**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held November 18, 2021

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman

 John F. Coleman, Jr., Vice Chairman

 Ralph V. Yanora

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| Pennsylvania Public Utility Commission,Bureau of Investigation and Enforcement v.Energy Transfer Company d/b/a ETC Northeast Pipeline, LLC |  |  M-2020-3004646 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement) filed on December 16, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Energy Transfer Company d/b/a ETC Northeast Pipeline, LLC (ETC or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. By Order entered July 15, 2021 (*July 2021 Order*), we provided interested parties with the opportunity to file comments on the proposed Settlement. Several parties filed comments. Before the Commission are the Comments of: (1) State Senator Carolyn T. Comitta, filed on August 3, 2021; (2) State Representative Danielle Friel Otten, filed on August 5, 2021; (3) Joint Comments of the Clean Air Council and the Pipeline Safety Coalition (CAC/PSC), filed on August 4, 2021; (4) International Union of Operating Engineers (IUOE), filed on August 3, 2021; (5) Pennsylvania Energy Infrastructure Alliance (PEIA), filed on August 3, 2021; (6) Washington County Chamber of Commerce (WCCC), filed on July 30, 2021; (7) Beaver County Chamber of Commerce (BCCC), filed on August 3, 2021; (8) Pittsburgh Regional Building Trades Council (BTC), filed on August 3, 2021; (9) Beaver County Marcellus Awareness Community (BCMAC), filed on August 2, 2021; (10) Builders Guild of Western Pennsylvania & Pittsburgh Works Together (BG/PW) filed on July 27, 2021; (11) Steamfitters Local Union #449 (SLU), filed on July 27, 2021; and (12) the Joint Comments of Ms. Karen Gdula, Mr. Thomas Coates, Ms. Barbara K. Goblick, Ms. Barbara A. Goblick, Mr. Chuck Belczyk, Ms. Eve Lemire, Mr. Don Lehocky, Ms. Cindy Almendarez and Mr. Steve Almendarez (Gdula and Coates, *et al* or residents), filed on July 26, 2021. For the reasons set forth herein, we shall approve the Settlement.

**I. History of the Proceeding**

This matter concerns the September 10, 2018, pipeline failure and ensuing fire in Center Township, Beaver County, Pennsylvania on the Company’s Revolution Pipeline. The I&E Safety Division, which is the entity responsible for investigating, inspecting, and enforcing pipeline safety violations at the Commission, received National Response Center (NRC) Report No. 1224150 related to the incident at 6:04 AM on September 10, 2018. Settlement at 3.

 I&E instituted an informal investigation of ETC beginning with the information contained in the NRC Report. The I&E investigation included, *inter alia*, a visit to the incident site, observation of a metallurgical analysis of the failed section of the pipeline, interviews of ETC employees, review of geological reports of the incident site, post-incident reports, and the service and review of nine sets of data requests directed to the Company. The Company cooperated with I&E’s investigation. Settlement at 6-7.

Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 1. The Parties filed the instant Settlement on December 16, 2020.

In the *July 2021 Order*, the Commission reviewed ETC’s actions and the related circumstances and provided interested parties with the opportunity to file comments on the proposed Settlement. To be considered timely, comments were due within twenty days of the date of entry of the *July 2021 Order*. As noted above, several parties filed Comments.

**II. Background**

On September 10, 2018, at approximately 4:54 AM, a pipeline failure and subsequent fire occurred near 750 Ivy Lane in Center Township, Beaver County, Pennsylvania. The I&E Safety Division received NRC Report No. 1224150 at 6:04 AM on that same day.  The NRC report indicated that greater than three million cubic feet of gas was released. The fire was extinguished at 7:00 AM. Settlement at 3.

The I&E Safety Division identified the failed pipeline as ETC’s Revolution Pipeline, which is a 24-inch coated steel line that is approximately 40 miles in length and intended to transport natural gas from the Pike Compressor Station in Butler County, south to the Revolution Cryogenic Gas Plant in Washington County. Settlement at 3.

Construction on the pipeline began in mid-March 2017. The pipeline was successfully hydrostatically pressure tested without failure in February 2018. ETC completed construction of the pipeline on March 19, 2018. ETC was bringing the pipeline up to optimal operating pressure when the incident occurred on September 10, 2018. Settlementat 4.

Twenty-two miles of the pipeline are classified as a Type A regulated gathering pipeline under Federal Pipeline Safety Act regulations at 49 CFR Part 192 based on an established maximum allowable operating pressure of 1440 pounds per square inch and Class 3 locations.[[1]](#footnote-1) The failure occurred on a Type A regulated gathering pipeline segment regulated under Act 127[[2]](#footnote-2) and 49 CFR Part 192. Settlement at 4.

The September 10, 2018 pipeline failure and subsequent ignition of the released natural gas destroyed a single-family residence at 752 Ivy Lane as well as a garage and multiple motor vehicles on the property. No fatalities or injuries occurred as the residents of 752 Ivy Lane evacuated before the fire reached their home. The incident was precipitated by heavy rain conditions caused by Tropical Storm Gordon which in turn prompted a landslide and when the landslide occurred, a section of the Revolution Pipeline separated, resulting in a loss of containment and a fire. Settlement at 4-5.

Several acres of wooded land burned, and six transmission towers operated by the FirstEnergy Corporation carrying electrical transmission lines collapsed.  The fire also destroyed a power line operated by the Duquesne Light Company. Settlement at 5.

At the time of the incident, the weather conditions were cloudy with rain and the temperature was approximately 60 degrees Fahrenheit. The area experienced a sustained, heavy rainfall event associated with Tropical Storm Gordon for approximately three days prior to the failure. A September 9, 2018 construction inspection report prepared by one of ETC’s contractors did not identify any observations of land movement in the incident area. *Id.*

The I&E Safety Division examined the metallurgical analysis of the failed section of the pipeline, which found no evidence of corrosion, material deficiencies, stress corrosion cracking or mechanical damage, as well as no evidence of weld defects, weld imperfections or weld discontinuities. Settlement at 6.

The results of the metallurgical analysis led the I&E Safety Division to focus on the preconstruction conditions of the failed site. The I&E Safety Division reviewed the January 2016 Terracon Geohazard Evaluation Report (Terracon Report) regarding the Revolution Pipeline which was prepared pre-construction to identify any geological hazards (geohazards) at the site.[[3]](#footnote-3) The Terracon Report contains a landslide model representing landslide hazards on a scale from 1 to 9, with 9 being the greatest risk of occurrence of a landslide.  The model categorizes the slope at the failure site as a 9. *Id.*

The I&E Safety Division also reviewed a November 15, 2018 report entitled “Landslide Evaluation – Beaver County, Pennsylvania for ETC Northeast Pipeline, LLC,” which was prepared for ETC by GeoEngineers, Inc. (GeoEngineers Report).[[4]](#footnote-4) Following review of the GeoEngineers Report, the I&E Safety Division concluded that daily construction logs prepared by various ETC contractors documented prior slide events at or very near the failure site. Settlement at 6-7.

