



Thomas J. Sniscak  
(717) 703-0800  
tjsniscak@hmslegal.com

Kevin J. McKeon  
(717) 703-0801  
kjmckeon@hmslegal.com

Whitney E. Snyder  
(717) 703-0807  
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

August 24, 2018

**VIA ELECTRONIC FILING**

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

Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3001451; P-2018-3001453; **SUNOCO PIPELINE L.P.'S PREHEARING CONFERENCE MEMORANDUM**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Prehearing Conference Memorandum in the above-referenced proceeding.

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

Very truly yours,

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

WES/das  
Enclosure

cc: Hon. Elizabeth H. Barnes, (Electronic and first class mail)  
Robert A. Fox, Esquire  
Robert L. Byer, Esquire  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3001451
	:	P-2018-3001453
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

---

**SUNOCO PIPELINE L.P.'S  
PREHEARING CONFERENCE MEMORANDUM**

---

**TO THE HONORABLE ELIZABETH H. BARNES**

Pursuant to Your Honor's July 20, 2018 Order and 52 Pa. Code § 5.222(d), Sunoco Pipeline L.P. (SPLP) submits this prehearing conference memorandum.

**I. SERVICE LIST**

Service of paper documents in this proceeding shall be accepted on behalf of SPLP by:

Thomas J. Sniscak, Esq.  
Kevin J. McKeon, Esq.  
Whitney E. Snyder, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Phone: 717-236-1300  
Fax: 717-236-4841  
E-mail: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Robert D. Fox, Esq.  
Neil S. Witkes, Esq.  
Diana A. Silva, Esq.  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430-5700  
Fax: (484) 430-5711  
Email: [rfox@mankogold.com](mailto:rfox@mankogold.com)  
[nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

Robert L. Byer, Esq.  
Leah A. Mintz, Esq.  
Duane Morris LLP  
600 Grant Street, Suite 5010  
Pittsburgh, PA 15219  
Tel: (412) 497-1000  
Fax: 412)202-2787  
Email: [rlbyer@duanemorris.com](mailto:rlbyer@duanemorris.com)  
[LMintz@duanemorris.com](mailto:LMintz@duanemorris.com)

Counsel for SPLP also requests that any electronic service list utilized by the parties in this proceeding include Thomas J. Sniscak ([tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)), Kevin J. McKeon ([kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)), Whitney E. Snyder ([wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)), Robert D. Fox ([rfox@mankogold.com](mailto:rfox@mankogold.com)), Neil S. Witkes ([nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)), Diana A. Silva ([dsilva@mankogold.com](mailto:dsilva@mankogold.com)), Robert L. Byer ([rlbyer@duanemorris.com](mailto:rlbyer@duanemorris.com)) and Leah A. Mintz ([LMintz@duanemorris.com](mailto:LMintz@duanemorris.com)).

## **II. SETTLEMENT**

SPLP is willing to engage in settlement discussions with the parties.

## **III. DISCOVERY**

SPLP does not propose any modifications to the Commission's discovery regulations.

## **IV. THE NEED FOR PUBLIC INPUT HEARINGS.**

In the July 17, 2018 email communication to the parties, Your Honor raised the issue of whether there would be a request for Public Input hearings. To SPLP's knowledge, up to that point

in time no party had raised or requested Public Input hearings. SPLP opposes holding public input hearings because they are legally improper, inappropriate in a complaint proceeding where Complainant bears the burden of proof, and would be a departure from Commission practice. Public input hearings are held as a matter of course in rate proceedings, application proceedings, and electric transmission line siting proceedings pursuant to the Commission's regulations and policy statements. In these types of proceedings where public input testimony sessions occur, the utility bearing the burden of proof is, respectively, making a request for permission to be granted higher rates to all customers, or new rights to expand service or territories or acquire or merge with an existing certificated public utility, or to site an electric transmission line.

In contrast, there is no such policy encouraging or legally permitting public input hearings in a complaint proceeding such as this. A complaint proceeding where the utility is not making a request for permission from the Commission to take some action that would affect the public (like increasing rates, etc.) does not require input from the public to determine whether the proposal is in the public interest. In a complaint proceeding the issue is not whether the utility's proposal is in the general public interest as in those other proceedings, but rather whether the Complainant has proven by its witnesses that a utility has violated the statute, regulation or applicable order (if any) involved.

