain an independent consulting firm to assist in establishing a reassessment interval using corrosion growth analysis and will meet with I&E to discuss SPLP's planned ILI inspection frequency. I&E is not required to wholly accept the interval recommendations proposed by SPLP's independent consultant. Should the ILI interval recommendation not be wholly accepted by I&E, I&E and SPLP agree to collaborate using best efforts to arrive at a mutually acceptable ILI interval period.

b. Close Interval Survey

SPLP further agrees to conduct a Close Interval Survey of ME1 at the same interval and frequency, once every eighteen (18) months, to evaluate the effectiveness of SPLP's corrosion control program for ME1 for the next three (3) calendar years.

D. Revision of Procedures:

The Parties agree that SPLP's May 2018 revisions to procedures Energy Transfer SOP HLD.22 have addressed I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

E. Implementation of Revised Procedures:

The Parties agree that SPLP has implemented the revised procedures and has fulfilled I&E's requested relief set forth in Paragraphs 47(c)-(d) of the Complaint.

F. Pipe Replacement as It Relates to Corrosion:

The Parties agree that I&E is not requesting that SPLP immediately replace pipe pursuant to Paragraph 47(e) of the Complaint. Instead, I&E understands that when SPLP detects anomalies, the Company maintains the discretion to initiate and/or utilize various remedial measures to preserve the integrity of the pipe or, if ultimately deemed necessary, to physically replace segments of the pipe. The Parties agree with SPLP's proposed approach as follows:

If the results of cathodic protection measurements indicate low IR free potentials or inadequate depolarization, SPLP will take action consistent with its Corrosion Control Plans, Integrity Management Program and applicable Federal regulations.

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IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

“It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). The Settlement is in the public interest because it promotes public safety and SPLP has agreed to take steps above and beyond statutory and regulatory requirements that SPLP believes the Commission could not unilaterally order SPLP to undertake involuntarily if this Complaint had been fully litigated. The Settlement avoids the time and costs to the Parties and the Commission of full litigation, including potential appeals.

SPLP has acted in good faith to comply with BI&E’s investigation since notifying BI&E of the pin-hole leak on the day it occurred. SPLP had a laboratory analysis conducted of the segment of the pipeline where the leak occurred and provided the results to BI&E. SPLP also complied with extensive requests for data. SPLP also notes that the incident did not result in injury to anyone. Each provision of the Settlement promotes the public interest.

Penalty. The penalty that SPLP agreed to pay of \$200,000 is approximately 89% of the penalty that BI&E requested in its Complaint.

Remaining Life Study. The Settlement has a Remaining Life Study provision that details what the study will include and has a provision for making public a summary of the study. The study will be conducted by an independent expert that BI&E will choose from a list of three proposed experts that SPLP will provide. The remaining life study will be completed within six months from the independent expert being contracted by SPLP. SPLP also agreed to provide annual summary reports on the study. These study provisions are in the public interest because SPLP has agreed to undertake a study that both BI&E and Governor Wolf³ have requested that

³ Press Release - Governor Wolf Issues Statement on DEP Pipeline Permit Bar, February 8, 2019, available at <https://www.governor.pa.gov/governor-wolf-issues-statement-dep-pipeline-permit-bar/> (“I am also calling upon the PUC to require that a remaining life study of Mariner East 1 be completed and reviewed by independent experts. Such a study should thoroughly evaluate the

APPENDIX B

SPLP believes the Commission does not have the authority to unilaterally order SPLP to undertake involuntarily had this matter proceeded to litigation and will provide for the study to be completed in a much shorter time frame than if this matter had proceeded to litigation.

In-Line Inspections and Close Interval Survey Frequency. In the Settlement, SPLP agrees to conduct these inspections and surveys in a shorter time-period that it is otherwise required to do. Again, this term is above and beyond statutory and regulatory requirements and results in obtaining relief that SPLP believes the Commission does not have the authority to unilaterally order SPLP to undertake involuntarily had this matter proceeded to litigation and will provide for these inspections and surveys to be completed in a much shorter time frame than if this matter had proceeded to litigation. SPLP also agreed to collaborate with BI&E concerning future frequency of these inspections and surveys. SPLP notes that the increased frequency of Close Interval Survey is estimated to cost SPLP approximately \$350,000 per survey.

Revision of Procedures. The Parties agree that SPLP's revised procedures address SPLP's requested relief in Paragraphs 47(c)-(d) of the Complaint. While SPLP does not believe its prior procedures were non-compliant, SPLP voluntarily revised these procedures prior to the Complaint being filed in this matter, demonstrating good faith and cooperation with BI&E concerning pipeline safety. These procedures have already been implemented.

Pipe Replacement as It Relates to Corrosion. The Parties were able to reach an understanding that SPLP is not required to immediately replace pipe, but instead, when SPLP detects anomalies, the Company maintains the discretion to initiate and/or utilize various remedial measures to preserve the integrity of the pipe or, if ultimately deemed necessary, to physically

safety of the existing pipeline and prepare a plan to implement the findings of that study as soon as possible.”).

APPENDIX B

replace segments of the pipe. This provision promotes the public interest because it is consistent with applicable law and avoids costly and potentially disruptive construction activities for pipe replacement when such replacements are unnecessary.

V. CONCLUSION

The Settlement is the result of extensive exchanges of information and negotiations between the Parties and is in the public interest. SPLP has agreed to take steps above and beyond statutory and regulatory requirements that promote public safety. SPLP fully supports the Settlement and request that the Commission approve it without modification.

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. # 33891
Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak LLP
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Harrisburg, PA 17101
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tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Dated: April 3, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

APPENDIX C



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

December 13, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Sunoco Pipeline, L.P. a/k/a Energy Transfer
Partners
Docket No. C-2018-

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Formal Complaint on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Wimer", is written over a horizontal line.

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Enclosures

cc: As per Certificate of Service

Pennsylvania Public Utility	:	
Commission, Bureau of	:	
Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, please serve a copy on:

Stephanie M. Wimer, Senior Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov

B. If you fail to answer this Complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the civil penalty and other requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty within twenty (20) days and performing the corrective actions set forth in the requested relief. A certified check, cashier's check or money order should be payable to the "Commonwealth of Pennsylvania" and mailed to:

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

Your payment is an admission that you committed the alleged violations and an agreement to cease and desist from committing further violations. Upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer, which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the civil penalty and granting the requested relief as set forth in the Complaint.

E. If you file an Answer which contests the Complaint, the matter will proceed before the assigned presiding Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at (717) 787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of	:	
Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint (“Complaint”) against Sunoco Pipeline, L.P. (“SPLP”) a/k/a Energy Transfer Partners (“ETP”) (collectively referred to as “SPLP,” “Company,” or “Respondent”) alleging violations of the United States Code, Code of Federal Regulations and Pennsylvania Code, which were discovered in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County, Pennsylvania. In support of its Complaint, I&E respectfully avers as follows:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (“Commission” or “PUC”), with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.* (“Code”).

