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January 24, 2019

VIA ELECTRONIC FILING

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

Re: Laura Obenski v. Sunoco Pipeline L.P.; Docket No. C-2019-3006905; **SUNOCO PIPELINE L.P.'S PRELIMINARY OBJECTIONS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections 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**

LAURA OBENSKI,	:	
	:	
Complainant/Petitioner,	:	
	:	
v.	:	
	:	Docket No. C-2019-3006905
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,



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Dated: January 24, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA OBENSKI,	:	
	:	
Complainant/Petitioner,	:	
	:	
v.	:	
	:	Docket No. C-2019-3006905
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE FORMAL COMPLAINT OF LAURA OBENSKI**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Formal Complaint¹ of Laura Obenski (Complainant) in the above captioned proceeding and requests that the Complaint be dismissed, or, in the alternative, portions of the Complaint be stricken.

I. INTRODUCTION

1. The Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because the Complainant has failed to conform the Complaint with governing rules concerning verification of allegations. Throughout the Complaint, Complainant relies on scientific assertions, opinions, and alleged facts which are not supported by any expert verification. *See* Complaint at Paragraphs 1, 8, 9, 13, 14, 16, 17, 21, 27, 29, 31, 35, 38, 40, 42-44, and the Relief Requested II-IV. These paragraphs form the very basis of the Complaint. Complainant is not an expert in pipeline safety, risk, public awareness, or pipeline siting and any averments used for the basis of the Complaint consisting of technical conclusions require expert

¹ The Complainant did not properly number her complaint. In order to prepare a response, SPLP numbered the complaint. See Attachment A.

verification under 52 Pa. Code § 1.36. Without this basis, the Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

2. In the alternative, portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(1) for lack of Commission jurisdiction over the allegations. Throughout her Complaint, Complainant alleges violations of The Emergency Management Services Code at 35 Pa.C.S.A. § 7101 *et seq.*, and Title 22, Education at 22 Pa. Code § 21.41. *See* Complaint Paragraphs 10, 11, 13, 18, 19, 25, 32-34, 37, and the Relief Requested II-III relating to 35 Pa.C.S.A. § 7101 *et seq.*; Complaint Paragraph 12 relating to 22 Pa. Code § 21.41. The Complaint also alleges violations by non-public utilities, including political subdivisions, schools, and first responders. *See* Complaint Paragraphs 12, 13, 18, 19, 24-26, 32, 33, 37, and the Relief Requested II-III. The Commission does not have jurisdiction over these claims. *See* 66 Pa. C.S. § 701. The Commission cannot hear a complaint for a claimed violation of a statute beyond its jurisdiction by entities over which the Commission does not have jurisdiction. *See* 52 Pa. Code § 5.21. Therefore, Complaint Paragraphs 10-13, 18, 19, 24-26, 32-34, 37, and the Relief Requested II-III should be stricken.

3. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(7) because Complainant lacks standing to bring claims regarding SPLP's pipelines outside the geographic area of her residence, regarding other individuals, schools or entities, or regarding remote events where Complainant's children "will spend their entire kindergarten through 12 grade academic careers" for which Complainant claims standing based on her children's future attendance at those schools. Complaint at Paragraphs 3, and 8 (emphasis added). The Paragraphs to be stricken include 1, 8, 19, 25, 29, 31, 35-38, 40, 42-44, and the Relief Requested II-IV. These paragraphs all make allegations regarding areas disconnected from the geographic area surrounding Complainant's residence or make allegations of general

public concern. Thus, Complainant does not have standing to bring claims for these allegations. Events and locations regarding other individuals, schools or entities, or having nothing to do with the Complainant's property or the pipelines on said property, or regarding remote, future events have no "discernable effect"² on Complainant, and thus Complainant has no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas. Further, 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.* Accordingly, Complaint paragraphs 1, 8, 19, 25, 29, 31, 35-38, 40, 42-44, and the Relief Requested II-IV should be stricken.

4. Complaint Paragraph 21 should 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"). Complaint Paragraph 21 relies on "other independently commissioned studies," but does not attach these studies and therefore this paragraph should be stricken.