Here, Complainant has brought a case for which he bears the burden of proof to show a violation of law or regulation and how it affects him, and he must present evidence to meet that burden. Allowing testimony by members of the public is not a proper means by which Complainant can fulfill that burden of proof.

Moreover, the Commission found that Senator Dinniman has standing to bring this proceeding in his personal capacity. *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco*

*Pipeline L.P.*, Docket Nos. C-2018-3001451 et al., at 21-23 (Order entered Jun. 14, 2018). Any grievances or concerns of the general public are not relevant because they have no bearing on whether Senator Dinniman may be harmed. Senator Dinniman does not have standing to bring the complaints of others. Notably, the Commission stated: “the ALJ’s analysis must consider the question of standing in view of the possible harm to the Complainant’s interest.” *Id.* at 23. Accordingly, this Complaint proceeding is to consider how Senator Dinniman’s interest as a resident of West Whiteland Township allegedly may be harmed by SPLP—not the interests of others. Further, the time for intervention has long passed and the intervenors have already been established and are able to present their own testimony.

To the extent that Complainant or any intervenor wishes to present factual evidence by a lay witness, they should be required to do so in written testimony form, as the Commission’s regulations encourage. 52 Pa. Code § 5.412. This will allow the respondent and any intervenor aligned with the respondent to have the due process and discovery rights to test such evidence and to consider whether it is relevant and not unduly repetitive.

**V. SCHEDULE.**

SPLP proposes the following schedule.

Complainant and Complainant Aligned Intervenor Direct	December 7
Respondent and Respondent Aligned Intervenor Rebuttal	March 5
Complainant and Complainant Aligned Intervenor Surrebuttal	April 8
Rejoinder Outlines	May 8
Evidentiary Hearings	June 10-14
Main Briefs	July 26
Reply Briefs	August 16

## **VI. WITNESSES.**

SPLP does not have the burden of proof in this proceeding and that it cannot predict what specific witnesses it may need to present to defend against the Amended Complaint until Complainant and aligned intervenors present their testimony. SPLP entered testimony into the record in this proceeding at the May 7 and 10, 2018 hearings and will rely on that testimony as necessary going forward. SPLP identifies preliminarily, as potential witnesses, those witnesses presented at the May 2018 hearings, including: Matthew Gordon, John Zurcher, David Demko, Paul Chrostowski, Anthony Gallagher, Alan Engberg, Richard Billman. SPLP will identify additional witnesses as necessary to respond to the witnesses and evidence submitted by Complainant and Intervenors aligned with Complainant. Depending upon Complainant's testimony and that of Intervenors aligned with Complainant, SPLP reserves the right to identify and submit other witnesses subject to the form and time of presentation in the schedule proposed herein by SPLP.

Each of these witnesses may present testimony regarding any of the below-stated issues or any other issue that may arise during the course of this proceeding. SPLP reserves the right to adopt any testimony of other witnesses, in whole or in part, to substitute witnesses, and to offer additional witnesses and exhibits as may be necessary, including but not limited to witnesses and evidence to address the testimony, exhibits, or evidence that may be presented by any party in this proceeding.

## **VII. ISSUES**

Complainant has the burden of proof in this proceeding to show that SPLP is in violation of law or a Commission regulation regarding its conduct in West Whiteland Township over which this Commission has jurisdiction and as raised in its Amended Complaint. SPLP reserves its right

to address additional issues as they may arise during this proceeding. SPLP's position will be finalized in its evidence and briefs submitted under the schedule developed in this proceeding. The below listed issues are not intended to be comprehensive or exhaustive.

A. SPLP's Operation of ME1 in West Whiteland Township

SPLP's operation of ME1 in West Whiteland Township is safe and in conformance with the applicable laws and regulations over which the Commission has jurisdiction. The geology of West Whiteland Township has been properly evaluated and is safe for the continued operation of ME1.

B. SPLP's Construction of ME2 and ME2X in West Whiteland Township

SPLP's construction of ME2 and ME2X in West Whiteland Township is safe and in conformance with applicable laws and regulations over which the Commission has jurisdiction. Construction of ME2 and ME2X in West Whiteland Township has not adversely impacted the integrity or safety of ME1. The geology of West Whiteland Township has been properly evaluated and is safe for the continued construction of ME2 and ME2X without causing a risk to the integrity of ME1.

