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September 17, 2018

VIA ELECTRONIC FILING

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

Re: Wilmer Baker v. Sunoco Pipeline L.P.; Docket No. C-2018-3004294; **SUNOCO PIPELINE L.P.'S PRELIMINARY OBJECTIONS TO THE FORMAL COMPLAINT OF WILMER BAKER**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections to the Formal Complaint of Wilmer Baker 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: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILMER BAKER

Complainant,

v.

SUNOCO PIPELINE L.P.

Respondent.

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Docket No. C-2018-3004294

NOTICE TO PLEAD

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

II. ARGUMENT

A. Legal Standard

2. The Commission's regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R. Civ. P. 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

3. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

B. Preliminary Objection 1: The Complaint Is Legally Insufficient Because It Fails to Allege Any Act or Thing Omitted to be Done in Violation of Law, Regulation or Commission Order

4. In order to be legally sufficient, a complaint must set forth "an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 52 Pa. Code § 5.22(a)(4); *see, e.g., James Drake v.*

Pennsylvania Electric Co., Docket No. C-2014-2413771, Initial Decision Sustaining Preliminary Objection and Dismissing Complaint, 2014 WL 2003281, *4 (May 7, 2014).

5. Here, the Complaint fails to cite and allege violations of any statute, regulation, or Commission order. The Complaint makes only three allegations: (1) that Complainant received “a safety manual”; (2) that a pipeline is “old iron” and was “back flowed” from 800 PSI to 1400 PSI; and (3) that Respondent “put two bigger pipes in.” None of these allegations can be construed to be a violation of any statute, regulation, or Commission order. Therefore, the pleading is legally insufficient and should be dismissed.

6. First, Complainant alleged he received “a safety manual.” SPLP mailed the document to which the Complaint refers (which was attached to the Complaint) consistent with federal regulations and its Public Safety Awareness Program. The fact that Complainant received this mailing is not a violation of law, regulations or Commission order.

7. Second, Complainant alleges the pipeline is “old iron” and was “back flowed” from 800 PSI to 1400 PSI, presumably regarding ME1. The Complainant’s assumption that the pipeline is an “old iron pipe” is in error when in fact, ME1 is constructed of steel pipe. The line was originally constructed with domestically manufactured steel pipe. As part of continuous maintenance throughout its life, significant mileage of the pipeline has been replaced with API 5L grade X42 and X52 pipe much of which was manufactured domestically. Under 49 CFR 195.112, whenever pipe replacements are made or new pipe is installed it must be steel of the carbon, low alloy-high strength, or alloy type that is able to withstand the internal design pressures, and external loads and pressures anticipated for the system. Although the original pipe predates the regulation, it still complies. Even if these allegations were accurate, Complainant’s allegations fail to state a claim on which relief can be granted as no violation of law, regulations or Commission order was

alleged because there is no applicable law or regulation that mandates the ME1 pipeline be made of a certain material of a certain age. Pursuant to 52 Pa. Code § 59.33(b), the safety standards applicable to ME1 are found in 49 CFR Part 195. The construction and design standards in those regulations are not applicable to the ME1 pipeline because it was constructed prior to the 1968 Pipeline Safety Act under which those regulations were promulgated. When Congress enacted the Pipeline Safety Act of 1968, codified at Title 49, Chapter 601 of the U.S. Code, Congress did not make design, installation, or construction standards retroactive on existing pipelines:

(b) Nonapplication. – A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

49 U.S.C. § 60104(b).

8. Third, the Complaint alleges SPLP “put two bigger pipes in.” Complainant appears to be referring to SPLP’s ME2/ME2X pipelines. There is no prohibition on a public utility constructing additional facilities. *See, e.g., Petition of Sunoco Pipeline, L.P.*, Docket Nos. P-2014-2411941 *et al.*, 2014 WL 5810345 at *19 (Order entered Oct. 29, 2014) (“Sunoco has the authority to provide intrastate petroleum and refined petroleum products bi-directionally through pipeline service to the public between the Ohio and New York borders and Marcus Hook, Delaware County through generally identified points. This authority is not contingent upon a specific directional flow or a specific route within the certificated territory. Additionally, this authority is not limited to a specific pipe or set of pipes, but rather, includes both the upgrading of current facilities and the expansion of existing capacity as needed for the provision of the authorized service within the certificated territory.”). Alleging SPLP has constructed ME2/ME2X cannot be interpreted as a violation of law, regulation, or Commission order.

9. Regarding other portions of the Complaint, such as the relief requested, none of these averments or requests show a violation of law, regulation, or Commission order, and the requested relief cannot be interpreted as necessary to comply with any law, regulations or Commission order. Thus, the Complaint is legally insufficient as plead.

