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March 10, 2022

VIA EMAIL

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**Re: Middletown Twp. v. Samuel Cortes, et al., Delaware CCP No. CV-2021-003627
Energy Transfer v. Middletown Twp., et al., Delaware CCP No. CV-2021-003772
Samuel Cortes v. Middletown Twp., et al., Delaware CCP No. CV-2021-009725**

Dear Mr. Flandreau:

As you know, this office represents Glen Riddle Station, L.P. (“GRS”), in the matter before the Pennsylvania Public Utility Commission captioned Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P., No. C-2020-3023129 (the “PUC Proceeding”). We write regarding recent developments in the PUC Proceeding relevant to the ongoing Right-To-Know Law disputes between GRS, on one hand, and Middletown Township (“Middletown”) and Sunoco Pipeline, L.P. (“Sunoco”), on the other.

On Tuesday, March 8, 2022, The Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis issued an Initial Decision in the PUC Proceeding (the “Decision”), which is enclosed. His Decision validates the many serious complaints, objections, and concerns communicated by GRS to Middletown about the work of Sunoco on GRS’s property. As Judge Cheskis finds, Sunoco, acting intentionally, jeopardized the lives of the more than 200 Middletown residents at GRS’s property.

The Decision highlights, among other things, the extraordinarily reckless, grossly negligent, and unconscionable behavior and decision-making of Middletown officials. It also gives rise to more serious questions about the relationship between these officials and Sunoco. It remains unclear

A Pennsylvania Limited Liability Partnership

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why Middletown officials permitted an international oil conglomerate based in Texas to come to Middletown and put the lives of more than 200 Middletown residents in jeopardy.

By way of background, GRS owns the residential apartment community known as the Glen Riddle Station Apartments, located on Glen Riddle Road in Middletown (the “Property”). The Property includes five apartment buildings with 124 units that more than 200 Pennsylvanians call home. Sunoco, as a part of its construction of the Mariner East pipeline, turned the Property into a major construction site for over 8 months. Sunoco obtained the right to build a part of its Mariner East pipeline on the Property by obtaining easements – some through condemnation.

During Sunoco’s work on the Property, Sunoco repeatedly, needlessly, and intentionally endangered the lives, health, and well-being of the GRS residents. As a result, GRS reached out to Middletown for help. Not only did Middletown dismiss and ignore GRS’s attempts at outreach and its concerns, but Middletown officials also blessed the safety of Sunoco’s work. This compelled GRS to file the PUC Proceeding, and to pursue that litigation for many months at substantial expense.

In summary, Judge Cheskis finds that Sunoco endangered the safety and health of over 200 Middletown residents by using the configuration for its work that Middletown officials blessed. [Decision, p. 86 and generally.] Sunoco subjected these residents to dangerous and hazardous site conditions and dangerous and unhealthy noise levels. [Id.] The Decision points out that it is fortunate that a tragedy did not occur at the Property. [Id., p. 71.]

Judge Cheskis also finds that Sunoco failed to communicate with GRS and its residents about the work as required by law. [Id., p. 68.] Instead, Sunoco, through Joseph McGinn, Vice President of Public and Government Affairs for Energy Transfer Partners, communicated with Middletown officials about the work. [Id., p. 65.] These same Middletown officials, who were apparently in regular communication with Mr. McGinn, appear to be the same officials who blessed Sunoco’s dangerous work at the Property.

The Decision concludes, “[M]ore should have been done by Sunoco where the well-being and safety of more than 200 Pennsylvanians was at issue.” [Id., p. 41.] Stating the obvious, the same is true of Middletown. Three key components of the Decision are discussed in more detail below.

First, Judge Cheskis states that Sunoco created dangerous site conditions at the Property. [Id., p. 40.] The Judge points out that Sunoco relied on Middletown’s “approval” in its effort to justify what the Judge finds to be “new and different hazards that Sunoco did not properly remedy.” [Id., p. 41.] Judge Cheskis concludes that these hazards amounted to a “failure to provide safe and

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reasonable service,” and a “fail[ure] to properly warn and protect the public from danger....” [*Id.*, p. 39, 43-44.] These dangerous conditions, including the “multiple ways in which emergency responders would, at a minimum, be impeded or slowed” at the Property were “clear,” and Sunoco’s arguments were “not credible.” [*Id.*, p. 40.]

At trial, Sunoco argued that its work plan was safe because Sunoco “worked with [Middletown] regarding emergency access and tested the ability for vehicles to access the [P]roperty.” [*Id.*, p. 33.] Sunoco even presented a memorandum prepared by Middletown concerning the alleged safety of Sunoco’s work. [*Id.*, p. 41.] Judge Cheskis rejects Sunoco’s defense, explaining that although the construction site “may have been sufficient for [Middletown’s] purposes...,” it was, nonetheless, “unsafe and therefore unreasonable.” [*Id.*] Regardless of whatever Middletown considered, “[Middletown’s] permission to conduct those [construction] activities does not negate the fact that new and different hazards were created as a result of Sunoco’s activities.” [*Id.*]

Middletown’s refusal to intervene to protect its residents reflected, and reflects, poorly on Middletown and its officials. The Decision makes clear, however, that Middletown officials acted more egregiously by approving a plan that intentionally jeopardized the safety of Middletown residents. Those officials’ approval of and support for Sunoco’s “unsafe and unreasonable” activities, as discussed in the Decision, are abhorrent. Their conduct is particularly outrageous here where Middletown has stated that it is aligned, and shares a “common interest,” with Sunoco as to my requests on behalf of GRS.

Second, Judge Cheskis finds that the noise Sunoco generated at the Property created a dangerous “situation that negatively affects those living and working at the Glen Riddle [P]roperty” – conditions that the Judge finds egregious because of the COVID-19 pandemic that forced residents to work and attend school from home. [*Id.*, pp. 48, 51.] Judge Cheskis explains that the “unhealthy levels of sound” that Sunoco generated “put Glen Riddle residents and employees at increased risk of hearing loss.” [*Id.*, p. 50.] Again, Middletown failed to intervene when GRS sought its assistance on this serious issue.

Third, Judge Cheskis finds that Sunoco’s communications concerning its work at the Property fell well below the standard required by law. He states, “Sunoco’s communications were untimely and/or insufficient to provide the residents of Glen Riddle with the necessary awareness of the major construction activities that would occur in such close proximity to their homes and were not consistent with Sunoco’s Public Awareness Plan or its requirement to continuously improve communications.” [*Id.*, p. 68.] Although Mr. McGinn claimed that Sunoco’s communications with the public went “above and beyond” its legal obligations, Sunoco’s own documents showed that the opposite was true. [*Id.*, p. 65.]

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Here, again, Sunoco relied on its relationship with Middletown in its effort to excuse its misconduct. Judge Cheskis explains that “when asked about communications and notifications to *residents*, Mr. McGinn discussed communications and notifications *to township officials*.” [Id. (emphasis in original).] Judge Cheskis finds that Sunoco’s efforts were “not adequate to satisfy Sunoco’s obligations under the Public Utility Code and [PUC] regulations to communicate with the public.” [Id.] In other words, Sunoco chose to communicate with Middletown officials when the law required Sunoco to communicate with GRS and its residents. We have a right to know why.

For the above-stated reasons, including, but not limited to, Middletown’s admitted “common interest” with Sunoco here, we renew our request for Middletown to withdraw its opposition to my outstanding Right-To-Know Law requests. The many Pennsylvanians harmed by Sunoco’s project, including the more than 200 Middletown residents whose lives were put in jeopardy so Sunoco could achieve its desired efficiencies, have a right to know more about the secret dealings between Middletown and Sunoco. It is time for someone at the Middletown offices to do the right thing.

Thank you.

Very truly yours,



Samuel W. Cortes

SWC:jcc
Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Glen Riddle Station, L.P.

v.

Sunoco Pipeline, L.P.

:
:
:
:
:

C-2020-3023129

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

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I. INTRODUCTION

This decision sustains in part and denies in part a formal complaint filed by the owner of an apartment complex against a pipeline utility company averring that the company has violated the Public Utility Code or Commission regulations regarding the company's public awareness plan and standard operating procedures when constructing a pipeline through the apartment complex property. Substantial record evidence demonstrates that the complainant has satisfied its burden of proving that the company's actions regarding fire hazards, noise levels and communications to the public violated the Public Utility Code and Commission regulations. As a result of the violations regarding fire hazards, noise levels and communications, a civil penalty of \$51,000 will be imposed. However, claims regarding traffic hazards, the use of calciment during construction, and a water line break shall be denied.

II. HISTORY OF THE PROCEEDING

On December 2, 2020, Glen Riddle Station, L.P. (Glen Riddle) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Sunoco Pipeline, L.P. (Sunoco), docket number C-2020-3023129. In its complaint, Glen Riddle averred that on or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County that concerned various portions of the Glen Riddle property that contains 124 residential dwelling units. Glen Riddle further averred that, in the taking action, Sunoco condemned temporary workspace easements and a temporary access road easement over their property for purposes of completing a pipeline project. Glen Riddle further averred that Sunoco is not complying with previous requirements of the Commission regarding its public awareness plan and standard operating procedures. Glen Riddle also identified several other alleged failures of Sunoco with regard to the property, including, parking and traffic safety concerns, creating an unsafe work site, failure to follow government-mandated pandemic safety protocols, failure to communicate regarding a potentially hazardous leak, and structural and storm drainage concerns, among other things. Glen Riddle averred that Sunoco's actions violated several provisions of the Public Utility Code and requested that the Commission enter an order enjoining or restraining Sunoco from

engaging in further work at the property until the safety concerns are addressed. Glen Riddle attached multiple documents to its complaint in support of its position.

On December 23, 2020, Sunoco filed an answer and new matter in response to the complaint. In its answer, Sunoco admitted or denied the various averments Glen Riddle made in its complaint. In particular, Sunoco denied that it has not complied with the public awareness plan or standard operating procedures it is required to comply with. Sunoco also admitted or denied the various averments made by Glen Riddle with regard to the other alleged failures of Sunoco with regard to the property that were averred in the complaint. Sunoco provided significant detail in response to the averments made in the complaint and concluded by requesting that the complaint be dismissed with prejudice. Sunoco also attached multiple documents to its answer in support of its position.

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

Subsequently, multiple pleadings were filed and procedural matters occurred. This includes the filing of preliminary objections, establishment of an initial telephonic hearing, a motion for a prehearing conference and procedural schedule, the filing of a petition for interim emergency relief, the withdraw of the petition for interim emergency relief, a prehearing conference, the rescheduling of the prehearing conference, the filing of a motion to compel by each party, the filing of a contested motion for a protective order, a motion *in limine*, a motion to enforce the order granting in part and denying in part the preliminary objections and striking Glen Riddle testimony, a motion for a final continuance, another motion to compel, a motion for a protective order and sanctions, and two motions to strike various portions of the parties' briefs.

Each of these procedural matters was responded to with the necessary answer, order or hearing notice as appropriate.

Notably, the following pre-served testimony and accompanying exhibits were submitted by the parties pursuant to the procedural schedule:

Glen Riddle Direct Testimony – March 15, 2021

- Glen Riddle Statement No. 1 - Direct Testimony of Stephen Iacobucci
- Glen Riddle Statement No. 2 – Direct Testimony of Raymond Iacobucci
- Glen Riddle Statement No. 3 – Direct Testimony of Jason Culp, P.E.
- Glen Riddle Statement No. 4 – Direct Testimony of Johanna Rincon

Sunoco Rebuttal Testimony – May 12, 2021

- SPLP Statement No. 1-R – Rebuttal Testimony of Gregory G. Noll
- SPLP Statement No. 2-R – David Amerikaner
- SPLP Statement No. 3-R – Rebuttal Testimony of Joe Becker
- SPLP Statement No. 4-R – Rebuttal Testimony of Jayme Fye
- SPLP Statement No. 5-R – Rebuttal Testimony of Chad Farabaugh, P.E.
- SPLP Statement No. 6-R – Rebuttal Testimony of John L. Packer (in proprietary and non-proprietary format)
- SPLP Statement No. 7-R – Rebuttal Testimony of Joseph McGinn
- SPLP Statement No. 8-R – Rebuttal Testimony of Seth Harrison, P.E.

Glen Riddle Surrebuttal Testimony – June 14, 2021

- Glen Riddle Statement 1-SR – Surrebuttal Testimony of Stephen Iacobucci
- Glen Riddle Statement 2-SR – Surrebuttal Testimony of Raymond Iacobucci
- Glen Riddle Statement 3-SR – Surrebuttal Testimony of Jason Culp, P.E.
- Glen Riddle Statement 4-SR – Surrebuttal Testimony of Joseph J. Wittman, P.E.

- Glen Riddle Statement 5-SR – Surrebuttal Testimony of Norman Henry
- Glen Riddle Statement 6-SR – Surrebuttal Testimony of James S. Davidson, Jr., P.E.
- Glen Riddle Statement 7-SR – Surrebuttal Testimony of Jay Etzel, P.E.
- Glen Riddle Statement 8-SR – Surrebuttal Testimony of Kevin Burns, P.G.
- Glen Riddle Statement 9-SR – Surrebuttal Testimony of Edward J. Deisher
- Glen Riddle Statement 10-SR – Surrebuttal Testimony of Jeffrey A. Davis

Hearings were held in this matter on July 7, 2021, July 12, 2021, and July 13, 2021, as scheduled. Sam Cortes, Esquire and Ashley Beach, Esquire appeared on behalf of Glen Riddle. Diana Silva, Esquire, Tom Sniscak, Esquire, Kevin McKeon, Esquire, Whitney Snyder, Esquire and Bryce Beard, Esquire appeared on behalf of Sunoco. In total, 18 witnesses were presented and cross examined. Oral rejoinder and surrejoinder were provided and numerous exhibits were admitted into the record. Throughout the hearings, numerous motions were made both in writing and orally, including a motion *in limine* filed by Glen Riddle on July 12, 2021. A transcript of 753 pages was created.¹

On August 4, 2021, an order was issued denying the motion *in limine* filed by Glen Riddle, granting in part and denying in part the motion to strike filed by Glen Riddle, denying the motion *in limine* filed by Sunoco and granting the joint stipulation filed by Sunoco.

Both Glen Riddle and Sunoco filed main briefs on September 24, 2021, and reply briefs on October 22, 2021.

On November 9, 2021, Sunoco filed a motion to strike portions of Glen Riddle’s reply brief. On November 29, 2021, Glen Riddle filed an answer to that motion. That motion was granted in part and denied in part by order dated December 2, 2021.

¹ On September 24, 2021, Sunoco filed a request for transcript correction seeking to change all 74 instances of “calcimate” in the transcript to “Calciment.” The request was not opposed and therefore deemed granted pursuant to Section 5.253(f)(2) of the Commission’s regulations. 52 Pa. Code § 5.253(f)(2).

On December 7, 2021, Glen Riddle filed a motion seeking to strike portions of Sunoco's main and reply briefs. On December 27, 2021, Sunoco filed an answer to that motion. That motion was granted in part and denied in part by order dated December 29, 2021.

The record in this case closed on December 29, 2021. Glen Riddle's complaint is now ready for disposition. For the reasons discussed below, Glen Riddle's complaint will be sustained in part and denied in part.

III. FINDINGS OF FACT

1. The Complainant in this case is Glen Riddle Station, L.P.
2. The Respondent in this case is Sunoco Pipeline L.P.
3. Glen Riddle is the owner of a residential apartment community known as the Glen Riddle Station Apartments on Glen Riddle Road in Middletown Township, Delaware County. GRS St. 1 at 2; GRS St. 2 at 2.
4. The Glen Riddle Station property includes five buildings closely located together with 124 units that house more than 200 residents. GRS St. 2 at 2.
5. Sunoco owns a pre-existing pipeline right-of-way through the Glen Riddle Station Apartments since approximately 1931, predating the original construction of the apartment buildings.
6. In 1971, the apartment buildings were constructed at the property abutting against and straddling the pre-existing pipeline right-of-way through the property. Sunoco St. No. 7-R at 4; Sunoco Exh. JM-9 at 1-2.

7. On June 20, 2016, Glen Riddle through Raymond Iacobucci voluntarily and for compensation gave Sunoco a permanent easement for the construction of additional pipelines through the property. GRS St. 2 at 3; Sunoco St. No. 2-R at 2.

8. In June 2020, Sunoco filed a condemnation action to acquire a temporary workspace easement and a temporary access road easement as it was unable to obtain a voluntary easement from Glen Riddle. Sunoco St. No. 2-R at 2 - 4; *see* Sunoco Exhs. DA-2, DA-3.

9. Sunoco's preconstruction inspections at the Glen Riddle property began in October 2020, followed by construction of the ME2 and ME2X pipelines at the Glen Riddle property beginning in November 2020.

10. Sunoco's pipeline project bisects the Glen Riddle property with two buildings on the east half and three buildings on the west half. GRS St. 3 at 3; GRS St. 7-SR at 4.

11. Construction at the property was completed prior to July 9, 2021, with site restoration occurring as of July 13, 2021. Tr. at 640.

12. Sound measurements taken at the property have averaged in the high 60 decibels with spikes over 90 and 100 decibels. GRS St. 3 at 4-5; GRS Exhs. 5 and 33.

13. The sound mitigation wall installation allowed routinely elevated noise levels for several weeks while the walls were installed. GRS. St. 3 at 5.

14. The Environmental Protection Agency (EPA) standard recommends limits for the general population of 75 decibels for an 8-hour exposure. GRS St. 3 at 4.

15. The EPA standard limits assume a 24-hour period of 70 decibel average over the 24-hour period. GRS St. 3 at 4-5.

16. The Occupational Safety and Health Administration (OSHA) standard recommendation for workplaces is 85 decibels over an 8-hour period. GRS St. 3 at 5.
17. The noise generated by the construction at the Glen Riddle property sometimes last all day. GRS St. 4 at 1.
18. The noise generated by the construction at the Glen Riddle property has made it difficult for residents who are working from home to perform their job. GRS St. 4 at 2; *see also*, GRS Exh. 8.
19. Hydrovac trucks were on the property for the majority of the day on November 25, 2020, November 28, 2020, December 8, 2020, December 12, 2020, December 22, 2020, and January 5 and 6, 2021. GRS St. 1-SR at 21-22; GRS St. 9-SR at 3.
20. The hydrovacs were the loudest point sources of the construction. GRS St. 3-SR at 4.
21. Many of the apartments adjacent to the work site are three or four stories above grade and are close to the top of the noise walls. GRS St. 4-SR at 8.
22. Noise levels are likely higher as the receiver elevation increases from five feet above grade approaching the limits of the noise wall. GRS St. 4-SR at 8.
23. Sound barriers are not the only means of mitigating noise. GRS St. 4-SR at 12.
24. There was a significant period of time when vacuum trucks were in use without the sound walls in place. GRS St. 4-SR at 13.

25. At 80-85 decibels, the Centers for Disease Control and Prevention (CDC) indicates that hearing loss can occur after two hours of exposure. GRS St. 10-SR at 3; *see also*, GRS St. 4-SR at 17.
26. At 95-100 decibels, the CDC indicates that hearing loss can occur after just 15 minutes of exposure. GRS St. 10-SR at 3.
27. There were 17 incidents of noise level readings at the Glen Riddle property higher than 85 decibels and an additional six incidents of noise level readings of between 75 and 85 decibels for a total of 23 incidents of unreasonably high noise levels. GRS-5 and GRS-33.
28. The sound walls installed by Sunoco are approximately 30 feet tall. GRS St. 3 at 13.
29. The sound walls installed by Sunoco restrict emergency responder access to the Glen Riddle apartments. GRS St. 3 at 13.
30. Some of the sound walls are not movable to allow for emergency vehicle access. GRS St. 3 at 14.
31. The western side of the Glen Riddle property does not have a turnaround space for emergency vehicles. GRS St. 3 at 14.
32. On March 30, 2021, Glen Riddle personnel observed high levels of truck traffic, delay and truck stacking on an incline portion of the property. GRS St. 1-SR at 6; GRS Exh. 116.
33. Sunoco failed to test the western side of the property to see if emergency responders could have access to the buildings with the sound walls in place. GRS St. 1-SR at 17.