Additionally, the I&E Safety Division reviewed a post-incident report dated February 1, 2019, that was prepared by Dynamic Risk Assessment Systems Inc. (Dynamic Risk Report) for ETC and provided a direct cause analysis of the failure.[[5]](#footnote-5) The I&E Safety Division concluded from its review of the Dynamic Risk Report that the area surrounding the failure site had experienced past slope instability, and that slope instability contributed to the incident. The I&E Safety Division further concluded, based on a review of the Dynamic Risk Report, that the pipeline was not consistently trenched into bedrock at the failure site and that the newly placed fill did not provide enough structural resistance to prevent movement of the pipe during the land movement that occurred. Settlement at 7.

Upon review of all data, the I&E Safety Division concluded that the September 10, 2018 failure of the Revolution Pipeline was caused by slope failure on ETC’s right-of-way precipitated by severe tropical storm rainfall. The slope failure created extensive shear forces that exceeded the tensile strength of the pipe and caused a pipeline leak or rupture that allowed the release of pressurized natural gas. The slope failure was exacerbated by the placement of the pipeline, which, in the affected segment, was not entrenched in bedrock and resting on colluvial soil. The released natural gas was introduced to an ignition source, likely either the power lines located in the same right-of-way or another ignition source at 752 Ivy Lane. Settlement at 7-8.

 The Parties submit that the Settlement has been filed to resolve this matter without litigation and urge the Commission to approve the Settlement as being in the public interest. Settlement at 18.

**III. Terms of the Settlement**

Pursuant to the proposed Settlement, ETC will pay a civil penalty and fulfill the following obligations:

1. ETC shall pay a civil penalty of $1,000,000, pursuant to 66 Pa.C.S.
§ 3301(c). The payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving any settlement in this matter and shall be paid by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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

1. For the commissioning of regulated (in accordance with 49 CFR Part 192) pipelines owned by ETC, ETC shall implement measures to its startup procedures for purging and packing a pipeline to include 24‑hour monitoring of all mainline[[6]](#footnote-6) valves on the pipeline that are undergoing startup. The 24-hour monitoring shall include onsite employees who are stationed at each valve and qualified to operate the valve. Such monitoring will continue until the pipeline reaches operating pressure. ETC shall modify its Standard Operating Procedure No. I.10 Pipeline Shutdown and Startup, Section 7.3, which shall be revised to define the end of an “emergency” in order to clearly delineate between emergency actions, which are taken to protect life and property, and operational decisions.
2. ETC shall establish procedures to further incorporate preconstruction research into its pipeline design and construction procedures so that such information is conveyed to the design team and construction inspectors working in the field. ETC shall use the outline of these procedures and policies provided to I&E on October 9, 2020 to complete the full policies and procedures document for submission to I&E upon completion with the following modification: ETC’s Engineering Standard Volume 2 - Pipeline Design, Geohazard Evaluations for Pipeline Projects 2.0203 dated 08/01/2020 shall be modified to provide that “The Geohazard Management Plan *shall* be delivered to COMPANY PM for review prior to the start of construction.” These procedures and policies will apply to all of ETC’s pipelines in Pennsylvania.
3. ETC shall within 40 days of start-up or operational date of the Revolution Pipeline, employ in-line inspection (“ILI”)[[7]](#footnote-7) tools to verify the integrity of the pipeline. The in-line tools for this ILI run shall include, but not be limited to,[[8]](#footnote-8) an inertial measurement unit (“IMU”), geometry tool, and MFL technology. The tools shall be run on the southern segment of the pipeline designated as the section from the Pike Compressor Station to the Revolution Cryo Plant, a distance of approximately 35 miles. This term does not apply to the segment of the pipeline north of the Pike Compressor Station, which is approximately 5 miles in length, based upon an April 30, 2019 Landslide Hazard Evaluation report prepared by GeoEngineers, Inc. and sealed by a Professional Engineer finding that the identified slope features pose low risk to the integrity of the pipeline in this segment. ETC shall within 6 months of the initial ILI inspection above, perform another ILI inspection utilizing, but not limited to, an IMU and geometry tool on the same segment of the pipeline described above. The data shall be collected and analyzed by ETC or a contractor retained by ETC on an expedited basis, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC’s receipt of the analysis and/or results.
4. Inclusive of the second ILI run in paragraph D., ETC shall perform five annual in-line inspections, at least once per calendar year with intervals not to exceed 15 months, to verify the integrity of the Revolution pipeline (years 2021-2025). Upon conclusion of the initial 5-year period, ETC shall meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols.

ETC shall also perform a minimum of one additional ILI run in 2028. Upon conclusion of the ILI run in 2028, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2031. Upon conclusion of this ILI run, which would be performed no later than 2031, ETC shall meet and confer with I&E to review and discuss the ILI results and mutually determine future inspection intervals and protocols. If the ILI results merit or demonstrate a need for future inspections, ETC shall perform an additional ILI run no later than 2034.

ETC shall provide I&E with notification 30 days in advance of each ILI run. The in-line tools must include, but not be limited to, an IMU and geometry tool. The data shall be collected and analyzed by ETC or a contractor retained by ETC, and the analysis and/or summary of the results interpreting the data shall be provided to I&E as soon as practicable, but no later than 45 days from ETC’s receipt of the analysis and/or results. The purpose of the continued, scheduled in line inspections is to determine if the pipeline is moving and to measure and monitor strain on the pipeline in any other location in the right-of-way.

1. ETC shall provide I&E immediate notice of any slope failure that affects pipeline integrity. ETC shall implement a three-phase approach to monitoring and patrolling the entire Revolution Pipeline right-of-way (“ROW”).
	* Phase 1. ETC shall walk the entire ROW at least every 7 days and after every 0.1” rainfall. Phase 1 shall continue until Notice of Termination of the PA DEP permit is received, but no sooner than the end of 2022. ETC shall utilize its staff of Environmental Inspectors that have been trained by and who shall work under the guidance and supervision of geotechnical subject matter experts (“SMEs”). The EIs shall report all observations to the geotechnical SMEs on a weekly basis, and, based on the nature of the observations, the geotechnical SMEs will perform a field investigation. A quarterly report shall be generated by the geotechnical Engineer of Record(s) and shall be provided to I&E.
	* Phase 2. Beginning after Phase 1, ETC shall patrol the portion of the ROW containing Steep Side Slope Fill Segments where gradients of 40 percent or steeper and where the pipeline is oriented parallel to contour (side slope) or oblique to contour either on-foot or by motorized all-terrain vehicle or similar vehicle at least once monthly and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas until the year 2025. This patrolling will be performed by ETC personnel that are trained to perform the inspections and will be under the guidance of an in-house geotechnical engineer. ETC shall provide I&E with a list of the locations containing Steep Side Slope Fill Segments that are subject to the patrolling. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.
	* Prior to the end of Phase 2, ETC shall present and discuss with I&E the data collected from the ILI tool run analysis and monitoring and patrolling and agree to a path forward for further monitoring based on the data. In the event the parties do not reach agreement, ETC shall proceed with the monitoring as described in Phase 3.
	* Phase 3. Beginning after Phase 2, ETC shall monitor the Steep Side Slope Fill Segments described in Phase 2 on a quarterly basis and within 48 hours of rain events of 1-inch or greater as recorded at mutually agreed-upon areas. A quarterly report that shall be signed by a Professional Geologist or Professional Engineer shall be provided to I&E.
2. ETC shall implement a quality assurance/quality control program to oversee pipeline siting and construction practices for ETC’s gas and hazardous liquid pipelines in Pennsylvania. ETC submitted an outline of these procedures and policies to I&E on October 9, 2020 for review. ETC will submit the policies and procedures document to I&E upon completion.
3. Based upon this settlement, I&E will not prevent ETC from placing the Revolution Pipeline in service.

