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April 4, 2019

VIA ELECTRONIC FILING

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

Re: *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline L.P.,*
Docket No. C-2018-3001451 and P-2018-3001453

Dear Ms. Chiavetta:

On behalf of Sunoco Pipeline, L.P., this letter responds to the March 29, 2019 letter from counsel for Senator Dinniman, which objects to the issuance of a Secretarial Letter lifting and discontinuing the injunction on construction of the Mariner East 2 pipeline at the Shoen Road work location. Senator Dinniman argues first that the Commission lacks jurisdiction to issue the Secretarial Letter, and second that Sunoco Pipeline's compliance filing does not demonstrate that DEP issued the appropriate permissions to recommence Mariner East 2 construction at the Shoen Road work location. Both claims are incorrect. We address each in turn.

Commission Jurisdiction: Commonwealth Court stay of proceedings

Senator Dinniman asserts without explanation that the Commonwealth Court's September 27, 2018 Order granting interlocutory review and staying "[a]ll proceedings in this matter before the PUC" deprives the Commission of "jurisdiction to consider" Sunoco Pipeline's request that the injunction on construction of the Mariner East 2 pipeline be discontinued at the Shoen Road work location by Secretarial Letter pursuant to paragraph 6 of the Commission's August 14, 2018 Opinion and Order. Respectfully, Senator Dinniman is incorrect. His letter misconstrues the Rules of Appellate Procedure, misconstrues the effect of the Commonwealth Court's Order, and ignores the ongoing effectiveness of the Commission's June 15, 2018 Order affirming Judge Barnes' *Interim Emergency Order*, which enjoined construction of Mariner East 2 and Mariner East 2X pipelines in West Whiteland Township, but expressly provided that the injunction could be lifted based on Sunoco Pipeline's compliance with specified conditions that now have been satisfied as to the Shoen Road work location.

The “proceedings” stayed by the Commonwealth Court’s September 27, 2018 Order pending resolution of whether Senator Dinniman has standing to bring his underlying complaint are the proceedings on the merits of Senator Dinniman’s complaint. Such a stay is the effect of an appeal under Pa. R.A.P. 1701 (a): “Except as otherwise prescribed by these rules, after ... review of a quasijudicial order is sought, ...the government unit may no longer proceed further in the matter.” Although a stay of proceedings does not arise just by the mere filing of a petition for permission to appeal, Pa. R.A.P. 1313, an order granting a petition for permission to appeal makes the otherwise interlocutory order appealable, and “the provisions of Pa. R.A.P. 1701(a) ... become effective.” Darlington, et al., *Pennsylvania Appellate Practice* §1313:4.

The “stay of the proceedings” effectuated by Pa. R.A.P. 1701(a), however, is not a “supersedeas” of the June 15, 2018 Order, and thus does not prevent the Commission from enforcing “any order entered in the matter” pending appeal. Enforcement of the June 15, 2018 Order continuing the injunction subject to the satisfaction of enumerated conditions thus would be prohibited only if it had “been superseded as prescribed in this Chapter.” Pa. R.A.P. 1701 (b)(2). No supersedeas of the Commission’s June 15, 2018 Order has ever been requested or issued, and Sunoco Pipeline’s March 29, 2019 letter merely seeks continued enforcement of the provisions of the June 15, 2018 Order. See *Glynn v. Glynn*, 789 A. 2d 242, 245 n. 4 (Pa. Super. 2001) (pursuant to Pa. R.A.P. 1701(b)(2), trial court had jurisdiction to conduct further contempt hearing to enforce previous contempt order while previous contempt order was pending on appeal). The June 15, 2018 Order affirmed Judge Barnes’ *Interim Emergency Order* enjoining “construction, including drilling activities on the Mariner East 2 and Mariner East 2X pipelines, all in West Whiteland Township, Pennsylvania,” Ordering Para. 1(b), 4, but went on to set forth a detailed compliance process pursuant to which Sunoco Pipeline may seek resumption of construction, Ordering Para. 6-8. As set forth in the Commission’s August 14, 2018 Order, Sunoco Pipeline as of that time had satisfied all of the conditions of the June 15, 2018 Order’s Ordering Para. 6, and also satisfied the conditions of the June 15, 2018 Order’s Ordering Para. 7 (relating to construction locations for which DEP has issued all required approvals) for some, though not all, construction locations, resulting in a lifting of the injunction at the specified locations as of August 14, 2018, but leaving it in place as to others. Sunoco Pipeline’s March 29, 2019 letter now seeks to have the June 15, 2018 Order enforced and the injunction lifted as to the Mariner East 2 Shoen Road work location. Only a supersedeas of the June 15, 2018 Order could prevent enforcement of that Order’s compliance process; the stay of proceedings effectuated by operation of Pa. R.A.P. 1701 and expressly noted in the Court’s September 27, 2018 Order applies to Senator Dinniman’s prosecution of his complaint on the merits, pending a judicial determination of whether he has standing to proceed at all.

