

 Raiders Law

September 3, 2018

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

RE: *Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P., Docket C-2018-3003605*
Answer to Preliminary Objections

Dear Secretary Chiavetta,

Please find the attached Answer to the Preliminary Objections of Sunoco Pipeline L.P. filed by Andover Homeowners' Association, Inc. filed with the Commission this date. Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders
9/3/18

Rich Raiders, Esq.

Enclosure

cc: Hon. E. Barnes, Administrative Law Judge

~~RECEIVED~~

~~2018 SEP -6 AM 11:18~~

~~PA PUC
SECRETARY'S BUREAU~~

RECEIVED

AUG 17 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

2018 SEP 26 AM 11:18

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUC
SECRETARY'S BUREAU
Andover Homeowners' Association, Inc.,
Petitioner

Docket No. C-2018-3003605

v.

Sunoco Pipeline L.P.,
Respondent

RECEIVED

AUG 17 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ANSWER TO PRELIMINARY OBJECTIONS

COMES NOW Andover Homeowners' Association, Inc. ("Association"), by and through its below-signed counsel, and respectfully answers the Preliminary Objections of Sunoco Pipeline L.P. ("Sunoco") pursuant to 52 Pa. Code § 5.61, and in support thereof avers as follows:

1. Denied. Sunoco attempts to assert that it is able to distinguish the operations of hazardous, highly volatile natural gas liquids ("NGL") pipelines within Thornbury Township, Delaware County ("Thornbury") from its operations along not only the entirety of the Mariner East system (Sunoco's term) which spans Ohio, West Virginia and Pennsylvania, but throughout its United States pipeline operations. Sunoco must provide safe and efficient service under its Public Utility Commission ("Commission") Certificates of Public Convenience ("CPC"). See, 66 Pa. C.S. §308.2(a)(10). The certificated utility must prove its operations are safe. See, 66 Pa. C.S. § 315(c). Sunoco is required to document its comprehensive operational, maintenance and emergency response manuals for its certificated service ("195 Manual"). See, 49 C.F.R. § 195.402 et. seq.

The paragraphs Sunoco moves to strike from the complaint reach the scope, hazards, accident history, precautions, procedures and methods Sunoco uses or proposes to use to address the safety and emergency response issues at the heart of the

Association's complaint. The Association avers that Sunoco has failed to understand, plan for and provide adequate public safety information and procedures into any of the phases of the Mariner East project. In particular, the Association avers that Sunoco has failed to provide a credible "public awareness program" concerning NGL pipelines as required under 49 CFR section 195.440; 66 Pa. C.S. § 315(c) . These paragraphs in the complaint describe, in detail, the hazards that the Association avers Sunoco has failed to address in this project. These issues arise not just in Thornbury Township, Delaware County, but universally across the Mariner East project. Notably, Sunoco did not plead in this Preliminary Objection that there is a separate 195 Manual or a separate public awareness program for Thornbury. Sunoco did not plead that various hazards of transporting highly volatile natural gas liquids in pipelines immediately adjacent to densely populated suburban areas are different in Thornbury from other locations. Sunoco also failed to plead that historic and contemporaneous hazards known across the natural gas liquids pipeline transportation industry differ in Thornbury Township, Delaware County than in other locations.

Sunoco also fails to note that Mariner East is a linear project. It impacts not only Thornbury Township, where Association Members reside, but also, for example, West Whiteland Township, Chester County, where Association Members dine and shop; adjacent Westtown Township, Chester County, where Association Members send their children to school; and adjacent Edgmont Township, Delaware County, where Sunoco has had at least three known pipeline accidents since 1988. The Commission has before

it significant evidence in this matter, including in the related *Dinniman v. Sunoco Pipeline L.P.*, C-2018-3001453 docket.

Sunoco's argument that events along the pipeline will have "no discernable effect" upon the Association is absurd on its face. As the Association asserted in its complaint, were Sunoco to suffer a Mariner East 2 accident in, for example, West Whiteland Township, Chester County, the next downstream valve that would have to be closed is on Association property. Further, if an accident were to occur downstream on the same line, in, for example, Edgmont Township, Delaware County, Sunoco would be required to respond at its valve site on Association property.