Settlement at 14-17.

Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released ETC from all past claims that were made or could have been made for monetary and/or other relief based on all allegations associated with the September 10, 2018 incident on the Revolution Pipeline. Settlement at ¶ 35; 17. We note that the language in Paragraph 35 of the Settlement states, “I&E shall be deemed to have released ETC from all past claims that were made or could have been made for monetary and/or other relief based on allegations associated with the September 10, 2018 incident on the Revolution pipeline.” This release pertains to those claims for violations and penalties which I&E retains the authority to bring and is not intended as a general release of liability.

 The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. *Id.* at 18-19.

**IV. Discussion**

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

**A. Comments in Response to the *July 2021 Order***

 The Commission received comments from twelve (12) parties in response to the *July 2021 Order*. The comments are summarized below. We note that if the Commission does not identify a particular comment *infra*, it has nonetheless been duly considered.

 **1.** **Members of the Pennsylvania General Assembly**

 **a. State Senator Carolyn T. Comitta**

 State Senator Carolyn T. Comitta provides that she is concerned that additional inspections, notification requirements, evaluations, and the studies stipulated in the Settlement apply only to ETC and the Revolution Pipeline. Senator Comitta notes that other pipeline projects that are under construction or in operation may face similar geological concerns. Senator Comitta expresses that the Commission’s Notice of Public Rulemaking (NOPR)[[9]](#footnote-9) regarding regulations related to the safety of pipelines in intrastate commerce is “vitally important” and “will be the true engine for change and stronger pipeline safeguards in Pennsylvania.” Comitta Comments at 1.

 **b. State Representative Danielle Friel Otten**

State Representative Danielle Friel Otten provides in her comments, that she has the following concerns related to the Settlement:

* I&E should have conducted a formal investigation due to the severity of the incident and the ongoing risks of continued pipeline operation. She is concerned that the issues of fact and law here may not be admissible in any other proceeding.
* The proposed $1 million fine is insufficient to deter or prevent future violations.
* While the Settlement includes provisions for additional inline inspections, it allows ETC to collect, analyze/summarize, and interpret the data resulting from those inspections before submission. Representative Otten provides that the Commission should require the inline data be forwarded to the Commission for analysis by an independent third party.
* While the Settlement requires ETC to notify I&E immediately of any slope failure that affects pipeline integrity in the Revolution right of way, it fails to address any other notification requirement. ETC should be required to immediately notify Beaver County Emergency Services (or the respective emergency services agencies in other areas of operations), and the local municipality of any slope failures. ETC should be required to ensure that information has been received in a timely manner. An email during off hours sent to an administrative employee who is off duty is insufficient.

Otten Comments at 1-2.

Representative Otten provides that the Settlement does not address the potential impact of climate change on pipeline infrastructure. Representative Otten requests that the Commission make no concessions that would prohibit any information regarding this incident to be admissible in court now or in the future. Otten Comments at 2.

**c. Advocates**

 **1. Clean Air Council and Pipeline Safety Coalition**

Mr. Joseph Minott, Executive Director and Chief Counsel, Clean Air Council and Ms. Lynda Farrell, Founder, Pipeline Safety Coalition (collectively, CAC/PSC) have provided Joint Comments regarding the proposed Settlement. CAC/PSC contends that the protective actions required by the Settlement do not go far enough and the civil penalty is too low to be of consequence. According to CAC/PSC, the protective measures in the proposed Settlement are an improvement on the status quo but leave too much discretion to ETC and have too little oversight. CAC/PSC explains that the Settlement would require ETC to update its policies and procedures with respect to geohazards. ETC would also be required to deliver the updated policies to its project manager prior to the start of pipeline construction and the policies will be submitted to I&E. CAC/PSC avers that ETC’s updated policies and procedures should be subject to public review, analyzed by an independent expert, and approved by I&E before they are implemented. CAC/PSC Comments at 1-2.

According to CAC/PSC, without a robust and transparent review process followed by explicit I&E approval, the policies cannot be trusted to be protective. CAC/PSC contends that ETC should not be allowed to continue to operate under its old, unsafe policies in the interim. Similarly, CAC/PSC argues that the inline inspections required by the Settlement should not be done by ETC, but by an I&E-approved, independent expert. Full results of the ILIs should be shared with I&E, not the summaries as required by the Settlement. CAC/PSC Comments at 3.

CAC/PSC provides that the Settlement’s program for monitoring slope failure is deeply flawed because it contemplates very little I&E involvement or oversight. ETC would be required to immediately report slope failure, but by the time a slope has failed, CAC/PSC notes that the situation may already be dire. CAC/PSC explains that the point of monitoring is prevention, which means identifying risk factors and changes in conditions and reporting any relevant developments to I&E immediately, before it reaches the point of a slope failure. CAC/PSC contends that it should be made explicit that, in the event that field conditions suggest an increased risk of slope failure, appropriate precautions will be taken in terms of pipeline operation, including discontinuing service until the conditions are stabilized. CAC/PSC Comments at 3-4.

CAC/PSC puts forward that the quality assurance/quality control program to oversee pipeline siting and construction practices for ETC’s gas and liquid pipelines in Pennsylvania is plainly necessary, but of little value without appropriate oversight and transparency. While the proposed Settlement only calls for ETC to submit the plans for the program to I&E for review, it does not provide for enforcement or ensuring the adequacy of the program. CAC/PSC provides that the fact that ETC in its statement in support of the proposed Settlement claims to already have a robust quality assurance/quality control program “makes the value of this aspect of the settlement even more dubious.” CAC/PSC Comments at 4.

CAC/PSC states that the various safety measures ETC would be required to take under the proposed settlement are a worthwhile start but fall far short of protecting the public and require a great deal of trust in a company that CAC/PSC considers untrustworthy. CAC/PSC Comments at 4.

