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August 24, 2018

Via Electronic Filing

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

**Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.
Docket Nos. C-2018-3001451 and P-2018-3001453**

Dear Secretary Chiavetta:

Attached for filing is Senator Andrew E. Dinniman's Prehearing Memorandum to be filed in the above-referenced matter.

Thank you.

Very truly yours,



Mark L. Freed
For CURTIN & HEEFNER LLP

MLF:jmd
Enclosure
cc: The Honorable Elizabeth Barnes (via email: ebarnes@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:
ANDREW E. DINNIMAN,	:
Complainant,	
v.	:
SUNOCO PIPELINE, L.P.,	:
Respondent.	

**SENATOR ANDREW E. DINNIMAN'S
PREHEARING MEMORANDUM**

Pursuant to the Prehearing Conference Order dated July 20, 2018, and Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, Pennsylvania State Senator Andrew E. Dinniman (“Complainant” or “Senator Dinniman”), by and through his counsel, respectfully submits this Prehearing Memorandum.

I. BACKGROUND

On April 25, 2018, Senator Dinniman filed a formal complaint and petition for interim emergency relief against Sunoco Pipeline, L.P. (“Sunoco” or “the Company”), followed by an amended formal complaint and amended petition for interim emergency relief on April 30, 2018. On May 21, 2018, following two days of hearings, Administrative Law Judge Elizabeth Barnes issued an Interim Emergency Order finding that Senator Dinniman had demonstrated by a preponderance of the evidence that he was entitled to emergency interim relief pursuant to 52 Pa. Code § 3.6. On June 15, 2018, the Commission issued an Opinion and Order affirming in part and reversing in part the Interim Emergency Order. On July 20, 2018, the Commission

also issued an order certifying for interlocutory appeal to Commonwealth Court the question of Senator Dinniman's standing to bring this action. In so doing, the Commission specifically stated that “[i]mportantly, the grant of this motion does not stay the proceeding before the Office of Administrative Law Judge, which can and will proceed during the interlocutory appeal to the Commonwealth Court.” Motion of Commissioner David W. Sweet, July 20, 2018.

The instant proceedings will afford the Commission an opportunity to examine evidence that Sunoco's pipelines are not safe or reasonable. Sunoco owns and operates a hazardous liquids pipeline known as Mariner East 1 (hereinafter “ME1”). It is also the proponent of two pipelines known as Mariner East 2 (hereinafter “ME2”) and Mariner East 2X (hereinafter “ME2X”). The routes of ME1, ME2 and ME2X in West Whiteland Township are unreasonable, unsafe, inadequate and insufficient. ME1, ME2 and ME2X traverse highly sensitive and potentially unstable karst geology of the Conestoga Limestone and Ledger Dolomite with at least four fault lines. The construction methods that Sunoco has used and proposes to use have resulted in and will continue to result in geologic instability, sinkholes, and other problems which endanger residents, their properties, places of public assembly, infrastructure and private and public drinking water supplies. Sunoco has made no effort to avoid areas containing private dwellings and places of public assembly with the ME2 and ME2X route. Sunoco has failed and continues to fail to take reasonable efforts to warn and protect the public from danger and has impaired the public's ability to protect themselves.

II. SERVICE

Senator Dinniman will be represented in this proceeding by Curtin & Heefner LLP attorneys, Mark L. Freed and Joanna A. Waldron. Senator Dinniman requests that the parties

serve electronic copies of all documents and communications in this proceeding on the undersigned counsel as follows:

Mark L. Freed, Esq.
mlf@curtinheefner.com

Joanna A. Waldron, Esq.
jaw@curtinheefner.com

III. SETTLEMENT OF THE CASE

The parties engaged in limited settlement discussions regarding the petition for interim emergency relief. The parties have not engaged in settlement discussions regarding the formal complaint.

IV. PUBLIC INPUT

In light of the demonstrated significant public interest, Senator Dinniman respectfully requests that a public input hearing be held in West Whiteland Township during the evening, and that this hearing include the opportunity to present evidence. Senator Dinniman will work with Judge Barnes, Sunoco, and the other parties to identify appropriate areas for public input hearings within the dates indicated by the proposed schedule.

V. PROCEDURAL SCHEDULE

Prehearing Conference	August 28, 2018
Public Input Hearing	October 15-19, 2018
Direct Written Testimony	December 7, 2018
Rebuttal Written Testimony	March 5, 2019
Sur-Rebuttal Testimony	April 8, 2019
Written Rejoinder Outlines	May 8, 2019
In Person Hearing	June 10-June 14, 2019
Main briefs	July 26, 2019
Reply briefs	August 16, 2019

VI. WITNESSES

Senator Dinniman intends to present the testimony of lay and expert witnesses as may be necessary. Senator Dinniman's witnesses will present testimony and necessary documents and explanatory exhibits that will assist in the presentation of Senator Dinniman's case.