34. Ground level fire department monitor nozzle operations will be hindered or delayed on the east side of the two buildings located to the west of the Sunoco construction, and the single building located to the east of the Sunoco construction, because the limited distance to the building's walls and the sound barrier wall prevents the optimal positioning of the monitor nozzle's stream from reaching the interior of the building during a fire incident. GRS St. 6-SR at 5-6.

35. The construction of a temporary roadway to the north of the existing construction site that could be removed after construction was completed would have kept the looped road configuration and eliminated dead-end roads on the property to allow for better ingress and egress. GRS St. 6-SR at 6.

36. Sunoco failed to construct a looped road at the property. GRS St. 6-SR at 6-7.

37. Sunoco's placement of the sound walls created a fire hazard. GRS St. 6-SR a 7.

38. Most of Sunoco's communications with Glen Riddle were reactive or only in response to inquiries from Glen Riddle. GRS St. 1-SR at 31-34.

39. When informed that "various witnesses for complainant Glen Riddle Station in [their] direct pre-submitted testimony and exhibits have alleged that Sunoco does not engage in sufficient communication and notification with it and to its residents," Mr. McGinn replied, in part: "When an event that impacts a municipality or its residents occurs, or is scheduled to occur, Sunoco engages in direct, personal communications (face-to-face, electronic, telephonic) with relevant local and County officials." Sunoco St. 7-R at 8.

40. Mr. McGinn engaged in communications with Middletown Township and multiple state senators and representatives, the Pennsylvania Department of Environmental Protection and the Commission. Sunoco St. 7-R at 8-9.

41. When asked about communications and notifications to residents, Mr. McGinn discussed communications and notifications to township officials. Sunoco St. 7-R at 9.

42. Mr. McGinn had multiple communications with emergency responders. Sunoco St. 7-R at 9-10.

43. The letters in Sunoco Exh. JM-5 are dated January 28, 2021, March 1, 2021, and March 27, 2021, after construction commenced. Sunoco Exh. JM-5.

44. The letters dated January 28, 2021, March 1, 2021 and March 27, 2021 contain no information regarding daily issues such as high noise level, placement of the sound walls in close proximity to the buildings, the traffic congestion created on the property, the use of port-a-potties, etc. Sunoco Exh. JM-5.

45. The letters in Sunoco Exhibit JM-6, although they are dated pre-construction, are too general to provide the residents of Glen Riddle with sufficient awareness of what the construction activity would look like and how it would impact the daily lives of the Glen Riddle residents. Sunoco Exh. JM-6.

46. The testimony of Sunoco witness Amerikaner pertains entirely to his communications with counsel for Glen Riddle. Sunoco St. 2-R, *passim*.

47. Glen Riddle was limited in its ability to provide input on Sunoco's construction plans. GRS St. 2-SR at 3.

48. The location of the sound walls and the impact on community emergency safety and resident hearing safety was not planned for in the construction planning prior to submitting the permitting establishing the limit of disturbance. GRS St. 2-SR at 5.

49. Glen Riddle did not have an adequate opportunity to provide input regarding the sound wall location. GRS St. 2-SR at 5.

50. Sunoco never asked Glen Riddle about the location of bedrooms for purposes of egress from the apartments. GRS St. 3-SR at 2.

51. Without proper notification and full cooperative review with Glen Riddle, it is not possible to have all safety aspects reviewed and incorporated in the design of the community flow and safety patterns, relocate residents with particular needs or make other accommodations, such as installing temporary sidewalks. GRS. St. 3-SR at 3.

52. Typical of many construction projects, websites can be set up to inform the public in addition to regularly scheduled meetings to provide a two-week look ahead schedule so residents know what to expect and when to expect it. GRS St. 7-SR at 7.

53. Sunoco did not share with the Glen Riddle residents a two-week look ahead schedule so residents knew what to expect and when to expect it. GRS St. 7-SR at 7.

54. If Sunoco provided additional information about the site conditions, the overall safety of the job site would be improved. GRS St. 7-SR at 8.

55. A town hall was held by Sunoco with the residents of Glen Riddle on February 23, 2021. GRS St. 9-SR at 3.

IV. DISCUSSION

1. Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the

other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Glen Riddle requested in its complaint that "the Commission enter an order enjoining and restraining Sunoco from engaging in any further work at the property until the submission to and approval by the Commission of a comprehensive plan and work schedule that addresses the safety issues identified [in the complaint]." Therefore, Glen Riddle has the burden of proof in this proceeding.

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

On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

With regard to the issues pertaining to pipelines raised in Glen Riddle's complaint, it is noted that the Commission has recently addressed many of these issues in a series of cases. A brief discussion of those cases is helpful in understanding the disposition of the complaint filed by Glen Riddle.

In *West Goshen Township v. Sunoco Pipeline, L.P.*, Docket Number C-2017-2589346 (Opinion and Order entered October 1, 2018) (West Goshen), Administrative Law Judge (ALJ) Elizabeth Barnes granted in part and denied in part a formal complaint filed by West Goshen Township who was seeking to enforce a settlement agreement entered into between the township, Sunoco and a group of residential homeowners who live within 1,000 feet of the properties owned by Sunoco. The decision enjoined Sunoco from constructing or locating a valve or its appurtenances in the township without first consulting with and obtaining the express written consent of the township and required Sunoco to provide engineering documents and plans to the township for safety reviews. The decision was adopted by the Commission without modification.

In *Dinniman v. Sunoco Pipeline, L.P.*, Docket Number C-2018-3001451 (Opinion and Order entered June 15, 2018) (Dinniman), the Commission addressed an Interim Emergency Order issued by ALJ Barnes finding, in part, that the evidentiary record supports enjoining construction activities in West Whiteland Township on a preliminary basis pending further review of the formal complaint filed on the same matter. The Commission reversed the interim decision to enjoin operation of the pipeline. The Commission created conditions upon which the construction could be resumed. Senator Dinniman had previously filed a formal complaint that remained outstanding averring that the pipeline was unsafe, Sunoco failed to take reasonable efforts to warn and protect the public and, among other things, that the pipeline is within 50 feet of private dwellings. On appeal, however, the Pennsylvania Commonwealth Court issued a reported Opinion on Sunoco's interlocutory appeal limited to the issue of standing finding that Senator Dinniman lacked either personal or legislative standing to file the complaint and related emergency petition and directed that the Commission's emergency injunction be dissolved and the underlying complaint dismissed.

In *Baker v. Sunoco Pipeline, L.P.*, Docket Number C-2018-3004294 (Opinion and Order entered Sept. 23, 2020) (Baker), Mr. Baker, a pro se complainant, alleged that Sunoco violated Section 59.33 of the Commission's regulations, 52 Pa. Code § 59.33, which require hazardous liquid utilities to have minimum safety standards consistent with federal pipeline safety laws and regulations. Mr. Baker requested that Sunoco be required to furnish public

awareness information, and an alarm system and odorant additive to alert all residents living within 1,000 feet of the potential blast zone, training for emergency personnel and to have the old iron pipeline be replaced with American made steel. In affirming the complaint in part and denying it in part, the Commission affirmed ALJ Barnes' decision that deficiencies in the public awareness program required the imposition of a \$1,000 civil penalty and corrective measures in the form of the scheduling of a public awareness/education meeting in which Sunoco was directed to participate. The Commission denied the requests for injunctive relief regarding public outreach and emergency response training practices beyond the relief directly responsive to the allegations in the complaint.²

Most recently, in *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3006116, *et al.* (Opinion and Order entered Nov. 18, 2021) (Flynn), a group of homeowners and aligned intervenors opposed the operation and construction of Sunoco's pipeline and argued that the transport of hazardous highly volatile liquids presented an unacceptable risk to life and property. The parties opposed the pipeline project and asked the Commission to direct Sunoco to cease operation and to take certain action to protect public safety. ALJ Barnes declined to direct that Sunoco cease operation of the pipeline project within the Commonwealth but, pursuant to the utility's duty to provide adequate, safe and reasonable service and facilities under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, directed that Sunoco should take certain reasonable actions to protect public safety. Such actions included, among other things, supplementing the material content of public awareness information, sharing the results of various inspection reports, providing advance notification prior to proposed excavation and scheduling public awareness meetings to discuss additional communications and training. The Decision of ALJ Barnes was adopted by the Commission.

² In *Baker and Blume v. Sunoco Pipeline, L.P.*, Docket No. C-2020-3022169 (Opinion and Order entered Dec. 2, 2021), the Commission affirmed ALJ Barnes' decision to reject on a preliminary basis a second complaint filed by Mr. Baker against Sunoco. The Commission agreed that the second complaint was a prohibited collateral attack on the first Order, *Baker, supra*, which addressed identical issues raised in the second complaint. The Commission also agreed with ALJ Barnes that it lacks jurisdiction over matters generally related to permits issued by the Pennsylvania Department of Environmental Protection governing construction of the pipeline.

It is also noted that the Commission recently issued a Notice of Proposed Rulemaking Order regarding some of the issues that are also raised in Glen Riddle's complaint. *See*, Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket Number L-2019-3010267 (Notice of Proposed Rulemaking Order entered July 15, 2021) (Rulemaking). In this Rulemaking, the Commission seeks comments on proposed amendments to the Commission's existing regulations and the addition of new regulations at Chapter 59 to enable more comprehensive regulation of public utilities that transport petroleum and other hazardous liquids in intrastate commerce. In the Rulemaking, the Commission noted its authority under Section 501(b) of the Public Utility Code to regulate public utilities in Pennsylvania and the incorporation in 2012 of the Federal pipeline safety regulations found at 49 CFR Part 195. The Commission noted that it has adopted the minimum Federal pipeline safety standards and is permitted to adopt additional more stringent regulations if they are compatible. The Commission opened the Rulemaking to focus on expanding its regulations to provide a more complete regulatory framework for hazardous liquid public utilities. The Rulemaking remains pending.

The parties have also cited frequently to Section 1501 of the Public Utility Code and Section 59.33 of the Commission's regulations. Section 1501 provides in pertinent part:

§ 1501. Character of service and facilities.

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

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

§ 59.33. Safety.

(a) *Responsibility*. Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the

hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

52 Pa. Code § 59.33.

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

Further impacting the disposition of Glen Riddle's complaint, it is noted that on January 28, 2021, an order was entered in this case granting in part and denying in part preliminary objections filed by Sunoco against the complaint. Sunoco raised five preliminary objections – three pertaining to the Commission's jurisdiction and two pertaining to legal insufficiency. In that order, it was determined that Glen Riddle has raised issues over which the Commission has jurisdiction, including allegations regarding the Public Awareness Plan and standard operating procedures ordered by the Commission in a prior proceeding. The order also noted that the Commission has jurisdiction to hear claims that a utility is providing unsafe service. Those issues were allowed to proceed to a hearing. The remaining issues, however, were stricken from the complaint. This includes issues related to the scope and validity of an easement, claims regarding Municipal Law, the Governor's face covering mandates and environmental regulations that are beyond the scope of the Public Utility Code or a Commission order or regulation. With regard to the objections based on legal insufficiency, it was determined that Glen Riddle's complaint was legally sufficient.

Finally, the parties also specifically raised arguments in this proceeding pertaining to Sunoco's Public Awareness Plan. The Plan provides standard operating procedures applicable

to hazardous liquids pipelines and related facilities. The Plan was approved by the Commission as part of Sunoco's compliance filing in Dinniman, *supra*. The stated objectives of the Plan include to "raise awareness of the affected public and key stakeholders to the presence of buried hazardous liquids pipelines and associated facilities in the communities where the company operates hazardous liquids pipelines and related facilities." The Plan also states that it "provides a framework that guides the company's goal of continuous improvement in communications with a variety of key audiences in the communities where the company operates pipelines." The 28-page document plus attachments then provides significant detail regarding applicability, frequency, governance, terms and definitions, target audiences and much more.

Of note, and as discussed further below, with regard to residents located along the pipeline right of way and places of congregation, the Plan requires, under multiple circumstances for both the affected public and emergency officials and local officials, supplemental messages for, among other things, "any planned major maintenance/construction activity." The frequency of such communications is "determined by specifics of the pipeline segment or environment" and such communications include "print materials, personal contact, telephone calls, group meetings and open houses."

It is against this extensive legal backdrop that Glen Riddle's complaint will be adjudged.

2. Position of the Parties

The parties submitted substantial amounts of evidence and exhibits in this case in the form of witness testimony, photographs, videos, email printouts and various miscellaneous documents. Their efforts to apply that evidence to the applicable law in making their arguments through the submission of main and reply briefs are appreciated. The parties' positions are summarized as follows:

a. Glen Riddle Main Brief

Glen Riddle is the owner of a residential apartment community known as the Glen Riddle Station Apartments in Middletown Township, Delaware County. The property includes five buildings closely located together with 124 units that house over 200 Pennsylvanians. Sunoco's pipeline project bisects the property. In its main brief, Glen Riddle argued that Sunoco violated its safety obligations in six ways.

First, Glen Riddle argued that Sunoco threatened the safety of the Glen Riddle residents and employees by creating avoidable traffic hazards. Glen Riddle M.B. at 22-34. Glen Riddle argued that Sunoco acted unsafely by failing to implement a traffic plan. *Id.* at 27-31. Glen Riddle argued that it was imperative that a traffic circulation plan with good signage and visual deterrents be implemented to provide for the safety of all drivers and pedestrians but that Sunoco did not use any signage, fencing or markings to identify its work area and left holes unguarded. Glen Riddle stated that this caused confusion and several "near miss" accidents and forced vehicles to make dangerous multipoint k-turns to exit. *Id.* at 29. Glen Riddle added that emergency vehicles were inhibited and Sunoco failed to communicate with Glen Riddle about such issues. Glen Riddle argued that Sunoco failed to rebut the evidence regarding safety threats created by this failure, instead viewing Glen Riddle's complaints as more of an inconvenience. Glen Riddle stated that Sunoco's actions threatened pedestrian safety and that such hazards should have been minimized through adequate signage, markings and positive reinforcement and that even though Sunoco agreed to explore pedestrian safety options, it never followed through with actual measures to do so. *Id.* at 31-33. Finally, Glen Riddle argued that Sunoco created and failed to address safety hazards relating to the school bus stops at the property and did not clearly anticipate the confusion it would cause buses. *Id.* at 33-34. Glen Riddle added that Sunoco failed to communicate and plan with the school district.

Second, Glen Riddle argued that Sunoco created fire hazards at the property. *Id.* at 34-39. Here, Glen Riddle argued that Sunoco's sound wall plan created an unreasonable, dangerous condition which was exacerbated by poor communication. Glen Riddle added that Sunoco could have mitigated the fire hazard and achieved the critical safety measure of looped

access by utilizing a gravel logging road and that the failure to do so was unreasonable and unsafe and created an environment that could have cost lives. *Id.* at 34. Glen Riddle stated that Sunoco's work blocked the loop road on the property and that this hindered fire apparatus access to the buildings and that the positioning of the sound walls delayed ground level fire department nozzle operations. Glen Riddle again argues that Sunoco failed to rebut the evidence of fire hazards, noting that Sunoco's argument, that the mere ability to reach each building in some manner is sufficient, needlessly endangers the Glen Riddle residents. *Id.* at 35-39. Glen Riddle argued that Sunoco's argument regarding the temporary nature of the project should be rejected, and that Sunoco knowingly played the odds that no fire or other major catastrophe would occur at the property from November 2020 to June 2021. Glen Riddle also attacked the credibility of Sunoco's fire safety expert noting that he has an ongoing business relationship with Sunoco and has taken conflicting positions on pipeline safety. *Id.* at 38-39.

Third, Glen Riddle argued that Sunoco threatened the safety of the Glen Riddle residents by creating noise hazards. *Id.* at 39-46. Glen Riddle argued that these failures were unquestionably serious and unreasonable and should be addressed by the Commission. Glen Riddle stated that sound monitoring conducted during Sunoco's work consistently registered in the 80s, 90s and over 100 decibels directly outside and in some cases inside the residences and at point source mitigation locations. *Id.* at 40. Glen Riddle stated that hearing loss can occur after only two hours of such exposure and that ear protection should be worn at those levels, yet Sunoco never communicated the need for ear protection at any time. Glen Riddle added that Sunoco's installation of sound walls created the most deafening noise during the construction including the use of a hydrovac truck for installation. Glen Riddle argued that Sunoco failed to create a sound mitigation strategy and declined sound monitoring measures requested by Glen Riddle. Glen Riddle stated that these noise hazards adversely affected those residents who were working and schooling from home. *Id.* at 42-43. Finally, Glen Riddle argued that Sunoco failed to present evidence of co-equal or greater value than that presented by Glen Riddle because the noise readings by Sunoco were flawed, the Behrens Report relied on by Sunoco is flawed and not followed and Sunoco's noise expert failed to assess the impact of the noise hazards on human health and safety. *Id.* at 43-46.

Fourth, Glen Riddle argued that Sunoco's actions threatened the residents of Glen Riddle when a chemical known as calciment was released into the air at the property without any warning. *Id.* at 46-50. Here, Glen Riddle argued that calciment is a hazardous substance that poses substantial risk in the event of exposure and that Sunoco conceded that it used this substance during construction at the property for at least 10 days. Glen Riddle added that so much calciment was released into the air that it left a visible layer of dust on residents' cars and presented video recordings taken at the property showing plumes of calciment being released into the air, calling it an "uncontrolled release." *Id.* at 49. Glen Riddle argued that Sunoco should have warned Glen Riddle and the residents of its use of calciment at the property but did not thereby endangering the health and safety of the residents. Glen Riddle argued that, when the calciment was released, work should have been stopped and the release contained. Glen Riddle added that traces of calciment could be tracked into the residences themselves and that Sunoco did not employ eye-wash stations on site. Glen Riddle noted that Sunoco eventually stopped using calciment and offered residents car wash certificates but took no remedial measures. Glen Riddle refuted Sunoco's assertion that the release of calciment does not pose a danger to human health and argued that Sunoco otherwise failed to rebut the evidence presented by Glen Riddle. *Id.* at 50.

Fifth, Glen Riddle argued that Sunoco broke a major water line on the property that raised serious safety concerns by failing to properly backfill the water line pipe to secure it during Sunoco's work on the pipeline. *Id.* at 50-53. Glen Riddle argued that these actions threatened the health and safety of the Glen Riddle residents and that Sunoco should have ensured the safety of Glen Riddle residents by appropriately testing the water beyond the single bacteria test that was performed by the local water company, Aqua Pennsylvania, Inc. (Aqua). *Id.* at 51. Sunoco failed to pursue any testing but instead told Glen Riddle to notify its residents that the water was safe to use for all purposes. Glen Riddle also argued that Sunoco sat on guidance from its own plumbing contractor for three weeks. *Id.* at 52. Again, Glen Riddle noted that Sunoco did not effectively rebut the evidence presented by Glen Riddle on this issue and failed to introduce any evidence that it did not cause the water line break at the property or that it took reasonable measures to ensure the integrity of the water line. *Id.* at 52-53.