CAC/PSC submits that the amount of the civil penalty is insufficient to deter future violations. CAC/PSC provides that ETC and its affiliates and subsidiaries operating in Pennsylvania have already received tens of millions of dollars in fines just in the past few years for their pipeline violations, yet ETC continues to be a “bad actor.” *Id.*

CAC/PSC notes that in February 2018, Energy Transfer/Sunoco Pipeline was fined $12.6 million by the Pennsylvania Department of Environmental Protection (PA DEP) for, among other things, its mishandling of geohazards while constructing a pipeline.[[10]](#footnote-10) CAC/PSC provides that DEP described the company’s conduct as “egregious and willful.”[[11]](#footnote-11) In January 2020, DEP issued a $30.6 million fine against ETC for its violations with respect to the Revolution Pipeline.[[12]](#footnote-12) CAC/PSC submits that as recently as last month, Chester County sought the help of the Commission to stop ETC from creating more sinkholes through its pipeline work. CAC/PSC Comments at 5.

CAC/PSC contends that the Commission must consider all of the recent and relevant history of ETC in determining the proposed penalty. CAC/PSC explains that even if the Commission is inclined to construe very narrowly the meaning of 52 Pa. Code § 69.1201(c)(6), which requires the Commission to consider the offender’s compliance history, 52 Pa. Code § 69.1201(c)(10) directs the Commission to also consider “other relevant factors.” CAC/PSC argues that ETC’s numerous violations and fines are relevant factors. CAC/PSC Comments at 6.

CAC/PSC contends that past Commission decisions support stronger enforcement. CAC/PSC explains that under 52 Pa. Code § 69.1201(c)(9), the Commission is to consider how the proposed settlement relates to past Commission decisions. I&E provided *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Order entered August 11, 2016) (*Hickory Hills*) for comparison. In *Hickory Hills*, the Commission-approved settlement imposed a $1,000,000 civil penalty. CAC/PSC argues that the two settlements have important differences. The present Settlement includes a $1,000,000 civil penalty and nearly a million dollars of additional measures to be taken by ETC. CAC/PSC notes that in *Hickory Hills*, the project was abandoned, and no additional safety measures were prescribed. According to CAC/PSC, ETC will “continue to endanger neighbors while reaping untold profit.” CAC/PSC Comments at 6.

CAC/PSC provides other key differences between *Hickory Hills* and the proposed Settlement: (1) Hickory Hills is not a large public utility familiar with the Commission’s Regulations but rather a single manufactured home community; (2) Hickory Hills had no history of complaints; and (3) there was no deterrence concern as Hickory Hills abandoned their pipeline operations following an explosion. CAC/PSC Comments at 7.

CAC/PSC indicates that the proposed Settlement failed to look at a more comparable case: *Pa. PUC, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.*, Docket No. M-2013-2338981 (Opinion and Order entered Sept. 26, 2013) (*UGI Penn Natural*). The civil penalty in *UGI Penn Natural* was $1,000,000 and added protective measures for a similar violation to ETC’s. CAC/PSC avers that *Hickory Hills* noted that for settlements occurring after the enactment of Act 127, the civil penalty should be higher than similar cases preceding Act 127. CAC/PSC argues, therefore, that the civil penalty for ETC should be higher than the civil penalty in *UGI Penn Natural*. CAC/PSC Comments at 7-8.

Beaver County Marcellus Awareness Community (BCMAC) contends that the $1 million civil penalty is not sufficient “to prevent new hazardous construction or maintenance practices.” BCMAC Comments at 1. BCMAC notes that after the incident, the pipeline was rerouted closer to population areas and resumed operation on March 1, 2021. BCMAC states that the civil penalty does not account for future risk to residents and emergency services. BCMAC has several concerns related to the proposed inspections as follows:

* If the data is collected by ETC or by a contractor employed by ETC, the data may be biased towards ETC. The inspections should be conducted by a third party.
* ETC’s 40-mile line may face more extreme weather due to climate change “making independent inspections for ensuring the integrity of pipelines even more essential.”

Additionally, BCMAC contends that protecting the surrounding communities requires establishing that the pipeline is equipped with a monitoring system that will patrol between inspections for potential threats to pipeline integrity so the community can be made aware in real time. BCMAC Comments at 1-2.

**2. Industry Affiliates**

 **a. IOUE**

IOUE Business Manager Thomas C. Melisko, Jr. provides in his comments that the Settlement should be approved without modification. Mr. Melisko states that the Settlement resolves all outstanding issues that stemmed from a natural disaster related issue in September 2018. Mr. Melisko notes that ETC has already begun to comply with the Settlement terms and has implemented safety and integrity measures. IOUE Comments at 1-2.

 **b. PEIA**

PEIA requests that the Commission approve the Settlement without modification. PEIA avers that ETC has already started to comply with all of the terms of the Settlement. PEIA provides that the Commission should approve the proposed Settlement to “bolster our state’s economy and energy sector.” PEIA Comments at 1.

 **c. Pittsburgh Regional Building Trades Council**

Pittsburgh Regional Building Trades Council Business Manager Mr. Tom Melcher supports the Settlement. In his Comments, Mr. Melcher contends that the Settlement “achieves a comprehensive and balanced resolution and is in the best interest of Pennsylvania craftsmen/women and their communities.” Mr. Melcher avers that ETC “has demonstrated its commitment to ensure the Revolution Pipeline will operate safely.” BTC Comments at 1-2.

**d. Builders Guild of Western PA & Pittsburgh Works Together**

Builders Guild of Western PA & Pittsburgh Works Together Executive Director Jeff Nobers supports the Settlement in his comments. Mr. Nobers provides that the project provides increased access to energy resources for consumers and safe and efficient transport of products to consumers. Mr. Nobers avers that “ETC Northeast Pipeline had enacted stringent environmental precautionary measures to guarantee the safety of local communities along the pipeline’s route.” BG/PW Comments at 1-2.

 **e. Steamfitters Local Union #449**

Steamfitters Local Union #449 Business Manager Ken Broadbent supports the Settlement. Mr. Broadbent provides that “ETC Northeast has been forthright in its approach to comply with concerns flagged by regulators in a timely fashion.” Mr. Broadbent explains that ETC is using enhanced predictive modeling to identify potential geohazards. SLU Comments at 1-2.

**3. Local Government**

 **a. Washington County Chamber of Commerce**

Washington County Chamber of Commerce President Jeff M. Kotula provides in his comments that the Settlement “should be approved as it is a positive step for our county and our Commonwealth.” WCCC Comments at 1. Mr. Kotula notes that ETC “has successfully implemented several safety and integrity measures.” Comments at 1. Mr. Kotula also avers that the Settlement will have a positive impact on employment and the economy of Washington County and the Commonwealth. WCCC Comments at 1.