2. Complainant is the Commission’s Bureau of Investigation and Enforcement, which is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant’s prosecuting attorneys are as follows:

Stephanie M. Wimer
Senior Prosecutor
stwimer@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
mswindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondent is Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners, with a principal place of business at 525 Fritztown Road, Sinking Spring, PA 19608. SPLP also

maintains an office at 212 North Third Street, Suite 201, Harrisburg, PA 17101, Attention Curtis Stambaugh, Esquire.

5. SPLP is a jurisdictional “public utility,” having received a Certificate of Public Convenience at A-140111, that is engaged in, *inter alia*, the intrastate transportation of hazardous liquids.

6. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

7. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

8. Pursuant to Section 59.33(b) of the Commission’s regulations, 52 Pa. Code § 59.33(b), I&E’s Safety Division has the authority to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199. The Federal pipeline safety laws and regulations set forth the minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth.

9. Violations of Federal pipeline safety laws and regulations pertaining to the transportation of hazardous liquids by pipeline are subject to a civil penalty of up to Two Hundred Thousand Dollars (\$200,000) per violation for each day that the violation persists, except that the maximum civil penalty for a related series of violations shall not exceed Two Million Dollars (\$2,000,000). 49 U.S.C.A. §§ 60122(a)(1) and 60118(a).

10. Civil penalties for violations of Federal pipeline safety laws and regulations are adjusted annually to account for changes in inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 599, 28 U.S.C.A. § 2461 note (Nov. 2, 2015) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990). The most recent adjustment made by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") occurred on November 27, 2018 and revises the maximum civil penalty to Two Hundred Thirteen Thousand, Two Hundred Sixty-Eight Dollars (\$213,268) for each violation for each day the violation continues, with a maximum penalty not to exceed Two Million, One Hundred Thirty-Two Thousand, Six Hundred Seventy-Nine Dollars (\$2,132,679) for a related series of violations. 83 Fed. Reg. 228 (November 27, 2018).

11. Respondent, in providing the transportation of hazardous liquids to the public for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

12. Pursuant to the provisions of the applicable Commonwealth and Federal statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Respondent related thereto.

II. Background

A. Background of Pipeline

13. SPLP operates a pipeline, Mariner East-1 (“ME1” or “pipeline”), which traverses the Commonwealth from the Mark West Houston processing plant in Washington, PA to the Marcus Hook facility in Delaware County. ME1 is approximately 300 miles long and consists primarily of eight (8) inch bare steel with wall thicknesses of 0.312 and 0.322 inches. ME1 was originally installed in or about 1931.

14. The pipeline has multiple line identification numbers,¹ which, running from west to east, are as follows: 12120, 12124, 11190, 11045 and 11192. In addition, SPLP has assigned station numbers across ME1 to delineate specific locations on the pipeline.

15. The pipeline has seventeen (17) pumping stations state-wide.

16. In the late 1980s, SPLP acquired the pipeline from Atlantic Richfield and at the time of acquisition, the line had a cathodic protection system.²

17. In 2013, SPLP made preparations to convert ME1 from being a pipeline transporting refined petroleum products to a pipeline transporting highly volatile liquids (“HVL”). ME1 currently transports HVLs.

B. The April 1, 2017 Leak

18. On April 1, 2017, at 3:57 PM, the ME1 pipeline segment identified as Twin Oaks to Montello with an identification number of 11190 experienced a leak at station

¹ The Company identifies specific segments of ME1 by using line identification numbers.

² Cathodic protection is a method of controlling corrosion on the surface of a metal pipeline by making the pipeline a cathode.

2449+12 near 5530 Morgantown Road, Morgantown, Berks County, Pennsylvania. The pipeline was carrying ethane and propane at the time of the leak.

19. A resident first noticed the leak by observing product “bubbling” out of the ground. The resident informed SPLP who dispatched a technician to the site shortly thereafter. The technician arrived at 5:04 PM on April 1, 2017, and confirmed the leak.

20. At the time of the accident, the pipeline was operating in excess of 1,000 Pounds per Square Inch (“PSI”) and, therefore, was considered to be high pressure. Pursuant to Section 195.50(b) of the Federal pipeline safety regulations, 49 CFR § 195.50(b) (relating to reporting accidents in which there is a release of five (5) gallons or more of hazardous liquids), SPLP filed an accident report with PHMSA and reported a total product loss of twenty (20) barrels³ from the leak.

21. The leak occurred between the Beckersville pumping station and the Elverson block valve and was isolated by shutting down the pumping station and block valve. The distance between the Beckersville pumping station and the Elverson block valve is approximately seven (7) miles.

22. On April 1, 2017 at approximately 6:30 PM, SPLP notified I&E’s Safety Division of the leak by making a telephone call to the manager of the Safety Division.

23. On April 2, 2017, an I&E Safety Division pipeline safety inspector visited the leak site, but was unable to inspect the facility because the pipeline was still being purged of the product.

³ One barrel is approximately forty-two (42) gallons. The total product loss was 840 gallons.

24. On April 3, 2017, I&E Safety Division pipeline safety inspectors visited the site again to examine the affected pipeline.

25. SPLP crews excavated and exposed the pipeline, which was then cleaned. Visual examination of the pipe demonstrated localized corrosion at the bottom of the pipe in the six (6) o'clock position.

26. SPLP cut out a portion of the pipe and an eight (8) foot section of this portion was sent to a laboratory for analysis. Laboratory analysis of this section of the pipeline attributed the failure to corrosion.

27. SPLP then repaired the pipeline by first hydrostatically testing eighty-three (83) feet of new pipe and welding that section into the existing pipeline replacing the portion of ME1 that had been removed. The new section of pipe consists of eight (8) inch coated steel with a wall thickness of 0.322 inches.

C. I&E's Investigation Following the Leak

28. Following I&E's preliminary investigation at the site of the leak, the I&E Safety Division conducted an in-depth investigation of SPLP's corrosion control practices. The I&E Safety Division's investigation took place between April 2017 and May 2018, and consisted of data requests and review of data request responses, and numerous meetings and inspections. The investigation included a review of SPLP's operations and maintenance procedures, corrosion control procedures, maintenance records, corrosion control records and integrity management program, which were in existence at the time of the April 2017 leak. SPLP's procedures have since been revised.

29. In the area of the leak, SPLP operates a twelve (12) inch pipeline in the same common right-of-way as the above-described eight (8) inch pipeline. The eight (8) inch pipeline and twelve (12) inch pipeline are electrically bonded in the same impressed current system. Current flows from multiple rectifiers ground beds to the surface area of both pipelines. Thus, any testing related to the adequacy of cathodic protection must consider the eight (8) inch and twelve (12) inch pipelines because they are located in the same right-of-way.