Senator Dinniman anticipates calling the following witnesses:

1. Senator Andrew E. Dinniman

Subject matter of testimony: Interest in proceeding; character of West Whiteland Township; observations and knowledge of pipeline construction activities and impacts; communications with and information obtained from constituents, Sunoco¹, State, County, municipalities, school districts and other government entities.

2. Dr. Ira Sasowsky
379 Bittersweet Rd., Akron, OH 44333
330-972-5389

Subject matter of testimony: Geologic character of West Whiteland Township; geologic impacts of proposed and completed pipeline construction and operation in karst geology and across fault lines.

3. Michael Perlow Jr, PE
Engineering Knowledge Management LLC
443 Main Street, East Greenville, PA 18041
267-664-3250

Subject matter of testimony: Geo-environmental hazard assessment; effect of construction methods, geologic conditions and other factors on the safety and integrity of the pipelines and their operation.

¹References hereinafter to "Sunoco" include Sunoco Pipeline, L.P. and Energy Transfer Partners, L.P.

4. Richard B. Kuprewicz
8151 164th Ave NE
Redmond, WA 98052
425-802-1200

Subject matter of testimony: Effect of construction methods, geologic conditions and other factors on the safety and integrity of the pipelines and their operation; risks and dangers associated with release of hazardous liquids from pipeline.

5. Virginia Kerslake, T.J. Allen and other area residents:

Subject matter of testimony: Proximity to pipelines; observations and knowledge of pipeline construction activities and impacts; conditions at area properties; communications with and information obtained from Sunoco, County, municipalities, school districts and other government entities.

6. West Whiteland Township Officials
101 Commerce Drive, Exton, PA 19341
610-363-9525

Subject matter of testimony: Character of West Whiteland Township; observations and knowledge of pipeline construction activities and impacts; emergency preparedness and response; conditions at area properties; communications with and information obtained from residents, Sunoco, State, County, municipalities, school districts and other government entities.

7. Chester County Emergency Management
601 Westtown Rd, West Chester, PA 19382
610-344-5000

Subject matter of testimony: Observations and knowledge of pipeline construction activities and impacts; conditions at area properties; emergency preparedness and response; communications with and information obtained from residents, Sunoco, State, County, municipalities, school districts and other government entities.

8. Chester and Delaware County municipal officials, first responders and emergency management personnel

Subject matter of testimony: Observations and knowledge of pipeline construction activities and impacts; emergency preparedness and response; conditions at area properties; communications with and information obtained from residents, Sunoco, State, County, municipalities, school districts and other government entities.

9. Pennsylvania Department of Environmental Protection
2 East Main Street, Norristown, PA 19401
484-250-5900
Rachel Carson State Office Building
400 Market Street, Harrisburg, PA 17101
717-783-2300

Subject matter of testimony: Pipeline construction activities and impacts; conditions at area properties; permits, approvals, facilities, inspections, incidents and violations, guidance documents, policies and procedures, and enforcement actions related to Sunoco; communications with and information obtained from Sunoco, residents, State, County, municipalities, school districts and other government entities.

10. Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE, Washington, DC 20590
202-366-4433

Subject matter of testimony: Pipeline construction activities and impacts; conditions at area properties; emergency preparedness and response; permits, approvals, facilities, inspections, incidents and violations, guidance documents, policies and procedures, and enforcement actions related to Sunoco; communications with and information obtained from Sunoco, residents, State, County, municipalities, school districts and other government entities.

11. Pennsylvania Public Utility Commission
400 North Street, Harrisburg, PA 17120

Subject matter of testimony: Pipeline construction activities and impacts; conditions at area properties; emergency preparedness and response; permits, certificates, tariffs, approvals, facilities, inspections, incidents and violations, guidance documents, policies and procedures, and enforcement actions related to Sunoco; communications with and information obtained from Sunoco, residents, State, County, municipalities, school districts and other government entities.

Senator Dinnimin incorporates by reference the witness lists and descriptions set forth in intervenors' pre-hearing memoranda.

Senator Dinniman reserves the right to modify the subject matter of identified witness testimony and identify additional witnesses, as necessary.

VII. ISSUES AND SUB-ISSUES

The issues and sub-issues Senator Dinniman intends to raise include:

1. Each of the issues identified in Senator Dinniman's amended formal complaint and amended petition for interim emergency relief.
2. Each of the issues identified in intervenors' petitions to intervene.
3. Each of the issues identified by Senator Dinniman or intervenors during the hearing on the Amended Petition for Emergency Relief and subsequent briefing before Judge Barnes and the Commission.
4. Whether Senator Dinniman has standing to bring this action. Whether Senator Dinniman has standing in his capacity as a State legislator who represents the 19th Senatorial District, through which the pipelines traverse, and in that capacity, *inter alia*, is a member of the standing Senate Environmental Resources and

Energy Committee, is a member of the Joint Legislative Air and Water Pollution Control and Conservation Committee, served as a member of the Pennsylvania Pipeline Infrastructure Task Force, and has unique responsibility, experience and knowledge, such that he has a direct, immediate and substantial interest in the subject matter of this proceeding.