Finally, Glen Riddle argued that the evidence demonstrates that Sunoco's actions and inactions with respect to communications with Glen Riddle and the residents violated Sunoco's legal obligation under Section 1501 of the Public Utility Code, Section 59.33 of the Commission's regulations and Sunoco's Commission approved Public Awareness Plan. *Id.* at 53-57, *citing*, 66 Pa.C.S. § 1501, 52 Pa. Code § 59.33. Glen Riddle also noted that the Commission has upheld an ALJ directive for Sunoco to hold additional public awareness meetings with affected residents in other proceedings involving the pipeline. Glen Riddle argued that it has presented numerous examples of attempts by Glen Riddle or its counsel to obtain critical safety information from Sunoco both before and during construction, but those attempts were unanswered. *Id.* at 55-56. This required Glen Riddle to rectify various safety issues on its own causing Glen Riddle to expend substantial sums of money. Glen Riddle concluded that Sunoco's expert set forth only three communications with Glen Riddle or its residents and that Sunoco's counsel conceded or could not refute multiple communications failures. *Id.* at 56-57. Glen Riddle added that Sunoco dismissed its concerns and its residents' concerns regularly even though the law requires Sunoco to communicate meaningfully with the communities in which it operates.

As a result of these alleged violations, Glen Riddle argued that a civil penalty should be imposed on Sunoco in the amount of \$2,000,000 and that all Sunoco's contractors and employees that work in residential areas on the pipeline project in Pennsylvania undergo mandatory safety training.

b. Sunoco Main Brief

Sunoco is a Texas limited partnership and certificated Pennsylvania public utility constructing a pipeline across Pennsylvania, including through the Glen Riddle apartment complex. In its main brief, Sunoco made five arguments why it believes that the complaint filed by Glen Riddle is without merit and should be dismissed.

First, Sunoco argued that the complaint is moot. Sunoco M.B. at 20-23. Sunoco stated that Glen Riddle's complaint was tied to Sunoco's active construction and that such

activities have since been completed. *Id.* at 20. Sunoco notes that Glen Riddle’s requested relief only sought to enjoin and restrain further work at the property and that Glen Riddle has conceded that its complaint would be rendered moot once construction was finished. *Id.* Sunoco cited to Pennsylvania law stating that an actual case or controversy must exist at all stages of the judicial or administrative process. *Id.* at 21 (citations omitted). Sunoco added that Glen Riddle is only continuing this proceeding to further leverage Glen Riddle’s monetary demands in a separate proceeding regarding business losses and the value of the temporary easement taking. *Id.* at 22.

Second, Sunoco argued that the complaint should be dismissed because Glen Riddle failed to reply to Sunoco’s new matter. *Id.* at 23-25. Sunoco stated that the allegations in the new matter are deemed to be admitted and the complaint should be dismissed. Sunoco cited to Section 5.63 of the Commission’s regulations in support of its position and listed all of the statements in its new matter that Glen Riddle has therefore admitted that support dismissing the complaint. *Id.* at 24, *citing*, 52 Pa. Code § 5.63. Sunoco added that Glen Riddle also failed to show that its complaint was properly verified and that, with no valid verification, the complaint must be dismissed. *Id.* at 25.

Third, Sunoco argued that Glen Riddle failed to prove that Sunoco’s communications violated the Public Utility Code or any other applicable laws. *Id.* at 26-39. Sunoco added that its communications went above and beyond a reasonable standard of care in keeping Glen Riddle informed. *Id.* at 27-31. Sunoco argued that the record shows that Sunoco was responsive to hundreds of emails, demands, threats, phone calls, in-person meetings and other requests that went well beyond what is required for Sunoco’s new pipeline construction activities. Sunoco added that it provided the Glen Riddle residents with extensive information and accommodations during construction. *Id.* at 31-37. Sunoco then argued that Glen Riddle tries to twist the rules and regulations governing Sunoco’s new pipeline construction by misconstruing the term “public awareness,” but Glen Riddle’s attempts have no basis in law. Sunoco claims that the Public Awareness Plan does not apply to new pipeline construction that is at issue in this case. Sunoco stated that the Commission’s relevant gas regulations do not create “public awareness” obligations related to new pipeline construction but that the Commission has initiated a rulemaking prior to the start of this proceeding regarding those matters and that

noticeably absent were any communications requirements pertaining to new construction. Sunoco then detailed record evidence it believes demonstrate extensive communications from Sunoco both preconstruction and during active construction. *Id.* at 32-34. Finally, Sunoco argued that it provided Glen Riddle with an open communication channel both before and during active construction but that the level of attention demanded by Glen Riddle and the amount of time it consumed for Sunoco was unparalleled in the entirety of Sunoco's statewide Mariner East pipeline construction project. *Id.* at 37-39. Sunoco added that it communicated with all government officials and even provided substantial financial mitigation to the residents at Glen Riddle. Sunoco concluded that, taken as a whole, its communications were sensible and reasonable. *Id.* at 39.

Fourth, Sunoco argued that Glen Riddle's arguments regarding the scope and validity of easements, issues grounded in municipal law including sound, fire code, parking and fencing ordinances, COVID-19 related mandates and environmental regulations are all outside the scope of the Commission's expertise and jurisdiction. *Id.* at 39-41. Sunoco added that Glen Riddle has presented no evidence that any regulatory agency or municipal entity having jurisdiction over these issues found Sunoco to be in violation of any applicable code or regulatory provision for the construction at the Glen Riddle property and that, therefore, Glen Riddle's claims related to each of these issues should be dismissed. *Id.* at 41.

Finally, Sunoco argued that construction at the site was safe and reasonable. *Id.* at 41-59. Sunoco argued that, throughout the construction and restoration, it adhered to safety practices that were specifically tailored to the Glen Riddle property and Middletown Township specifications. Sunoco added that Glen Riddle complained about various tangential issues related to pipeline construction and that Glen Riddle failed to prove that any actual harmful consequences occurred or that there was a high probability of a harmful consequence occurring. Sunoco also cited to its managerial discretion regarding its construction practices. *Id.* at 42.

Specifically, Sunoco argued that there was safe and reasonable ingress, egress and emergency responder access to the property during construction and nothing about the construction created a new or different hazard than the hazards that already existed at the

property, including with regard to the sound walls. *Id.* at 43-46. Sunoco provided extensive argument regarding emergency response access and noted, among other things, that Glen Riddle's witness on this issue is not an expert in emergency response. Sunoco also detailed the many steps it took to ensure that its construction site and vehicles did not cause safety issues to other vehicles or pedestrians including having certified flaggers and spotters on site and not blocking sidewalks and noting that Glen Riddle's complaints were general and not specific. *Id.* at 48-49. With regard to Glen Riddle's claims about noise levels, Sunoco noted that the sound walls were designed for this type of construction to mitigate the noise stemming from construction machinery and that at no time did noise levels present a safety issue, even within the easement where the sound levels would be the loudest. *Id.* at 49-53. Sunoco added that its arguments were supported by the testimony of a noise control engineering expert.

Next, Sunoco argued that vibrations from its construction did not cause a structural safety issue to Glen Riddle's apartments, noting that it had a pre-construction inspection performed that was compared to a post-construction inspection and monitored vibrations on an ongoing basis. *Id.* at 53-54. Sunoco also argued that its construction did not create toxicity or environmental issues, noting in particular arguments with regard to truck and equipment leak and prevention containment, the use of clean fill, stormwater management and use of calciment. *Id.* at 53-58. For each of these issues, Sunoco argued that the evidence it presented in the form of expert testimony outweighed the evidence presented by Glen Riddle. Finally, Sunoco argued that it took all reasonable and appropriate steps to locate underground utilities at the property and when a water line broke, went above and beyond in response, including providing bottled water for residents, ensuring the issue was repaired and making sure residents had water that was safe to drink and use, among other things. *Id.* at 58-59.

Sunoco concluded that Glen Riddle has failed to meet its burden of proof and the complaint should be dismissed and denied. *Id.* at 60.

c. Glen Riddle Reply Brief

In its reply brief, Glen Riddle argued that Sunoco believes it is above the law and puts profits and efficiency before the safety of the communities in which it operates. Glen Riddle R.B. at 1. Glen Riddle added that the Commission has the power and the duty to protect the public from Sunoco's reckless conduct and reduce the likelihood of a tragic outcome.

Glen Riddle added that Sunoco's main brief demonstrates the company's reckless attitude about safety noting several examples where Sunoco minimizes the safety hazards raised by Glen Riddle or otherwise defers to Sunoco's managerial discretion. *Id.* at 2-4. Glen Riddle stated that it should not take an avoidable death for Sunoco to change its unreasonably dangerous behavior and stop its callous disregard for the concerns of the Pennsylvania communities in which it operates. *Id.* at 3. Glen Riddle also refuted Sunoco's claims that Glen Riddle was a "demanding" and "litigious" property owner. *Id.* at 5.

Next, Glen Riddle asserted that Sunoco's argument that the complaint should be dismissed because the Public Utility Code and the Public Awareness Plan do not apply to "new construction" should be dismissed because it has already been rejected in response to preliminary objections. *Id.* at 6-7.

Glen Riddle also argued that Sunoco's arguments that industry standards cannot be relied upon to demonstrate whether Sunoco's service was reasonable and safe should also be rejected because it is not uncommon for the Commission to rely on such standards when determining whether a safety violation has occurred. *Id.* at 7-11. Glen Riddle noted that Section 59.33 of the Commission's regulations codifies industry standards as the minimum standards set regarding natural gas and hazardous liquid public utilities, referencing in part 49 U.S.C.A. § 60101-60503 and 49 CFR 191-193, 195 and 199. *Id.* at 7-8, *citing*, 52 Pa. Code § 59.33. Glen Riddle argued that Commission decisions recognize that industry standards are important when determining whether conduct complained of is unsafe. Glen Riddle added that it would set an unsafe precedent if the Commission were to adopt Sunoco's arguments that the bare minimum suffices because of Sunoco's "managerial discretion." *Id.* at 10. Glen Riddle noted the extensive

evidence it submitted regarding Sunoco's failure to comply with relevant industry standards and safety regulations.

Glen Riddle also responded to the various procedural arguments that Sunoco raised in its main brief. *Id.* at 11-14. Glen Riddle called these procedural issues "minor" and said that Sunoco should have responded to the overwhelming record of its reckless behavior. *Id.* at 11. Glen Riddle added that those procedural arguments are meritless, waived and undermined by Sunoco's own failures to follow the Commission's requirements and should be rejected.

In particular, Glen Riddle argued that the Commission can impose the relief requested in the complaint, noting that the Commission has the authority and duty to impose civil penalties and mandatory education to protect the public interest, regardless of whether such relief was specifically requested in the complaint, and noting that the complaint is ripe for adjudication. Glen Riddle also responded to Sunoco's arguments that Glen Riddle never responded to new matter by arguing that Sunoco never filed an answer with new matter in response to the complaint. *Id.* at 14-15. Glen Riddle noted that the Commission's docket does not reflect such a document being filed. Glen Riddle also denied the new matter as a matter of law, noting that the new matter consists entirely of legal conclusions. *Id.* at 15-16. Glen Riddle also argued that Sunoco did not object to the verification of the complaint when it filed its preliminary objections and therefore that objection is waived. Glen Riddle argued that, even if Sunoco did not waive this objection, the complaint was properly verified. Lastly, Glen Riddle argued that Sunoco's brief violates Commission procedure because Sunoco avoided page limit requirements by attaching lengthy findings of facts and conclusions of law as an appendix meaning that the entire brief was 87 pages instead of the limit of 60. *Id.* at 17.

Finally, Glen Riddle attached to its reply brief information regarding its request made under the Pennsylvania Right to Know Law, a grand jury indictment filed by the Pennsylvania Attorney General and a printout of the Commission's docket for this case.

d. Sunoco Reply Brief

In its reply brief, Sunoco made three arguments in response to Glen Riddle's main brief. First, Sunoco identified nine ways, both procedural and substantive, that Glen Riddle failed to show that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation.

With regard to procedural matters, Sunoco argued that, throughout its main brief, Glen Riddle impermissibly cites to several hearsay exhibits consisting of emails and resident complaint submissions admitted for the truth of the matter asserted. Sunoco R.B. at 8-12. Sunoco specifically notes Glen Riddle's averments regarding the alleged release of calciment, the purported lack of water testing after the water line break and the assertion that Sunoco's construction impeded emergency vehicle access. Sunoco referenced an interim evidentiary order made in this case on these issues regarding a motion *in limine* and identified several specific statements it believes are hearsay. Sunoco reiterated its hearsay objections and noted that these statements cannot be relied upon to support a finding of fact. Similarly, Sunoco also argued that Glen Riddle's main brief fails to show that Sunoco violated applicable law by inappropriately relying on lay opinion testimony, conjecture and unqualified expert testimony. *Id.* at 12-14. Sunoco identified opinions of Glen Riddle witness Stephen Iacobucci and others who testified regarding matters outside their field of expertise.

With regard to responding to Glen Riddle's substantive arguments, Sunoco argued that Glen Riddle did not show that Sunoco did not reduce potential hazards or otherwise fail to protect or warn Glen Riddle residents from danger or demonstrate that any harm in fact occurred during pipeline construction. *Id.* at 15-17. Sunoco argued that Glen Riddle's claims of harm are speculative and insufficient to show that Sunoco violated applicable law but only show that certain changes could have led to harm. Sunoco argued that more than opinion, hypotheticals or conjecture are needed to satisfy the burden of proof and that the various inconveniences argued by Glen Riddle are not a harm.

Similarly, Sunoco argued that Glen Riddle's arguments ignore unrefuted evidence that Sunoco carefully designed, evaluated and tested the placement of sound walls regarding emergency responder access and argued that emergency responders had unimpeded access to the apartments during the construction. *Id.* at 18-20. Sunoco added that Glen Riddle's only support for the allegation that emergency responders was delayed was hearsay email from Glen Riddle's counsel. *Id.* at 19. Sunoco added that Glen Riddle's rebuttal to Sunoco's evidence that the emergency response was not hindered is also without merit and should be rejected, relying on its expert witness in support of its position.

Next, Sunoco argued that Glen Riddle failed to show that Sunoco violated any applicable laws with regard to parking, traffic and school bus stop location. *Id.* at 20-24. With regard to parking, Sunoco noted that the record only shows that two residents out of more than 200 complained and that these complaints are hearsay, false or only state that the parking issue was an inconvenience. *Id.* at 20-23. With regard to traffic, Sunoco noted that the Commission lacks jurisdiction to find that Sunoco violated Pennsylvania Department of Transportation (PennDOT) or the Federal Highway Administration (FHWA) guidelines and that Glen Riddle's arguments that there were no flaggers on site and there were "near misses" are not correct. Sunoco added that the flaggers were communicating via radio to direct traffic and did not need flags and that the videos that Glen Riddle moved into the record are unauthenticated, lack credibility and do not show reckless driving. With regard to the bus stop location, Sunoco argued that it worked diligently with the school district to establish a plan prior to construction and resolved the issue that was raised by paying for crossing guard services. *Id.* at 23-24.

With regard to Glen Riddle's arguments pertaining to unsafe sound levels, Sunoco argued that Glen Riddle has misconstrued the evidence it presented versus the evidence required to show that Sunoco created sound at a level that could damage someone's hearing outside of its construction zone. *Id.* at 24-25. Sunoco argued that there was no continuous multi-hour-long sampling necessary to make such findings and that the only sound recordings admitted into evidence were point-in-time measurements shown in unauthenticated videos which show levels below OSHA standards and taken prior to the sound walls being put in place.

Sunoco then argued that Glen Riddle has spun out of proportion the sporadic use over a ten-day period of calciment at the Glen Riddle site and that there is no evidence of any resident or employee coming into direct contact with calciment. *Id.* at 25-27. Sunoco argued that Glen Riddle's expert lacked expert qualifications on toxicology and admitted that he did not have information necessary to form a conclusion that calciment used was harmful. Sunoco also argued that Glen Riddle misrepresented the record on this issue. *Id.* at 26.

With regard to Glen Riddle's allegations pertaining to the water line break, Sunoco argued that it took all reasonable steps to locate and protect underground utilities on the Glen Riddle property and Glen Riddle failed to show that Sunoco failed to take any measures to ensure the integrity of the water line. *Id.* at 27. Sunoco stated there was no violation of the Public Utility Code with regard to the water line break and Sunoco took all reasonable responses to the break, noting that Aqua took water samples due to the delay in Sunoco taking samples caused by Glen Riddle's counsel. *Id.* Sunoco argued that Glen Riddle again relied on an unqualified expert who also misunderstood the nature of the pipeline being constructed. Sunoco also argued that Glen Riddle again misconstrued evidence and that, in fact, all of the testing showed the water was safe to drink.

Sunoco's last substantive argument in response to Glen Riddle's main brief was that Glen Riddle failed to show Sunoco violated any applicable law pertaining to Sunoco's communications. *Id.* at 29-38. Here, Sunoco argued that Glen Riddle continues to skew the record and failed to show that any of the communications between the parties violated Sunoco's duties under the Public Utility Code. *Id.* at 29-30. Sunoco presented three arguments on this issue. First, Sunoco reiterated its argument that 49 C.F.R. § 195.440 and Sunoco's Public Awareness Plan do not apply to Sunoco's new pipeline construction and that Glen Riddle's reliance thereon is unsupported. *Id.* at 30-32. Second, Sunoco argued that Glen Riddle creates a "skewed narrative" regarding the communications that occurred prior to and during the active construction at the property and that Sunoco replied and provided significant information to each and every one of Glen Riddle's inquiries, "no matter how frivolous or litigious they were." *Id.* at 32-33. Sunoco also attacked Glen Riddle's argument because they rely on hearsay. *Id.* at 33. Third, Sunoco argued that Glen Riddle has mischaracterized and misrepresented the three prior

Commission proceedings pertaining to Sunoco's Public Awareness Plan. *Id.* at 36-38. Sunoco noted that each of the cases dealt with concepts involving Sunoco's Public Awareness Plan for its operational pipelines and have no application to the instant complaint and are entirely distinguishable.

Additionally, Sunoco responded to Glen Riddle's main brief by reiterating its position that the Commission lacks jurisdiction over PennDOT, FHA, Department of Environmental Protection (DEP), International Fire Code, OSHA and CDC statutes, regulations, guidance and/or permits. *Id.* at 39-41. In making this assertion, Sunoco stated that Glen Riddle's arguments fundamentally misrepresent the nature of the Commission's jurisdiction and its enforcement authority under the Public Utility Code, noting that the Commission cannot determine that a utility's actions violate a statute, regulation or ordinance that it does not have authority to administer to support a safety violation under Section 1501. *Id.* at 39-40 (citations omitted). Sunoco added that there are limited circumstances where the Commission can apply the laws of another agency, including only where the regulatory authority is co-extensive with another agency and regulations are incorporated into the Commission's regulations by rulemaking. *Id.* at 40. Sunoco concluded by stating that the case law relied upon by Glen Riddle does not support the arguments it seeks to make.

Finally, Sunoco responded to Glen Riddle's main brief by arguing that Glen Riddle's request for penalty or injunctive relief must be denied. *Id.* at 41-55. Here, Sunoco stated that Glen Riddle's request for \$2,000,000 in civil penalties and requiring at least 50 hours of safety training at Sunoco's expense for Sunoco, its employees and its contractors violates Sunoco's due process rights and right to a fair and meaningful opportunity to be heard. *Id.* at 41-43. Sunoco added that Glen Riddle has waived these requests for relief that were not made in its complaint or any amendments thereto and were not raised in testimony. Sunoco further added that the record in this case has closed and that, because the work at the property has been completed, the complaint is moot and Glen Riddle lacks standing for the relief now sought. *Id.* at 43-47. Sunoco noted that, under the mootness doctrine, an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed.

