



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Kevin J. McKeon
(717) 703-0801
kjmckeon@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

January 10, 2019

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket No. C-2018-3006116,
P-2018-3006117; **SUNOCO PIPELINE L.P.'S PRELIMINARY
OBJECTIONS TO AMENDED FORMAL COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections to the Amended Formal Complaint of Flynn et al. 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**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	
CAROLINE HUGHES and	:	
MELISSA HAINES	:	
	:	Docket No. C-2018-3006116
Complainants,	:	Docket No. P-2018-3006117
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

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

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)
Kevin J. McKeon, Esq. (PA ID No. 30428)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyer@hmslegal.com

Robert D. Fox, Esq. (PA ID No. 44322)
Neil S. Witkes, Esq. (PA ID No. 37653)
Diana A. Silva, Esq. (PA ID No. 311083)
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Tel: (484) 430-5700
rfox@mankogold.com
nwitkes@mankogold.com
dsilva@mankogold.com

Attorneys for Respondent Sunoco Pipeline L.P.

Dated: January 10, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
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MELISSA HAINES	:	
	:	
Complainants,	:	Docket No. C-2018-3006116
	:	Docket No. P-2018-3006117
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE AMENDED FORMAL COMPLAINT OF MEGHAN FLYNN ET AL.**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Amended Formal Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Complainants) in the above captioned proceeding and requests that the Amended Complaint or portions thereof be dismissed, or, in the alternative, portions of the Amended Complaint be stricken.

I. INTRODUCTION

1. Count IV should be dismissed and paragraphs E, 61-81, and 111-118 should be stricken pursuant to 52 Pa. Code § 5.101 (a)(4) as legally insufficient for two reasons. First, Complainants cannot litigate integrity of SPLP’s pipelines in this proceeding. Complainants’ counsel admitted that integrity issues are not a part of this proceeding, those admissions are

binding, and Complainants cannot now amend their Complaint and attempt to place integrity of SPLP's pipelines at issue in this case. Second, Complainants cannot simply incorporate an entire complaint by the Commission's Bureau of Investigation and Enforcement into its Amended Complaint in one sentence and then ask for nearly identical relief as what BI&E seeks. Complainants do not have a private right of attorney general to enforce pipeline safety regulations.

2. The Amended Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because the Complainants have failed to conform the Amended Complaint with governing rules concerning verification of allegations. Throughout the Amended Complaint, Complainants rely on scientific assertions, opinions, and alleged facts which are not supported by any expert verification. *See* Amended Complaint at Paragraphs 11, 21, 22, 25, 28, 41, 46-49, 54-56, 59-60, 70-71, 73-83, 85-88, 90-92, 94-95, 104-110, 118. These paragraphs form the very basis of the Amended Complaint. Complainants are not experts in pipeline safety, and any averments used for the basis of their Amended Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36. Without this basis, the Amended Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

3. The Amended Complaint should also be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(5) because Complainants failed to join necessary parties that will be directly adversely affected if the relief requested is granted, including SPLP's current and future shippers, royalty owners who will lose their payments if the petroleum products from their land is shut in because it cannot be delivered due to enjoining operation/constructions of the Mariner East pipelines, and the businesses and labor force that rely on deliveries or future deliveries from the Mariner East pipelines, such as the Marcus Hook Industrial Plant. These are all parties who will sustain substantial injury to their personal and property interests and whom under the

Commission's rules must be joined as a prerequisite to their rights being affected due to this action on an interim and permanent basis being adjudicated.

4. In the alternative, the relief in this proceeding should be limited based on Complainants' geographic standing. As Your Honor recognized in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), "Complainant does not have standing to represent other individuals, schools or entities." In that proceeding, Your Honor limited the relief requested to the Township in which Complainant resides, and Your Honor should do the same here. *Id.*

5. Portions of the Amended Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) for failure to comply with 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 Amended Complaint relies on various documents but fails to attach such documents. Accordingly, Amended Complaint Paragraphs 43, 82-83 should be stricken.

6. Portions of the Amended Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(1) for lack of Commission jurisdiction over the allegations. Complainants allege inadequacies with the Chester and Delaware Counties emergency response agencies and the services they provide regarding "reverse 911" capabilities. *See* Amended Complaint Paragraphs 50-52. The Commission does not have jurisdiction over these entities, nor does SPLP have control

over the procedures and decisions of these agencies. Therefore, Amended Complaint Paragraphs 50-52 should be stricken.

I. ARGUMENT

A. Legal Standard

7. 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).

8. 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 Objections Warranting Complete Dismissal

1. Preliminary Objection 1: The Amended Complaint is legally insufficient and should be dismissed pursuant to 52 Pa. Code § 5.101 (a)(4).