Were it otherwise, Sunoco Pipeline would be penalized with a costly continued work stoppage as the price for seeking to challenge Senator Dinniman's standing in the Commonwealth Court, notwithstanding its compliance with the terms of the Commission's June 15, 2018 Order that continued Judge Barnes' injunction but provided a path forward to lifting the injunction as the conditions were satisfied at each construction site. Indeed, if the Commonwealth Court's stay of proceedings operated as a supersedeas, as Senator Dinniman contends, Sunoco Pipeline could simply disregard the Commission's June 15, 2018 Order and recommence construction without adhering to the Commission's compliance process. Neither the Commonwealth Court's Order nor the Appellate Rules requires or permits such an absurd result. The Commission clearly has jurisdiction to enforce its June 15, 2018 Order pending appeal.

Merits: DEP Compliance at the Mariner East 2 Shoen Road work location

Senator Dinniman's argument on the merits is that Sunoco Pipeline's compliance filing does not demonstrate that DEP issued the appropriate permissions to recommence construction at the Mariner East 2 Shoen Road work location because of DEP's February 8, 2019 letter (copy attached). That letter placed a hold on requests for DEP approvals of permits, permit modifications, and permit amendments. The letter does not apply to construction at the Mariner East 2 Shoen Road work location because DEP did not approve a permit, permit modification, or permit amendment after its February 8, 2019 letter. As set forth in the March 29, 2019 Affidavit of Matthew Gordon, DEP confirmed that Sunoco Pipeline satisfied the requirements of the applicable DEP Consent Order and Agreement for the Mariner East 2 Shoen Road work location over a year ago, by letter dated February 9, 2018. *See* Gordon Affidavit, Exhibit 1. The March 28, 2019 email from DEP referenced in paragraph 8 of the Affidavit of Matthew Gordon simply confirms that Sunoco Pipeline already satisfied the applicable requirements and remains willing to comply with the requirements of a prior agreement and order. *See* Gordon Affidavit, Exhibit 2. The March 28, 2019 email is not the approval of a permit, permit modification, or permit amendment.

Under paragraph 6 of the Commission's August 14, 2018 Opinion and Order, a Secretarial Letter was previously issued on August 24, 2018 (copy attached) when Sunoco Pipeline submitted an affidavit from Matthew Gordon verifying that DEP issued appropriate permission and authorization at two other work locations. Because the March 29, 2019 Affidavit of Matthew Gordon and the accompanying DEP approval letter and email certify that Sunoco Pipeline "has satisfied applicable requirements" for the recommencement of construction at the Mariner East 2 Shoen Road work location, Sunoco Pipeline requests that the Commission issue a second Secretarial Letter, this one lifting and discontinuing the injunction on construction of Mariner East 2 at the Shoen Road work location.

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If you have any questions, please feel free to contact me at (717) 236-1300.

Respectfully submitted,



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KJM/jld

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