Nonetheless, Sunoco argued that, notwithstanding that Glen Riddle failed to prove Sunoco violated any applicable law, when applying the factors set forth in the Commission's regulations, Glen Riddle has not demonstrated that any civil penalty is warranted even if it had properly raised the issue. *Id.* at 47-53. Sunoco articulated the "Rosi" standards in Section 69.1201 of the Commission's regulations, *infra*, and specifically argued why consideration of the factors demonstrates that no civil penalty is warranted. *Id.* at 47-48, *citing*, 52 Pa. Code § 69.1201. Notably, Sunoco stated that the evidence shows that it acted reasonably at all stages and that no harm to residents occurred and the property has since been returned to pre-construction condition. Sunoco also argued that the record shows that it was responsive to Glen Riddle's concerns and tried to accommodate each and every concern raised. Sunoco also noted its history of complying with applicable law and that the other Rosi factors do not weigh in favor of the Commission imposing a civil penalty.

With regard to injunctive relief, Sunoco argued that Glen Riddle's request for employee safety training should also be denied because Glen Riddle has not demonstrated that Glen Riddle is entitled to such mandatory injunctive relief. *Id.* at 53-55. Sunoco then identified case law regarding the requirements for obtaining mandatory injunctive relief and argued that Glen Riddle has not met the necessary standard. Sunoco added that Glen Riddle has not demonstrated a clear right to relief and that Glen Riddle has the legal remedy of obtaining damages in the appropriate forum. Sunoco also noted that the request for injunctive relief is not narrowly tailored as is required. *Id.* at 54.

Sunoco concluded that Glen Riddle's complaint is moot, that Glen Riddle has failed to meet its burden of proof and that the complaint should be dismissed and denied.

3. Disposition

a. Introduction

Glen Riddle's complaint will be sustained in part and denied in part. Glen Riddle has satisfied its burden to demonstrate that Sunoco's actions with regard to the construction of

the pipeline at the Glen Riddle apartment complex violated the Public Utility Code and Commission regulations with regard to fire hazards, noise levels and communications with the public. However, Glen Riddle has failed to satisfy its burden of proof with regard to traffic hazards, the use of calciment and a water line break at the property.

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

Disposition of Glen Riddle's complaint is also colored by the underlying fact that Sunoco has easements to perform these construction activities. This includes both the permanent easements that has existed through the Glen Riddle property since 1931, as well as the construction easements recently obtained. Although the scope and validity of the easement is not at issue in this case because the Commission lacks jurisdiction to hear such issues, it is nonetheless clear that Sunoco has an easement to perform these major construction activities and that implicit in the regulatory approval Sunoco received to perform these construction activities was the understanding that such activities would be performed in residential areas such as the Glen Riddle property with as much care as reasonable.

b. Glen Riddle Arguments

As noted above, in its main brief, Glen Riddle raised six arguments alleging Sunoco has violated its safety obligations. Each of these arguments will be addressed in turn below.

i. Traffic Hazards

In its main brief, Glen Riddle argued that Sunoco mixed pedestrians, residential vehicles, delivery vehicles and a heavy flow of construction vehicles without any planning or responsible safeguards. In particular, Glen Riddle argued that it is undisputable that Sunoco did not create a traffic plan for the property and that it was imperative that a traffic circulation plan with good signage and visual deterrents be implemented to provide for the safety of all drivers and pedestrians. Glen Riddle added that Sunoco did not use any signage, fencing or markings to identify its work area and left unguarded holes in areas frequented by Glen Riddle residents or that some of the signage were inaccurate. Glen Riddle noted that there were several “near miss accidents” and vehicles were forced to make dangerous multi-point “k-turns” to exit the property which limited access to and from the property, including obstructing emergency responders. Glen Riddle argued that these hazards were exacerbated by Sunoco’s failure to communicate with Glen Riddle residents about what to expect and when. Glen Riddle added that parking lot changes required residents to walk in unlit dangerous areas with no sidewalks. Glen Riddle concluded that Sunoco failed to rebut the safety threats created by its failures.

Similarly, Glen Riddle argued that Sunoco should have minimized the hazards through adequate signage, markings and positive reinforcement but failed to do so. Glen Riddle added that Sunoco failed to rebut this evidence but instead relied upon its claim that it requires all on-site employees to submit to defensive driving courses and that, although Sunoco agreed to explore some pedestrian safety options, it never followed through with actual measures to do so.

Glen Riddle then argued that Sunoco threatened Glen Riddle residents’ safety by creating hazards for school children at bus stops on the property. Glen Riddle noted that

Sunoco's own testimony revealed that Sunoco's initial contact with the local school district occurred after Sunoco began construction work and that confusion regarding impacts on school bus service was ongoing after that. Glen Riddle concluded that Sunoco failed to communicate and plan with the school district regarding bus stops.

In response, Sunoco argued that nothing about the construction work created a new or different hazard than the hazards that already existed at the property. Sunoco noted its use of sound walls that advanced safety at the site by both mitigating sound levels and preventing unauthorized persons from accessing the worksite while construction was active. Sunoco added that it worked with the township regarding emergency access and tested the ability for vehicles to access the property, and added that there were two emergency response events during the construction and responders were able to access the property. Sunoco stated that its emergency planning and response expert disagreed with Glen Riddle's concerns regarding emergency vehicle access adding that Glen Riddle's witness was not an expert in emergency response and that his testimony should otherwise be rejected. Sunoco stated that it is common for emergency responders to navigate tight roadways and that there is no evidence that Sunoco's construction created a circumstance where the township could not adequately and safely access the property with emergency responder apparatus.

With regard to the impact of the construction on vehicles and pedestrians, Sunoco argued that there were certified flaggers on site to direct traffic flow on the property who had radio communications with the drivers. Sunoco added that all construction drivers were trained in defensive driving. Sunoco also noted that construction did not block any existing sidewalks on the property and that it communicated with the local school district regarding temporarily moving the school bus stop and paid for provision of additional crossing guards to ensure safety of the school children at the apartment complex. Sunoco added that Commission regulations do not require these steps, but that Sunoco took them anyway. Sunoco also noted that its transportation engineering expert evaluated Glen Riddle's complaints and concluded, among other things, that there were no unreasonable or unsafe burdens on motorists. Sunoco called Glen Riddle's concerns general and non-specific and mostly an issue of convenience. Sunoco

added that it did coordinate with the local school district regarding temporarily moving the bus stop before construction began.

With regard to parking, Sunoco argued that Glen Riddle's concerns have no foundation in evidence and that at no time was there ever a shortage of parking at the Glen Riddle property because of Sunoco's active construction.

Glen Riddle's complaint with regard to traffic hazards will be denied. Glen Riddle has failed to satisfy its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to traffic hazards.

A review of the evidence of record submitted by Glen Riddle in support of this issue and relied on in its briefs reveals that Sunoco did not violate the Public Utility Code, a Commission order or a Commission regulation. 66 Pa.C.S. § 1501. GRS-25, for example, is an email exchange from a Glen Riddle resident complaining about the location of a port-a-potty outside of the perimeters and occupying five parking spaces. GRS-29 is information regarding pedestrian facilities and the Americans with Disabilities Act. GRS-101 is an exchange of emails between various counsel in this proceeding from October 29, 2020, to November 6, 2020, including a copy of the easement and aerial photographs. In part, these email exchanges discuss a pre-construction inspection and a possible meeting on November 10, 2020. GRS-117 is an exchange of emails regarding a March 5, 2021, meeting that discussed communication, sound concerns and pedestrian safety. GRS-171 is an email from Glen Riddle counsel to Sunoco counsel on December 14, 2020, indicating that an emergency vehicle could not access the property due to the work site and that other vehicles struggled to access and leave the property as both ingress and egress were a challenge due to the work site, noting video evidence.

GRS-155 is comprised of seven videos, showing various construction vehicles entering and exiting the Glen Riddle property, some going in reverse. At one point, a car enters the property as a construction vehicle exits the property. Each video is approximately 30 seconds long. Similarly, GRS-172 is comprised of nine videos, again showing various construction vehicles entering and exiting the Glen Riddle property, many going in reverse. In

some videos, other construction workers can be seen directing the construction vehicles, although at no points are actual flags being used to direct the vehicles. In addition, every time that a construction vehicle is going in reverse, the reverse “beeps” are sounding.

None of this evidence depicts a violation of the Public Utility Code, a Commission order or Commission regulation. While having large construction vehicles operating in a residential area in general is not ideal, and it is certainly reasonable that the videos entered into the record could only depict a small fraction of the overall construction activity, nothing in the admitted exhibits demonstrates a violation of Section 1501 of the Public Utility Code or any other applicable law. 66 Pa.C.S. § 1501.

As noted above, this determination is guided in part by the fact that Sunoco has easements to perform these construction activities. Although the scope and validity of the easement is not at issue in this case, it is nonetheless clear that Sunoco has an easement to perform these major construction activities and that implicit in the regulatory approval Sunoco received to perform these construction activities was the understanding that such activities would be performed in residential areas such as the Glen Riddle property where the easement runs through the apartment complex and apartment buildings were built within feet of the easement boundary. Nothing in the evidence submitted by Glen Riddle demonstrates that Sunoco acted with less than as much care as possible with regard to the traffic issues within less-than-ideal circumstances of performing major construction in a residential area.

Furthermore, GRS-25, the email from the resident complaining about the use of a port-a-potty outside of the construction perimeter and occupying five parking spaces, reflects a less than ideal situation but does not represent a violation of applicable laws. It is reasonable for a resident to be upset about the location of a port-a-potty, especially if the location occupies parking spaces. However, such a circumstance is necessary in order for the construction work to be performed. In addition, the situation was temporary and only existed during the construction. The printout regarding the Americans with Disabilities Act in GRS-29 is insightful and sheds light on the various issues to be considered when performing construction activities but also does not support a finding that Sunoco’s activities violated any applicable law.

With regard to the various exchanges of emails submitted into the record by Glen Riddle in support of its arguments regarding traffic hazards, these emails demonstrate the communications between the two parties noting in particular the attempts by the parties to engage in a pre-construction meeting. Such emails occurred between October 29, 2020, and November 6, 2020, and were before construction activities commenced. Therefore, these communications do not support finding that Sunoco, for example, did not “at all times use every reasonable effort to properly warn and protect the public from danger,” as is required in Section 59.33 of the Commission’s regulations. 52 Pa. Code § 59.33. In fact, these emails demonstrate that Sunoco engaged in some effort to take the necessary precautions with regard to potential traffic hazards. While those efforts and the manner in which Sunoco conducted itself with regard to the potential traffic hazards may not have been suitable to Glen Riddle, they again do not warrant finding that Sunoco violated any applicable laws. The remaining emails admitted into evidence on this issue demonstrate the difficulties of performing major construction work in a residential area. This evidence does not demonstrate that Sunoco’s actions were in violation of applicable laws.

Finally, there was insufficient evidence to demonstrate that Sunoco’s actions unreasonably threatened pedestrian or other traffic or otherwise unreasonably occupied parking spaces. There is one video admitted into the record that shows a car entering the property at the same time as a large construction vehicle was leaving the property, but it is unclear that this video demonstrates a violation of applicable law. Similarly, there is no evidence that any parking spaces were unreasonably restricted during the construction. Although some parking spaces certainly were impacted by the construction activities, such an impact was temporary and not unreasonable in light of the circumstances involving major construction activities in a residential area. Additional evidence would be required to show that Sunoco unreasonably restricted parking spaces, but such evidence was not submitted. Likewise, there is insufficient evidence of record that demonstrates that Sunoco’s construction activities violated any applicable law with regard to children waiting at bus stops. Record evidence demonstrates that Sunoco communicated with the local school district and took other precautions to ensure safety such as hiring crossing guards. While it is again clear that it would be possible for unreasonable actions regarding children at school bus stops to occur in this environment in violation of the

Public Utility Code or some other applicable law, record evidence in this proceeding does not support such a finding.

As such, Glen Riddle's arguments that Sunoco's activities created traffic hazards in violation of the Public Utility Code, a Commission order or regulation or other applicable laws is without merit and will be denied.

ii. Fire Hazards

In its main brief, Glen Riddle argued that Sunoco's actions and inactions with respect to fire safety at the property violate Sunoco's legal obligation to provide safe and reasonable service, to reduce hazards to which customers and others may be subjected to and to communicate in accordance with its Public Awareness Plan.

More specifically, Glen Riddle argued that Sunoco's sound wall was unreasonable and created a dangerous condition. Glen Riddle argued that, instead, Sunoco could have mitigated fire hazards and achieved safety by utilizing a gravel logging road. Glen Riddle added that eliminating the looped access hindered fire apparatus access to Glen Riddle apartment buildings and that the sound walls delayed ground level fire department nozzle operations.

Glen Riddle also argued that Sunoco failed to rebut the evidence presented by Glen Riddle. In particular, Glen Riddle argued that a letter from a township employee presented by Sunoco did not constitute a variance to the relevant portion of the fire code and that the letter in any event is substantially flawed. Glen Riddle added that Sunoco's argument that some level of access to each building could still be achieved and that the project was only temporary are flawed. Glen Riddle argued that any delay in the amount of time that it takes emergency response personnel from reaching the worksite could be a safety concern, noting as well that the dangers at the property are exacerbated by its garden apartment layout. Glen Riddle stated that any potential delay created by Sunoco's failure to adequately plan its work to accommodate emergency response could mean the difference between life and death in a fire response. Glen

Riddle added that Sunoco's suggestion that the temporary nature of the construction alleviated these concerns is absurd.

Glen Riddle concluded that Sunoco's purported expert in fire safety lacks credibility because he works for Sunoco and because he has taken conflicting positions on fire safety issues.

In response, Sunoco argued that it carefully designed, evaluated, tested, redesigned, reevaluated and implemented the placement of the sound walls, working with the Township who tested the ability for emergency responders to access the apartments. Sunoco reiterated that the Commission lacks the jurisdiction to determine violations of the International Fire Code and that during the entirety of the construction emergency responders had unimpeded access to the apartments. Sunoco also addressed the evidence presented by Glen Riddle that an emergency response period to the apartments was delayed in the form of Glen Riddle's counsel's email which it argued was hearsay. Sunoco said that its witness reviewed the subject matter and testified that the response time was normal and there were no issues with access to the apartments.

Sunoco also addressed the arguments raised by Glen Riddle by noting that the Commission lacks authority to determine whether a variance was necessary and that Glen Riddle has otherwise misconstrued the township's memo. Sunoco also relied on the two emergency response events during construction that it claimed proved that emergency responders were able to respond within their normal response time and without any access issues. Sunoco concluded that Glen Riddle's attacks on its witness Mr. Noll's credibility defies the evidence that Mr. Noll has helped pipeline companies, emergency responders, townships and counties and has authored articles and presentations which were not inconsistent. Sunoco argued that, instead, it is Glen Riddle's witness on this issue who is not competent to offer expert opinion testimony on the issue of emergency response. Sunoco added that it is common for emergency responders to navigate tight roadways or access areas to respond to an emergency and responders are routinely familiar with those areas and locations within their community where access can be a challenge.

Glen Riddle's complaint with regard to fire hazards will be sustained. Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to fire hazards created at the construction site.

Record evidence demonstrates that fire hazards were created or exacerbated at the Glen Riddle property as a result of Sunoco's construction activities. For example, a plain review of the pictures admitted into the record demonstrates that these walls are approximately 30 feet high and often very close to the buildings. This is prima facie evidence that new or different hazards have been created at the construction site either by an emergency responder not being able to access a building because the looped access is blocked, the wall is too close to the building or for some other reason. When viewing the videos submitted as GRS-155 and GRS-172, it is clear, for example, that if an emergency responder would have had to access the property while a large construction vehicle was maneuvering on the property, that emergency responder would have been delayed as a result. Sunoco's argument that "during the entirety of [Sunoco's] construction, emergency responders had unimpeded access to the GRS apartments," is not credible. *See, e.g., Sunoco R.B. at 18.*

Furthermore, there are a substantial number of other exhibits admitted into the record that show multiple ways in which emergency responders would, at a minimum, be impeded or slowed. Without question, this was a major construction site and impeding or slowing anyone's access – residents and emergency responders alike – was inherent in the activities that were going on. Nonetheless, Sunoco's actions to address such issues were unreasonable. For example, record evidence demonstrates that some of the sound walls were not movable to allow for emergency vehicles access. GRS St. 3 at 14. The western side of the Glen Riddle property did not have a turnaround space for emergency vehicles. GRS St. 3 at 14. High levels of truck traffic, delay and stacking on an incline on the property occurred. GRS St. 1-SR at 6. Sunoco's construction made a fire or emergency response more difficult and the property less safe. GRS St. 6-SR at 6.

Where issues of community safety are concerned, this Commission possesses irrefutable authority to exercise its jurisdiction. *Re: Consolidated Rail Corp.*, 56 Pa. P.U.C. 367 (1974). In this case, given the circumstance of major construction in close proximity to a residential area, extra efforts were required that were not taken by Sunoco. More should have been done by Sunoco where the well-being and safety of more than 200 Pennsylvanians was at issue. Expert testimony is not required for this conclusion.

Sunoco's response to the substantial evidence presented by Glen Riddle does not outweigh a finding that Sunoco's actions violated the Public Utility Code. *See, Milkie, supra*. For example, the fact that Sunoco had a memo from the township does not mitigate the fact that emergency responders were undoubtedly slowed as a result of Sunoco's construction activities at the property. SPLP St. 1-R at 9. The construction site may have been sufficient for township purposes so long as there was some access to the apartment – a determination that the Commission does not have jurisdiction to make – but when viewed in light of Section 1501 of the Public Utility Code, the additional delay caused by Sunoco's construction activities was unsafe and therefore unreasonable and the memo from the township is not dispositive. 66 Pa.C.S. § 1501.

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

Furthermore, it is unreasonable that Sunoco's witness would claim that "nothing about the construction work has created a new or different hazard than the hazards that already

pre-existed at the property.” Sunoco St. 1-R at 15-16. That argument is unreasonable based on the substantial record evidence submitted in this case that shows a major construction project located immediately in the middle of a 124-unit apartment building. While, as noted above, Sunoco has an easement through the property to perform the construction, it cannot be stated that “nothing about the construction work has created a new or different hazard than the hazards that already pre-existed at the property.” In fact, quite the opposite is true. But for the construction, there would be fewer hazards created at the property. This is true simply by virtue of all the efforts undertaken to do the construction: large construction vehicles, large sound barriers, additional traffic congestion, etc. All of these items, and more, create new and different hazards at the property, including the creation of the fire hazards within the worksite itself.

The creation of new hazards, however, is not entirely dispositive of the issue. In this case, the question becomes whether Sunoco took any reasonable actions to reduce or minimize the new and different hazards created at the property by Sunoco’s construction activities. There is nothing in the record to demonstrate that it has. Glen Riddle suggested that a gravel logging road could have been put in place and other actions might have also reduced or eliminated the new and different hazards created by Sunoco’s construction activities. No such actions were taken. It should not be required that a major accident or incident take place before sufficient safety precautions are put in place.

I agree with Glen Riddle witness Davidson who said:

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

Glen Riddle St. 6-SR at 9. Expert testimony is not required for this conclusion.