30. At station 2459+00, which is approximately 1,030 feet from the leak, SPLP's records indicated cathodic protection readings of -628 millivolts ("mV") in 2016 and -739 mV in 2015. Adequate cathodic protection is achieved at a negative cathodic potential of *at least* -850 mV.⁴

31. SPLP has to achieve a standard *greater* than a negative cathodic potential of -850 mV. The laboratory analysis of the leak concluded that microbiologic induced corrosion may have contributed to the corrosion that was observed. *See* NACE SP0169-2007 at § 6.2.2.2.2 (providing that the presence of sulfides, bacteria, elevated temperatures, acid environments and dissimilar metals may render a negative cathodic potential reading of at least -850 mV to be insufficient).

32. In addition to the cathodic protection readings, SPLP performed side drain measurements at station 2459+00. The side drain measurements involved taking cell-to-

⁴ *See* 49 CFR § 195.3, citing the standard of the National Association of Corrosion Engineers ("NACE") SP0169-2007 at § 6.2.2.1.1. NACE SP0169-2007 is incorporated, by reference, in the Federal pipeline safety regulations. *See* 49 CFR § 195.3.

cell readings ten (10) feet left and right of the pipeline for a distance of one hundred (100) feet upstream and downstream of the station, with the measurements spaced five (5) feet apart on each side of the station, parallel to the pipeline.

33. While the magnitudes of the side drain measurements varied, several of the measurements between the eight (8) inch pipeline and twelve (12) inch pipeline indicated that current was flowing *away* from the pipeline, which is a sign of corrosion.

34. SPLP inappropriately relied on these side drain measurements to ensure the accuracy of cathodic protection. However, pursuant to NACE standards, side drain measurements should not be used in a multiple pipe right-of-way due to interference of the current magnitudes and direction of flow for each pipe.⁵ Side drain measurements are also ineffective for locating localized corrosion cells due to the spacing of the measurements.

35. SPLP's records concerning close interval potential surveys ("CIPS") of ME1, which were performed in 2009, 2013 and 2017, demonstrate that only "on" potentials were measured.⁶ Moreover, the CIPS do not contain accurate and reliable data needed to assess cathodic protection on the pipeline in that the CIPS do not align with footages and test station points. Furthermore, certain features, such as rectifiers, areas with parallel pipelines and overhead power lines are not identified in the records where such information is critical in the determination of the validity and accuracy of the test

⁵ See the precautionary note in NACE SP0169-2007 at § 6.2.2.3.1, which provides that an earth current technique is often meaningless in multiple pipe rights of way.

⁶ An "on" potential is a measurement taken at a position on the ground surface of a pipeline where the rectifier or current source remains "on" as opposed to being interrupted.

results.

36. SPLP's records also indicate that in 2016, SPLP conducted an inspection using an In-Line Inspection ("ILI") tool to detect anomalies in the pipeline and measure corrosion. This ILI inspection was performed between the Twin Oaks and Montello segment of ME1, which includes Morgantown. However, the ILI tool failed and no data was available from the 2016 inspection. SPLP conducted another ILI inspection for the Twin Oaks to Montello segment in July 2017. The results of the 2017 ILI inspection indicated metal loss on maintenance reports. However, corrosion is not noted or mentioned anywhere in SPLP's reports regarding the 2017 ILI inspection. Thus, SPLP made no record of the existence of corrosion on ME1 even though the presence of metal loss on ME1 also signifies the presence of corrosion.

37. The Safety Division examined SPLP's procedures pertaining to corrosion control that were effective in April 2017, at the time of the leak in Morgantown. SPLP's procedure at § 195.573,⁷ regarding Monitoring External Corrosion Control, was identical to NACE SP0169-2007 at § 10.1.1.3 in that it listed the five CIPS metrics, which set forth the reasons for performing CIPS.⁸ However, SPLP's procedure did not explain how the metrics would be obtained, evaluated and accomplished.

38. SPLP's procedure at § 195.571, which related to the criteria used to

⁷ SPLP's procedures were numbered to mirror the numbering of the applicable Federal pipeline safety regulation.

⁸ NACE SP0169-2007 at § 10.1.1.3 provides that a detailed CIPS should be conducted to: (1) assess the effectiveness of the cathodic protection system; (2) provide base-line operating data; (3) locate areas of inadequate protection levels; (4) identify locations likely to be adversely affected by construction, stray currents or other unusual environmental conditions; or (5) select areas to be monitored periodically.

determine the adequacy of cathodic protection,⁹ did not state any applications of or limitations on the criteria listed, nor did it incorporate the precautionary notes of NACE SP0169-2007 at § 6.2.2.3 regarding the use of earth current techniques in multiple pipe rights-of-way. SPLP's procedure at § 195.571 also did not require documentation.

39. While the data reviewed was largely specific to the site of the leak, SPLP's procedures and overall application of corrosion control and cathodic protection practices are relevant to all of ME1 and, thus, I&E alleges that there is a statewide concern with SPLP's corrosion control program and the soundness of SPLP's engineering practices with respect to cathodic protection.

III. Violations

Counts 1-5

40. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

SPLP failed to demonstrate adequate cathodic protection at test station 2459+00 in that: (a) the pipe-to-soil potentials did not meet at least -850 mV; (b) the Company utilized side drain measurements without considering the precautionary note in NACE SP0169-2007 at § 6.2.2.3.1 concerning earth-current techniques in multiple pipe rights-of-way; (c) SPLP did not perform ILI testing on an annual basis when SPLP relied on ILI for its cathodic protection program; (d) SPLP did not use any other criteria to determine the adequacy of cathodic protection; and (e) SPLP did not

⁹ The criteria, which have been shortened for brevity, are as follows: (1) a negative cathodic potential of -850mV with the cathodic protection applied (-850 mV); (2) a negative polarized potential of at least -850 mV (-850 mV polarization); (3) a minimum 100 mV of cathodic polarization (100 mV polarization); (4) on bare or ineffectively coated pipelines where long-line corrosion activity is a concern, the measurement of a net protective current at predetermined current discharge points from the electrolyte to the pipe surface, as measured by an earth current technique (net protective current); and (5) alternative analysis techniques such as ILI, corrosion coupons, historical corrosion rates, measured corrosion rates, net protective current measurements, soil resistivity, historical performance of corrosion control measures and other techniques based on sound engineering practices may be used in conjunction with or in lieu of the other criteria.

document its analysis for determining that it achieved adequate cathodic protection.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.571 (related to the criteria used to determine the adequacy of cathodic protection) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities) (multiple counts).