5. Whether the construction and/or operation of ME1, ME2 and ME2X is unreasonable, unsafe, inadequate and insufficient. Whether construction of ME2 and ME2X in highly sensitive and unstable geologies, including Conestoga Limestone, Ledger Dolomite, Octoraro Phyllite and fault lines, has resulted in, caused and will continue to risk: Inadvertent Returns (IRs) and other dangers to private and public drinking water supplies; sinkholes and other subsidences that endanger individuals, homes and other occupied dwellings, schools and other places of public assembly, infrastructure, and the integrity of ME1; and risks a catastrophe to individuals, homes and other occupied dwellings, schools and other places of public assembly, and Amtrak and SEPTA rail lines and other infrastructure.
6. Whether Sunoco has failed to take reasonable efforts to warn and protect the public from danger. Whether Sunoco's refusal to share any portion of an integrity management plan, risk analysis or other relevant information has resulted in confusion to the public on how to respond to a release from the pipelines or other emergency, and impaired the public's ability to protect themselves and their wards from danger.

7. Whether Sunoco failed to select a pipeline right-of-way so as to avoid areas containing private dwellings and places of public assembly. Whether this failure has resulted in impacts, and will continue to risk impacts, to water supplies, infrastructure, structures, and individuals.
8. Whether ME1, which was modified in 2014 by being converted to a hazardous liquids pipeline with a new flow direction, and which is being expanded by and interconnected with ME2 and ME2X, violates applicable safety regulations because it is located within 50 feet of private dwellings despite being less than 48 inches underground. Whether the shallowness of ME1 increases the risk of damage to the pipeline resulting from construction activities associated with ME2 and ME2X, and increases the risk of harm to residents and homes within West Whiteland Township.
9. Whether ME1, ME2 and ME2X are not public utility facilities. Whether Sunoco does not own or operate ME1, ME2 or ME2X in this Commonwealth to transport or convey petroleum products or other fluid substances, by pipeline or conduit, for the public for compensation.
10. Whether ME1, ME2 and ME2X as proposed, as constructed or as operated fails to comply with the Pennsylvania Constitution, statutes and regulations providing for the protection of the natural resources of this Commonwealth, including drinking water quality.
11. Whether the Commission's actions, or its interpretation and application of statutes and regulations, is inconsistent with the Commission's duties and limitations under, *inter alia*, Article I, Section 27 of the Pennsylvania Constitution.

Senator Dinnimin incorporates by reference the issues and sub-issues set forth in intervenors' pre-hearing memoranda.

Discovery is ongoing. Senator Dinniman reserves the right to supplement this Prehearing Memorandum as additional issues are identified during the course of this process, including during discovery.

VIII. EVIDENCE

Senator Dinniman plans to present lay witness testimony, expert testimony and documentary evidence on any or all of the issues enumerated above, and as listed in the topics to be presented through its witnesses. Such evidence will include:

1. Evidence presented at the May 7 and May 10, 2018 hearings on the Petition for Interim Emergency Relief, and any and all documents relied upon in briefing in the same proceeding.

2. Documents provided to the Commission by Sunoco in response to the Commission's July 15, 2018 Order and Opinion, and any responses thereto.

3. Testimony, permit applications, permits, tariffs, inspection reports, correspondence, safety and compliance records, guidance documents, policies and procedures, photographs, videos, notices of violations, opinions, orders, consent orders and agreements, civil penalty assessments, consent assessments of civil penalties and other documents to, from or maintained by government entities, including, the Pennsylvania Public Utility Commission, the Pipeline and Hazardous Materials Safety Administration, the Pennsylvania Department of Environmental Protection, and the Pennsylvania Environmental Hearing Board.

4. Testimony, correspondence, photographs, videos, and other documents of residents and other lay witnesses.

5. Testimony, photographs, videos, drawings, diagrams, charts, maps, data, reports, learned treatises, and other documents generated or relied upon by expert witnesses.

Senator Dinniman incorporates by reference the evidence identified in intervenors' pre-hearing memoranda.

Discovery is ongoing. Senator Dinniman reserves the right to supplement the evidence on which he intends to rely.

Respectfully submitted,

CURTIN & HEEFNER LLP



By: _____
Mark L. Freed (Pa. I.D. No. 63860)
Joanna A. Waldron (Pa. I.D. No. 84768)
2005 South Easton Road, Suite 100
Doylestown, PA 18901

Dated: August 24, 2018

**CERTIFICATE OF
SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Pre-Hearing Memorandum upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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Dated: August 24, 2018