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October 22, 2018

VIA ELECTRONIC FILING

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

Re: Melissa DiBernardino v. Sunoco Pipeline L.P.; Docket No. C-2018-3005025;
**SUNOCO PIPELINE L.P.'S PRELIMINARY OBJECTIONS TO THE
FORMAL COMPLAINT**

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 Melissa DiBernardino 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

Respectfully submitted,

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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: October 22, 2018

said property. Events and locations having nothing to do with the Saint Peter and Paul School property or the pipelines on said property, have no “discernable effect”¹ on Complainant, and thus Complainant has no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas.

2. These same portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) because they are scandalous and impertinent. The alleged acts or events are unrelated to the claim alleged – that operations of SPLP’s Mariner East pipelines is unsafe, especially allegations related to other pipelines and non-safety related issues. Such claims are not relevant to the showing Complainant must make, that SPLP violated an applicable regulation over which the Commission has jurisdiction and that shows operation of the Mariner East pipelines in the vicinity of the Saints Peter and Paul School is unsafe.

3. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) for failure to comply with the requirements for formal complaints at 52 Pa. Code 5.22(a)(7) (“a document, or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof”). The Complaint relies on various documents but fails to attach such documents. The Complaint then proceeds to list a series of links as “Sources”, some of which the Complaint does not cite, many of which are news articles and thus inadmissible hearsay that cannot be relied upon, and all of which should be stricken as non-complaint with the Commission

¹ See *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018)

rules for formal complaints. Accordingly, Complaint ¶¶ 14-15, 22 and the links on pages 16-19, should be stricken.

I. ARGUMENT

A. Legal Standard

4. 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.C.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).

5. 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: Complainant Does Not Have Standing to Bring Claims Outside of The Geographic Region of the Saints Peter and Paul School

6. Pursuant to 52 Pa. Code § 5.101(a)(7), portions of the Complaint should be stricken because the law is clear and free from doubt that the Complainant does not have standing to bring

certain claims. Complainant makes various allegations intended to raise safety issues, but none of those allegations relate to the area of East Goshen Township, where the Saints Peter and Paul School that Complainants children attend, is located. Instead they relate to other states, other pipelines and other Townships and areas of Pennsylvania. Complaint at ¶ 14 (allegations regarding summarized risk analysis for HDD that make no attempt to relate such claims to geographic area for which Complainant claims standing); ¶ 15 (allegations regarding filed ethics complaints unrelated to the claims or geographic area which claims standing); ¶ 16 (allegations referring to inadvertent returns, sinkholes etc. that are unrelated to the geographic area for which Complainant claims standing); ¶ 17 (allegations referring to events which occurred in West Whiteland and Middletown Townships unrelated to the geographic area for which the Complainant claims standing); ¶ 19 (allegations referring to events East Swedesford Road/Hillside Drive HDD modification unrelated to the geographic area for which the Complainant claims standing); ¶ 20 (allegations referring to other pipelines in other areas of the state or other states; general allegations regarding precipitation and storm drainage and no attempt to relate to the geographic area for which the Complainant claims standing); ¶ 22 (allegations regarding DEP document that is not attached and no attempt to relate to the alleged comments to the geographic area for which the Complainant claims standing); ¶ 23 (allegations of an exposed, inactive pipe with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 24 (allegations that Aqua struck ME2 while working on a water main with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 27 (allegations of events from Delaware County and other unrelated incidents with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 28 (allegations of events from Delaware County with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 30 (general allegations about

enforcement actions, violations, letters, allegations of issues in Ohio with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 31 (allegations from “5 counties” with newly installed pipe “coating issues” with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 37 (allegations against Chester and Delaware Counties broadly, allegations are not against SPLP and make no attempt to relate to the geographic area for which Complainant claims standing); ¶ 44 (allegations of events in other Townships/Counties with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 47 (allegations on behalf of the safety of children in 40 plus schools, nursing homes, and the public generally for which do not relate to the geographic area for which Complainant claims standing).

7. The Public Utility Code and controlling precedent make clear that a Complainant *must* have a direct, substantial, and immediate interest in order to pursue any complaint allegation.

[A]ny person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the [PUC] has jurisdiction to administer, or of any regulation or order of the [PUC].

66 Pa.C.S. § 701. To bring a formal complaint under Section 701 (i.e. to have “an interest”), Complainant “must have a direct, immediate and substantial interest.” *See, e.g., Mun. Auth. of Borough of West View v. PUC*, 41 A.3d 929, 933 (Pa. Commw. Ct. 2012) (“In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant ‘*must have a direct, immediate, and substantial interest* in the subject matter of the controversy.’”) (emphasis added) (quoting *Waddington v. PUC*, 670 A.2d 199, 202 (Pa. Commw. Ct. 1995)); *Hatchigan v. PECO*, Dkt. No. C-2015-2477331 2016 WL 3997201, at * 6 (Order entered Jul. 21, 2016) (“In order to have standing to pursue a formal complaint before the

Commission under Section 701, the complainant *must have a direct, immediate, and substantial interest in the subject matter of the controversy.*”).