Specifically, the Association denies that each paragraph should be stricken for the following reasons:

- a. Paragraph 26 specifically alleges that the twelve inch (12") "Point Breeze to Montello" pipeline, added by Sunoco to the Mariner East project in 2018, has leaked in and near the areas where Sunoco now proposes to convert this line to NGL service. Sunoco cannot now claim that, once it adds this pipeline to its Mariner East certificated service that the Commission may ignore the history of this line's operations in deciding if Sunoco provides safe and efficient Mariner East NGL service.
- b. Paragraph 38(h) alleges that Sunoco's pipeline operating history, as documented in a docket proposed to be consolidated with this docket, and where the Association is an intervenor to that docket, includes several examples of Sunoco not properly reporting accidents to proper authorities. Part of the Association's

concern is that Sunoco, in not properly reporting its accidents to authorities, cannot operate a safe and efficient pipeline on Association property or in a manner that does not constitute an unreasonable threat to the Association, its Members, families and guests, both within Thornbury Township and wherever Association Members may travel within what Sunoco calls the “blast radius” associated with Mariner East system.

- c. Paragraph 38(i) introduces Sunoco’s PHMSA enforcement record as a relevant consideration for Sunoco’s operating record. Sunoco’s past conduct and its record of accidents are fully relevant to determine whether Sunoco operates safe pipeline transportation service given the especially hazardous properties of highly volatile liquids. The Association intends to introduce expert testimony and other evidence that the history of past failures is regularly used to predict the likelihood of future accidents. For example, Dakota Access Pipe Line, (“DAPL”), a unit of Sunoco parent company Energy Transfer Partners (“ETP”), recently used just such an analysis to estimate the likelihood of hazardous liquids leaks on the Dakota Access pipeline for the United States Army Corps of Engineers. See, Exhibit “A”; Brent Cossette and Johnathan Shelman, *Memorandum: DAPL-Route Comparison and Environmental Justice Considerations* (Army Corps of Engineers Apr. 12, 2016); <https://www.documentcloud.org/documents/3480350-MemoDAPLUSACEApril2016ICN.html> (last visited Sep. 3, 2018). The Association avers that consideration of Sunoco’s accident history is directly relevant to the

likelihood that it will continue to experience pipeline accidents that could affect the safety and property of Association Members.

- d. Paragraphs 51-62 detail compliance, construction, design, operation and safety problems Sunoco has suffered in implementing the Mariner East project. Sunoco attempts to argue that this large number of publicly documented regulatory problems do not portend to operational problems if and when Sunoco begins full Mariner East operation. Such an assertion is simply beyond the pale. If Sunoco's problems with horizontal directional drilling ("HDD") cause stresses on one or more of the pipelines to cause a failure or accident, that accident could impact one or more pipeline segments, including segments on or near Association property. The Mariner East 2 and 2X segments that cross West Whiteland Township, Chester County, where many of these construction problems surfaced also are proposed to cross Association property. The potential impact of these issues upon Association Members' safety and property is best left for discovery.
- e. Paragraph 68 introduces Sunoco's operational history of over 300 self-reported pipeline accidents reported to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") since 2006. Such information is completely relevant to the Association's safety complaint. The Association intends to introduce expert testimony that historical operational history can inform a valid prediction of the likelihood of future accidents.
- f. Paragraph 75 likewise introduces the information that the 1930s-era repurposed and reverse-flowed Mariner East 1 pipeline has leaked at least three times within

a one-year period during 2016-2017, including once in Delaware County. The Association intends to introduce expert testimony to discuss how Sunoco's accident history impacts its ability to provide safe and efficient NGL transportation services. Specifically, the Association is concerned that these accidents are typically discovered by the public, rather than being detected by the operator. These facts bear on Sunoco's demonstrated inability to quickly and reliably detect leaks on its pipeline systems.¹ This inability is an integral component of the Association's safety complaint, especially given that the operator has also failed to either identify a credible public notification system or provide a credible plan for the public to execute in the case of continued Sunoco pipeline leaks.