 **b. Beaver County Chamber of Commerce**

Beaver County Chamber of Commerce President & Executive Director Helen Kissick supports the Settlement in her comments. Ms. Kissick provides that “ETC has already taken action, closely inspecting the Revolution pipeline entirely after it was rerouted.” Comments at 1. Ms. Kissick avers that the Revolution Pipeline provides employment opportunities and reliable energy. BCCC Comments at 1.

**4. Individual Commenters**

 **a. Karen Gdula and Thomas Coates, *et al.***

Ms. Gdula and Mr. Coates and additional residents (Gdula and Coates, *et al* or residents) of Ivy Lane, the site of the 2018 incident, have several concerns related to the Settlement as follows:

Terms of the Settlement, Section A. “ETC shall pay a civil penalty of $1,000,000…”

* The residents recommend a higher penalty of several million dollars as a deterrent.
* The Revolution pipeline was rerouted closer to the residents, reconnected, and was put into service on March 1, 2021. Earth stabilization and aquatic restoration continues six or seven days a week, oftentimes 12-hours a day.
* The residents are continuing to experience daily disruptions, construction traffic, helicopter traffic, and constant noise. The residents feel they have lost the enjoyment of their land and their once quiet neighborhood. They recommend a greater civil penalty for the magnitude of disruption caused by the explosion.

Terms of the Settlement, Section E. “…ETC shall perform five annual in-line inspections…”

* The residents support the five annual in-line inspections and subsequent inspections, providing that these are additional safety precautions they had hoped for.

Terms of the Settlement, Section E. “The data shall be collected and analyzed by ETX or a contractor...”

* The residents do not agree with ETC analyzing the in-line inspection data.
* The raw in-line data should be forwarded to the Commission for analysis by an independent third-party chosen jointly by the Commission and ETC, paid for by ETC.

Gdula and Coates, *et al.* Comments at 1-2.

**B. Analysis of the Comments**

**1. Civil Penalty**

Regarding the civil penalty, commenters noted that it was not large enough to provide a deterrent to further violations and the penalty should be greater to reflect the level of disturbance caused by the explosion. We note that the civil penalty of $1,000,000 is comparable to that in *UGI Penn Natural* and ETC has agreed to additional measures projected to cost $975,000. *UGI Penn Natural* was the first case before the Commission that involved gas safety violations that occurred after the amendment to Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), which increased the maximum civil penalty the Commission is authorized to levy for gas pipeline safety violations to $2,000,000.[[13]](#footnote-13) The total of $1,975,000 is very near the limit of $2,000,000 as set by 66 Pa. C.S. § 3301(c) which is as follows:

**(c)  Gas pipeline safety violations.--**Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

66 Pa. C.S. § 3301(c).

Additionally, the preventative measures totaling $975,000 that ETC has agreed to are not required by the regulations. The civil penalty along with the additional measures totals $1,975,000, which is only $25,000 less than the maximum penalty of $2,000,000 as set by 66 Pa. C.S. § 3301(c). Therefore, we conclude the terms regarding the civil penalty and the additional measures to be reasonable and in the public interest.Accordingly, we will refrain from modifying the Settlement to increase the civil penalty.

**2. Data Collection and Reporting**

Several commenters provided that ETC should not be in charge of the data collected during the ILIs and the ILIs should be performed by a third party. Otten Comments at 1-2; BCMAC Comments at 1; Gdula and Coates, *et al* Comments at 2. CAC/PSC Comments at 3. We are not inclined to require a third party to perform the ILIs or analyze the data. We note that ETC will be required to submit the inspection results to I&E for review as part of the Settlement. I&E may request the raw data as part of its review. I&E explains that gathering lines are not subject to the integrity management regulations set forth in 49 CFR Part 193, yet it reached an agreement with ETC to perform the ILIs, an integrity management measure, on the Revolution Pipeline which is a gathering line. I&E Statement in Support at 5. The ILIs and associated data collection are not required by the regulations. We cannot, under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipeline Act, 58 P.S. §§ 801.101 *et seq*., impose regulatory requirements “greater or more stringent that the minimum standards and regulations” adopted by Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Pipeline safety law. 58 P.S. § 801.501. Given existing regulations and the fact that ETC has agreed to perform additional ILIs that are not required by the regulations, we are satisfied that the terms of the Settlement adequately address the issue of ILIs.  Therefore, we conclude the terms regarding the ILIs and the data collection to be reasonable and in the public interest.  Accordingly, we shall decline to modify the Settlement to mandate a third party perform the ILIs or analyze the inspection data.

**3. Emergency Notifications and Monitoring**

Regarding emergency notifications procedures, commenters noted that: (1) ETC should be required to immediately notify emergency services agencies and the local municipality in the event of any slope failures; (2) the pipeline should be equipped with a monitoring system to patrol the pipeline between inspections and provide notice to the community in real time; and (3) ETC should be reporting any relevant developments to I&E immediately, before it reaches the point of a slope failure. Otten Comments at 2; BCMAC Comments at 2; CAC/PSC Comments at 3.

We note that ETC is subject to 49 CFR § 191.5 requiring an operator to notify the NRC of certain incidents at the earliest practicable moment following discovery but no later than one hour after the confirmed discovery.

ETC is also required to notify PA DEP and other agencies in the event of incidents related to the Revolution Pipeline. ETC is required by 25 Pa. Code §§ 78a.55(a), 78a.68, 102.1, and 102.5(l), to prepare, implement, and have available upon request by PA DEP, a Preparedness Prevention and Contingency (PPC) Plan.[[14]](#footnote-14) The PPC Plan includes a notification list of local, state and federal emergency service contact information for ETC to make the appropriate notifications in an emergency.[[15]](#footnote-15) The PPC Plan is required to be updated regularly. We encourage ETC to: (1) ensure the contact information is kept up to date and includes the local municipalities and local emergency response agencies in the areas the Revolution Pipeline traverses; and (2) utilize the emergency contact information to notify the local municipalities and local emergency responders in the event of any condition that may endanger public health or safety.

In addition, ETC has agreed to implement increased monitoring of pipeline facilities undergoing start-up. I&E Statement in Support at 6. ETC explains that it has agreed to modify its start-up procedures for purging and packing to provide for 24-hour monitoring of all mainline valves. This 24-hour monitoring will include onsite employees who are stationed at each valve and qualified to operate the valve, and such monitoring will continue until the pipeline reaches operating pressure. ETC Statement in Support at 19.

Furthermore, I&E states that ETC has committed to perform certain measures that exceed the standards set forth in the Federal pipeline safety regulations. I&E explains that Class 1 gathering lines are not subject to any of the Federal pipeline safety regulations and, no class of gathering lines is subject to any of the integrity management regulations set forth is Subparts O and P of Part 192 of Title 49 of the Code of Federal Regulations. According to I&E, the Settlement achieves an agreement from ETC to perform in-line inspections, an integrity management measure, on the Revolution Pipeline, which is a gathering line. ETC has agreed to perform a minimum of six (6) ILIs on the Revolution Pipeline between the present time and 2028, with an estimated cost of $975,000. I&E Statement in Support at 5-6.