It is not sufficient to rebut Glen Riddle's arguments by noting that the situation at the construction site was temporary or that there were two instances during construction where "emergency responders were able to access the property and respond to emergency events within their normal response time and without any access issues into the apartment complex," as Sunoco argued. Sunoco M.B. at 43-45. These facts do not negate the underlying fire hazards created by Sunoco's construction activities. The fact that the fire hazards created were temporary does not negate the fact that the fire hazards were created. Regardless of how long the fire hazards existed, they did exist and Sunoco's failure to reduce or eliminate them is a violation of the Public Utility Code. *See, e.g.*, 66 Pa.C.S. § 1501. The fact that the hazards existed temporarily weighs on the civil penalty to be imposed for the violation, as discussed below, not whether the violation occurred in the first place. The fact that emergency responders were twice able to access the property within their normal response time is fortunate. As discussed below, actual harm or injury is not required to show a violation of the Public Utility Code or a Commission regulation but weighs on the amount of civil penalty to be imposed for the violation.

It is noted as well that finding that Sunoco's actions at the property create new and different fire hazards *in violation* of the Public Utility Code is not inconsistent with the finding above that Sunoco's actions regarding traffic hazards involving pedestrians, school bus stops and parking spaces, is *not a violation* of the Public Utility Code. In this instance, absent specific direction from the General Assembly or the Commission, a disruption to a resident in having to maneuver through a major construction zone is different than a disruption to emergency responders having to maneuver through a major construction zone. In the one instance it is not unreasonable for a driver to be delayed a few moments if a construction vehicle is temporarily blocking a path; in the case of an emergency, such a delay is unreasonable. Likewise, a temporary limit to access to a parking spot is not as unreasonable as a temporary limit to access for emergency responders.

As such, Glen Riddle's complaint with regard to fire hazards will be sustained. Substantial record evidence demonstrates that Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with

regard to fire hazards created at the construction site. Sunoco's activities created new and different hazards that Sunoco did not properly remedy. These hazards are both a violation of Section 1501 of the Public Utility Code for failure to provide safe and reasonable service and Section 59.33 of the Commission's regulations for failing to properly warn and protect the public from danger and exercising reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33.

iii. Noise Levels

In its main brief, Glen Riddle argued that Sunoco's actions and inactions at the work site violated Sunoco's obligations to provide safe and reasonable service pursuant to the Public Utility Code. Glen Riddle also argued that Sunoco's actions and inactions violate Sunoco's obligations to reduce hazards to which customers and others may be subjected to pursuant to the Commission's regulations, and to warn and communicate in accordance with Sunoco's Public Awareness Plan with regard to noise levels at the construction site.

More specifically, Glen Riddle noted that it conducted sound monitoring during Sunoco's work on the property that consistently reached levels in the 80s, 90s and over 100 decibels directly outside and, in some cases, inside resident's homes. Glen Riddle presented the testimony of Dr. Davis who testified that Sunoco should have followed CDC and other guidelines with regard to noise safety. Glen Riddle added that Sunoco never communicated the need for ear protection at any time.

Glen Riddle further argued that Sunoco's efforts to mitigate the noise levels through the installation of sound walls created the most deafening noise as Sunoco used a hydrovac truck to install the sound walls over multiple days causing decibel readings in the 90s. Thus, Glen Riddle argued, Sunoco performed the loudest work on the property for extended periods without any sound mitigation at all. Glen Riddle also noted that Sunoco declined to monitor the sound levels during the construction and that such noise hazards adversely affected

Glen Riddle residents' work and schooling at a time when many were working or schooling from home due to the Covid-19 pandemic.

Glen Riddle also argued that Sunoco failed to rebut Glen Riddle's evidence of noise hazards because the noise readings taken by Sunoco were flawed since there is no evidence their meters were calibrated and there is no evidence of the sampling periods. Glen Riddle also noted that Sunoco's readings were not taken when the most noise was generated and did not capture the noise of the hydrovac truck. Glen Riddle noted that Sunoco's witness admitted that if the hydrovac truck was operating without sound walls – which it was – then the sounds would have been much louder than the 75 decibels the Sunoco witness measured. Glen Riddle added that Sunoco provided no warnings of the excessive sound. Finally, Glen Riddle argued that the study relied upon by Sunoco is flawed because Glen Riddle did not provide input on the study, the study did not measure the loudest times and the study also incorrectly assumed a receiver of five feet above ground where many of the apartments were three or four stories above grade and closer to the top of the sound walls. Glen Riddle concluded that, although the report from Sunoco's witness was flawed, Sunoco did not even follow it.

In response, Sunoco argued that it properly installed sound walls designed for this type of construction to mitigate noise stemming from construction machinery. Sunoco added that prior to construction it hired an acoustical engineering consultant to evaluate and model potential sound the construction would create and provide assessment to Glen Riddle. Sunoco stated that at no time did noise level present a safety issue, noting that Glen Riddle prohibited Sunoco from taking sound readings outside of the easement, including inside the apartment buildings. Sunoco noted that sound readings were taken twice a day in the work zone, where only authorized personnel were allowed and those readings did not exceed safe levels. Sunoco also noted that the company that designed the sound walls came back to the worksite to check their effectiveness and tried to improve their effectiveness. Sunoco added that its noise control engineering expert reviewed all the sound readings and found to a reasonable degree of professional certainty that the 24-hour exposure level was below the OSHA standard for hearing damage and also noted numerous flaws in the readings taken by Glen Riddle.

Sunoco concluded its main brief by noting that it went above and beyond to ensure its noise did not create a safety issue at the Glen Riddle property and noted that sound walls are not a requirement for the general public for construction projects unless a local ordinance establishes a specific sound level limit which was not the case here. Sunoco also concluded by stating that there is no evidence that anyone suffered any harm to their hearing.

In its reply brief, Sunoco argued that Glen Riddle has repeatedly misconstrued the evidence it presented and noted that it repeatedly referenced decibel readings that show sound levels dropping and spiking repeatedly. Sunoco argued that Glen Riddle did not undertake the continuous multi-hour-long sampling that is necessary to make a determination. Sunoco also noted that some of the sound readings were taken prior to the installation of the sound walls. Sunoco concluded its reply brief by noting that it did not create unsafe sound levels and mitigated the construction sound it did create to minimize inconvenience to residents.

Glen Riddle’s complaint with regard to noise hazards will be sustained. Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to the level of noise present at the construction site. *See, e.g.*, 66 Pa.C.S. § 1501.

Glen Riddle submitted 30 videos regarding noise levels. A review of each of these videos reveals the following:

Video	Description
1	on a windowsill, window open clear view of construction, readings approximate 85-90 dB
2	handheld, outside, along the perimeter next to the building and balcony’s, no sound wall, readings from 90-95 dB
3	outside, handheld, between the sound wall and the building. Readings in the low 90s
4	handheld, outside, next to construction, no sound wall, readings in high 80s
5	outside, on a balcony, handheld, no sound wall, readings in high 70s
6	high 80s, outside along the jersey barriers and near a construction vehicle
7	low 90s, outside, near construction vehicles, along the perimeter
8	Outside, readings in mid80s to mid-90s, cutting parking lot, clanging sound like cymbals

9	Low to upper 100s, outside, close to cutting of parking lot and cymbal sounds
10	Near opening of sound walls, close to perimeter, sounds in the low 50s
11	Upper 80s, standing in parking lot near opening of sound walls
12	Standing outside an opening from the sound walls with readings between 75-80 dB
13	Standing outside an opening from the sound walls with readings between 70-75 dB
14	Standing outside an opening from the sound walls with readings between 65-70 dB
15	Standing on a second floor balcony near sound wall with readings between 60-70 except when there are several bangs and the reading reaches mid-80s
16	Standing outside an opening from the sound walls with readings between 65-70 dB
17	Standing outside an opening from the sound walls with readings between 80 and low 90 dB
18	Standing outside an opening from the sound walls with readings between mid-70s and low 80s dB
19	Standing outside an opening from the sound walls with readings between in upper 70s dB
20	Standing outside an opening from the sound walls with readings between mid-70s to low 80s dB and it is dark outside
21	Standing outside an opening from the sound walls with readings in the low 100 dB
22	Standing outside an opening from the sound walls with readings between mid to upper 90 dB
23	Standing outside an opening from the sound walls with readings mid to upper 80s dB
24	Standing outside an opening from the sound walls with readings mid to upper 80s dB
25	Inside looking out a second floor window over the construction site at large construction vehicles. No sound walls in place. No reading given
26	Standing outside an opening from the sound walls with readings low to mid 90s dB
27	Standing outside an opening from the sound walls with readings mid-80s to mid-90s dB; dark outside
28	Standing outside an opening from the sound walls. No readings given
29	On a windowsill, taken from a second floor window overlooking construction site. No sound walls. readings in the mid-80s to low 90s dB
30	Video taken inside. No construction activity. Readings in the low to mid 30s dB

See, GRS-5 and GRS-33. Most of these videos are less than 30 seconds in duration. There is no indication as to who took the videos and when they were taken. It is clear from the videos, however, that the device used to obtain the readings is BAFX Products BAFS3608 Digital Sound Level Meter with a range of 30 decibels to 130 decibels.

These videos evidence several instances where the decibel levels exceeded 80 and went as high as in the 100s. Although this does not mean that the noise levels were consistently in those ranges or consistently in those ranges throughout the Glen Riddle property, there were high levels read at some times in certain parts of the property. As Glen Riddle witness Culp

testified, the EPA standard recommends limits of 75 decibels or lower for an 8-hour exposure for the general public. GRS St. 3 at 5. The OSHA standard for workplaces is 85 decibels over an 8-hour period. *Id.*, *see also*, Sunoco St. 8-R at 6. Here, record evidence demonstrates that the sound mitigation measures undertaken by Sunoco have not been effective and have created a situation that negatively affects those living and working at the Glen Riddle property. GRS St. 3 at 6. The sound mitigation measures undertaken by Sunoco allowed for unhealthy levels of sound to permeate the residences and offices at the Glen Riddle property and put Glen Riddle residents and employees at increased risk of hearing loss. GRS St. 3 at 6.

Furthermore, in many of the videos, there is either no sound wall present or the sound wall is open for some reason. In some of the videos, readings were taken indoors, on a balcony or close to a building. At least one video shows a dark sky, although it is not clear exactly what time of day the video was taken. Taken as a whole, in general, these videos demonstrate that the attempts made by Sunoco to mitigate the noise hazards were insufficient, at least at certain times. The readings of 75 decibels to over 100 decibels are unreasonable, even for a short duration, when viewed in light of Section 1501 of Public Utility Code, given the residential nature of the property at issue. 66 Pa.C.S. § 1501. Sunoco should have done more to reduce the noise hazards created by its construction activities.

This is true despite Sunoco's right to perform the construction activities within the easement, as noted above. Implicit in Sunoco's right to perform these construction activities within the easement is the obligation to do so in a safe manner, including without creating noise hazards. Substantial record evidence in this case demonstrates that Sunoco did not perform these construction activities in a reasonable manner with regard to noise hazards at the work site. I agree with Glen Riddle witness Culp who testified:

In my professional opinion, the sound mitigation measures undertaken by Sunoco have not been effective and have created a situation that negatively affects those living and working at the [Glen Riddle] property. They are allowing for unhealthy levels of sound to permeate the residences and offices at the property as demonstrated by the sound readings and resident complaints.

GRS St. 3 at 6. Mr. Culp testified that this situation puts the Glen Riddle residents and employees at increased risk of hearing loss according to various federal regulations and studies and creates an unhealthy environment that could easily be avoided by Sunoco. *Id.*

This is true despite Sunoco's arguments to the contrary. Sunoco's argument for example that the sound walls were installed to mitigate the noise stemming from the construction machinery does not negate the fact violations occurred. Most of the readings in the videos that are admitted into the record show the high decibel readings with the sound walls in place. As a result, the sound walls were not sufficient because the high decibel readings still occurred. Furthermore, there were openings in the perimeter created by the sound wall and some of those openings were near the apartment buildings. In addition, many of the videos show the sound walls themselves close to the buildings, sometimes just a few feet away from the building. Therefore, the evidence of record shows that the high decibels occurred even with the sound walls.

In addition, Sunoco's argument that the videos submitted by Glen Riddle should be rejected because they only show point-in-time readings will also be rejected. It may be necessary to have 24-hour readings, as Sunoco suggests, in order to prove a violation of an OSHA standard, or some other standard. The Commission does not have jurisdiction over the OSHA standard, however, and the OSHA standard is not at issue in this proceeding. Section 1501 of the Public Utility Code requires utilities to provide safe service at all times and it is sufficient for those purposes to determine that the point-in-time readings, as Sunoco refers to them, as demonstrated in the videos submitted by Glen Riddle, demonstrate a violation of Section 1501. 66 Pa.C.S. § 1501. The point-in-time loud noises are unreasonable under the Public Utility Code, even if they are not 24-hour readings. 66 Pa.C.S. § 1501. Likewise, Sunoco's arguments that the readings shown in the videos submitted by Glen Riddle were taken at gates or other openings in the sound walls and were taken with the loudest measurements from the hydrovac truck are also without merit and will be rejected. It is sufficient to find a violation of Section 1501 to determine that those loud levels were created at a point-in-time and not over a 24-hour period. *Id.* Whether the recordings were taken at openings does not negate the fact that

those levels were measured at the property at those times. Sunoco should have taken extra precautions to reduce or eliminate the openings.

Sunoco's argument that there is no applicable regulation specifying a safe or unsafe level of construction noise for the general public also does not negate any finding that the noise levels created by Sunoco at the work site were unreasonable. This argument will also be rejected. Section 1501 allows findings on a general basis that actions of a utility may or may not be unreasonable. 66 Pa.C.S. § 1501. To not find that Sunoco's actions were unreasonable simply because there is no specific regulation to apply to noise level over which the Commission has jurisdiction would negate the effect of Section 1501 and would significantly impair the Commission's ability to protect the public in general. Certainly, lack of a regulation stating a specific noise level limit does not mean that Sunoco can be as loud as it wants to be.

Sunoco's argument that Glen Riddle's videos should be rejected because it is unclear whether the device Glen Riddle used was calibrated prior to each day of measurements will also be rejected. Certainly, it is important to ensure that measuring devices are properly calibrated. In this case, however, 30 videos were submitted, many of which showed high decibel readings. Although undated, it is clear from the videos that the readings were taken over multiple days and at different times throughout the day while construction was ongoing. The specific date of each video is not important here as it is clear the videos were taken during construction at the construction site. It is unlikely that the device used to take the measurements was not properly calibrated on all of those days and for all of those readings. While it may be that some of the readings were taken when the device was not properly calibrated, taken as a whole, the videos show that excessive readings were taken at the work site and support finding that Section 1501 of the Public Utility Code was violated. 66 Pa.C.S. § 1501.

Finally, given that the property involved both a construction site and a place where residents live, both the OSHA standard of 85 decibels and the CDC/EPA standard of 75 decibels are instructive. As such, it is clear that there were 17 incidents of readings higher than 85 decibels and an additional six incidents of readings of between 75 and 85 decibels for a total of 23 incidents of unreasonably high noise levels at the construction site. Given the nature of

this construction site, Sunoco should have done more to mitigate noise levels, especially knowing residents are home during a pandemic.

As such, Glen Riddle’s complaint with regard to noise hazards will be sustained. Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to the level of noise present at the construction site. Record evidence demonstrates 23 instances of unreasonably high noise levels created by Sunoco at the construction site. Each of these instances is a violation of both Section 1501 of the Public Utility Code for failure to provide safe and reasonable service and Section 59.33 of the Commission’s regulations for failing to properly warn and protect the public from danger and exercising reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33.

iv. Calciment

In its main brief, Glen Riddle argued that Sunoco released calciment – a chemical – into the air at the property without warning Glen Riddle or its residents of its use, thereby endangering the health, safety and welfare of the residents in violation of Section 1501 and Section 59.33. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33.

Glen Riddle argued that calciment is a hazardous substance that poses substantial risk in the event of exposure and that Sunoco conceded its use at the property for 10 days in March 2021. Glen Riddle added that so much calciment was released into the air at the property that it left a visible layer of dust on resident’s cars, as shown by video recordings admitted into the record. Glen Riddle argued that the amount released was twice the workplace standard limit recommended by OSHA and constituted an “uncontrolled release.” Glen Riddle argued that, due to calciment’s hazardous effects, Sunoco should have warned Glen Riddle of its use at the property but Sunoco did not, thereby endangering the residents. Glen Riddle added that the safety officer on site should have immediately stopped work and contained the release once the calciment became airborne, noting that airborne calciment could be inhaled or tracked

throughout the property, including into residents' homes. Glen Riddle also argued that Sunoco did not employ the necessary remedial measures, including having an eye wash station on site. Instead, Sunoco gave residents certificates to a car wash.

Glen Riddle also argued that Sunoco failed to rebut the evidence presented by Glen Riddle regarding the safety threats created by the uncontrolled calciment release. Glen Riddle argued that Sunoco's arguments that calciment does not pose a danger to human health ignores OSHA guidance. Glen Riddle also argued that the conclusions offered by Sunoco's calciment expert lack a reasonable basis, noting that Dr. Brian Magee offered only conjecture that the videos showing clouds of dust could be water vapor. Glen Riddle concluded that a ruling should be in their favor regarding the unannounced and uncontrolled calciment release.

In response, Sunoco argued in its main brief regarding environmental issues in general, noting that its construction activities did not create toxicity or environmental issues. Sunoco noted at the outset that the Commission does not have jurisdiction over environmental permitting issues and that, even if it did, Glen Riddle failed to demonstrate any alleged issue was a violation or resulted in a significant safety concern. Sunoco addressed issues with regard to truck and equipment leak, prevention and containment, use of clean fill and storm water management, noting that there is not sufficient evidence of any violation of the Public Utility Code, a Commission order or a Commission regulation with regard to those matters.

With regard to the use of calciment, Sunoco argued that the use of calciment at the site was safe and reasonable, relying on the testimony of Dr. Magee, and did not cause any harm to residents at Glen Riddle. Dr. Magee testified, among other things, that construction data from the site showed dust almost every day during construction at very low levels of particulates that are found typically in the air everywhere, including throughout Delaware County, and that calciment dust is of a large size, not respirable, has a very low risk and did not implicate health concerns.

Sunoco also argued that Glen Riddle's arguments are speculative and unsupported. Sunoco added that neither of Glen Riddle's witnesses who testified on the topic is

an expert in toxicology and did not present substantial evidence upon which any violation can be found. Sunoco called the witnesses' statements speculative and uncertain. Sunoco concluded that the Commission lacks jurisdiction regarding air quality or environmental materials used on site, Glen Riddle's allegations are unsupported and unqualified, and Glen Riddle has failed to show that Sunoco has violated the Public Utility Code, a Commission regulation or a Commission order.

In its reply brief, Sunoco argued that Glen Riddle has spun Sunoco's use of calciment out of proportion and that there is no evidence of any resident or employee coming into direct contact with calciment, no evidence of calciment entering anyone's homes and no evidence anyone was harmed by calciment. Sunoco reiterated that Glen Riddle's witnesses' opinion is speculative and uncertain and should be rejected. Sunoco also reiterated that Glen Riddle's witnesses' opinion is not based on the necessary information and that the Commission does not have jurisdiction over allegations of air quality or the use of environmental materials. Sunoco concluded that Glen Riddle has misrepresented the record and that the unrefuted record shows that calciment did not pose any danger to the residents or employees at Glen Riddle.

Glen Riddle's complaint with regard to the use of calciment at the property will be denied. Glen Riddle has failed to satisfy its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation or with regard to the use of calciment.