9. Count IV should be dismissed and paragraphs E, 61-81, and 111-118 should be stricken pursuant to 52 Pa. Code § 5.101 (a)(4) as legally insufficient for two reasons. First, Complainants cannot litigate integrity of SPLP's pipelines in this proceeding. Complainants' counsel admitted that integrity issues are not a part of this proceeding after Your Honor consolidated the Complaint and Petition proceedings, those admissions are binding, and Complainants cannot now amend their Complaint and attempt to place integrity of SPLP's pipelines at issue in this case. Second, Complainants cannot simply incorporate an entire complaint by the Commission's Bureau of Investigation and Enforcement into its Amended Complaint in one sentence and then ask for nearly identical relief as what BI&E seeks. Complainants do not have a private right of attorney general to enforce pipeline safety regulations.

10. At hearing, counsel for Complainants admitted, after the Petition and Complaint were consolidated, that integrity is not at issue in this proceeding. *See, e.g.*, N.T. 32:810 ("If Your Honor please, we're not talking about the integrity of the pipelines. That's not an issue in this proceeding.") That admission is binding on Complainants. *See, e.g., Sule v. W.C.A.B. (Kraft, Inc.)*, 121 Pa. Cmwlth. 242, 245, 550 A.2d 847, 849 (1988) ("It is well settled that an admission of an attorney during the course of a trial is binding upon his client."); *Marmo v. Com., Dep't of Transp.*, 121 Pa. Cmwlth. 191, 195-96, 550 A.2d 607, 609 (1988). Complainants cannot now raise integrity as an issue here.

11. Next, Complainants raise integrity through an improper attempt to incorporate an entire BI&E complaint against SPLP. Amended Complaint at Paragraph 74. This violates the

Commission's requirements for formal complaints at 52 Pa. Code § 5.22, which requires complaints to contain "a clear and concise statement of the act or omission being complained of."

Id. Complainants have not made such statement, but instead attempt to plead a separate complaint in the space of one sentence. Moreover, Complainants are not experts and cannot make such allegations as discussed below.

12. Complainants also lack standing to make allegations regarding the BI&E complaint, which focuses on a pin-hole leak and alleged past non-conformity with integrity management and cathodic protection regulations. Complainants wholly fail to allege that the Morgantown incident or those past occurrences have in any way impacted them, let alone had the required direct, immediate, and substantial impact required for standing discussed below. Accordingly, Count IV should be dismissed and paragraphs E, 61-81, and 111-118 should be stricken pursuant to 52 Pa. Code § 5.101 (a)(4) as legally insufficient

2. Preliminary Objection 2: The Amended Complaint fails to conform with the governing rules and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

13. The Amended Complaint should also be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because the Complainants have failed to conform their Amended Complaint with the governing rules. Throughout the Amended Complaint, Complainants rely on scientific assertions, opinions, and averments which are not supported by any expert verification. *See* Complaint at Paragraphs 11, 21, 22, 25, 28, 41, 46-49, 54-56, 59-60, 70-71, 73-83, 85-88, 90-92, 94-95, 104-110, 118. These paragraphs form the very basis of the Amended Complaint.

14. Complainants are lay persons, not experts in pipeline safety, and any allegations used for the basis of their Amended Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36.

15. Therefore, the Amended Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

3. Preliminary Objection 3: The Amended Complaint fails to join necessary parties and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

16. Pursuant to 52 Pa. Code § 5.101(a)(5), the Amended Complaint should be dismissed because it fails to join necessary parties.

17. “A necessary party is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights.” *Pennsylvania Fish Commission v. Pleasant Tp.*, 388 A.2d 756, 759 (Pa. Commw. Ct. 1978).

18. SPLP’s shippers on the Mariner East pipelines are necessary parties because they, as public utility customers, have a right to obtain service from SPLP. The relief requested here of enjoining operation of SPLP will infringe upon those rights. Regarding ME2, SPLP held an open season and obtained binding contractual commitments to serve certain shippers. Delaying the operation of ME2 infringes on those contractual rights. Moreover, some of those shippers, such as Range Resources who intervened in this proceeding to provided testimony of the damages they will suffer, pay royalties to landowners for their mineral rights. If injunction of operation/construction of the Mariner East pipelines is granted, product may become shut-in, meaning those royalty payments will stop. Likewise, a large labor force and other businesses depend on deliveries from the Mariner East Pipelines, such as the Marcus Hook Industrial Complex. Shutting down the pipelines infringes on their ability to operate their businesses.

19. The people and businesses that depend on the Mariner East public utility service are all necessary parties. The Amended Complaint failed to join these parties, and these parties have not been given formal notice of the Amended Complaint given it was not required to be

published in the Pennsylvania Bulletin. Accordingly, the Amended Complaint should be dismissed for failure to join necessary parties.

C. **In the Alternative, Relief Should be Limited by Geographic Scope and Portions of the Amended Complaint Should be Stricken**

1. **Preliminary Objection 4: Complainants do not have standing 52 Pa. Code § 5.101(a)(7) to bring claims outside of their Townships in Chester and Delaware Counties and thus relief should be limited by geographic scope.**

20. 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”), Complainants “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.*”).

21. Complainants do not have standing to bring a claim regarding the pipeline for issues outside the geographic regions for which they claim standing. 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), holding 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.”).

22. As Your Honor recognized in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), “Complainant does not have standing to represent other individuals, schools or entities.” In that proceeding, Your Honor limited the relief requested to the Township in which Complainant resides, and Your Honor should do the same here. *Id.*

23. Accordingly, Your Honor should limit the relief to the following Townships: Middletown Township, Delaware County; Thornbury Township, Delaware County; Westtown Township, Chester County; West Whiteland Township, Chester County; East Goshen Township Chester County; and Aston Township, Delaware County.

2. Preliminary Objection 5: Portions of the Amended Complaint should be stricken for failure to comply with requirements for formal complaints pursuant to 52 Pa. Code § 5.101(a)(2).

24. Portions of the Amended 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)(2), 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.

25. The Amended Complaint relies on documents but fails to attach such documents. Amended Complaint at 43 (relying upon school district letters), 82-83 (relying upon Delaware County Council “risk assessment”). 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.

26. Accordingly, Amended Complaint paragraphs 43, 82-83 should be stricken for failure to comply with the requirements for formal complaints for failure to attach documents relied upon.

3. Preliminary Objection 5: Portions of the Amended Complaint should be stricken for lack of Commission jurisdiction over the averments pursuant to 52 Pa. Code § 5.101(a)(1).

27. Pursuant to 52 Pa. Code § 5.101(a)(1), portions of the Amended Complaint should be stricken because the law is clear and free from doubt that the Commission does not have jurisdiction over allegations unrelated to public utilities. Complainants allege inadequacies with

the Chester and Delaware Counties emergency response agencies and the services they provide regarding “reverse 911” capabilities. *See* Amended Complaint Paragraphs 50-52.

28. The Commission as a regulatory body only has the powers that the General Assembly grants to it. *See, e.g., W. Pennsylvania Water Co. v. Pennsylvania Pub. Util. Comm'n*, 370 A.2d 337, 339 (Pa. 1977) (Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute.). The Commission only has the power to entertain complaints by third parties against “public utilities.” For complaints, 66 Pa. C.S. § 701 provides:

The commission, or any 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 commission has jurisdiction to administer, or of any regulation or order of the commission. Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

66 Pa. C.S. § 701 (emphasis added).

29. The Commission does not have jurisdiction over complaints regarding Chester and Delaware Counties emergency response agencies, as they are not “public utilities” as defined in the Code.

30. Further, SPLP does not have any control over the procedures and decisions of these agencies. The processes, decisions, and management of these emergency response agencies is completely outside the control of SPLP.

31. Accordingly, Amended Complaint Paragraphs 50-52 should be stricken because the Commission lacks jurisdiction over the averments.

II. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Amended Complaint or portions thereof be dismissed, or, in the alternative, portions of the Amended Complaint be stricken.

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)
Kevin J. McKeon, Esq. (PA ID No. 30428)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Hawke, McKeon & Sniscak LLP
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Harrisburg, PA 17101
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kjmckeon@hmslegal.com
wesnyer@hmslegal.com

Robert D. Fox, Esq. (PA ID No. 44322)
Neil S. Witkes, Esq. (PA ID No. 37653)
Diana A. Silva, Esq. (PA ID No. 311083)
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Tel: (484) 430-5700
rfox@mankogold.com
nwitkes@mankogold.com
dsilva@mankogold.com

Attorneys for Respondent Sunoco Pipeline L.P.

Dated: January 10, 2019

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 ELECTRONIC AND FIRST CLASS

Michael S. Bomstein, Esquire
Pinnola & Bomstein
Suite 2126 Land Title Building
100 South Broad Street
Philadelphia, PA 19110
mbomstein@gmail.com

Counsel for Complainants

Anthony D. Kanagy, Esquire
Garrett P. Lent, Esquire
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com
glent@postschell.com

*Counsel for Range Resources – Appalachia,
LLC*

Rich Raiders, Esquire
Raiders Law
321 East Main Street
Annville, PA 17003
rich@raiderslaw.com

*Counsel for Andover Homeowners'
Association, Inc.*



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

Dated: January 10, 2019