As part of the Settlement, ETC explains that it has agreed to conduct restart and post-restart ILIs more frequently and in a shorter time-period than it is otherwise required to do. ETC is required to employ ILI tools to verify the integrity of the Revolution Pipeline at least once per year for the next five years and upon the entry of a Commission Order approving the Settlement. Upon conclusion of the initial five-year period, the Settlement requires ETC to meet and confer with I&E in 2025 to review and discuss the ILI results and mutually determine future inspection protocols. ETC Statement in Support at 19-20.

ETC provides that it is already subject to and implementing substantially more comprehensive monitoring obligations pursuant to: (1) the General Permits, Erosion and Sedimentation Plan, and additional plans submitted to the PA DEP in connection with an October 29, 2018 Compliance Order with PA DEP; and (2) the December 30, 2019 Consent Order and Agreement with PA DEP which imposes extensive and long term mitigation and monitoring plans and obligations in identified areas of the right of way (ROW), including the incident site. ETC explains further that it is developing new guidelines that will be specific to monitoring in geohazard areas. According to ETC, pursuant to its obligations to the PA DEP, ETC has been monitoring the ROW extensively for two years. ETC has also profiled the pipe at all slope stability monitoring sites with the assistance of third-party consultants, and it has not observed any evidence of conditions that would threaten pipe integrity. ETC maintains that it continues to monitor the ROW as required by the PA DEP permits and Orders referenced above, including monitoring for slope stability. ETC Statement in Support at 20.

ETC submits that these ILIs go above and beyond PHMSA statutory and regulatory requirements[[16]](#footnote-16) and will be completed in a shorter time frame and with greater frequency than if this matter had proceeded to litigation. ETC notes that it has agreed to collaborate with I&E concerning future frequency of these inspections and that these ILIS are estimated to cost ETC approximately $975,000. ETC Statement in Support at 20.

As part of the Settlement, ETC has also agreed to implement a three-phase approach to monitoring and patrolling the entire Revolution Pipeline ROW. For the first phase, ETC will walk the entire ROW at least every seven days and after every 0.1” rainfall. ETC notes that it has also agreed to collaborate with I&E concerning future monitoring based on data collected from the ILI tool run analysis and monitoring and patrolling. ETC Statement in Support at 21; Settlement at 16.

We note that ETC, with the proposed Settlement, has agreed to monitoring beyond the regulatory requirements. We also note the monitoring ETC is required to perform to comply with the PA DEP permits and Orders. Under Act 127, the Commission in regulating the Revolution Pipeline may not impose regulatory requirements “greater or more stringent that the minimum standards and regulations” adopted by PHMSA and the Federal Pipeline safety law. 58 P.S. § 801.501. Given that ETC has agreed to monitoring not required by the regulations and the increased monitoring required by the DEP permits and PPC Plan, we are satisfied that the terms of the Settlement adequately address the issue of emergency notifications and monitoring.  For all of the reasons set forth above, we are satisfied that the terms of the Settlement adequately address the issue of emergency notifications and monitoring. Therefore, we conclude the terms regarding emergency notifications and monitoring to be reasonable and in the public interest.  Under the circumstances in this case, we are not inclined to disturb the proposed Settlement by imposing additional reporting and monitoring requirements.

**4. Geohazard Policies and Procedures and the Quality Assurance/Quality Control Program**

One commenter recommended that ETC’s policies and procedures related to geohazards should be subject to public review, analyzed by an independent expert and approved by I&E before they are implemented. CAC/PSC Comments at 2. The same commenter recommended that ETC’s Quality Assurance/Quality Control Program to oversee pipeline siting and construction practices should be more transparent and have I&E oversight. CAC/PSC Comments at 4.

I&E provides that ETC has agreed to enhance the coordination of preconstruction research with the pipeline design and construction crews. I&E Statement in Support at 6. Settlement Condition C requires ETC to establish procedures to incorporate preconstruction research into its pipeline and construction procedures.

ETC explains that it has adopted an express procedure to address relevant preconstruction geohazard analysis for purposes of design and construction, including route selection: Energy Transfer Engineering Standard, “Geohazard Evaluations for Pipeline Projects,” Document No. 2.0203 (eff. August 1, 2020). ETC agreed to modify the standard to provide that “the Geohazard Management Plan shall be delivered to COMPANY PM for review prior to the start of construction” and that these policies and procedures will apply to all of ETC’s pipelines in Pennsylvania. ETC Statement in Support at 19.

ETC provides that it has submitted to I&E for review on October 9, 2020, an outline of the quality assurance/quality control program to oversee pipeline siting and construction practices for ETC’s gas and hazardous liquid pipelines in Pennsylvania. As required by the Settlement, ETC will submit the policies and procedures document to I&E upon completion. ETC Statement in Support at 21. Since I&E has received an outline of the proposed procedures and will review them upon completion, we are satisfied that the terms of the Settlement adequately address the issue of the geohazard policies and procedures and QA/QC plan.  Therefore, we conclude the terms regarding the geohazard issue to be reasonable and in the public interest.  Accordingly, in these circumstances, we do not find that a modification to the Settlement terms is warranted.

**5. Compliance History of ETC Affiliates**

One commenter recommended that the Commission consider the compliance history of ETC’s affiliates. CAC/PSC Comments at 6.

We agree with I&E that ETC, as a corporate entity, is separate and distinct from Sunoco Pipeline L.P. a/k/a Energy Transfer Partners and is subject to the Commission’s jurisdiction as a pipeline operator pursuant to Act 127. I&E Statement in Support at 15, n. 6. As separate and distinct entities, consideration of compliance history of affiliated entities from the one in a Commission proceeding would be inappropriate as it is the entity which is the subject of the matter before the Commission and not its affiliates that the Commission addresses. Given this, we are satisfied that the terms of the Settlement adequately address the issue of Commission consideration of compliance history of ETC’s affiliates. Therefore, we conclude the terms regarding compliance history of ETC’s affiliates to be reasonable and in the public interest.  Accordingly, in these circumstances, we do not find that a modification to the Settlement terms is warranted.

 **6. Formal Investigation**

 State Representative Diane Friel Otten commented that the Commission conduct a formal investigation of the matter.

The Commission has often recognized that the prosecutorial functions provided by statute, including the determination of informal or formal investigations, are left to the sole discretion of the prosecutorial division, I&E, of the Commission. Specifically, the Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa. C.S. § 308.2(a)(11). Accordingly, I&E has the authority and ability to conduct investigations and file complaints or other enforcement actions as it deems appropriate. Simply stated, I&E has the prosecutorial discretion to determine the scope of an informal investigation, initiate an investigation, terminate an investigation, enter into settlement discussions or agreements, and/or take formal enforcement action, including to file formal complaints.[[17]](#footnote-17)

In this instance I&E exercised its discretion and proceeded with an informal investigation. For the reasons stated above, we will defer to I&E’s discretion on this matter and will not disturb its decision of an informal investigation. Thus, we conclude I&E’s decision to perform an informal investigation to be reasonable and in the public interest.  Accordingly, in these circumstances, we do not find that a modification to the Settlement terms is warranted.