C. SPLP's Pipeline Right of Way in West Whiteland Township

SPLP's pipeline right of way in West Whiteland Township is in conformance with applicable laws and regulations. Notably, the Commission has limited jurisdiction over the siting of pipelines. Challenges to the pipeline right-of-way are also barred by the doctrine of laches.

D. The Location of ME1 in West Whiteland Township

The location of ME1 in West Whiteland Township is safe and in conformance with all applicable laws and regulations over which the Commission has jurisdiction. Challenges to the location of ME1 are barred by laches.

E. Efforts to Warn and Protect the Public From Danger

SPLP has taken all steps required under applicable law and regulation to warn and protect the public from danger. SPLP's efforts are in conformance with industry standards and are not unreasonable or inadequate.

F. SPLP's Emergency Response Plans, Risk Assessments, and Integrity Management Plans

SPLP has created and, where permissible, disseminated all required Emergency Response Plans, Risk Assessments, and Integrity Management Plans (collectively, Plans). SPLP's Plans are in conformance with applicable law and regulations. SPLP is not required and it would be illegal to require SPLP to share its Integrity Management Plan or Risk Assessment with the public.

G. Senator Dinniman's Standing

Senator Dinniman lacks personal standing as well as representational standing. To the extent that Your Honor or the Commission or any tribunal finds Senator Dinniman has only personal standing, SPLP submits that it is improper for public taxpayer funds to be used to finance Senator Dinniman's personal standing litigation. While SPLP will seek appeal of the Commission's holding that Senator Dinniman has standing, that appeal is discretionary for the Commonwealth Court to hear. *See* 42 Pa. Code § 702(b). Unless and until a final, unappealable court order is issued that Senator Dinniman lacks standing, SPLP will continue to pursue this issue.

H. SPLP's Public Utility Status

SPLP's status as a public utility cannot be disputed and is thus no longer an issue in this proceeding. The Commission's June 14, 2018 affirmatively held, consistent with a plethora of precedent, that:

Sunoco is recognized and regulated as a public utility and a public utility corporation by the Commission. *See Sunoco I*. Sunoco maintains tariffs on file with the Commission pursuant to Section 1302 and 1303 of the Code, 66 Pa. C.S. §§ 1302; 1303. *See also, Sunoco Pipeline L.P. Supplement No. 2 Tariff Pipeline-Pa P.U.C. No. 16 and Letter Request for Waiver of 52 Pa. Code §53.52(b)(2) and (c)(1) through (5)*, Docket No. R-2014-2452684 (Order entered January 15, 2015):

On November 6, 2014, Sunoco Pipeline L.P. (Sunoco or the company), Utility Code 140001, filed Supplement No. 2 Tariff Pipeline-Pa P.U.C. No. 16 (Supplement No. 2), to become effective January 5, 2015. On December 18, 2014, Sunoco filed Supplement No. 4 which voluntarily postpones the effective date to January 16, 2015.

Supplement No. 2 proposes to add the new origin point of Houston, Washington County, Pennsylvania for west to east intrastate movement of propane originating from the Marcellus Shale on the previously abandoned Mechanicsburg to Delmont segment and the newly constructed Houston to Delmont pipeline segment to markets in Southeastern Pennsylvania as part of Sunoco's Mariner East Project.

Sunoco declares that given the increased interest expressed by shippers in securing intrastate pipeline transportation facilities sooner than originally anticipated, and in recognition of the public interest in ensuring adequate pipeline capacity to meet peak demand for propane during the winter season, Sunoco maintains it is able to answer shipper demand and support the public interest though the addition of the Houston, Pennsylvania origin point for the intrastate shipment of propane to Twin Oaks.

Sunoco indicates that they will be investing significant capital to reactivate the Delmont to Mechanicsburg segment and construct over 50 miles of new pipe and facilities from Houston to Delmont for the transportation of propane to

Twin Oaks. Sunoco notes that in addition to the capital investment to complete the Mariner East project, substantial capital will continue to be invested and substantial expense incurred in connection with the remainder of the Pennsylvania intrastate petroleum and refined petroleum products pipeline to ensure their continued safe, reliable, and environmentally prudent operation.