In making these arguments, Glen Riddle presented 9 videos, 18 pictures, a letter sent from Glen Riddle counsel to Sunoco counsel on March 18, 2021, and a printout of an email exchange.

In the videos, each of which are approximately 15 seconds long and were taken between February 27, 2021, and March 18, 2021, a white plume can be seen rising in the air as part of various construction activities. *See*, GRS-182. With regard to the pictures, one picture shows packaging with "calciment" written on it. *Id.* Another picture shows a plume of white smoke in the construction site. *Id.* 16 pictures show cars in the Glen Riddle parking lot covered

with a white film. GRS-136. The March 18, 2021, letter from Glen Riddle counsel to Sunoco counsel pertains to the alleged release of calciment at the property and requests that immediate action be taken to contain the material. GRS-135. The letter forwards videos and a six-page, safety data sheet regarding calciment that, among other things, identifies hazards of the use of calciment. Finally, the email exchange presented in March and April 2021 pertains to complaints about the use of calciment at Glen Riddle and other locations. GRS-137.

As an initial matter, it is reiterated that the Commission does not have jurisdiction to hear claims regarding environmental issues or air quality that are beyond the scope of Section 1501 of the Public Utility Code. As noted throughout this decision, Section 1501 provides that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.” 66 Pa.C.S. § 1501. The disposition of Glen Riddle’s complaint in this case regarding the use of calciment at the construction site is based solely on Section 1501 of the Public Utility Code and any other applicable statutes or regulations over which the Commission has jurisdiction to consider.

As a result, Glen Riddle has failed to present sufficient evidence to show that Sunoco’s activities at the construction site violate the Public Utility Code. It is clear that calciment was used at the construction site and it is clear that there were plumes of some substance rising in the air as a result of the construction. Likewise, it is clear that a white substance covered many cars at the Glen Riddle property. What is unclear, however, is whether the white plumes and the substance on the cars were calciment and, even if they were, if either of those things jeopardize public safety and therefore are a violation of the Public Utility Code. *Id.*

The crux of Glen Riddle’s witness, Mr. Henry’s, surrebuttal testimony on this issue pertains to whether communications with Sunoco counsel about the release of calciment was adequate – not about the underlying issue of whether the plumes of dust or the coverings on the vehicles are in fact calciment and, if so, whether that presents a danger. *See*, Glen Riddle St. 5-SR at 4-5. Glen Riddle has not passed the threshold issue regarding whether the plume and the dust are calciment, despite Sunoco’s admission that calciment was used at the property, and, if it is calciment, if that creates a safety issue. This is particularly true in light of the testimony from

Sunoco's witness that the plume of smoke that Glen Riddle argued was calciment, was actually water vapor. To the extent that this plume and the dust were calciment and they presented a safety issue, additional evidence should have been presented detailing the risk to public safety. For example, such additional evidence could have been in the form of medical records from residents who have suffered harm as a result of inhaling calciment or lab testing results verifying that the dust on the vehicles was, in fact, calciment. No such evidence was presented.

The fact that Sunoco offered residents certificates for car washes does not mean that the white dust on the car was calciment – it just means that Sunoco believed their construction activities were making the cars dirty and they wanted to give everyone a free car wash. It is not unreasonable given a construction project of this magnitude and the close proximity of the construction site to the residential property that dust would form on vehicles during construction. While it certainly is true that Sunoco could have violated the Public Utility Code even if there was no harm or injury caused, if these pictures and videos showed a dangerous release of calciment, there would be more evidence of problems to support such a finding given how pervasive the dust was. Again, however, no such evidence has been presented.

Because Glen Riddle has failed to satisfy its burden to demonstrate that Sunoco violated the Public Utility Code or any other applicable law because of the release of calciment, Glen Riddle's argument that Sunoco failed to properly warn and protect the residents at Glen Riddle also must be rejected.

As such, Glen Riddle's complaint with regard to the use of calciment at the property will be denied. Glen Riddle has failed to satisfy its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to the use of calciment at the Glen Riddle property.

v. Water Main Break

In its main brief, Glen Riddle argued that Sunoco caused a water line break on the property by failing to properly backfill the water line pipe to secure it during Sunoco's work on the pipeline, which lay directly beneath the water line, and that Sunoco concedes this by offering no evidence disputing this testimony. Glen Riddle added that the water line break coupled with the use of chemicals at the property threatened the health and safety of the Glen Riddle residents. Glen Riddle also argued that Sunoco failed to properly test the water for the presence of petroleum hydrocarbons and never pursued any testing before notifying Glen Riddle residents that the water was safe for human consumption. Glen Riddle also argued that Sunoco knew about its own contractor's guidance for three weeks before providing such information to the Glen Riddle residents. Glen Riddle added that, instead, Sunoco recommended that Glen Riddle's residents should make do with two portable toilets and bottled water.

Glen Riddle then reiterated that Sunoco did not offer any evidence to rebut the evidence that Sunoco caused the line break at the property or that it introduced any evidence that it took any measures to ensure the integrity of the water line. Glen Riddle argued that, instead, Sunoco insisted that the water line break was "not a big deal."

In response, Sunoco argued that it took all reasonable steps to protect underground utilities and, when a water line broke, took all reasonable steps to ensure its repair while minimizing inconvenience to the residents. Sunoco argued it did not violate the Public Utility Code or a Commission regulation or order. More specifically, Sunoco argued that prior to beginning construction, Sunoco utilized OneCall procedures and performed a four-way sweep to locate underground facilities. Sunoco added that it requested records of utilities in the complex from Glen Riddle but Glen Riddle did not provide such records.

Sunoco recognized that its construction personnel saw water bubbling to the surface within the construction zone on May 26, 2021, and determined it was a leak from a Glen Riddle water line. Sunoco added that the line was repaired within five hours and ready to be tested and placed back into service. Sunoco noted while the water was out, they provided bottled

water and port-a-potties to the property to minimize any inconvenience. Sunoco added that Glen Riddle refused to allow Sunoco to test the water but performed its own testing that took more than two weeks, during which time Sunoco continued to provide bottled water to the residents.

In its reply brief, Sunoco argued that it used flume pipe and straps to protect all utilities that were exposed in the construction workspace, including the water line. Sunoco argued that there is no violation of the Public Utility Code because it took all reasonable steps to prevent the water line break from occurring and a water line break or outage is not an uncommon event. Furthermore, Sunoco argued that it took all reasonable steps in response to the water line break, including having the line repaired within five hours, noting that Aqua performed testing which confirmed no bacteria in the water. Sunoco also attacked the credibility of the witness presented by Glen Riddle on this issue and argued that Glen Riddle misconstrued two emails to allege that Sunoco ignored its own plumber's advice.

Glen Riddle's complaint with regard to the water line break at the construction site will be denied. A review of the exhibits admitted into the record reveals Glen Riddle has failed to satisfy its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to the water line break.

For example, GRS-139 is a lengthy email exchange between counsel for Sunoco and counsel for Glen Riddle beginning on May 26, 2021, the day of the water line break, and ending on May 27, 2021. In this email exchange, counsel debate the response to the water line break, including residents' ability to use the water following the repair of the water line, and the need for testing. GRS-139. GRS-140 is a picture of two port-a-potties placed outside the construction site. GRS-140. GRS-141 and 142 are two aerial views of the construction site. GRS-141 and GRS-142. Finally, GRS-183 is three pictures of the water line break. GRS-183.

There is no dispute that Sunoco's actions caused the water line on Glen Riddle's property to break. Without question, this is unfortunate and regrettable. Hundreds of residents at Glen Riddle were severely inconvenienced without access to potable water, especially given that record evidence shows the break occurred during a period of very hot weather. This severe

inconvenience is not minimized and utilities, including Sunoco, are required to take all necessary steps both to prevent water lines from breaking and to restore access to safe and reliable water service as quickly and expeditiously as possible.

However, water line breaks are an unintended consequence of major construction such as that which occurred at the Glen Riddle property. Just as with the inconvenience associated with parking hazards created by Sunoco's activities, *supra*, major construction causes increased potential for water line breaks. In this instance, again, Sunoco was operating within its easement and the approval for such operations likely came with the understanding that there would be an increased risk of water line breaks (when compared to no construction activity at all). Therefore, the fact the water line broke as a result of Sunoco's construction activities does not, by itself, constitute a violation of the Public Utility Code, a Commission order or a Commission regulation. 66 Pa.C.S. § 1501. The inconvenience caused by the water line break is different than the inconvenience caused by the other issues complained of by Glen Riddle which do constitute violations.

In this case, neither is there any record evidence that demonstrates that Sunoco's actions *after* the water line break occurred constitute a violation of the Public Utility Code, a Commission order or a Commission regulation. 66 Pa.C.S. § 1501. Record evidence demonstrates that Sunoco provided bottled water for residents, ensured that the water line was repaired and made sure residents have water that was safe to use and drink. *See*, Sunoco St. 4-R at 6; Sunoco St. 4-RJ at 3. Sunoco recognized that at approximately midmorning on May 26, 2021, construction personnel saw water bubbling to the surface within the work zone and determined that it was a water leak from Glen Riddle's water line. *Id.* Within approximately five hours, Sunoco had the line located, repaired, turned on by the local public water utility and ready to be tested. *Id.* Subsequently, there were issues with regard to the testing of the water once the line was reactivated, which were exacerbated given the fact that the water line broke in a major construction site. But there is not sufficient evidence in the record that demonstrates that any actions, or inactions, by Sunoco violated the Public Utility Code, a Commission order or a Commission regulation.

As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. Section 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993). *See also*, *Bennett v. UGI Cent. Penn Gas, Inc.*, Docket No. F-2013-2396611 (Initial Decision dated April 10, 2014; Final Order entered May 29, 2014) ("A public utility cannot be held to have provided inadequate or unreasonable service because it failed to anticipate unforeseen or unusual circumstances or occurrences."). A spectrum of acceptable behavior exists based upon the particular facts of each case. *Borough of Sewickley v. Verizon Pa. Inc.*, Docket No. C-00003256, 2001 Pa. PUC LEXIS 29 (June 21, 2001).

There is no substantial evidence in this proceeding that Sunoco's response to the water line break was inadequate. To find that Sunoco's actions in response to the water line break in this case is a violation of the Public Utility Code would be engaging in micro-managing of Sunoco's actions. *Pa. Pub. Util. Comm'n. v. Phila. Elec. Co.*, 561 A.2d 1224 (Pa. 1989) (it is long established that the Commission may not interfere in the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown). Certainly, the fact that a water line broke during construction was unfortunate and some aspects of the situation were less than ideal (i.e., that the water line break occurred during a hot period). None of Sunoco's actions, or inactions, however, rose to the level of a violation. Rather, I agree with Sunoco that, when the water line broke, Sunoco took all reasonable steps to ensure its repair while minimizing inconvenience to residents. Glen Riddle's argument to the contrary will be rejected.

In addition, there does not appear to be any Commission regulation that requires water line breaks to be responded to and repaired within a specific time period. And, Glen Riddle has not cited to any cases where the Commission found that the mere breakage of a water line, in and of itself, constitutes inadequate, inefficient, unsafe, or unreasonable service. In evaluating a claim of inadequate service relating to a broken water line the Commission has focused on the number and frequency of breaks that have affected the complainant or upon the

utility's repair efforts. *See, Dongelewicz v. Oneida Water Co.*, 1994 Pa. PUC LEXIS 76 (five interruptions of service in fifteen months constitutes inadequate service); *Dopp v. Williamsburg Borough Dep't of Water & Sewer*, 59 Pa. PUC 25 (1984) (failure to repair water line or to provide a satisfactory alternative method of supply constitutes inadequate service); *Murray v. Phila. Suburban Water Co.*, Docket Number C-00004623 (Opinion and Order entered July 12, 2002) (prompt location and repair of water line break, under the circumstances of six other breaks and water not surfacing at break site, constituted adequate and reasonable service); *Rahn, et al. v. Pa. American Water Co.*, Docket No C-20054919 (Opinion and Order entered July 27, 2007). No inadequate service is present here. Rather, record evidence demonstrates that the water line was repaired within five hours and that during that time and the subsequent testing period, Sunoco provided bottled water and access to port-a-potties. These actions are reasonable.

Finally, Glen Riddle's arguments regarding delays in testing once the water was turned back on will be rejected. Both parties presented extensive argument regarding this issue. Glen Riddle, however, has failed to satisfy its burden to demonstrate that Sunoco's actions with regard to testing the water after the line was turned back on violated the Public Utility Code or a Commission order or regulation. Sunoco acted reasonably in response to the water line break, including the testing of water.

As such, Glen Riddle has failed to satisfy its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to the water line break.

vi. Communications with Public

In its main brief, Glen Riddle argued that, given the evidence of violations of the Public Utility Code and Commission regulations, Sunoco's failure to communicate with Glen Riddle also violates its Public Awareness Plan, which requires Sunoco to educate the public on its ongoing pipeline integrity management activities. Glen Riddle relied on a recent decision in *Baker* by ALJ Barnes in support of its position, including that the Commission upheld the ALJ's directive for Sunoco to hold additional public awareness meetings. Glen Riddle added that

Sunoco's failure to adequately communicate with and warn Glen Riddle and the residents regarding the construction activities at the property demonstrates the need for public outreach required by the Public Utility Code.

Glen Riddle provided several examples where it believed its attempts, or its counsels' attempts, to obtain critical safety information both before and during construction went unanswered. Glen Riddle added that Sunoco's refusal to engage with Glen Riddle and respond to its questions and concerns were only rectified either by Glen Riddle himself or after repeated requests and/or legal actions initiated by Glen Riddle. Glen Riddle added that Sunoco's failure to respond to legitimate safety concerns is unacceptable and that it had to expend substantial sums to obtain the changes. Glen Riddle then addressed the attempts by Sunoco's expert McGinn regarding Sunoco's communications with Glen Riddle and its residents, noting in particular several failures. Glen Riddle concluded that Sunoco dismissed Glen Riddle's concerns regularly, even after significant threats to safety were realized, and that the law requires Sunoco to meaningfully communicate with the communities in which it operates, which did not occur here.

In response, Sunoco argued that the law and evidence of record clearly demonstrate that Sunoco was both in compliance with all regulations for new pipeline construction and went above and beyond a reasonable standard of care in keeping Glen Riddle informed at all stages of construction. Sunoco added that it was responsive to hundreds of emails, demands, threats, phone calls, in-person meetings and other requests that went well beyond what is required for new pipeline construction.

As a preliminary matter, Sunoco argued that its Public Awareness Plan is not applicable to this project because it does not pertain to new pipeline construction, the only construction at issue here. Sunoco added that it complied with federal regulations that require public awareness brochures be sent every two years to the affected public. Sunoco also argued that neither Chapter 59 of the Commission's regulations nor regulations of the Pipeline and Hazardous Materials Safety Administration create public awareness obligations related to new pipeline construction either. Sunoco argued that, instead, the Commission initiated a rulemaking

proceeding in 2019 to amend Chapter 59 to address these issues but even that rulemaking does not include communication requirements pertaining to new construction. Sunoco argued that Glen Riddle's communication requirements are subjective preferences used to leverage its economic demands. Sunoco argued that the Commission should find its conduct was both reasonable and prudent under the circumstances.

Next, Sunoco argued that it went to great lengths to communicate extensively and reasonably to keep Glen Riddle informed of its construction activities at the property. Sunoco divided its argument into pre-construction communications and communications during construction. With regard to pre-construction communications, i.e., those communications occurring prior to December 2020, Sunoco noted the various communications with Glen Riddle including the original easement itself, the negotiation of the temporary easement which included details of construction, pre-construction inspections and meetings and a list of questions from Glen Riddle that Sunoco responded to. With regard to communications during construction, Sunoco noted that it provided ongoing construction updates to Glen Riddle residents, provided rent relief, provided a hotline for concerns, worked with local officials, responded to emails and hosted a virtual town meeting. Sunoco added that its continuous line of communications with Glen Riddle during construction, even while dealing with active litigation on multiple fronts, was both reasonable and prudent and did not reflect in any way a violation of any Commission rule, regulation or order that is applicable to utility construction.

Finally, Sunoco argued that it communicated extensively with local government, including Middletown Township and Delaware County, regarding all aspects of new pipeline construction and ongoing operations of pipelines within their borders, including bi-weekly meetings and ensuring that emergency vehicles could enter and exit the property during active construction without complications. Lastly, Sunoco discussed the financial mitigation provided to the residents at Glen Riddle and noted that very few residents raised complaints. Sunoco concluded that none of these enhanced communications were required by the Public Utility Code or the Commission and that Sunoco took every reasonable effort to properly communicate with the public.

In its reply brief, Sunoco argued, among other things, that Glen Riddle's arguments mischaracterize and misrepresent the record evidence in this proceeding regarding the communications that occurred between the parties as well as the Commission proceedings on public awareness for operational pipelines that it argued do not apply to this case. Sunoco reiterated that it responded to and did not dismiss the concerns raised by Glen Riddle.

Glen Riddle's complaint with regard to Sunoco's failure to communicate and warn will be sustained. Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to Sunoco's communications as part of the construction activities at the construction site at issue in this case. Record evidence demonstrates that extensive communications have occurred between Glen Riddle and Sunoco related to the construction activities at the Glen Riddle property. However, these communications were generally not directed to the residents of Glen Riddle, and were untimely or insufficient to provide the residents of Glen Riddle with the necessary awareness of the major construction activities that would occur in such close proximity to their homes. Such communications were not continuous improvement the Commission seeks from Sunoco. *See*, Dinniman.

As a preliminary matter, Sunoco's argument that the Public Awareness Plan, and other applicable law, do not apply to *new* construction will be rejected. There are several provisions of the Public Awareness Plan that pertain to construction of pipelines, not just operation of pipelines. For example, in the Public Awareness Communication Summaries, Section 7.4.5 of the plan, Tables 1, 2 and 3 each entitled "Public Awareness Communications for the Affected Public," residents located along the pipeline right of way and "places of congregation" are to be given "supplemental messages" regarding "any planned major maintenance/construction activity" including print materials, personal contact, telephone calls, group meetings and open houses "as determined by specifics of the pipeline segment or environment." This plan was effective April 1, 2018, and references "49 CFR 195.440; RRC 8.235, 8.310, 8.315." As a result, Sunoco's Public Awareness Plan applies, at least in part, to the construction activities performed by Sunoco at the Glen Riddle property and, therefore, by extension to the residents of Glen Riddle. Sunoco's arguments to the contrary will be rejected.

Furthermore, regardless of whether the Public Awareness Plan or federal regulations are applicable to the type of construction present at the construction site on the Glen Riddle property, certainly the Public Utility Code and the Commission's regulations are applicable. As noted in the order denying the preliminary objections in this case dated January 28, 2021, the Commission has jurisdiction to hear claims that a utility is providing unsafe service. *See*, 66 Pa.C.S. § 1501 (“every public utility shall furnish and maintain adequate, efficient, *safe* and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and *the public.*”) (emphasis added), and 52 Pa. Code § 59.33(a) (“each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.”). When viewing the evidentiary record in light of these applicable laws, either in addition to or instead of the Public Awareness Plan and federal regulations, it is clear that Sunoco's construction activities at the Glen Riddle property violate the Public Utility Code or a Commission regulation and, again, do not constitute continuous improvement in communications efforts that is required of Sunoco.

For example, in the testimony of Sunoco witness McGinn, the Vice President of Public and Government Affairs for Energy Transfer Partners (formerly Sunoco Pipeline), Mr. McGinn was asked whether Sunoco provides periodic information to the public, including Glen Riddle and its residents, regarding the pipelines to which Mr. McGinn replied:

Yes. For instance, Exhibit JM3 is the latest public awareness brochure that we have sent in September 2020 to residents who live or work near pipelines. We do this mailing every two years, and the messaging includes a broad array of information much of which is outlined in RP1162.