8. For example, Complainant alleges various incidents and leaks occurred, but none of those incidents were in the vicinity of the Saints Peter and Paul School. *See, e.g.*, Complaint at ¶ 20 (allegations referring to other pipelines in other areas of the state or other states; general allegations regarding precipitation and storm drainage and no attempt to relate to the geographic area for which the Complainant claims standing) ¶ 24 (allegations that Aqua struck ME2 while working on a water main with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 27 (allegations of events from Delaware County and other unrelated incidents with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 28 (allegations of events from Delaware County with no attempt to relate to the geographic area for which Complainant claims standing); ¶ 30 (general allegations about enforcement actions, violations, letters, allegations of issues in Ohio with no attempt to relate to the geographic area for which Complainant claims standing). Complainant does not have any interest, let alone a direct, immediate, and substantial interest in bringing claims regarding these events. Notably, some of these events did not even occur in Pennsylvania. Complaint at ¶ 20 (allegations referring to other pipelines in other areas of the state or other states; general allegations regarding precipitation and storm drainage and no attempt to relate to the geographic area for which the Complainant claims standing).

9. Complainant does not have standing to bring a claim regarding safety of the pipeline except for safety issues within the geographic region of the Saints Peter and Paul School, which is the area for which Complainant claims standing because her children attend school there. The Commonwealth Court recently issued an opinion in *Friends of Lackawanna v. Dunmore*

Borough Zoning Hearing Bd., 186 A.3d 525, 534–35 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018), that where standing based on proximity is alleged, there must be “discernable adverse effects” that infringe on the use and enjoyment of property, not just mere proximity or aesthetic concerns. Slip. Op. at 7 (finding homeowners within a quarter to a half mile of landfill had standing to challenge expansion of landfill where they experienced “pungent odors of rotting garbage, dust, bird droppings, and truck traffic directly affecting their properties.”). Here, the allegations relating to incidents outside of the area in East Goshen Township where the Saints Peter and Paul School is located have no discernable adverse effects on Complainant. Accordingly, Complainant has no standing to bring a Complaint regarding those events.

C. **Preliminary Objection 2: Portions of the Complaint should be stricken as scandalous and impertinent**

10. The portions of the Complaint discussed above should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) because they are scandalous and impertinent. The alleged bad acts are unrelated to the claim alleged – that operations of SPLP’s Mariner East pipelines is unsafe in the vicinity of the Saints Peter and Paul School in East Goshen Township – especially allegations related to other pipelines and non-safety related issues. Such claims are not relevant to the showing Complainant must make, that SPLP violated an applicable regulation over which the Commission has jurisdiction and that shows operation of the Mariner East pipelines in the vicinity of the Saints Peter and Paul School in East Goshen Township is unsafe.

11. For example, the Complaint alleges inadvertent returns and other Department of Environmental Protection issues that are irrelevant to the question of whether it is safe to operate the Mariner East pipelines. *See, e.g.*, Complaint at ¶ 16 (allegations referring to inadvertent returns, sinkholes etc. that are unrelated to the geographic area for which Complainant claims

standing). Moreover, the Complaint fails to tie any of these allegations to the geographic region at issue, as discussed above.

12. Likewise, allegations regarding other pipelines are irrelevant to whether it is safe to operate the Mariner East pipelines and these allegations should be stricken. *See, e.g.*, Complaint at ¶ 20. Similarly, allegations regarding the Mariner East lines that involve incidents outside the vicinity of Saints Peter and Paul School are irrelevant and should be stricken because they allege past occurrences that have no relationship to whether it is safe to operate the pipelines in the this area. *See, e.g.*, Complaint at ¶ 30.

13. Accordingly, Complaint paragraphs ¶¶ 14-17, 19-20, 22-24, 27-28, 30-31, 37, 44, 47 should be stricken because they are scandalous and impertinent.

D. Preliminary Objection 3: Portions of the Complaint should be stricken for failure to comply with requirements for formal complaints

14. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) for failure to comply with the requirements for formal complaints at 52 Pa. Code 5.22(a)(7), which states:

a document, or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof.

15. The Complaint relies on various documents, but fails to attach such documents. Complaint at ¶ 14 (allegations regarding summarized risk analysis for HDD that is not attached); ¶ 15 (allegations regarding filed ethics complaint that is not attached); ¶ 22 (allegations regarding DEP document that is not attached). This clearly fails to comply with the requirement to attach

documents, which is required to provide fair notice to SPLP of the allegations against it. As such, these paragraphs should be stricken.

16. The Complaint then proceeds to list a series of links as “Sources”, some of which the Complaint does not cite, many of which are news articles and thus inadmissible hearsay that cannot be relied upon, and all of which should be stricken as non-complaint with the Commission rules for formal complaints. Complaint at pp. 16-19.

17. Nothing in the Commission’s procedural rules allows a Complainant to merely set forth a list of links. It is unclear what Complainant is specifically alleging regarding these links. This lack of clarity and failure to follow requirements for Complaints fails to give SPLP notice of the allegations against it. Moreover, many of these links are news articles and other inadmissible hearsay, which cannot be relied upon. As such, these links should be stricken. SPLP notes that striking these links will not preclude Complainant from attempting, subject to evidentiary requirements, to enter any reliable, non-hearsay documents into the record to support her claims in the event this Complaint proceeds to hearing.

II. CONCLUSION

WHEREFORE, SPLP respectfully requests paragraphs ¶¶ 14-17, 19-20, 22-24, 27-28, 30-31, 37, 44, 47 of the Complaint be stricken because Complainant lacks standing to bring them and they are scandalous and impertinent, and ¶¶ 14-15, 22 and the links on pp. 16-19 of the Complaint be stricken for failure to give SPLP fair notice of the allegations against it by failing to comply with requirements for formal complaints.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: October 22, 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

Melissa DiBernardino
1602 Old Orchard Lane
West Chester, PA 19380



Thomas J. Sniscak, Esq.
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Dated: October 22, 2018