**C. Analysis of the Settlement under the Policy Statement**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). After a review of the terms of the Settlement, we find that the Settlement, as modified, is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty 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. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id*. I&E alleges that the driving conduct in this matter involves ETC’s failure to protect the Revolution Pipeline from known hazardous conditions, *i.e.,* landslides, that caused the pipeline to move and sustain abnormal loads, as well as ETC’s failure to select and install materials and components for the Revolution Pipeline that were able to maintain the integrity of the pipeline under the anticipated environmental conditions, *i.e.*, the high probability of landslides at the failure site. I&E further alleges that ETC failed to adhere to its construction procedures in that it failed to react to the warnings set forth in a preconstruction report related to potential geohazards on ETC’s right-of-way, which predicted a strong likelihood of landslides occurring at the incident side. According to I&E, even though ETC relied upon independent contractors to design and construct the Revolution Pipeline, ETC, as a regulated pipeline operator, bears the ultimate responsibility to comply with the Federal pipeline safety regulations. I&E therefore submits that the alleged violations resulting from the I&E Safety Division’s investigation are of a serious nature and were considered in arriving at the civil penalty and remedial relief set forth in the terms of the Settlement. I&E Statement in Support at 12.

The second factor considered is whether the resulting consequences of ETC’s alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). In this case, the pipeline failure released natural gas that resulted in a fire, which demolished one residential structure, six transmission towers and one electric power line. The fire also burned several acres of wooded land. Approximately forty-nine residential properties were evacuated, however, no fatalities or injuries occurred. The terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of ETC’s pipeline facilities in Pennsylvania. I&E Statement in Support at 12-13.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* This factor does not apply to the present case since this matter is being resolved through a settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the filing of the instant Settlement, ETC revised or was in the process of finalizing revisions to its procedures pertaining to pipeline siting and construction practices. One such revised procedure took effect on August 1, 2020 and relates to incorporating preconstruction research into pipeline design and construction, especially as it pertains to evaluating geohazards for pipeline projects. The Settlement ensures that ETC will further revise this procedure to guarantee that its pipeline project manager receives a copy of a geohazard management plan for each ETC pipeline construction project in Pennsylvania. Furthermore, ETC is in the process of developing a quality control program to oversee pipeline siting and construction practices in Pennsylvania. The I&E Safety Division reviewed an outline of these policies and procedures and the document will be submitted to I&E upon completion. I&E Statement in Support at 13.

In addition to the procedures referenced above, ETC has committed to perform certain actions that exceed the standards set forth in the Federal pipeline safety regulations. Such actions include increased patrolling along the Revolution Pipeline right-of-way through at least 2025 and performing multiple ILIs on thirty-five (35) miles of the pipeline, including the segment that experienced the failure, through 2028. Significantly, there is no regulatory requirement that gathering lines be evaluated for integrity management, including employing ILIs. Moreover, approximately half of the forty-mile Revolution Pipeline, including portions in which ETC has agreed to perform ILIs, is classified as a Class 1 gathering line that is not subject to *any* of the Federal pipeline safety regulations. The ILI settlement term alone produces a more favorable outcome than any result that would be acquired through litigation as I&E likely would not have been able to obtain relief outside of what the law and regulations prescribe. I&E Statement in Support at 13.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, I&E asserts that the primary violations occurred during the construction of the Revolution Pipeline, which took place between 2016 and 2018. The consequence of these violations resulted in the pipeline failure and subsequent fire, which endured for approximately two hours on September 10, 2018, and impacted the public. The residents of approximately forty-nine properties were forced to evacuate and one family lost their home entirely. The fire also destroyed six transmission towers and a power line. Natural gas was not yet being transported to customers at the time of the incident as the pipeline was being brought up to optimal operating pressure. However, ETC’s customers experienced delays resulting from the pipeline failure as ETC was forced to re-route and reconstruct the failed segment of the Revolution Pipeline. I&E Statement in Support at 14-15.

The sixth factor to be considered relates to the compliance history of ETC. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Energy Transfer Company d/b/a ETC Northeast Pipeline LLC[[18]](#footnote-18) has been the subject of three formal complaint proceedings before the Commission that were initiated by property owners whose properties either border or include an easement for the Revolution Pipeline. *See Mark Iancono v. Energy Transfer Company*, Docket No. C-2018-3003645; *Michelle Lutz v. Energy Transfer Company*, Docket No. C‑2019-3014395; and *Michelle Lutz v. Energy Transfer Company*, Docket No. C‑2020‑3019394. All three matters were resolved by the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24(b). The instant matter is the first I&E investigation of ETC resulting in findings of alleged violations of the Federal pipeline safety regulations. I&E Statement in Support at 15.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that ETC fully cooperated in the investigation and settlement process in this matter and that such cooperation demonstrates a commitment consistent with public safety goals and objectives. I&E Statement in Support at 15.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). We find that a civil penalty amount of $1,000,000, which may not be claimed as a tax deduction, in combination with the monetary cost of ETC’s performance of all of the remedial measures, notably the estimated cost of $975,000 related to operating at least six (6) ILIs on the Revolution Pipeline, will be a sufficient deterrent to ETC to prevent similar occurrences in the future. I&E Statement in Support at 16.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). We note that the civil penalty of $1,000,000 is comparable to that in *UGI Penn Natural* and ETC has agreed to additional measures projected to cost $975,000. *UGI Penn Natural* was the first case before the Commission that involved gas safety violations that occurred after the amendment to Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), which increased the maximum civil penalty the Commission is authorized to levy to $2,000,000.[[19]](#footnote-19) The total of $1,975,000 is quite near the limit of $2,000,000 as set by 66 Pa. C.S. § 3301(c) as follows:

**(c)  Gas pipeline safety violations.--**Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

Additionally, the preventative measures totaling $975,000 that ETC has agreed to are not required by the regulations.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). We agree with I&E that the fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions. We note that the Settlement provides relief by virtue of this Settlement that might not otherwise have been obtained had this matter been fully litigated as ETC has agreed to perform measures above and beyond what the applicable regulations require. I&E Statement in Support at 17.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement, the Statements in Support of the Settlement, and the Comments, we find that the proposed Settlement between I&E and ETC is in the public interest and merits approval. Accordingly, we will approve the Settlement; **THEREFORE**,

 **IT IS ORDERED:**

1. That the Joint Settlement Petition filed on December 16, 2020, between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Energy Transfer Company d/b/a ETC Northeast Pipeline LLC, is approved.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), within thirty (30) days of the entry of this Opinion and Order, Energy Transfer Company d/b/a ETC Northeast Pipeline LLC shall pay a civil penalty of One Million Dollars ($1,000,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

3. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

4. That the above-captioned matter shall be marked closed upon receipt of the civil penalty.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: November 18, 2021

ORDER ENTERED: November 18, 2021

1. 49 CFR § 192.3 **Gathering line** means a pipeline that transports gas from a current production facility to a transmission line or main.