Counts 6-9

41. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

SPLP's procedures pertaining to corrosion control that were in effect at the time of the leak were deficient in that: (a) SPLP did not provide for any application of or limitation on the criteria used to determine the adequacy of cathodic protection nor did the procedures incorporate the precautionary notes of NACE SP0169-2007; (b) SPLP's procedures did not require documentation considering the Company's analysis for any determination that it achieved adequate cathodic protection; (c) SPLP's procedures did not include any detail on how to accomplish the five CIPS metrics; and (d) SPLP did not have procedures for designing, operating, maintaining or testing rectifiers and rectifier ground beds, which are critical to the operation of cathodic protection systems.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.402 (related to preparing and following a manual of written procedures for operations, maintenance and emergencies) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities) (multiple counts).

Counts 10-11

42. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

SPLP failed to adequately monitor external corrosion control in that: (a) it did not conduct tests on protected pipeline at least once each calendar year, but with intervals not exceeding fifteen (15) months; and (b) it failed to identify the circumstances in which a CIPS or comparable technology is

practicable and necessary within two (2) years after installing cathodic protection.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.573(a) (related to monitoring external corrosion control on protected pipelines) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities) (multiple counts).

Counts 12-13

43. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

SPLP failed to correct an identified deficiency in corrosion control when: (a) the 2015 and 2016 pipe-to-soil potentials readings demonstrate that adequate cathodic protection was not achieved; and (b) the results of the 2017 ILI inspection indicated metal loss.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.573(e) (related to monitoring external corrosion control – corrective action) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities) (multiple counts).

Count 14

44. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

SPLP failed to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey and test performed in sufficient detail and for a period of at least five (5) years to demonstrate the adequacy of corrosion control measures.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.589(c) (related to maintaining corrosion control information) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities).

Count 15

45. All allegations in paragraphs 1-39 are incorporated as if fully set forth herein.

In failing to demonstrate the adequacy of SPLP's cathodic protection system on ME1, SPLP failed to demonstrate that it operates ME1 at a level of safety required by Federal pipeline safety regulations.

This is a violation of 49 U.S.C.A. § 60118(a)(1) (requiring compliance with applicable Federal pipeline safety standards), 49 CFR § 195.401(a) (prohibiting pipeline operators from maintaining a pipeline system at a level of safety lower than what is required) and 52 Pa. Code § 59.33(b) (adopting Federal pipeline safety laws and regulations of hazardous liquid public utilities).

IV. Requested Relief

46. I&E proposes that SPLP pay a civil penalty of Fifteen Thousand Dollars (\$15,000) for each of the fifteen (15) counts set forth in this Complaint for a total civil penalty of Two Hundred Twenty-Five Thousand Dollars (\$225,000) pursuant to 49 U.S.C.A. § 60122(a)(1) and 52 Pa. Code § 59.33(b).

47. In addition to the civil penalty, I&E proposes that SPLP perform the following corrective actions:

- (a) Conduct a "remaining life study" of ME1 to determine the forecasted retirement age of ME1. The study should consider the forecasted retirement age by coating type and age of the pipeline, and the results of the study should be integrated into SPLP's Integrity Management Program;
- (b) Increase the frequency of ILI inspections to occur at least once per calendar year on all SPLP bare steel and poorly coated pipelines in Pennsylvania;

- (c) If not already completed, revise SPLP's corrosion control procedures to include separate provisions for determining the adequacy of coated steel pipelines and bare steel pipelines. The revised procedures should be consistent with NACE SP0169-2007;
- (d) If not already performed, develop procedures to determine the adequacy of cathodic protection through testing and performance methods. The new procedures should include establishing a baseline of IR free potentials using CIPS. The new procedures should also include the operation and maintenance of rectifiers and rectifier ground beds; and
- (e) Implement the new and revised cathodic protection procedures and perform all cathodic protection measurements within one (1) year. If the results of the cathodic protection measurements indicate low IR free potentials or inadequate depolarization, then SPLP shall replace the impacted sections of bare or inadequately coated steel pipe on ME 1.

48. I&E proposes that the Commission order such other remedy as the Commission may deem to be appropriate.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of the United States Code, the Code of Federal Regulations and the Pennsylvania Code for each of the fifteen (15) counts set forth herein; (2) impose a civil penalty upon Respondent in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000); (3) direct Respondent to perform each of the corrective actions detailed in this Complaint; and (4) order such other remedies as the Commission may deem to be appropriate.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: December 13, 2018

Pennsylvania Public Utility
Commission, Bureau of
Investigation and Enforcement,
Complainant

v.


Sunoco Pipeline, L.P. a/k/a
Energy Transfer Partners,
Respondent

Docket No. C-2018-

VERIFICATION

I, Sunil R. Patel, Fixed Utility Valuation Engineer ("FUVE") III, Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 13, 2018



Sunil R. Patel
FUVE III, Safety Division
PA Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265


Pennsylvania Public Utility	:	
Commission, Bureau of	:	
Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Electronic Mail:

Curtis N. Stambaugh, Esquire
Assistant General Counsel
Energy Transfer Partners
212 North Third Street, Suite 201
Harrisburg, PA 17101
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Stephanie M. Wimer
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Date: December 13, 2018

APPENDIX D



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January 31, 2019

VIA ELECTRONIC FILING

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

Re: Bureau of Investigation and Enforcement v. Sunoco Pipeline L.P.; Docket No. C-2018-3006534; **SUNOCO PIPELINE L.P.'S ANSWER AND NEW MATTER**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer and New Matter in the above-referenced proceeding.

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

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Per Certificate of Service
Thomas Casey (via U.S. Mail)
David J. Brooman (via U.S. Mail)

Pursuant to 52 Pa. Code §§ 5.62 and 5.63, you are hereby notified that, if you do not file a written response denying or correcting the enclosed Answer to Formal Complaint and New Matter of Sunoco Pipeline L.P., within twenty (20) days from service of this notice, the facts set forth by Sunoco Pipeline L.P. in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings such as a Reply to New Matter must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Sunoco Pipeline L.P.

Respectfully submitted,

Thomas J. Sniscak

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Kevin J. McKeon, Esq. (PA ID No. 30428)

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Dated: January 31, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND
ENFORCEMENT

Docket No. C-2018-3006534

SUNOCO PIPELINE L.P.,

**SUNOCO PIPELINE L.P.'S ANSWER AND NEW MATTER TO
FORMAL COMPLAINT OF PENNSYLVANIA PUBLIC UTILITY COMMISSION,
BUREAU OF INVESTIGATION AND ENFORCEMENT**

4. Denied as stated. SPLP is a Texas Limited Partnership with its principal place of business in Dallas Texas, although SPLP has offices at 525 Fritztown Road, Sinking Spring, PA 19608 and 212 North Third Street, Suite 201, Harrisburg, P A 17101.