- g. Paragraphs 77 and 78 further describe Sunoco's actual operational history concerning the 12" Point Breeze to Montello pipeline, which Sunoco now proposes to make part of its Mariner East system.
- h. Paragraph 80 provides historical precedent concerning a series of NGL accidents that have occurred over time from which Sunoco should have used as design considerations and to inform its emergency response procedures. Sunoco cannot now argue that the history of NGL transportation accidents is irrelevant to NGL transportation infrastructure and how Sunoco might not be able to evacuate nearby residents, visitors and others from a vulnerability zone. The Association

¹ Sunoco demonstrated this inability most recently in June 2018, when its 12" Point Breeze to Montello pipeline failed and leaked a self-reported 33,516 gallons of hazardous liquids in Tinicum Township, Delaware County. This accident was reported by the public.

intends to use these accidents, as well as others, to illustrate the problems with Sunoco's "public awareness program," which the Association avers is neither credible nor practicable to protect the public from a potential NGL accident in this pipeline system. Sunoco protests that these incidents were not recent and were not in Thornbury. Neither concern is valid if Sunoco is found to have disregarded the lessons that it should have learned from these events.

2. Denied. The Association alleges that Sunoco is unable to provide safe and efficient service as required by both the Commission and PHMSA. The standards of proof for how Sunoco should provide safe and efficient operations must, at least, be informed by industry standards, prior operational history and the specific hazards of NGL transportation. On information and belief, Sunoco has limited operational history with NGL transportation. The Association understands, and therefore avers, that Sunoco's only experience constructing and operating dedicated NGL pipelines was from the various portions of its Mariner project, including Mariner East and other Sunoco Mariner projects. The Association was unable to identify prior Sunoco NGL operational experience prior to 2014,² so it included allegations based on industry practices and history, as well as Sunoco history transporting other petroleum products for which Sunoco has an established operational history. The veracity of these industry standards, history and issues is best left for the Commission to evaluate under the longstanding weight of the evidence standard.

² The Association has identified seven HVL accidents reported by Sunoco to PHMSA since 2014, or approximately one every six months on average. As noted above and as acknowledged by Sunoco, three of these accidents occurred on Mariner East 1, which crosses Association property.

Further denied in that Sunoco claims that its operational history throughout its service areas, within Pennsylvania or elsewhere, are not relevant to its providing NGL transportation services in the Mariner East system. See, Exhibit "A". Energy Transfer Partners, the Sunoco corporate parent, accepts such data as highly relevant to a pipeline operator's likelihood of having future accidents.

3. No responsive pleading is required for averrals of law per standard Pennsylvania civil practice.
4. No responsive pleading is required for averrals of law per standard Pennsylvania civil practice.
5. Denied. As described in Paragraphs 1 and 2 above, the Mariner East project does not exist in a vacuum in a small section of one Delaware County township. Any review of Sunoco's safety plans, design and performance, as well as emergency response concerning a potential or actual pipeline accident, necessarily include Sunoco's entire Mariner East project, and may include other Mariner or other Sunoco pipelines beyond Pennsylvania. Discovery will show if Sunoco operates a separate 195 Manual for each township or other municipality in which it operates transportation services, or if its 195 Manual and the required public awareness program in fact cover large areas or Pennsylvania or the United States. Without the ability to discover how Sunoco manages its operations and how it provides safety design and planning services, Sunoco is unable to justify how operational, planning and design considerations outside of Thornbury Township would be isolated from a small section of a 350-mile long linear project.

6. No responsive pleading is required for averrals of law per standard Pennsylvania civil practice.
7. Admitted in part, denied in part. Admitted that the Association properly cited Sunoco's operational record, including for its Mariner East pipeline system. Denied that Sunoco's operational record is irrelevant for evaluating its ability to provide safe and efficient pipeline transportation service. In fact, Sunoco's operating record, in the Association's view shows an unacceptable accident rate over time, is completely relevant to estimating the rate at which it will continue to have pipeline accidents in the future. Otherwise denied.
8. Denied. As stated above, Sunoco's provision of safe and efficient services is not restricted to each municipal geography in which it operates. Sunoco has argued, at great length, before this Commission and elsewhere, that the Mariner East project is an integrated transportation system. *See e.g.*, Order of August 19, 2014, Commission Docket C-2014-2422583; *In re Sunoco Pipeline (Martin)*, 143 A.3d 1000, 1027 (Pa. Commw. 2016). After arguing for years that the Commission and the courts cannot view Mariner East as a segmented project but must view Mariner East 2 as an extension of Mariner East 1 certificated service across seventeen (17) counties in Pennsylvania and beyond into Ohio and West Virginia, Sunoco cannot now suddenly change course to claim that safety concerns over this pipeline can only be viewed in the lens of a single municipality whose borders (as far as a pipeline is concerned) are completely arbitrary.