SPLP St. 7-R at 7. A general mailing such as Sunoco Exhibit JM-3 that is done every two years and includes a “broad array of information” is not helpful to the residents of Glen Riddle to know and be prepared for the major construction activity that is about to take place within feet of their residences. The general mailing is extremely detailed and comprehensive and, without

question, helpful in multiple other situations. Sunoco Exhibit JM-3, however, does not adequately raise public awareness for Glen Riddle residents of the construction at the property in this case.

In addition, when informed that “various witnesses for complainant Glen Riddle Station in [their] direct pre-submitted testimony and exhibits have alleged that Sunoco does not engage in sufficient communication and notification with it *and to its residents*,” Mr. McGinn replied, in part: “When an event that impacts a municipality or its residents occurs, or is scheduled to occur, Sunoco engages in direct, personal communications (face-to-face, electronic, telephonic) *with relevant local and County officials*.” Sunoco St. 7-R at 8 (emphasis added). Mr. McGinn then identified Middletown Township and multiple state senators and representatives, the PA DEP and the Commission as officials Sunoco communicated with. *Id.* at 8-9. When asked about communications and notifications *to residents*, Mr. McGinn discussed communications and notifications *to township officials*. While it may then be incumbent upon the township and other officials to communicate with the residents, that does not absolve Sunoco of its obligation under the Public Utility Code and the Commission’s regulations to communicate *with the residents* as well (i.e., to make its functions safely to the public). 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33. Mr. McGinn then proceeds to testify regarding his communication with multiple *emergency responders*. *Id.* at 9-10. Sunoco’s obligation to provide public awareness requires that the public be made aware.

Mr. McGinn does testify regarding efforts undertaken “above and beyond” its Public Awareness Plan regarding communications regarding construction with Glen Riddle and its residents. *Id.* at 11-12. Mr. McGinn testified regarding letters (SPLP Exhs JM-5 and JM-6), updates to Middletown Township shared on its website, updates to Glen Riddle shared on its website, a 24/7 toll free hotline, 250 refrigerator magnets (SPLP Exh JM-7), communications with the school district, work with first responders, information on Sunoco’s website and a virtual town hall on February 23, 2021. However, a review of Sunoco Exhibits JM-5, JM-6 and JM-7 reveals that they are also not adequate to satisfy Sunoco’s obligations under the Public Utility Code and Commission regulations to communicate with the public.

The letters in Sunoco Exh. JM-5 are dated January 28, 2021, March 1, 2021, and March 27, 2021, after construction commenced. The information contained in these letters is too general to be helpful to Glen Riddle residents. There is information regarding where the construction will occur but there is no information regarding daily issues such as high noise level, placement of the sound walls in close proximity to the buildings, the traffic congestion created on the property, the use of port-a-potties, etc. These are the everyday, real-life issues that will most impact the residents of Glen Riddle and that are complained of in the complaint that is the subject of this proceeding. The March 27, 2021 letter discusses noise mitigation and traffic safety but, by that time, the unsafe conditions have already occurred. Similarly, the letters in Sunoco Exhibit JM-6, although they are dated pre-construction, are too general to provide the residents of Glen Riddle with sufficient awareness of what the construction activity will look like and how it will impact the daily lives of the Glen Riddle residents. Again, the purpose of public awareness obligations is to make the public aware.

These efforts of Sunoco were helpful. Yet, to fully ensure that Sunoco was maintaining the safety of the public, as is required in Section 1501, more detailed and specific communications regarding the significant impact of the daily lives of the residents of Glen Riddle was necessary. Toll-free hotlines, information on websites and refrigerator magnets were not sufficient. And, while a virtual town hall was held, it was not held until February 23, 2021, well after the major construction project and significant issues had already arisen.

With regard to the testimony of Sunoco witness Amerikaner, an attorney and member of the team of attorneys who represents Sunoco in eminent domain matters, real estate matters, land use matters, municipal law matters, and various litigation matters with respect to the Mariner East 2 pipeline project, and who also worked on the portion of the project related to the Glen Riddle apartments, his testimony pertains entirely to his communications with counsel for Glen Riddle. *See generally*, Sunoco St. 2-R. This included discussions regarding the temporary easements for the property, permits that needed to be obtained, work schedules, installation of sound walls, safety issues, inspections, litigation, sound levels and traffic ingress and egress during construction. Sunoco is again commended for its efforts to communicate as part of the construction project. Certainly, such a major construction project involves many

communications among counsel. Regrettably, the evidence demonstrates that many of these communications became contentious and perhaps unnecessarily overly complicated. There are multiple print-outs of emails admitted into the record of this case that demonstrate that such contention clearly created ill-will between the parties. Nonetheless, all of the communications to which Mr. Amerikaner testified, and every exhibit sponsored by Mr. Amerikaner, were not sufficient to notify the residents of Glen Riddle.

As a result, Mr. Amerikaner's testimony suffers the same defect as Mr. McGinn's testimony – the communications were not to the people whose lives were most affected by the construction activities, the residents of Glen Riddle. For example, Mr. Amerikaner's discussions with counsel for Glen Riddle about the easement is not information regarding daily issues such as high noise level, placement of the sound walls in close proximity to the buildings, the traffic congestion created on the property, the use of port-a-potties, etc. In this situation, given the close proximity of major construction to residential homes, Sunoco should have done more to communicate to those residents, but did not. Further, town halls should have been held months in advance and on multiple occasions, not one-time, two months after the construction began. Holding multiple town halls in advance would have been consistent with Sunoco's Public Awareness Plan and the Commission's directive to continuously improve its communications to the public as is required in Dinniman.

Instead, record evidence demonstrates that most of Sunoco's communications with Glen Riddle were reactive or only in response to inquiries from Glen Riddle and that Glen Riddle was limited in its ability to provide input on Sunoco's construction plans. GRS St. 1-SR at 31-34; GRS St. 2-SR at 3. The location of the sound walls and the impact on community emergency safety and resident hearing safety should have been thought through and planned for in the construction planning prior to submitting the permitting establishing the limit of disturbance. GRS St. 2-SR at 5. Glen Riddle did not have an adequate opportunity to provide input regarding the sound wall location. GRS St. 2-SR at 5. For example, Sunoco never asked Glen Riddle about the location of bedrooms for purposes of egress from the apartments. GRS St. 3-SR at 2. Without proper notification and full cooperative review with Glen Riddle, it is not possible to have important safety aspects reviewed and incorporated in the design of the community flow and safety patterns, relocate

residents with particular needs or make other accommodations, such as installing temporary sidewalks. GRS. St. 3-SR at 3.

Sunoco's arguments to the contrary are without merit and will be rejected. For example, and as noted above, Sunoco's arguments that the Public Awareness Plan and similar applicable law do not relate to new pipeline construction is irrelevant because Sunoco still has obligations under Section 1501 of the Public Utility Code and Section 59.33 of the Commission's regulations. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33. Similarly, Sunoco's arguments that a rulemaking is pending regarding these issues also does not absolve Sunoco of its current obligations under Section 1501 of the Public Utility Code and Section 59.33 of the Commission's regulations. The fact that Sunoco received a substantial number of emails, phone calls and other communications from Glen Riddle's counsel or its residents, or that Sunoco's communications "went above and beyond," also does not support finding that Sunoco's actions did not violate Section 1501 or Section 59.33. This is true regardless of the contentious nature of those communications or whether Glen Riddle's counsel was attempting to use the communications as leverage for litigation. Sunoco has not otherwise made any arguments that support rejecting a finding that Sunoco's communications to the public regarding the construction activities at the Glen Riddle site violated the Public Utility Code or the Commission's regulations. Sunoco's communications were generally not to the residents of Glen Riddle. Furthermore, Sunoco's communications were untimely and/or insufficient to provide the residents of Glen Riddle with the necessary awareness of the major construction activities that would occur in such close proximity to their homes and were not consistent with Sunoco's Public Awareness Plan or its requirement to continuously improve communications.

Notwithstanding whether the construction activities performed by Sunoco at the construction site at issue in this proceeding were safe or reasonable, as discussed above, Sunoco's communications regarding those activities were deficient. This is true regardless of the contentious nature of the matter or the intentions behind the communications from opposing counsel. In addition, while other entities may have had the responsibility of also communicating with the *residents* that were affected by the construction activities, including the Township and the owners of the Glen Riddle apartments, that does not absolve Sunoco of its obligation to

communicate effectively with the residents. Record evidence demonstrates that Sunoco failed to meet those obligations. A general brochure that was sent every two years did not provide the necessary information needed regarding how the construction was to impact the daily lives of the residents living in such close proximity to the construction. Nor is a virtual town hall meeting that was held weeks after the construction, and many related problems, began. Sunoco is commended for many attempts to communicate with the Glen Riddle property owners, and its counsel, as well as elected officials, emergency responders, the school district, etc. The construction was a major undertaking that required significant communications to those parties. However, the communications to the people who were impacted the most by the construction – the residents of Glen Riddle – was not reasonable and fell short of what was required by the Public Awareness Plan, Dinniman, Section 1501 and Section 59.33. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33; Dinniman.

As such, Glen Riddle’s complaint with regard to Sunoco’s failure to communicate and warn will be sustained. Glen Riddle has satisfied its burden of proof that Sunoco violated the Public Utility Code, a Commission order or a Commission regulation with regard to Sunoco’s communications to the public as part of the construction activities at the construction site at issue in this case. Sunoco’s inadequate communications to the residents of Glen Riddle constitutes: (a) a violation of Section 1501 of the Public Utility Code for failure to provide safe and reasonable service; (b) a violation of Section 59.33 of the Commission’s regulations for failing to properly warn and protect the public from danger, and exercising reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities; and (c) a violation of Sunoco’s requirement to continuously improve its communications to the public. 66 Pa.C.S. § 1501; 52 Pa. Code § 59.33; Dinniman.

c. Sunoco’s Arguments

In its briefs, Sunoco raised several arguments regarding why Glen Riddle’s complaint should be dismissed, in addition to responding to the arguments raised by Glen Riddle. None of these arguments, however, warrant denying Glen Riddle’s complaint or otherwise

finding that Sunoco's construction activities at the worksite do not violate the Public Utility Code or the Commission's regulations, as discussed above.

To begin, Sunoco provided legal argument regarding evidentiary standards on expert opinion and lay witness testimony. Sunoco articulated the standard for expert qualifications and cited to the Pennsylvania Rules of Evidence and supporting cases for the notion that the witness's expert testimony is limited to those issues within his or her specific expertise and that an expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. Sunoco also noted that lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact and that the Commission has consistently held that a lay witness is not qualified to testify or offer exhibits related to any issues outside of his or her direct personal knowledge.

Sunoco's arguments regarding evidentiary standards are duly noted. There has been much debate in this proceeding regarding the qualifications and competencies of the various witnesses presented. Sunoco's arguments, however, do not negate the above findings of violations regarding Sunoco's actions at the construction site. In particular, the findings of violations of Section 1501 and 59.33 do not always require expert testimony as support. Such findings can be made without expert testimony as they are based on a reasonableness standard and do not rely on technical matters involving sound, fire code, parking, fencing, COVID-19, or environmental and related regulations, which are matters over which the Commission lacks jurisdiction to hear beyond the reasonableness standard. As noted previously, the evidence presented in this case will not be viewed in terms of issues over which the Commission lacks jurisdiction to hear. As a result, the findings of violations above are not invalidated due to a lack of expert testimony on certain issues and Sunoco's arguments with regard to evidentiary standards will be rejected.

Next, Sunoco's argument that the complaint is moot is also without merit and will be rejected. Sunoco argued that Glen Riddle's arguments are related to *active* construction at the work site which are moot because the construction activities have been completed as of July 13, 2021. Sunoco added that Glen Riddle has conceded that its complaint would be rendered moot

once construction was finished and argued that Pennsylvania courts agree that an actual case or controversy must exist at all stages of the judicial or administrative process. Sunoco added that the only relief sought – enjoining or retraining Sunoco’s construction at Glen Riddle’s property – can no longer be granted and that the new pipeline construction at the property was completed without any safety related incidents and there is nothing to enjoin. Sunoco concludes that the complaint should be denied as moot.

While it is fortunate that the construction was completed without any major accidents or injuries, that does not negate the fact that violations of the Public Utility Code or a Commission regulation have occurred. Nothing in Section 1501 of the Public Utility Code or Section 59.33 of the Commission’s regulations requires actual harm to have occurred for a violation to be found. It is irrelevant that the construction has been completed when determining whether a violation occurred during the construction. To hold such a standard would significantly impair the Commission’s ability to find any violations of the Public Utility Code if such violations were to disappear as soon as construction on any project by a utility is completed. Doing so could put an unnecessary sense of urgency on completing projects, or a Commission investigation into allegations of violations, when more time is needed. That is not a reasonable standard. Simply because construction at a site is completed does not automatically negate any prior violations of the Public Utility Code or the Commission’s regulations. In fact, the imposition of civil penalties by its nature must occur after the fact.

Furthermore, in this case, an injunction is not the only possible remedy where violations of the Public Utility Code or Commission regulations could also result in the imposition of civil penalties. Certainly, an injunction can no longer be imposed because construction at the site has ceased. But the ability to impose a civil penalty or some other corrective measure remains regardless of whether Sunoco has completed the construction project. Sunoco’s argument to the contrary will be rejected.

Sunoco also argued that the complaint should be dismissed because Glen Riddle failed to reply to new matter and failed to properly verify the complaint. These arguments will also be rejected. With regard to new matter, Sunoco argued that Glen Riddle’s failure to reply to

Sunoco's new matter means that the allegations in the new matter are deemed admitted and the complaint should be dismissed. Sunoco articulated several provisions in its new matter that it believes are deemed admitted because Glen Riddle failed to reply to them, noting that it provided a counterstatement of fact to every material allegation Glen Riddle made in its complaint. With regards to the verification of the complaint, Sunoco argued that Glen Riddle failed to show that Stephen Iacobucci was authorized to sign the verification and, therefore, the complaint should be dismissed. Sunoco references Section 1.36 of the Commission's regulations regarding formal complaints and notes that Stephen Iacobucci is not an employee of Glen Riddle and that the appropriate person to verify the complaint was Raymond Iacobucci. 52 Pa. Code § 1.36. Sunoco concluded that, consequently, with no valid verification the complaint must be dismissed.

Sunoco's arguments will again be rejected. With regard to Glen Riddle's failure to respond to Sunoco's new matter, it is noted that Section 5.63(b) of the Commission's regulations provides that "failure to file a timely reply to new matter *may* be deemed in default, and relevant facts stated in the new matter *may* be deemed to be admitted." 52 Pa. Code § 5.63(b) (emphasis added). The use of the permissive word "may" twice in this regulation indicates that Glen Riddle's failure to file an answer to new matter does not automatically result in admission of Sunoco's denials and counterstatements in its new matter, as Sunoco argues. Rather, such admission is discretionary and will not be countenanced here where a significant record has already been developed wherein Glen Riddle has refuted Sunoco's allegations. It would be unreasonable at this juncture of the proceeding to negate the entire evidentiary record developed over the course of several months simply because Glen Riddle did not respond to Sunoco's new matter. To do so would be a waste of the Commission and parties' resources. A decision should be made on the record developed and not cast away due to a formality, especially one that is discretionary. As a result, Sunoco's argument will be rejected.

Similarly, Sunoco's argument regarding the failure of Glen Riddle to properly verify the complaint will also be rejected. Sunoco is correct that Section 1.36 provides in pertinent part that:

Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

52 Pa. Code § 1.36(a). Although in this instance, the regulation uses the mandatory term “must” instead of the permissive term “may,” Sunoco’s argument again fails because it would be unreasonable to allow parties to litigate an entire proceeding, and develop such a significant record, and not have a determination made on that record. This is especially true where, as is the case here, there was a verification, but the verification may have been signed by the wrong person. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Here, Glen Riddle’s defect of procedure will be disregarded because Sunoco’s substantive rights have not been harmed. Sunoco’s argument to the contrary will be rejected and Glen Riddle’s complaint will be heard on the merits.

Next, Sunoco argued in its reply brief that there is no evidence that any harm occurred to any Glen Riddle resident or employee as a result of the pipeline construction and that Glen Riddle’s claims of harm are speculative and insufficient under Pennsylvania law to support a finding that Sunoco violated a statute, regulation or Commission order. In doing so, Sunoco also argues that “inconvenience is not harm, just as highway construction, detours or delay are not harm.” *See*, Sunoco R.B. at 16. Sunoco added that however inconvenient the temporary construction was to Glen Riddle and its residents, the evidence demonstrates that reasonable care was taken by Sunoco to minimize hazards and reasonably improve safety. Sunoco’s argument, however, fails to recognize that Section 1501 includes “convenience” as part of every utility’s obligation: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, *convenience* and safety of its patrons, employees and the public.” 66 Pa.C.S. § 1501 (emphasis added). While some issues raised by Glen Riddle were addressed

above based on a degree of inconvenience, the mere fact that inconvenience is at issue does not mean that no violation can be found. Sunoco's argument to the contrary will be rejected.

Finally, Sunoco has made several references in its briefs that Glen Riddle is using the Commission's complaint process to bolster its settlement leverage or positioning in other civil litigation. This argument will also be rejected. The actions of Glen Riddle's counsel are governed by the Pennsylvania Rules of Professional Conduct which prohibits the filing of pleadings, including complaints, for improper purposes. Rules of Prof. Conduct, Rule 3.1, 42 Pa.C.S.A. Regrettably, at times, the actions of all counsel in this proceeding were often unnecessarily contentious. Such contentious actions cannot be condoned. Regardless, sufficient evidence has been presented that demonstrates that Glen Riddle's complaint will be sustained in part due to violations of the Public Utility Code and Commission regulations and therefore there is nothing inappropriate about Glen Riddle's complaint. In addition, it is noted that over 200 residents of the Glen Riddle apartments are affected by Sunoco's actions and, as a result, it is reasonable that these issues be pursued. To the extent that Glen Riddle uses the outcome of this proceeding for other purposes that fit within the Rules of Professional Conduct, then Glen Riddle is entitled to do just that on behalf of its client.

Sunoco has otherwise not presented any valid argument to support finding that its actions at the construction site have not violated the Public Utility Code or the Commission's regulations, as discussed above.

d. Conclusion

Substantial record evidence demonstrates that Glen Riddle has satisfied its burden of proving that Sunoco violated the Public Utility Code and Commission regulations with regard to the fire hazards, noise levels and communications with the public with regard to the construction activities at the Glen Riddle property. Such violations can be summarized as follows:

Action	Violations
Traffic hazards	0
Fire hazards	1 violation of Section 1501 1 violation of Section 59.33
Noise levels	23 violations of Section 1501 23 violations of Section 59.33
Use of calciment	0
Water line break	0
Communications with public	1 violation of Section 1501 1 violation of Section 59.33 1 violation of the Public Awareness Plan
Total	51

66 Pa.C.S. § 1501; 52 Pa. Code § 59.33. As a result of such violations, a civil penalty will be imposed. However, Glen Riddle has failed to satisfy its burden of proving that Sunoco violated the Public Utility Code and Commission regulations with regard to the traffic hazards, the use of calciment and a water line break with regard to the construction activities at the Glen Riddle property. No relief will be granted for those issues.