5. Admitted.
6. Denied as a conclusion of law to which no response is required.
7. Denied as a conclusion of law to which no response is required.
8. Denied as a conclusion of law to which no response is required.
9. Denied as a conclusion of law to which no response is required.
10. Denied as a conclusion of law to which no response is required.
11. Denied as a conclusion of law to which no response is required.
12. Denied as a conclusion of law to which no response is required.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.
24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted in part, denied in part. Admitted that I&E conducted an investigation of SPLP's corrosion control practices between April 2018 and May 2018, which included data requests, review or responses, and numerous meetings and inspections. After reasonable investigation, SPLP is without knowledge or information as to whether such investigation can be characterized as "in-depth" or whether I&E in fact reviewed all of SPLP's relevant operations and maintenance procedures, corrosion control procedures, maintenance records, corrosion control records and integrity management program and therefore such allegations are denied. Admitted that SPLP has since revised its procedures.

29. Admitted.

30. Admitted in part, denied in part. Denied that "[a]dequate cathodic is achieved at a negative cathodic potential of at least -850 mV." This is not the only criteria to achieve or demonstrate adequate cathodic protection, consistent with NACE SP0169-2007 at § 6.2.2.2 and SPLP O&M Procedures in effect at the time of the inspection, Section 195.571. Specifically, depending on consistency or effectiveness of coating and where pipe-to-soil potentials are measured less negative than -0.850mV, alternative criteria can be used to demonstrate effective cathodic protection in that area. This includes using net protective current measurements and ILI comparisons showing no corrosion growth.

31. Admitted in part, denied in part. Denied that "SPLP has to achieve a greater than a negative cathodic potential of -850mV." See Response to Paragraph 30, which is incorporated herein as if set forth in full.

32. Admitted.

33. Denied as stated and denied. When looked at individually, the data for the subject test location appears to indicate earth currents flowing away from the 8" line and away from the 12" line in some areas between them. However, when analyzed together, the testing demonstrated that net protective current was flowing toward both lines from the north and toward both lines from the south. Since the lines share the same cathodic protection system(s), any cathodic protection current accumulated on either line will remain on that line as it returns to its source. There would not be a current exchange between the lines through the soil, as the resistance of the electrolyte to the pipe surface is much greater than the resistance of the metallic path through the pipe itself. Denied that these readings were a sign of corrosion.

34. Denied. The NACE standard speaks for itself and BI&E's characterization thereof is denied. By way of further response, the NACE "standard" BI&E refers to is a precautionary note that does not prohibit the use of side drain measurements in a multiple pipe right-of-way. SPLP did consider the precautionary note. Denied that SPLP "inappropriately relied on these side drain measurements." See Response to Paragraph 33, which is incorporated herein as if set forth at length. Denied that side drain measurements are ineffective due to the spacing of the measurements. Side drain measurements indicate whether there is net protective cathodic protection current flowing toward a pipeline. The 10-foot spacing between pipe-to soil readings is close enough to provide an accurate indication of any direction changes in current flow along the 400-feet of pipeline being evaluated during the test. Localized corrosion cells that may not be detected by over-the-line measurements/techniques had not been a concern (based on leak history, ILI comparison, and past performance of cathodic protection systems) at the time of the incident in April 2017.

35. Admitted in part, denied in part, denied as stated in part. Admitted that, consistent with its cathodic protection survey procedure at the time, SPLP's records for CIPS of ME1, which were performed in 2009, 2013, and 2017, demonstrate that only "on" potentials were measured. The CIPS also captured side-drain readings in areas with pipe-to-soil potentials less negative than -0.85V. Denied that the CIPS do not contain accurate and reliable data needed to assess cathodic protection on the pipeline. The footages measured during CIPS rarely line up exactly with established stationing assigned to the test stations. The CIPS data contains sub-meter GPS locations for each reading, as well as comments in the data that can be and were associated with fixed permanent references, such as roads, streams, test stations, foreign line crossings, fences, etc. to ensure accuracy and reliability of data. Denied as stated that rectifiers, areas with parallel pipelines and overhead power lines are not identified in the records where such information is critical in the determination of the validity and accuracy of the test results. Rectifier locations and high voltage overhead power lines are identified and called out during CIPS and captured in the data. Pipeline crossings are called out as well. While parallel pipelines are not necessarily called out, locations of parallel pipelines are readily available and well known prior to, during and after the CIPS is conducted. This is especially true for paralleling pipelines that are common to the same cathodic protection systems as the pipeline(s) being surveyed.

36. Admitted in part, denied in part. Denied that the presence of metal loss signified the presence of active corrosion. Metal loss features from an ILI report do not indicate that there is inadequate cathodic protection on the line; rather, it indicates that there was inadequate cathodic protection on the line at one point. SPLP compares several consecutive ILI reports with cathodic protection data to look for areas of consistent corrosion growth or new areas of corrosion, consistent with its O&M Procedure 195.571, paragraphs 4 and 5. The data integration over multiple ILI runs is a much better indicator of whether cathodic protection is adequate or effective.

SPLP's documented analysis reveals that average corrosion pit depths +/- 200-feet from Test Station 2459+00, as reported in 4 consecutive ILI reports, ranged from 27% in 2003 to 31% in 2008 to 28% in 2013 to 26% in 2017. In short, just because metal loss measured in 2017 does not mean it was active corrosion.

37. Admitted in part, denied as stated in part. Denied as stated that "SPLP's procedure did not explain how the metrics would be obtained, evaluated and accomplished." While SPLP's procedure at § 195.573 did not specifically explain how metrics would be obtained, evaluated, and accomplished, SPLP issued Scope of Work documents, which explained how CIPS testing should be done. The Scope of Work documents were readily available to BI&E during their inspection.

38. Admitted in part, denied in part. Denied that SPLP did not provide for any application of or limitation on the criteria used to determine adequate cathodic protection. Section 195.571, paragraphs 4 and 5, of SPLP's O&M Manual (in effect at the time of the inspection) provides three conditions where alternative criteria/analysis may be used. One of the conditions listed is on long continuous ineffectively coated lines. Denied as stated that SPLP's procedures did not incorporate the precautionary notes of NACE SP0169-2007. SPLP's O&M manual references the entirety of NACE SP0169, although it does not specifically quote the precautionary note. Moreover, SPLP did consider this precautionary note. Admitted that SPLP's procedure at § 195.571 did not contain the requirement for documentation. Denied that SPLP's procedures did not require documentation considering SPLP's analysis for determination that it achieved cathodic protection. SPLP's O&M Manual, Section 195.589 at 2.i. addresses this.

39. Admitted in part, denied in part. It is denied that "SPLP's procedures and overall application of corrosion control and cathodic protection practices are relevant to all of MEI" and the speculation and lack of facts in this paragraph to support the erroneous allegation that there is thus a "statewide concern with SPLP's corrosion control program and the soundness of SPLP's

engineering practices with respect to cathodic protection.” In further Answer, as BI&E admits, SPLP has since updated its procedures; thus, those legacy procedures are no longer relevant to or a cause for concern as to the ongoing operation of the ME1 pipeline or SPLP’s engineering practices with respect to cathodic protection.