49 CFR § 192.5(b)(3) A Class 3 location is: (i) Any class location unit that has 46 or more buildings intended for human occupancy; or (ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12‑month period. (The days and weeks need not be consecutive.)

49 CFR § 192.8 describes the Type A line parameters. [↑](#footnote-ref-1)
2. The Gas and Hazardous Liquids Pipeline Act, 58 P.S. §§ 801.101 et seq. (Act 127) authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws and regulations. Settlement at 2. [↑](#footnote-ref-2)
3. ETC designated the Terracon Report as Confidential Security Information (CSI) pursuant to “The Public Utility Confidential Security Information Disclosure Protection Act,” 35 P.S. §§ 2141.1 – 2141.6, and the Commission’s Regulations at 52 Pa. Code §§ 102.1-102.6. Accordingly, the Terracon Report has not been produced and the discussion of it is limited to details that are not confidential security information. [↑](#footnote-ref-3)
4. Similar to the Terracon Report, ETC designated the GeoEngineers Report as CSI pursuant to “The Public Utility Confidential Security Information Disclosure Protection Act,” 35 P.S. §§ 2141.1 – 2141.6, and the Commission’s Regulations at 52 Pa. Code §§ 102.1-102.6. Accordingly, the GeoEngineers Report has not been produced and the discussion of it is limited to details that are not CSI. [↑](#footnote-ref-4)
5. ETC has likewise designated the Dynamic Risk Report as CSI pursuant to “The Public Utility Confidential Security Information Disclosure Protection Act,” 35 P.S. §§ 2141.1 – 2141.6, and the Commission’s Regulations at 52 Pa. Code §§ 102.1‑102.6. Accordingly, the Dynamic Risk Report has not been produced and the discussion of it is limited to details that are not CSI. [↑](#footnote-ref-5)
6. This term is limited to monitoring emergency, or mainline block, valves that are capable of isolating the pipeline. This term excludes ancillary valves that have no effect on isolating the pipeline in an emergency situation, *i.e.* small bypass valves on pig launchers or receivers. Settlement at 14, n.5. [↑](#footnote-ref-6)
7. An in-line inspection is a preventative maintenance examination of a pipeline using a tool that travels inside the pipeline and is able to identify corrosion, cracks or other defects that may result in the failure of the pipeline. I&E Statement in Support at 6, n. 2. [↑](#footnote-ref-7)
8. Strain analysis will be performed utilizing the data collected from the geometry tool and IMU. Settlement at 15, n. 6. [↑](#footnote-ref-8)
9. Notice of Proposed Rulemaking Order, Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L‑2019‑3010267 (Order entered July 15, 2021). [↑](#footnote-ref-9)
10. *See* *Consent Order and Agreement*; E&S Permit Nos. ESCG030015002, ESCG030015001, WO&E Permit Nos. E02-1718, E06-701, E07-459, E11-352, E15-862; E21-449; E22-619, E23-524, E32-508, E34-136, E36-945, E38-194, E50-258, E63-674, E65-973, E67-920 (February 8, 2018), *available at:*

[https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary\_of\_Order/Sunoco%20Pipeline%20LP,%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf](https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary_of_Order/Sunoco%20Pipeline%20LP%2C%20Consent%20Order%20and%20Agreement%20-%20February%208%2C%202018.pdf); CAC/PSC Comments at 5, n. 1. [↑](#footnote-ref-10)
11. *Pennsylvania Department of Environmental Protection Administrative Order,* E&S Permit Nos. ESCG030015002, ESCG030015001, WO&E Permit Nos. E02‑1718, E06-701, E07-459, E11-352, E15-862; E21-449; E22-619, E23-524, E32-508, E34-136, E36-945, E38-194, E50-258, E63-674, E65-973, E67-920 (January 3, 2018), *available at:* [https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf](https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf%20%20)  ; CAC/PSC Comments at 5, n. 2. [↑](#footnote-ref-11)
12. *See* “DEP Issues Historic $30.6 Million Penalty Over Revolution Pipeline Violations Department Collects One of the Largest Civil Penalties in Single Settlement History” DEP Newsroom Website (January 3, 2020), available at:

<https://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21792&typeid=1>; CAC/PSC Comments at 5, n. 4. [↑](#footnote-ref-12)
13. *See* *UGI Penn Natural* at 21. [↑](#footnote-ref-13)
14. Consent Order and Agreement (COA) between PA DEP and ETC Northeast Pipeline, LLC, February 26, 2021, ¶ P at 5. [↑](#footnote-ref-14)
15. The PPC Plan requirements can be found in “*Guidance for Development and Implementation of Environmental Emergency Response Plans*”, Document No. 400-2200-001, PA Department of Environmental Protection, Aug. 6, 2005. The notification list requirement details can be found at p. 19 of the referenced guidance document. [↑](#footnote-ref-15)
16. Under Act 127, the Pennsylvania Gas and Hazardous Liquids Pipeline Act, 58 P.S. §§ 801.101 *et seq*., the Commission in regulating the Revolution Pipeline may not impose regulatory requirements “greater or more stringent that the minimum standards and regulations” adopted by PHMSA and the Federal Pipeline safety law. 58 P.S. § 801.501. Settlement at 18, n. 7. [↑](#footnote-ref-16)
17. Furthermore, it is well-established that the exercise of prosecutorial discretion cannot be compelled, nor is it subject to judicial review. *See Commonwealth v. Sanico, Inc.*,830 A.2d 621, 629 n.14 (Pa. Cmwlth. 2003), *Lerro ex rel. Lerro v. Upper Darby Township*, 798 A.2d 817, 820-21 (Pa. Cmwlth. 2002)(citing *Commonwealth v. Malloy*, 450 A.2d 689 (Pa. Super. 1982)). The doctrine of prosecutorial discretion also applies to enforcement actions by administrative agencies. *Sanico*, 830 A.2d at 629 n.14 (citing *In re Frawley*, 364 A.2d 748 (Pa. Cmwlth. 1976)). It is the agency’s sole province to assess whether a violation has occurred and whether to expend resources on one particular enforcement action as opposed to another. *Sanico*, 830 A.2d at 629 n.14 (citing *Heckler v. Chaney*, 470 U.S. 821, (1985)). An agency’s decision not to enforce “often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.” *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). [↑](#footnote-ref-17)
18. This corporate entity is separate and distinct from Sunoco Pipeline L.P. a/k/a Energy Transfer Partners and is subject to the Commission’s jurisdiction as a pipeline operator pursuant to Act 127. [↑](#footnote-ref-18)
19. *See* *UGI Penn Natural* at 21. [↑](#footnote-ref-19)