\* \* \*

Sunoco declares that Supplement No. 2 Tariff No. 16 will generate \$838,229 in revenue. Sunoco states that 5% of that revenue will be paid to the Commonwealth in gross receipts tax (\$41,911).

Sunoco avers that they expect a positive effect on the service rendered, in that the tariff changes will enable it to continue the high level of reliable, environmentally responsible service it has traditionally provided to its customers.

Docket No. R-2014-2452684; Order at 1-3.

Sunoco is the product of various mergers and acquisitions of two pipeline companies that were originally certificated by the Commission's predecessor, the Pennsylvania Public Service Commission, in the early 1930s to transport petroleum and refined petroleum products.<sup>1</sup> *Sunoco-Delaware Riverkeepers Order* at 7. In this Order we additionally found as follows:

In 2013, Sunoco advised the Commission that it intended to revise its operations in view of the rapid development and limited infrastructure available to move Marcellus Shale natural gas and natural gas liquids (NGLs) to market. To that end, Sunoco filed an Application with the Commission at Docket No. A-2013-2371789 to abandon certain intrastate service along portions of its pipeline system and a Petition at Docket No. P-2013-2371775 to temporarily suspend a portion of certain intrastate service along other segments. Sunoco averred that the abandonment and suspension were necessary to construct its proposed Mariner East pipeline,

---

<sup>1</sup> Pursuant to Section 5.408(a) of the Commission's Regulations, 52 Pa. Code § 5.408(a), we take administrative notice of the history of Certificates and Orders issued by the Commission and predecessor agencies. Under Section 103 of the Code, 66 Pa. C.S. § 103, any Certificates granted under prior iterations of the Code remain valid and have the full force and effect of law.

which would meet a public need for the transportation of natural gas byproducts. By Order entered on August 29, 2013, and subsequently clarified on October 17, 2013, the Commission approved both the Application and the Petition. *See, Application of Sunoco Pipeline LP for a Certificate of Public Convenience to Abandon a Portion of its Petroleum Products Pipeline Transportation Service in Pennsylvania and a Petition for Approval of Temporary Suspension of a Portion of its Petroleum Product Pipeline Transportation Service in Pennsylvania, Docket Nos. A-2013-2371789 and P-2013-2371775 (Order entered on August 29, 2013) (August 2013 Order).*

*Sunoco-Delaware Riverkeepers Order at 9.*

The Commission regulates the intrastate movement of natural gas and petroleum products or service by Sunoco through its pipelines, and not the actual physical pipelines conveying those liquids. *Id.*

#### **VIV. EVIDENCE**

SPLP does not have the burden of proof in this proceeding and it cannot predict what specific evidence it may need to present to defend against the Amended Complaint until Complainant and aligned intervenors present their testimony. SPLP entered extensive evidence into the record in this proceeding at the May 7 and 10, 2018 hearings and will rely on that evidence as necessary going forward. SPLP may also move into the record the portions of its June 22, 2018 Compliance filing in these proceedings that have not already been officially admitted into the evidentiary record.

SPLP intends to present the pre-filed testimony of the above-named witnesses along with any exhibits that witness may sponsor to support his or her testimony. SPLP reserves the right to adopt testimony of other witnesses, in whole or in part, to substitute witnesses, and to offer additional witnesses and exhibits, including but not limited to addressing the testimony, exhibits or other evidence that other parties in this proceeding may present.

## VIII. PETITIONS TO INTERVENE

SPLP is not aware of any outstanding petitions to intervene.

## IX. STATUS OF DEP DRILLING PERMITS AND COMPLIANCE FILINGS

The Commission's June 15, 2018 Order in this proceeding ordered SPLP to make two compliance filings. *Id.* at ¶¶ 6-7. Paragraph 6 required SPLP to submit various protocols, plans, and training documents. SPLP submitted the compliance filing that Paragraph 6 required on June 22, 2018. On August 14, 2018, the Commission found SPLP's filing compliant, stating: "Sunoco has established that it has complied with standard notice procedures of DEP and its internal policies and such procedures, as outlined, comply with the requirements of Ordering Paragraph No. 6." *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3001451 et al., at 25 (Order entered Aug. 14, 2018).