Counts 1-5

40. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Admitted in part, denied in part. Denied that SPLP failed to demonstrate adequate cathodic protection at test station 2459+00. Admitted that pipe-to-soil potential did not meet at least -850 mV; however, the implication of that under this paragraph by B is incorrect because under federal regulations, this is not the only criteria by which to measure adequacy of cathodic protection consistent with NACE SP0169-2007 at § 6.2.2.2 and SPLP O&M Procedures in effect at the time. In fact, NACE SP0169-2007 at § 6.2.2.2, incorporated into the PHMSA regulations, expressly provides: “It is not intended that persons responsible for external corrosion control be limited to the criteria listed below.” Admitted that SPLP utilized side drain measurements. Denied that SPLP did not consider the precautionary note in NACE SP0169-2007 at § 6.2.2.3.1 concerning earth-current techniques in multiple pipe rights-of-way. SPLP did consider the precautionary note consistent with SPLP O&M Procedures in effect at the time. SPLP analyzed and documented that the testing it used, taken together, demonstrated that net protective current was flowing toward both lines from the north and south, since the lines share the same cathodic protection system(s), any cathodic protection current accumulated on either line will remain on that line as it returns to its source, and there would not be a current exchange between the lines through the soil, as the resistance of the electrolyte to the pipe surface is much greater than the resistance of the metallic path through the pipe itself. Admitted that SPLP did not perform ILI testing on an annual basis. Denied to the extent implied that SPLP relied solely on ILI for its cathodic protection program. SPLP did rely in part on ILI testing for its cathodic protection program. Applicable pipeline safety

regulations do not require annual ILI testing. ILI comparisons are one of several data sets (along with bimonthly rectifier inspections, annual test station surveys, net protective current measurements, CIS, CP coupons, etc.) used to verify the effectiveness of cathodic protection. Denied that SPLP did not use any other criteria to determine the adequacy of cathodic protection. SPLP did conduct other tests to evaluate the cathodic protection status where necessary, consistent with its procedures in place at the time. Denied that SPLP did not document analysis for determining that it achieved adequate cathodic protection. SPLP documented and maintained a permanent copy in its corrosion database of data necessary for the analysis. SPLP created the documented analysis of this data after the April 1, 2017 incident. The remaining allegations are denied as conclusions of law to which no response is required.

Counts 6-9

41. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Admitted in part, denied in part, denied as stated in part. Denied that SPLP's procedures pertaining to corrosion control that were in effect at the time of the incident were "deficient." Denied that SPLP did not provide for any application of or limitation on the criteria used to determine adequate cathodic protection. Section 195.571, paragraphs 4 and 5, of SPLP's O&M Manual (in effect at the time of the inspection) provides three conditions where alternative criteria/analysis may be used. One of the conditions listed is on long continuous ineffectively coated lines. Denied as stated that SPLP's procedures did not incorporate the precautionary notes of NACE SP0169-2007. SPLP's O&M manual references the entirety of NACE SP0169, although it does not specifically quote the precautionary note. Moreover, SPLP did consider this precautionary note. Denied that SPLP's procedures did not require documentation considering SPLP's analysis for determination that it achieved cathodic protection. SPLP's O&M Manual, Section 195.589 at 2.i. addresses this. Denied as stated that "SPLP's procedures did not include any detail on how to accomplish the five

CIPS metrics.” While SPLP’s procedure at § 195.573 did not specifically explain how metrics would be obtained, evaluated, and accomplished, SPLP issued Scope of Work documents, which explained how CIPS testing should be done. The Scope of Work documents were readily available to BI&E during their inspection. Denied as stated that “SPLP did not have procedures for designing, operating, maintaining or testing rectifiers and rectifier ground beds, which are critical to the operation of cathodic protection systems.” Regulations do not require that procedures detail this information, as guidelines for designing cathodic protection systems are set forth in NACE SP0169 (portions of which are incorporated by reference under Part 195) and in industry standards API 651 (which is incorporated by reference under Part 195) and NACE SP0193. All three of these are referenced in SPLP’s procedures in effect at the time, at Section 195.573. Further, all SPLP Corrosion Technicians responsible for the operations, maintenance and inspection of the ME-1 cathodic protection systems are NACE CP-II certified and report to a NACE CP-IV certified supervisor. The remaining allegations are denied as conclusions of law to which no response is required.

Counts 10-11

42. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Denied. Denied that SPLP failed to adequately monitor external corrosion control. Denied that SPLP did not conduct tests on protected pipeline at least once each calendar year, but with intervals not exceeding fifteen months. Upon information and belief, SPLP conducted and documented bi-monthly rectifier inspections and output measurements for all impressed cathodic protection system rectifiers on this pipeline system, consistent with 49 C.F.R. Part 195.573(a) and SPLP O&M Procedure 195.573. SPLP also conducted and documented annual test station pipe-to-soil potential measurements at least once per calendar year, not exceeding 15 months between measurements, consistent with 49 C.F.R. Part 195.573(a) and SPLP O&M Procedure 195.573.

Denied that SPLP failed to identify the circumstances in which a CIPS or comparable technology is practicable and necessary within two (2) years after installing cathodic protection. Section 195.573 of SPLP's O&M Manual (in effect at the time of the inspection) states in SPLP Requirement/Process Description 1.ii.iii:

A listing of line segments will be generated to document the pipeline segments where close-interval potential survey or comparable technology should be utilized... and where such testing is not practical and necessary. This listing will document the reasons why close-interval potential survey or comparable technology is not practical and necessary...

SPLP maintained this listing on the entire legacy SPLP system from the mid 2000's to present time and it is available for review. By way of further response, CIPS on protected liquids pipelines are only potentially required within 2 years after installing cathodic protection, per 49 C.F.R. Part 195.573(a)(2). In 1988, SPLP had two pipelines with impressed current cathodic protection on it for which CIPS was determined to not be practicable considering dynamic stray currents from transit corridors, consistent with 49 C.F.R. Part 195.573(a)(2). The remaining allegations are denied as conclusions of law to which no response is required.

Counts 12-13

43. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Admitted in part, denied in part. Denied that SPLP failed to correct an identified deficiency in corrosion control. Admitted that 2015-2016 pipe-to-soil potentials did not meet the -0.85 volt criteria. Denied that this demonstrated adequate cathodic protection was not achieved. SPLP applied alternate criteria consistent with the federal regulations and its O&M Procedures in effect at the time, at Section 195.571, paragraphs 4 and 5. Specifically, alternate criteria indicating adequate cathodic protection levels was met through measurements indicating net protective current flowing toward the pipe, ILI comparisons showing little to no corrosion growth, and a history of no corrosion failures on any unprotected section of the line going back to 1988.