Contrary to Sunoco's allegations, accidents outside of Thornbury Township, Delaware County have a full and complete impact on the Association. For example,

Sunoco is required to document the results of each corrosion investigation it conducts anywhere in its system, and include these results in its 195 Manual. 49 C.F.R. § 195.589(c). Appendix C of part 195 documents how pipeline operators should implement their integrity management plan required at 49 C.F.R. § 195.501(l). Sunoco cannot demonstrate that these factors are different within or outside of Thornbury Township, nor that part 195 allows a pipeline operator to sever each township's issues from the entire pipeline system.

9. Denied. The Commission regulates the entire pipeline, not just a small segment. Sunoco cites no authority to justify why averrals about Sunoco's operations or operations of NGL transportation systems are not pertinent to Sunoco's NGL operations. If Sunoco cannot operate a safe and efficient pipeline in one segment of its operations, then Sunoco must concede that its operations are not demonstrably safe anywhere in its NGL transportation system.
10. Admitted in part, denied in part. Admitted that the Association used, as an example, Sunoco's non-compliance with applicable law during Mariner East 2 construction as examples of how its pipelines may not provide safe and efficient service. Denied in that such construction issues, many of which occurred on a pipeline segment that is proposed to cross Association property and that pass through valve sites on Association property, are not relevant to Sunoco's ability to safely operate a pipeline traversing Association property.
11. Denied. Sunoco is required under 49 C.F.R. part 195 and Commission law to operate a safe and efficient pipeline. The Association seeks discovery of how Sunoco was informed

by historically well documented NGL accidents to construct its 195 Manual and make various safety and design decisions in this project. NGL transportation history, much of which is believed to precede Sunoco's involvement in the NGL transportation market, is wholly relevant to Sunoco's ability to safely operate a NGL pipeline system.

12. Denied. Standard civil practice only allows striking impertinent matter when the allegations are immaterial and inappropriate to show any cause of action. *Piunti v. Dep't of Labor and Industry, Unemployment Bd. of Review*, 900 A.2d 1017, 1019 (Pa. Commw. 2006); quoting, *Common Cause/Pennsylvania v. Commw.*, 710 A.2d 108, 115 (Pa. Commw. 1998). Here, Sunoco has not shown that its operational history is irrelevant to its operations. Sunoco has not shown that risks, hazards and accidents in NGL transportation are irrelevant to NGL transportation services provided by Sunoco. The Association uses these examples and historical reports to illuminate the appropriate standards and design considerations that the Commission must evaluate in determining if Sunoco is capable of providing safe and efficient NGL transportation service. These data points are highly relevant to the safety and emergency response issues complained of by the Association. Therefore, the Commission should not strike these paragraphs as impertinent to the Association's questions around Sunoco's providing safe and efficient NGL transportation service.

Inaccurate matter may be stricken in Preliminary Objections. *Id.* In the cited case, the party offering Preliminary Objections identified inaccurate statements in the pleading, which were stricken during the Preliminary Objections process. Here, Sunoco

has not averred that any of the Association's averrals were inaccurate. Thus, the Commission should not strike these paragraphs as inaccurate.

CONCLUSION

WHEREFORE, the Association respectfully requests that the Public Utility Commission overrule Sunoco's Preliminary Objections in their entirety.

Dated: September 3, 2018

Respectfully Submitted,



/s/ Rich Raiders

Rich Raiders, Esq.
Attorney ID 314857
606 North 5th Street
Reading, PA 19601
rich@raiderslaw.com

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andover Homeowners' Association, Inc., : Docket No. C-2018-3003605
Petitioner :
 :
v. :
Sunoco Pipeline L.P., :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Formal Complaint in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), upon the persons listed below by first class mail:

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

Robert L. Byer
Leah A. Mintz
Duane Morris LLP
600 Grant Street, Suite 5010
Pittsburgh, PA 15219

Robert D. Fox
Neil S. Witkes
Diana A. Silva
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Attorneys for Sunoco Pipeline L.P.

Dated: September 3, 2018

Respectfully Submitted,


/s/ Rich Raiders

Rich Raiders, Esq.
Attorney ID 314857
606 North 5th Street
Reading, PA 19601
rich@raiderslaw.com



RAIDERS LAW
AND ENVIRONMENT

Raiders Law PC
606 North Fifth Street
Reading, PA 19601



Rosemary Chiavetta
Public Utility Commission
Commonwealth of PA
P.O. Box 3265
Harrisburg, PA 17105-3265