Paragraph 7 of the June 14, 2018 Order required SPLP to submit "a verification or affidavit that the Department of Environmental Protection has issued the appropriate permission for continued construction of Mariner East 2 and Mariner East 2X in West Whiteland Township when it is granted." *Id.* SPLP submitted compliance filings for Paragraph 7 on July 3 and 18, 2018. Those compliance filings explained that SPLP has DEP permits in place for eight out of twelve locations in West Whiteland Township. The Commission found SPLP's submissions compliant and allowed SPLP to resume construction in these eight areas. August 14, 2018 Order at 27. For two of the remaining four DEP approvals related to the North Pottstown Pike and Swedesford Road work locations, SPLP submitted compliance filings on August 17, 2018, after the permit modifications for those locations were granted by DEP, and SPLP awaits a Commission determination regarding that filing via secretarial letter. August 14, 2018 Order at 27. SPLP will

follow the same procedure for the remaining two DEP approvals in West Whiteland Township, when the approvals are received.

**X. PROTECTIVE ORDER**

A Protective Order was entered in this proceeding on May 7, 2018. The Protective Order states that it is applicable to “all proceedings consolidated therewith.” *Id.* at ¶ 1.

**XI. CONSOLIDATION**

SPLP incorporates its Answer Opposing Consolidation filed on August 13, 2018.

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)  
Kevin J. McKeon, Esq. (PA ID No. 30428)  
Whitney E. Snyder, Esq. (PA ID No. 316625)  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Tel: (717) 236-1300  
tjsniscak@hmslegal.com  
kjmckeon@hmslegal.com  
wesnyer@hmslegal.com

/s/ Robert D. Fox

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430-5700  
rfox@mankogold.com  
nwitkes@mankogold.com  
dsilva@mankogold.com

Dated: August 24, 2018

*Attorneys for Respondent Sunoco Pipeline L.P.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system and served via overnight mail on the following:

**VIA FIRST CLASS AND E-MAIL**

Mark L. Freed, Esquire  
Curtin & Heefner LLP  
Doylestown Commerce Center  
2005 South Easton Road, Suite 100  
Doylestown, PA 18901  
[mlf@curtinheefner.com](mailto:mlf@curtinheefner.com)  
*Attorney for Pennsylvania State Senator  
Andrew Dinniman*

Joseph O. Minott, Esquire  
Kathryn Urbanowicz, Esquire  
Clean Air Council  
135 S 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 190103-4912  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[kurbanowicz@cleanair.org](mailto:kurbanowicz@cleanair.org)  
*Attorneys for Intervenor Clean Air Council*

Virginia Marcille Kerslake  
103 Shoen Road  
Exton PA, 19341  
[vkerslake@gmail.com](mailto:vkerslake@gmail.com)  
*Pro Se Intervenor*

Rich Raiders, Esquire  
Raiders Law  
321 East Main Street  
Annville, PA 17003  
[rich@raiderslaw.com](mailto:rich@raiderslaw.com)  
*Council for Andover Homeowners' Association,  
Inc.*

Erin McDowell, Esquire  
Range Resources – Appalachia LLC  
3000 Town Center Boulevard  
Canonsburg, PA 15317  
[emcdowell@rangeresources.com](mailto:emcdowell@rangeresources.com)  
*Counsel for Range Resources – Appalachia  
LLC*

Anthony D. Kanagy, Esquire  
Garrett P. Lent, Esquire  
Post & Schell PC  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)  
*Counsel for Range Resources- Appalachia LLC*

Vincent Matthew Pompo, Esquire  
Alex J. Baumler, Esquire  
Lamb McErlane PC  
24 East Market Street, Box 565  
West Chester, PA 19382-0565  
[vpompo@lambmcerlane.com](mailto:vpompo@lambmcerlane.com)  
[abaumler@lambmcerlane.com](mailto:abaumler@lambmcerlane.com)  
*Solicitor for West Whiteland Township*



Thomas J. Sniscak, Esquire  
Kevin J. McKeon, Esquire  
Whitney E. Snyder, Esquire

Dated: August 24, 2018