Admitted that the 2017 ILI inspection results indicated metal loss. Denied that this indicates there is inadequate cathodic protection on the pipeline. Rather, this indicates that there was inadequate cathodic protection on the line at one point. SPLP compares several consecutive ILI reports with cathodic protection data to look for areas of consistent corrosion growth or new areas of corrosion, consistent with its O&M Procedure 195.571, paragraphs 4 and 5. The data integration a much better indicator of whether cathodic protection is adequate or effective. SPLP's documented analysis reveals that average corrosion pit depths +/- 200-feet from Test Station 2459+00, as reported in 4 consecutive ILI reports, ranged from 27% in 2003 to 31% in 2008 to 28% in 2013 to 26% in 2017. In short, just because there was metal loss measured in 2017 does not mean there was active corrosion. The remaining allegations are denied as conclusions of law to which no response is required.

Count 14

44. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Admitted. By way of further response, SPLP admits that there may be a few isolated instances where specific records were not maintained. The remaining allegations are denied as conclusions of law to which no response is required.

Count 15

45. SPLP incorporates its answers in Paragraphs 1-39 herein as if set forth at length. Denied that SPLP failed to demonstrate the adequacy of its cathodic protection system on ME1. Denied that SPLP failed to demonstrate that it operates ME1 at a level of safety required by Federal pipeline safety regulations. The remaining allegations are denied as conclusions of law to which no response is required.

46. – 48. (including all subparts). These paragraphs contain no allegations to which a response is required.

NEW MATTER

49. SPLP incorporates its answers in Paragraphs 1-48 herein as if set forth at length.
50. Just because a pin-hole leak occurred does not mean SPLP has violated any law or regulation.

I will first address the Complainant's argument that the Respondent should have prevented the leaks that occurred on his property. The Commission regulations at 52 Pa.Code § 59.33 require that natural gas 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. These regulations adopt federal safety standards for natural gas facilities. These standards include what materials must be used for natural gas pipelines, how those pipelines should be constructed, and corrosion control, maintenance and testing of natural gas pipelines.

The Commission regulations at 52 Pa.Code § 59.34 require a natural gas utility, like the Respondent, to establish and execute a plan by which it will periodically survey customer owned service lines for leaks. The utility must file a copy of the leak survey plan with the Commission. One of the purposes of these regulations is to require natural gas utilities, like the Respondent, to take proactive measures to minimize gas leaks. The Complainant presented no evidence that the Respondent has failed to undertake the proactive measures set forth in these regulations.

In the absence of any evidence that the Respondent failed to comply with these regulations, I cannot conclude that the Respondent acted unreasonably or violated any Commission regulation in failing to prevent the leaks that occurred at the Complainant's property. The Complainant failed to establish that the Respondent had knowledge of the leaks prior to the time that the Complainant contacted the Respondent. The leaks that occurred on the Complainants property were the result of unforeseen circumstances. *A public utility cannot be held to have provided inadequate or unreasonable service because it failed to anticipate unforeseen or unusual circumstances or occurrences.*

Given that the leaks on the Complainant's property were due to unforeseen circumstances, I cannot conclude that the Respondent provided unreasonable service to the Complainant by failing to discover or repair the leak prior to the Complainant contacting the Respondent. Since the Respondent acted reasonably under the circumstances, it provided reasonable service. The Respondent did not violate 52 Pa.Code § 59.33 or 52 Pa.Code § 59.34 by failing to detect the leak or repair or replace any of its facilities prior to the times that the Complainant contacted the Respondent.

Bennett v. UGI Central Penn Gas, Inc., Docket No. F-2013-2396611 (Final Order entered April 10, 2014); *see also Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494, 2002 WL 31060581 (June 14, 2002).

A. Portions of the Complaint Should be Dismissed

51. Counts 1-13 and 15 of the Complaint should be dismissed because SPLP has not violated the law or regulations. BI&E's subjective interpretations as to what the regulations require are not the law, and SPLP cannot be held in violation of the law based on those interpretations and BI&E's attempt to apply retroactively its new and subjective standards which violates due process and the law generally. The Commission may adopt additional or more stringent pipeline safety regulations than 49 C.F.R. Part 195 regulations "only if those standards are compatible with minimum standards." 49 U.S.C.A. § 60104(c). The Commission has not established any relevant regulations and its after-the-fact subjective interpretation of 49 C.F.R. Part 195 is therefore inconsistent with the Pipeline Safety Act and should be preempted. In addition, finding a violation based on an after-the-fact subjective interpretation rather than the plain terms of the regulations violates SPLP's due process rights.

52. The Commission has adopted as the "minimum" safety standards for pipeline utilities the Federal pipeline safety laws at 49 U.S.C.A. §§ 60101-60503 and the Federal Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulations at 49 CFR Parts 191-193, 195 and 199. *See* 52 Pa. Code § 59.33(b).

53. BI&E's attempt to re-write regulations or to establish new standards violates Pennsylvania law by not following the process for establishing regulations under The Commonwealth Documents Law and the Regulatory Review Act and is otherwise illegal by establishing and then both imposing as an obligation and imposing fines retroactively for what amounts to *de facto* regulations.

54. Thus, to find SPLP violated 52 Pa. Code § 59.33(b), 49 C.F.R. Part 195, and/or 49 U.S.C.A. § 60118(a)(1), BI&E must show that SPLP has violated the plain terms of a specific regulation within 49 C.F.R. Part 195 that are in place now under prevailing law, not BI&E's subjective interpretation of these regulations or its imposition of new *de facto* regulation obligations or standards of behavior.

55. Unlike many agencies that use prescriptive regulatory standards where 'one size fits all,' PHMSA's regulations are performance based, intended to establish minimum safety standards that are then tailored to individual systems.

56. Under these regulations, each operator is required under the regulations to prepare a variety of manuals, specific to its own system, in a manner that will meet or exceed the minimum federal standards. Those manuals, in turn, become enforceable by PHMSA. *See e.g., Interpretation Letter from J. Caldwell, Director, OPS to H. Garabrant* (April 22, 1974) ("the procedures of an operating and maintenance plan are as binding on the operator as the federal standards").

Rather than telling operators what to do, the regulations tell them what level of safety to achieve. [...] There is tremendous variation between pipeline operators and between pipeline facilities. In order for one set of regulations to be comprehensive in scope, it would have to be quite lengthy and detailed. It would have to prescribe what operating, maintenance and emergency procedures are appropriate for all conceivable scenarios. The performance-based regulations reject this approach. They tell operators what level of safety must be achieved but do not spell out all of the steps necessary to get there.

Final Order, In re: Kaneb Pipe Line, CPF No. 53509 (Feb. 26, 1998).

57. Accordingly, the relevant PHMSA regulations are not prescriptive in nature as to what details SPLP's procedures had to contain, as long as those procedures were within the bounds of the guidelines set forth in those regulations and industry guidelines incorporated therein, such as portions of NACE SP0169.

58. Moreover, PHMSA and BI&E conduct inspections and audits of the procedures and manuals and within that process may make suggestions as to how such materials should be modified if the agency or bureau believes they are defective. PHMSA conducted integrated inspections on ME1 in 2010 and 2013, including SPLP's procedures. The procedures in place during that inspection were the same procedures BI&E now alleges are in violation of the regulations. During those inspections PHMSA had no negative findings related to SPLP's corrosion procedures or criteria.

59. SPLP explained in its responses to paragraphs 41-43, and 45 why BI&E is legally and factually incorrect that SPLP violated regulations and incorporates those responses herein as if set forth in full.

B. SPLP Has Already Fulfilled Portions of the Relief Requested

60. Portions of the relief BI&E has requested have already been satisfied and are moot. As BI&E states, SPLP has revised certain procedures since 2017. SPLP revised these procedures to be consistent with other Company procedures. The revision of these procedures is not an admission that the prior SPLP procedures were inadequate or non-compliant.

61. Specifically, in Paragraph 47(c) and (d), BI&E requests that SPLP revise certain procedures. SPLP has revised its procedures and the as-revised procedures comply with BI&E's requests and while SPLP does not admit any violation relative to this it submits the allegations are moot.

C. The Commission Cannot Order Portions of the Requested Relief

62. Portions of the requested relief are also inconsistent with the requirements of Federal safety regulations, not required by such regulations, and/or impede SPLP's managerial discretion and the Commission cannot order SPLP to engage in the requested actions as a matter of preemption and due process.

63. Specifically, in Paragraph 47(a), BI&E requests SPLP conduct a “remaining life study” of the ME1 pipeline. There is no requirement under federal law or regulation for an operator of an oil or gas pipeline to determine a retirement age for a pipeline. Moreover, this is wholly inconsistent with the federal safety regulations because it presumes there is a finite life span of the ME1 pipeline. It also is a *de facto* regulation establishing a new regulatory requirement without following Pennsylvania’s Commonwealth Documents Law and the Regulatory Review Act.

64. Congress directed PHMSA to develop regulations regarding inspection, maintenance and system integrity for pipelines (49 U.S.C. 60101, et seq.). PHMSA regulations require that operators monitor pipe condition through various means, including cathodic protection and close interval survey, in-line inspection (ILI) and hydrostatic pressure testing (49 C.F.R. Part 195 for oil and Part 192 for gas). Those tests are conducted on an ongoing schedule. When anomalies in pipe condition are detected, federal law also specifies what type of action should be taken in response, and on what timetable.

65. Continuing inspections over time provide an ability to track and trend pipe conditions. Industry expert Dr. John Kiefner has stated that: “A well-maintained and periodically assessed pipeline can safely transport natural gas indefinitely.”¹

66. In short, there is no legal requirement to determine ‘retirement age’ for any pipelines, including natural gas liquids (NGL), pipelines. Instead, federal law requires pipeline operators to develop O&M and integrity management programs to inspect and monitor pipelines on an ongoing basis, and when anomalies are detected, federal law prescribes various corrective measures and timetables to maintain or restore system integrity. Such corrective measures may include pipe replacement where appropriate.

¹ *The Role of Pipeline Age in Pipeline Safety*, Kiefner & Associates, Inc., (Nov. 8, 2012). While this study was focused on natural gas pipelines, the Executive Summary clarifies that “many of the report’s findings also would apply to pipelines carrying crude oil, motor fuels and other liquid petroleum products.” *Id.*

67. Significant portions of the ME1 pipeline have been replaced over the years. Further, SPLP complied with PHMSA's flow reversal and product change guidance prior to converting ME1 to NGL service. In response to the April 1, 2017 pin hole leak, SPLP has performed further investigation and inspection to confirm the pipeline's integrity. Thus, there is no legal or technical basis for a defined retirement date for pipe generally or ME1 specifically.

68. In Paragraph 47(b), BI&E requests that SPLP be required to conduct an ILI inspection at least once per calendar year on all SPLP bare steel and poorly coated pipelines in Pennsylvania. Again, there is no federal requirement that SPLP do so. Moreover, BI&E has not alleged any facts that show a technical or safety basis to order SPLP to do this. Again, BI&E seeks to impose a new regulatory standard by *de facto* regulation that does not comport with The Commonwealth Documents Law and the Regulatory Review Act.

69. Conducting yearly ILI inspections on an annual basis would not provide meaningful information in terms of corrosion control. The ILI inspections are utilized to look for growths in metal loss by comparing these inspections over time. Comparing ILI inspections from one year to the next consecutive year does not allow enough time for detectable changes to occur and the comparison of such results would result in an abundance meaningless noise in the data. Thus, there is no legal or technical basis for requiring SPLP to conduct annual ILI inspections. Again, BI&E seeks to impose a new regulatory standard by *de facto* regulation that does not comport with The Commonwealth Documents Law and the Regulatory Review Act.

70. In Paragraph 47(c), BI&E requests, in part, that "If the results of the cathodic protection measurements indicate low IR free potentials or inadequate depolarization, then SPLP shall replace the impacted sections of bare or inadequately coated steel pipe on ME 1." Again, there is no federal requirement that SPLP replace segments of pipe based solely on initial measurements and this request is inconsistent with federal regulations. Again, BI&E seeks to

impose a new regulatory standard by *de facto* regulation that does not comport with The Commonwealth Documents Law and the Regulatory Review Act.

71. As discussed above, federal regulations specify generally what type of action should be taken in response and on what timetable when anomalies, such as low IR free potentials or inadequate depolarization are found. Corrective measures to be taken can include iterative measures to remediate the issue, including site specific repair, enhanced cathodic protection, re-coating, and if the operator concludes necessary or appropriate, pipeline replacement. Requiring SPLP to jump from anomaly detection directly to pipe replacement is wholly inconsistent with the Federal regulations the Commission adopted.

72. Given the incorrect factual allegations and applications of law meriting dismissal of the Counts discussed above, the penalty requested in the Complaint is not justified as a matter of law or the Commission's policy statement at 52 Pa. Code § 69.1201.

WHEREFORE, SPLP respectfully requests Counts 1-13 and 15 of the Formal Complaint and requested relief paragraphs 47(a)-(e) be dismissed with prejudice for the reasons stated herein and that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted,



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Dated: January 31, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

VERIFICATION

I, Chris Lason, certify that I am Vice President – Pipeline Integrity, Corrosion Services, materials QA/QC at Energy Transfer Partners, and that in this capacity I am authorized to, and do make this Verification on behalf of Sunoco Pipeline L.P., that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Sunoco Pipeline L.P., expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

A handwritten signature in black ink, appearing to read 'CL', is written over a horizontal line.

Chris Lason
Vice President, Pipeline Integrity,
Corrosion Services, materials QA/QC
Energy Transfer Partners


DATED: January 31, 2019

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). This document has been filed electronically on the Commission's electronic filing system and served via overnight mail on the following:

VIA ELECTRONIC AND FIRST CLASS

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Whitney E. Snyder, Esq.

Dated: January 31, 2019

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Dated: April 3, 2019