10. First, the Complaint requests SPLP be required to provide alarm systems for certain residents. There is absolutely no requirement under the applicable regulations that SPLP do this. *See generally*, 49 CFR Part 195. Moreover, SPLP's emergency response procedures and public outreach plans are consistent with regulations and industry practices and the Commission has already reviewed them and found them to be adequate in its August 14, 2018 Order in *Dinniman v. Sunoco Pipeline*, Docket Nos. P-2018-3001453 *et al.*

11. Second, Complainant requests that SPLP "train emergency personnel." As is of public record which the Commission has reviewed and relied upon, SPLP has already done just that in accordance with its Public Awareness Plan. Each year, SPLP sends direct mailings to local emergency responders in the communities where SPLP's pipelines and related facilities are located, including a letter that provides details on free training for responding to pipeline emergencies, and specific training provided directly by SPLP, referred to as CORE and MERO training. In 2017, CORE training sessions were attended by 1,229 emergency responders and MERO sessions were attended by 664 emergency responders. Since 2014, 154 emergency responders in Cumberland County, where Complainant resides, attended MERO training. This information is all publicly available in SPLP's June 22, 2018 Compliance Filing in *Dinniman v. Sunoco Pipeline LP*, Docket Nos. P-2018-3001451 *et al.* (available at <http://www.puc.state.pa.us/pcdocs/1573043.pdf>). SPLP's emergency response procedures and public outreach plans are consistent with regulations and industry practices and the Commission

has already reviewed them and found them to be adequate in its August 14, 2018 Order in *Dinniman v. Sunoco Pipeline*, Docket Nos. P-2018-3001453 *et al.* These Commission records clearly show SPLP has conducted the necessary training.

12. Third, the Complaint requests that SPLP “replace old iron pipeline with American-made steel.” There is no law, regulation, or Commission order requiring SPLP to do this and the requested relief in the Complaint is legally insufficient. *See supra.* ¶ 7.

C. Preliminary Objection 2: The Complaint Is Legally Insufficient Because It Is Barred by Claim and Issue Preclusion and Is an Improper Collateral Attack on Prior Commission Orders

13. Complainant’s claims are legally insufficient as they are barred by issue and claim preclusion and are an improper collateral attack on prior orders and determinations of the Commission.

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa. C.S. § 316. “This section of the Public Utility Code precludes a collateral attack upon a Commission order that has not been reversed upon appeal.” *In re Core Communications, Inc.*, Docket Nos. A-310922F0003 *et al.*, 2007 WL 1771688 (Order entered May 31, 2017).

14. Regarding averments of the age and reversal of ME1, the Commission has twice found that ME1 is not in violation of law, regulation, or Commission order and that it is safe and allowed it to operate. *See generally, Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 (Order entered May 3, 2018); *Dinniman v. Sunoco Pipeline*, Docket Nos. P-2018-3001453 *et al.* (Order entered June 15, 2018). Complainant alleges no facts other than the age and reversal of the ME1 pipeline, and as such he does not present any facts showing

his claim is not already barred by the Commission's findings in these orders. As such, his allegations are a collateral attack on Commission orders and are thus legally insufficient.

15. Regarding claims of training of emergency personnel and public outreach in general, SPLP's emergency response procedures and public outreach plans evidencing its emergency personnel outreach and training are consistent with regulations and industry practices and the Commission has already reviewed them and found them to be adequate in its August 14, 2018 Order in *Dinniman v. Sunoco Pipeline*, Docket Nos. P-2018-3001453 *et al.* Complainant merely requests relief that SPLP engage in training, and thus, again does not present any facts showing his claim is not already barred by the Commission's findings in this order. As such, his allegations are a collateral attack and are thus legally insufficient.

16. Regarding general claims of construction of ME2/2X, the Commission has already found SPLP has the authority to construct those pipelines. *See, e.g., Petition of Sunoco Pipeline, L.P.*, Docket Nos. P-2014-2411941 *et al.*, 2014 WL 5810345 at *19 (Order entered Oct. 29, 2014). Complainant merely avers that SPLP constructed these pipelines, and thus, again does not present any facts showing his claim is not already barred by the Commission's findings in this order. As such, his allegations are a collateral attack and are thus legally insufficient.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests the Formal Complaint be dismissed with prejudice for the reasons stated herein, that the Commission assess costs and counsel fees, and that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: September 17, 2018

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

Wilmer J. Baker
430 Run Road
Carlisle, PA 17015



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

Dated: September 17, 2018