4. Civil Penalty

a. Rosi Factors

Having found that the record evidence in this case demonstrates that Sunoco has violated the Public Utility Code and a Commission regulation, it is necessary to determine the appropriate civil penalty. Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa. Code § 69.1201(a). These factors and standards are as follows:

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

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

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

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

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c); *see also*, *Rosi v. Bell Atl.-Pa., Inc. & Sprint Commc'ns Co.*, Docket No. C-0092409 (Final Order entered February 10, 2000) (“Rosi factors”).

b. Application of Rosi Factors

i. Whether Conduct was of a Serious Nature

In this case, with regard to factor number 1, whether the conduct at issue was of a serious nature, Sunoco’s conduct was neither willful fraud or misrepresentation nor an administrative filing or technical error. Nonetheless, Sunoco’s conduct was of a serious nature because the conduct involved installation of a major gas pipeline including heavy construction equipment in the middle of a residential apartment complex. This was not a minor utility construction project that merely inconvenienced utility customers. Fire hazards and high noise volumes were created. Inadequate communications were provided. It is unclear whether any other utility conduct could be of a more serious nature than the conduct Sunoco performed at the Glen Riddle site and especially in the middle of a residential apartment complex during a pandemic. Extreme care should have been taken but was not and, therefore, violations of the Public Utility Code resulted. Although the conduct at issue did not involve willful fraud or misrepresentation, the conduct was well beyond administrative filing or technical error.

Sunoco argued in its reply brief with regard to this factor that it acted reasonably at all stages of construction and cited to examples such as installing the sound walls and working with township officials, among other things. This argument will be rejected because certain of Sunoco’s conduct above has been deemed to be unreasonable and therefore worthy of a civil penalty. Sunoco’s argument does not pertain to whether its conduct was of a serious nature, which this factor addresses. Therefore, Sunoco’s argument is not relevant. This factor supports the imposition of a higher civil penalty because Sunoco’s conduct was of a serious nature.

ii. Whether Resulting Consequences of the Conduct were of a Serious Nature

With regard to factor number 2, whether the resulting consequences of the conduct at issue was of a serious nature, there is no record evidence specifically of personal injury or damage to property. Furthermore, although some of Sunoco's violations included fire hazards, no fire incidents in fact occurred. Sunoco noted in its reply brief that there were no traffic or pedestrian incidents on the property, school children accessed the temporary bus stop without incident, no resident's hearing was damaged from noise construction, vibrations did not cause property damage, no construction materials or chemicals harmed anyone, and Sunoco provided bottled water for residents after the water line break. Although, without question, serious consequences such as personal injury or damage to property *could have occurred* as a result of Sunoco's violations of the Public Utility Code or Commission regulations, including significant personal injury or damage to property, that potential could be reflected in other Rosi factors. Factor number 2, however, warrants a lower civil penalty.

iii. Whether the Conduct at Issue was Intentional or Negligent

With regard to factor number 3, record evidence demonstrates that Sunoco's actions which resulted in violations of the Public Utility Code or a Commission order or regulation were intentional. Certainly, the act of performing major construction is intentional. That is, Sunoco's actions that created fire hazards, high noise levels and inadequate communications with the public were intentional and not negligent. Here again, Sunoco argued in its reply brief that record evidence demonstrates that at all times it acted reasonably. Record evidence, however, demonstrates that Sunoco's actions with regard to fire hazards, noise levels and communications with the public were not reasonable and Sunoco's arguments to the contrary here do not justify finding that a lower civil penalty should be imposed because its actions were not intentional. As a result, Sunoco's argument that Rosi factor 3 warrants a lower civil penalty will also be rejected. Rosi factor 3 warrants imposing a higher civil penalty for Sunoco's violations of the Public Utility Code and Commission regulations with regard to its construction activity at the Glen Riddle apartments.

iv. Whether the Regulated Entity Made Efforts to Modify its Practices and Procedures

With regard to factor number 4, there is no evidence that Sunoco made efforts to modify its internal practices and procedures to address the conduct at issue in this proceeding and prevent similar conduct in other cases in the future. To the contrary, Sunoco consistently contested that any of its actions constituted a violation that required modifications to its practices or procedures. Sunoco argued in its reply brief that it was responsive to Glen Riddle's concerns and took several steps that it believed are "above and beyond" what it was required to do. As noted above, certainly Sunoco is commended for its efforts in attempting to resolve some of the concerns raised by Glen Riddle and its residents throughout the construction. However, and also as noted above, some of these efforts were still insufficient because they were delayed or otherwise inadequate. Regardless, factor number 4 addresses whether the regulated entity made efforts to modify its internal practices and procedures to address the conduct at issue to prevent similar conduct in the future. There is no record evidence in this case that demonstrates that what Sunoco did will prevent similar conduct in the future. Rather, Sunoco's actions in this case pertain specifically to Glen Riddle and its residents and it is unclear whether they will benefit other similarly affected residents in the future. Therefore, factor number 4 supports imposing a higher civil penalty.

v. Number of Customers Affected and Duration of the Violation

Factor number 5 also warrants imposing a higher civil penalty because of the large number of residents who were affected by Sunoco's violations and the duration of the violation. Record evidence demonstrates that there are 124 apartment units at the construction site and that more than 200 people live in these 124 apartment units. This is a large number of people who were impacted by Sunoco's violations of the Public Utility Code and Commission regulations in the form of fire hazards, noise levels and inadequate communications. Furthermore, the construction at the apartment complex lasted approximately eight months (from December 2020 to July 2021). This is an inordinate amount of time for the residents of Glen Riddle to have to endure the fire hazards, noise levels and the lack of adequate communications

that are supported by record evidence in this proceeding. Fortunately, no major incident occurred but all of the residents of Glen Riddle were affected for a long period of time with regard to the fire hazards, the noise levels and the lack of adequate communication from Sunoco.

Sunoco's argument in its reply brief that no harm was actually suffered and that mere speculation is not sufficient to issue a civil penalty will again be rejected. As noted above, the fact that no harm was actually suffered is relevant to other Rosi factors. Furthermore, Sunoco argued that very few residents themselves directly raised any concerns during construction. Yet, elsewhere, Sunoco notes that it responded to hundreds of emails, demands, threats, phone calls, in person meetings and other request. This admission itself reflects the high number of people affected by Sunoco's violations and the lengthy period of such violations. Sunoco cannot argue here that few people were affected when elsewhere it has argued that it has responded to complaints from many Glen Riddle residents.

Furthermore, it is noted that a civil penalty could be imposed for each day the violations existed or for each person impacted by the violation. Doing so would increase the civil penalties by a factor of approximately 180 (since the construction existed for approximately six months) or approximately 200 (for each of the residents who live at the property) or both. For example, Sunoco's inadequate communications to the public affected all 200 residents every day throughout construction. That could result in 36,000 individual violations ($180 \times 200 = 36,000$). However, record evidence does not support making such findings when determining the appropriate civil penalty and such an approach will not be taken here. Nonetheless, the fifth factor warrants the imposition of a higher civil penalty.

vi. Compliance History of Regulated Entity

With regard to the sixth factor, this factor also warrants the imposition of a higher civil penalty. As noted above, Sunoco's construction of this pipeline has resulted in other litigation pertaining to different locations of the pipeline. Some of this litigation has concluded with the determination that Sunoco's actions in those other locations of the pipeline also violated the Public Utility Code or a Commission order or regulation and has resulted in the imposition of

a civil penalty. Sunoco's arguments to the contrary in its reply brief are unclear at best. Sunoco's construction of the pipeline is undoubtedly a massive project of which only a very small part is occurring at the Glen Riddle property. Nonetheless, the violations supported by the record evidence in this case are not an isolated incident from an otherwise compliant utility, as addressed in the sixth factor, including specifically other violations pertaining to inadequate communications that are also evident here. The sixth factor therefore warrants the imposition of a higher civil penalty.

vii. Whether the Regulated Entity Cooperated with the Commission's Investigation

The seventh factor is not relevant to this proceeding because there was no Commission investigation.

viii. Amount of Civil Penalty Necessary to Deter Future Conduct

The eighth Rosi factor also warrants the imposition of higher civil penalty to deter future violations. As noted above, Sunoco has been involved in other litigation regarding the construction of this pipeline and some of that litigation has resulted in the imposition of civil penalties. Furthermore, since this factor allows for consideration of potential future violations, and also as noted above, it is therefore reasonable to consider here that this major construction activity could result in substantial personal injury or property damage if Sunoco's future violations are not deterred. For example, although there was no major fire incident that occurred at the Glen Riddle property during the time of construction, the construction at the site did create fire hazards by slowing emergency responders' ability to respond efficiently. If such violations occur in the future, it is possible that such violations hinder an emergency response to the extent that personal injury or property damage does occur, and possibly to a significant scale. Therefore, it is reasonable to impose a higher civil penalty to deter Sunoco's future violation of Commission regulations or a Commission order or regulation when engaging in future construction activities. When considering the size of Sunoco when determining the appropriate

penalty amount, as the eighth factor specifically allows, it is further evident that a higher civil penalty should be imposed.

Sunoco's argument regarding the impact of factors 8, 9 and 10 on the imposition of a civil penalty in this case in its reply brief is without merit and will be rejected. Sunoco argued that these last three factors do not weigh in favor of imposing a civil penalty because past Commission proceedings involving similar customer service situations have not resulted in a civil penalty. Sunoco then cites to cases involving a water leak during a meter relocation, an "errant billing issue" and "simple communications issues." *See*, Sunoco R.B. at 52. Sunoco's argument will be rejected because the facts of this case are well beyond a water leak during a meter relocation, an "errant billing issue" and "simple communications issues." The cases cited by Sunoco are not controlling. As such, this factor warrants the imposition of a higher civil penalty.

ix. Past Commission Decisions in Similar Situations

With regard to factor 9, the Commission has addressed issues pertaining to pipelines raised in Glen Riddle's complaint in a series of recent cases. West Goshen, Dinniman, Baker, Flynn. Those cases specifically involve Sunoco and the instant pipeline and have been considered in the imposition of the civil penalty with regard to other Rosi factors. There are no other Commission decisions to consider, nor did Sunoco cite to any in its reply brief.

x. Other Relevant Factors

Finally, with regard to factor 10, other relevant factors, another relevant factor in the development of an appropriate civil penalty is that the very nature of this particular construction site involves major construction activity in close proximity to residences during a pandemic. While it is understood, as discussed above, that Sunoco had an easement for this right-of-way dating back to 1931, prior to when the apartment complex was constructed, and additional easements were obtained, nonetheless, Sunoco should have taken even greater precautions when performing major construction activities in such close proximity to so many

residences. While it is also understood that Sunoco was granted the authority to perform such construction activities when it received the necessary approvals to construct the pipeline, such approvals were likely contingent on Sunoco exercising a higher standard of care with regard to the construction activities in residential areas. For example, while Sunoco installed sound walls, those sound walls were not sufficient to minimize noise levels at all times. More should have been done than install sound walls given the close proximity of the construction to the residences. Similarly, while Sunoco did hold a virtual town hall, the town hall was held after construction had already been underway for several weeks and should have been held several weeks before any construction began. More than one town hall should have been held and should have been held earlier in the construction process, given the close proximity of major construction to the residences.

As a result, a relevant factor in determining the imposition of a civil penalty for Sunoco's violations noted above is Sunoco's failure to properly take extra precautions in light of the very nature of this particular construction project (i.e., major construction in such close proximity to residences during a pandemic). Sunoco did not identify any other relevant factors in its reply brief. As a result, factor 10 supports the imposition of a higher civil penalty.

c. Remaining Issues

It is noted that Glen Riddle's request to have all of Sunoco's employees and contractors that work on behalf of Sunoco in Pennsylvania undergo at least 50 hours of safety training at Sunoco's expense before such employees and contractors can begin work on the Mariner East 2 pipeline in any residential areas will be rejected. In response to this request, Sunoco argued that Glen Riddle has not met the standard for injunctive relief to be granted. Sunoco noted in part that Glen Riddle has not demonstrated a clear right to relief because it has not proved any violation of statute, regulation or Commission order and that Glen Riddle has a legal remedy through seeking monetary damages in civil court. Sunoco also noted that the injunctive relief is not narrowly tailored to abate the alleged harm.

Sunoco is correct that Glen Riddle has failed to satisfy the standards required for Glen Riddle to be directed to have all of Sunoco's employees and contractors that work on behalf of Sunoco in Pennsylvania undergo at least 50 hours of safety training at Sunoco's expense. Although record evidence in this proceeding demonstrates that Sunoco's actions at the Glen Riddle construction site did violate the Public Utility Code and Commission regulations, such violations are best remedied through the imposition of civil penalties, as discussed above. Requiring all of Sunoco's employees and contractors that work on behalf of Sunoco in Pennsylvania undergo at least 50 hours of safety training at Sunoco's expense is an extreme remedy that is not necessary here and will not be ordered as part of this Initial Decision. Sunoco, however, is expected to take actions to ensure that there are no further violations of the Public Utility Code or a Commission regulation in the future even though no mandatory training will be required.

It is also noted that, in its reply brief, Sunoco argued that Glen Riddle's request for a penalty is inappropriate because Glen Riddle first made the request in its brief. Sunoco claimed that this "eleventh hour" request in its brief violates its due process rights and its right to a meaningful opportunity to be heard. Sunoco claimed that Glen Riddle has waived these requests for relief by failing to raise them before the briefing stage. Sunoco argued that Glen Riddle is attempting to add an entirely new claim to this case well after the evidentiary record is closed without any justification and without following proper procedures. Sunoco claims that this new request for relief must be denied. Sunoco then provided argument regarding each of the Rosi factors, as noted above.

Sunoco's arguments that the imposition of a civil penalty in this case violates its due process rights will be rejected. As a preliminary matter, the formal complaint notice that accompanied the formal service of the complaint on Sunoco by the Commission's Secretary's Bureau specifically stated that "if you fail to answer the complaint within twenty (20) days of the above date service, the claims against you may be deemed admitted, the case may go forward *and a penalty may be entered against you* by the Commission without further notice." (emphasis added). As a result, since the inception of this proceeding, Sunoco had notice that the result of this proceeding may include a civil penalty. Furthermore, to the extent that Sunoco wished to do

so, it too could have also filed a petition to reopen the record in this matter for purposes of presenting evidence on the Rosi factors. Sunoco did not do so and therefore cannot not now be found to have lacked notice and an opportunity to be heard regarding the imposition of a civil penalty in this case. Finally, as a certificated public utility, Sunoco has general notice that its violations of the Public Utility Code or Commission regulations could result in the imposition of a civil penalty. Sunoco’s argument will be rejected.

5. Conclusion

Therefore, the application of the Rosi civil penalty factors to the record evidence developed in this case demonstrates that most of the factors support the imposition of a higher civil penalty. Furthermore, each violation of the Public Utility Code and Commission regulation warrants its own civil penalty. As a result, a \$1,000 civil penalty will be imposed for each of the above violations as follows:

Action	Violations	Amount per violation	Sub-total
Traffic hazards	0	\$1,000	\$0
Fire hazards	1 violation of Section 1501 1 violation of Section 59.33	\$1,000	\$2,000
Noise levels	23 violations of Section 1501 23 violations of Section 59.33	\$1,000	\$46,000
Calciment	0	\$1,000	\$0
Water line	0	\$1,000	\$0
Communications with public	1 violation of Section 1501 1 violation of Section 59.33 1 violation of Public Awareness Plan	\$1,000VII	\$3,000
		Total	\$51,000

Finally, although Sunoco has completed work at the Glen Riddle site, Sunoco will be otherwise directed to refrain from violating the Public Utility Code or Commission orders or regulations when operating as a utility in Pennsylvania.

V. CONCLUSION

Substantial record evidence demonstrates that Glen Riddle has satisfied its burden to demonstrate that Sunoco's actions with regard to the construction of the pipeline at the Glen Riddle apartment complex violated the Public Utility Code and Commission regulations with regard to fire hazards, noise levels and communications with the public. Sunoco's public awareness actions did not adequately make the public aware of its construction activities. Likewise, the fact that no major incident or accident occurred at the construction site does not absolve Sunoco of its obligation to be safe. As a result of these violations, a civil penalty of \$51,000 will be imposed. However, Glen Riddle has failed to satisfy its burden of proof with regard to traffic hazards, the use of calciment and a water line break at the property.

The disposition of this case is significantly impacted by the fact that the pipeline is being constructed immediately through the center of 124-unit apartment complex where more than 200 people live in such close proximity to major construction activities and in light of the Commission's directive for Sunoco to show continuous improvement in its communications with the public. Although Sunoco holds easements to perform such construction work, its actions were still unreasonable with regard to fire hazards, noise levels and inadequate communications with the public. This is especially true given that the construction occurred during a major pandemic when most of those residents were working or attending school from home. This is a major factor that colors the lens through which Glen Riddle's complaint is viewed.

It is also noted that the disposition of Glen Riddle's complaint in this case has no bearing on litigation of issues beyond the Public Utility Code or a Commission order or regulation that may be heard in other jurisdictions.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd.*

of Review, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. 66 Pa.C.S. § 1501.

10. Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33.

11. Hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. 52 Pa. Code § 59.33(b).

12. Where issues of community safety are concerned, this Commission possesses irrefutable authority to exercise its jurisdiction. *Re: Consolidated Rail Corp.*, 56 Pa. PUC. 367 (1974).

13. It is long established that the Commission may not interfere in the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown. *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 561 A.2d 1224 (Pa. 1989).

14. Absent express legislative authority, the Commission may not interfere with general management decisions of public utilities. *Pa. Pub. Util. Comm'n. v. Phila. Elec. Co.*, 561 A.2d 1224 (Pa. 1989).

15. The Public Utility Code does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993).

16. In evaluating a claim of inadequate service relating to a broken water line the Commission has focused on the number and frequency of breaks that have affected the complainant or upon the utility's repair efforts *Dongelewicz v. Oneida Water Co.*, 1994 Pa. PUC LEXIS 76 (five interruptions of service in fifteen months constitutes inadequate service).

17. There are several provisions of the Public Awareness Plan that pertain to construction of pipelines, not just operation of pipelines. Public Awareness Plan at Section 7.4.5, Tables 1, 2 and 3 ("Public Awareness Communications for the Affected Public").

18. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

19. The Commission's regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa. Code § 69.1201; *see also*, *Rosi v. Bell Atl.-Pa., Inc. and Sprint Commc'ns Co.*, Docket No. C-0092409 (Final Order entered February 10, 2000).

20. Glen Riddle has satisfied its burden to demonstrate that Sunoco has violated the Public Utility Code or a Commission order or regulation with regard to fire hazards, noise levels and inadequate communication to the public with regard to the construction activities conducted by Sunoco at the Glen Riddle apartments. 66 Pa. C.S. § 332(a); *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

21. Glen Riddle has failed to satisfy its burden to demonstrate that Sunoco has violated the Public Utility Code or a Commission order or regulation with regard to traffic hazards, the use of calciment and a water line break with regard to the construction activities conducted by Sunoco at the Glen Riddle apartments. 66 Pa. C.S. § 332(a); Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

VII. ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Glen Riddle Station, L.P., against Sunoco Pipeline, L.P. on December 2, 2020, at docket number C-2020-3023129 is hereby sustained in part and denied in part.

2. That the formal complaint filed by Glen Riddle Station, L.P. against Sunoco Pipeline, L.P. is sustained with regard to the averments of fire hazards, noise levels and inadequate communications with the public.

3. That the formal complaint filed by Glen Riddle Station, L.P. against Sunoco Pipeline, L.P. is denied with regard to the averments of traffic hazards, the use of calciment at the property and a water line break.

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

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

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

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

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

Date: March 8, 2022

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge