



August 24, 2018

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

RE: *Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P.*, Docket C-2018-3003605  
Pre-Hearing Memorandum

Dear Secretary Chiavetta:

Please find the attached Pre-Hearing Memorandum for the above-referenced matter.

Please let me know if you have any questions. Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

Enclosure

cc: Hon. Elizabeth Barnes  
Distribution

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                 |   |                |
|---------------------------------|---|----------------|
| Andover Homeowner’s Association | : |                |
|                                 | : |                |
| v.                              | : | C-2018-3003605 |
|                                 | : |                |
| Sunoco Pipeline, L.P.           | : |                |

**PREHEARING CONFERENCE MEMORANDUM OF ANDOVER HOMEOWNERS’ ASSOCIATION, INC.**

**TO: ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:**

In accordance with the provisions of 52 Pa. Code § 1.222(d), Andover Homeowners’ Association, Inc. (“Association”) submits this Prehearing Conference Memorandum in advance of the scheduled August 28, 2018 hearing in the above captioned Matter.

**1. Introduction and Background.** The Association filed this complaint against Sunoco Pipeline L.P. (“Sunoco”) on July 24, 2018 concerning issues directly focused on Sunoco’s Mariner East system, now consisting of four pipelines. This system includes the 1930s eight inch (8”) diameter Mariner East I (“ME1”), the under construction twenty inch (20”) Mariner East II (“ME2”), the under construction sixteen inch (16”) Mariner East 2x (“ME2X”), and the 1930s twelve inch (12”) “Point Breeze to Montello” (“12 inch”) line that Sunoco announced in July 2018 would be reversed and converted to natural gas liquids (“NGL”) service. ME1 and the 12-inch lines are repurposed and reversed former liquids lines used by Sunoco and predecessor companies to transport gasoline, diesel and related liquid petroleum products from the former Sunoco Marcus Hook refinery to markets in Central and Western Pennsylvania and beyond.

In 2014, Sunoco applied to the Commission to expand and extend its NGL service by adding ME2 and ME2X, reversing the flow of what is now ME1, and extending service to

include new points between Houston, Washington County and Scio, Ohio by way of West Virginia. *See, e.g.*, PUC Docket P-2014-2411942 (lead case), Order Entered Oct. 29, 2014. In July 2018, Sunoco announced that it intended to repurpose the 12-inch line in Delaware and Chester Counties to provide NGL service.

The Association is a Pennsylvania not-for-profit corporation that owns approximately 20 acres of open space in Thornbury Township, Delaware County. The open space is burdened with approximately one-half mile of ME1 and 12-inch pipeline, and a valve site for each line. A similar length of ME2 and ME2x pipeline, as well as a valve site for each, is planned for the Association open space. The pipelines operate southwardly roughly parallel State Route 352 for the entire length of Route 352 frontage on Association property, then turn westward along the southern property boundary before turning southbound again to adjacent parcels.

Thornbury Township, Delaware County borders Chester County, specifically Westtown Township. All of the Mariner East pipelines, existing and proposed, enter Delaware County at State Route 926, which forms the northern border of Association open space.

The valve sites, existing and proposed, are or are anticipated to be constructed on the southeast portion of Association property, less than one hundred feet (100') from residential property of certain Association members (down-slope from the valve sites) and less than 100' from an adjacent restaurant operation (up-slope from the valve sites).

2. **Persons to be Listed on Service List.** The Association requests that all documents be served upon the Association's counsel, where counsel consents to electronic service from the

Pennsylvania Public Utility Commission (“PUC”):

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3. **Statement Regarding Possible Settlement.** No settlement discussions have occurred. The Association will consider potential settlement in due course.

4. **Proposed Plan and Schedule of Discovery.** 52 Pa. Code § 5.321 et. seq. will govern discovery. The Association does not propose to modify the rules to discovery. The Association is open to give due consideration to any discovery modifications proposed by any other party.

The Association has moved to consolidate this case with the matters of *Dinniman v. Sunoco Pipeline, L.P.*, Dockets C-2018-3001451 and P-2018-3001453. The Association is willing and able to conform its discovery schedule request to accommodate the *Dinniman* matter as will be discussed in the August 28, 2018 hearing.

5. **Other Proposed Orders with Respect to Discovery.** Protective Orders may be necessary to allow for proper discovery of pertinent portions of Sunoco’s Part 195 Manual, 49 C.F.R. § 195, which may contain confidential, trade secret or national security restricted information. Other records, including detailed safety, emergency response or pipeline design information, could require coverage under such a Protective Order. The Association is willing to enter into a reasonable and appropriate Protective Order to allow full and complete discovery, such as any appropriate Protective Order issued by the Commission in

the *Dinniman* matter.

6. **Need for Public Input Hearings.** The Association raises the issue of public safety and emergency response in this complaint. As specifically described below, the Association does not believe that a credible emergency response and evacuation plan exists, especially with concern to the pipeline upon the Association's property, the valve sites located on Association property, the extents of various pipeline segments beginning and ending at the valves located on Association property, and nearby residences, businesses and travelers upon the heavily traveled PA-352 and PA-926 corridors.

The Association believes that at least one public hearing would assist the Commission in determining the appropriateness, effectiveness and viability of the pipeline's public engagement, preventative maintenance, emergency alert and notification, emergency response and integrity management programs as required by 49 CFR § 195. Therefore, the Association requests at least one public hearing be held in the vicinity of the Association's Thornbury Township, Delaware County, open space.

7. **Proposed Schedule of Submission of Written Testimony, In-Person Hearings and Briefs.**

The Association will cooperate with the ALJ and the parties at the Prehearing Conference to develop an appropriate procedural schedule, including a schedule for submitting written testimony, conducting an in-person hearing and submitting briefs, and discovery rules in accordance with the Commission's regulations and any directives issued by the ALJ. The Association understands that, in moving for consolidation with the *Dinniman* matter that concerns of that matter may dictate such schedules should the Commission order consolidation.

**8. Witnesses Expected to be Called and Subject Matter.** The Association currently expects to call the following witnesses, without being limited thereto:

- a. Eric Friedman, 2 Wellfleet Lane, Glen Mills, PA 19382, (210) 365-6903, eric.law.friedman@gmail.com – President of the Andover Homeowner’s Association, Inc., property owner. Will testify concerning the Association property, layout, nearby features, populations, membership concerns.
- b. Jeff D. Marx, PE, Quest Consultants Inc., 908 26th Avenue NW, Norman, OK 73069-8069, (405) 329-7475, [jdm@questconsult.com](mailto:jdm@questconsult.com) – risk consultant for the Association. Will testify concerning Risk Assessment matters for NGL systems, engineering and safety considerations, specifically upon Association property and nearby residents, businesses and features.

Other witnesses may be called as appropriate, as discovery or analysis of party positions may dictate.

**9. Issues and sub-issues of This Proceeding and Party’s Position.** The following list represents the Association’s preliminary determination of potential issues in these proceedings, pending discovery and analysis of party positions. The Association specifically reserves the right to address other appropriate issues that may emerge during discovery. The preliminary issues are as follows:

- a. Sunoco does not operate natural gas liquids pipelines upon Association property in a manner to adequately protect public safety.
- b. Sunoco does not operate natural gas liquids pipelines, including to but not limited to those lines upon Association property, using a practically viable emergency alert

system to notify neighbors, visitors or passers-by of an incident.

- c. Sunoco cannot demonstrate that it can safely and effectively evacuate populations within an anticipated incident impact radius of its pipeline or valve sites in a timely and orderly manner to avoid loss of life, bodily injury or extensive property damage.

**10. Statement Describing Proposed Evidence.** Substantial evidence would include expert testimony from one or more expert witnesses and fact testimony by one or more Association members, officers, and stakeholders. Expert witness testimony would include, but may not be limited to, pipeline safety concerning NGL transportation, emergency response for densely populated residential and commercial areas near NGL pipelines, consequence analyses for areas near and along pipeline segments including or relating to Association property and equipment onsite thereto, and other matters to be discerned in discovery. Additional written testimony may be solicited from other fact or expert witnesses as appropriate.

**11. Statement Concerning Consolidation.** The Association moved for consolidation between this matter and *Dinniman v. Sunoco Pipeline L.P.*, Dockets C-2018-3001451 and P-2018-3001453. The Association filed this Motion for Consolidation for several reasons, as fully described below and in the Association’s Motion. Further, the Association addresses Sunoco’s issues raised in its August 13, 2018 Answer to the Association’s Motion below.

- A. Consolidation is Appropriate Here. As Sunoco describes in its Answer, 52 Pa. Code 5.81 allows the Commission to consolidate matters with “sufficient common questions of law or fact and where a joint proceeding would avoid unnecessary delay.” Sunoco Answer at unnumbered \*2-3 (additional citations omitted). Sunoco fails to aver that any party

would suffer any delay in consolidation.

The Association notes that the Prehearing Conferences for the Association matter and the *Dinniman* matter are scheduled for the same time, at the same place, before the same Administrative Law Judge. As the Judge will be hearing scheduling argument at the August 28, 2018 hearing, any discussion of delays in discovery are premature at best. Sunoco further admits that the Commission will grant motions to consolidate where “it would be extraordinarily difficult for this Commission to make an informed decision concerning one petition without contemporaneous consideration of the other”. *In re PECO Energy Company and Enron Energy Serv’s Power, Inc.*, Docket R-009373943 and P-00971265, 87 Pa. P.U.C. 718 (Order entered Oct. 9, 1997).

Here, the issues at dispute here concern the segment of the Mariner East 2 system common between the *Dinniman* matter and the Association property. The Commission has already found that the Association has a significant nexus with the *Dinniman* matter when it allowed the Association to intervene in *Dinniman*. See, Docket C-2018-3001451, Order of July 20, 2018.

Sunoco misstates the relevance of site-specific geology and geography. Sunoco objects to consolidation because these sites are six miles apart and in different counties. However, the crux of both complaints is not geology, but Sunoco’s ability to safely transport NGLs through several very densely populated Philadelphia suburbs. Judge Barnes recognized that any incident on the Mariner East system in West Whiteland Township could impact the Association, especially any ME2 or ME2X incident where the valve on Association property is likely to be closed in response to any such incident in



West Whiteland Township or along the corridor between West Whiteland and Thornbury Townships. *Id.* Both complaints concern the exact same ME2 and ME2x pipeline segments. These issues are sufficiently intertwined to support consolidation.

- B. Both Actions Involve the Mariner East System. First, both matters involve the Mariner East system. Mariner East is a system of several pipelines providing or proposed to provide NGL transportation from Ohio to Pennsylvania, through West Virginia. *In re Condemnation of Sunoco Pipeline, L.P. (Martin)*, 143 A.3d 1000, 1008 (Pa. Commw. 2016); *See also; Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 674 (Pa. Commw. 2018); *Clean Air Council v. Sunoco Pipeline L.P.*, \_\_\_ A.3d \_\_\_, 1112 C.D. 2017 at \*3-4 (Pa. Commw. April 30, 2018); *In re Sunoco Pipeline L.P. (Katz)*; 165 A.3d 1044, 1053 (Pa. Commw. 2017); appeal denied, \_\_\_ A.3d \_\_\_ (Pa. 2018).

The number of pipelines in this system has changed over time, starting with one (“ME1”) 1930s legacy pipeline that was reversed and converted to NGL service in 2016. Sunoco then proceeded to construct two additional pipelines, known as ME2 and ME2X, between 2017 and present. Recently, and during the pendency of Senator Dinniman’s complaint, Sunoco announced that it will add a fourth pipeline, a twelve inch (12”) line between Delaware County and Berks County known as the “Point Breeze to Montello” line, to the Mariner East project. Bill Rettew, *Mariner East 2 pipeline may take alternate route*, West Chester (Pa.) Daily Local News (Jul. 5, 2018)

<http://www.dailylocal.com/article/DL/20180705/NEWS/180709904> (last visited Aug. 20, 2018); Jon Hurdle, *Sunoco wants to use older pipeline to pump NGLs over unfinished sections of ME2*, Stateimpact.org (Jul. 3, 2018)

<https://stateimpact.npr.org/pennsylvania/2018/07/03/sunoco-wants-to-use-older-pipeline-to-pump-ngls-over-unfinished-sections-of-me2/> (last visited Aug. 20, 2018).

On August 13, 2018, Sunoco answered the Association's Motion to Consolidate. However, it misstates the nature of both the Association's and the Senator's complaint. Section C of Sunoco's answer alleges that the Mariner East system does not include all of the pipeline assets included in the Mariner East system. Our Commonwealth Court has repeatedly ruled against Sunoco's argument, holding that the Commission regulates the Mariner East system, not just one or more pieces of pipe comprising the system. Sunoco's attempt to differentiate between parts of the Mariner East system, including the part it only added to Mariner East in July 2018, after Senator Dinniman filed his complaint, directly contradict Sunoco's repeated argument in our courts that the new phases of pipelines added to the Mariner East 1 pipeline are nothing more than an extension of Mariner East service. Sunoco cannot now be allowed to escape consideration of all parts of the Mariner East system simply because Senator Dinniman did not wait for Sunoco to add a fourth pipeline to Mariner East before he filed his complaint. Therefore, Sunoco's arguments about different projects scopes are irrelevant and already disclaimed by Sunoco in several appellate proceedings.

- C. Consolidation Will Not Materially Impact the Schedule. Sunoco offers a red herring that this new proceeding will materially impact the schedule for this matter. First, the Association recognizes that the *Dinniman* matter has undergone injunction hearings that have had some impact on the scope of that matter. The Association also recognizes that Sunoco has questioned the Senator's standing in this matter. However, the

Commission has allowed *Dinniman* to proceed, to the point of scheduling its Pre-hearing and the instant Pre-hearing at the same time before the same ALJ. The Association believes, and therefore avers, that the Commission is fully capable of reacting to whatever opinion the Commonwealth Court hands down concerning the Senator's standing in the instant matter.

The Association disagrees that the Commission or Sunoco would suffer significant prejudice if the schedules were consolidated. The "broader issues" Sunoco cites to all revolve around safety and Sunoco's ability to protect the public in the event of a pipeline failure. Sunoco is believed to have one "195 Manual" for Mariner East or its entire pipeline operation system. The Association does not believe that Sunoco has separate processes and procedures applicable to its pipeline operations in West Whiteland Township as it has in Thornbury Township. Any Mariner East 2 or 2X review of West Whiteland safety necessarily involves a review of the next downstream valve site – which is located on Andover's open space. Any incident on ME2 or ME2X in West Whiteland Township necessarily and directly impacts the Association. Therefore, the Association asserts that discover in the two matters, and the related schedules for ongoing proceedings, could easily be coordinated without causing any party undue delay.

- D. The Association and the Senator Seek Similar Relief. Sunoco offers a red herring that the Association and Senator Dinniman seek different relief. First, if ME2 and ME2X are prohibited from operating in West Whiteland Township, then the ME2 and ME2X valve sites on Association open space would be removed, redesigned or otherwise impacted

by whatever engineering Sunoco would be required to complete to implement the Commission's Order. Sunoco cannot argue otherwise. Second, the Senator seeks a written Integrity Management Plan, which is a major component of the integrated safety review the Association requests. Any credible notification and evacuation plan would necessarily include the same elements in West Whiteland Township as it would in Thornbury Township, Delaware County, even if the implementation methods would vary slightly based on each Township's emergency response capabilities.

The Association is unaware of what different factual or legal considerations would be in place concerning one end of a pipeline segment as opposed to the middle of the same pipeline segment. Any incident on any portion of the ME2 or ME2X pipeline segment in West Whiteland Township would involve a response on Association property. Any incident on Association property for these two sites would necessarily involve changing operations in West Whiteland Township. Population densities are similar along the Chester to Delaware County corridor.



## 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 US Mail on the following:

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