² See *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018)

II. ARGUMENT

A. Legal Standard

5. 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).

6. 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 Complaint fails to conform with the governing rules and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

7. The Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because it does not conform with the governing rules concerning verifications. The Complaint relies on scientific assertions, opinions, and averments that are not supported by any

expert verification. *See* Complaint at Paragraphs 1, 8, 9, 13, 14, 16, 17, 21, 27, 29, 31, 35, 38, 40, 42-44, and the Relief Requested II-IV. These paragraphs form the very basis of the Complaint.

8. Complainant is a lay person, not an expert in pipeline safety, and any allegations used for the basis of her Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36.

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

C. In the Alternative, Portions of the Complaint Should be Stricken

2. Preliminary Objection 2: Portions of the Complaint should be stricken for lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1).

10. Pursuant to 52 Pa. Code § 5.101(a)(1), portions of the Complaint should be stricken because the law is clear and free from doubt that the Commission does not have jurisdiction over allegations of violations of law over which the Commission does not have jurisdiction that non-public utilities allegedly committed. Complainant alleges violations of The Emergency Management Services Code at 35 Pa.C.S.A. § 7101 *et seq.*, and Title 22, Education at 22 Pa. Code § 21.41. *See* Complaint Paragraphs relating to 35 Pa.C.S.A. § 7101 *et seq.* including ¶ 10 (alleging political subdivisions and schools are unable to comply with Title 35); ¶ 11 (alleging application of “Title 35 § 7103”); ¶ 13 (alleging political subdivision obligations under Title 35); ¶ 18 (alleging the powers and duties of political subdivisions under “Title 35 Part III § 7503”); ¶ 19 (alleging inability of political subdivisions to comply with Title 35); ¶ 25 (alleging requirements of political subdivisions under Title 35 § 7503); ¶ 32 (alleging duties of school districts under Title 35 § 7701(g)); ¶ 33 (alleging powers and duties of political subdivisions under “Title 35 § 7103”); ¶ 34 (alleging, generally, the purpose of Title 35 § 7103); ¶ 37 (alleging “the ability of the DASD, Uwchlan Township and the County of Chester” under

Title 35); and Relief Requested (requesting and alleging “technologies available” for schools and political subdivisions for them to comply with Title 35; requesting and alleging “the ability of the DASD, Uwchlan Township and the County of Chester” under Title 35); *See also* Complaint Paragraph ¶ 12 relating to 22 Pa. Code § 21.41 (alleging requirements to comply with PA School Code). The Complaint also alleges violations by non-public utilities, including political subdivisions, schools, and first responders. *See* Complaint Paragraphs ¶ 12 (alleging requirements to comply with PA School Code); ¶ 13 (alleging political subdivision obligations under Title 35); ¶ 18 (alleging the powers and duties of political subdivisions under “Title 35 Part III § 7503”); ¶ 19 (alleging inability of political subdivisions to comply with Title 35); ¶ 24 (alleging necessity of technology accessible and utilized by emergency services personnel); ¶ 25 (alleging requirements of political subdivisions under Title 35 § 7503); ¶ 26 (alleging Chester County emergency services activities); ¶ 32 (alleging duties of school districts under Title 35 § 7701(g)); ¶ 33 (alleging powers and duties of political subdivisions under “Title 35 § 7103”); ¶ 37 (alleging “the ability of the DASD, Uwchlan Township and the County of Chester” under Title 35); Relief Requested II (requesting and alleging “technologies available” for schools and political subdivisions for them to comply with Title 35); and Relief Requested III (requesting and alleging “the ability of the DASD, Uwchlan Township and the County of Chester” under Title 35).

11. 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).

12. The Commission does not have jurisdiction over complaints regarding the activities of political subdivisions, schools, and Chester Counties' emergency response agencies, as they are not "public utilities" as defined in the Code. Likewise, the Commission does not have jurisdiction to enforce 35 Pa.C.S.A. § 7101 *et seq.*, or 22 Pa. Code § 21.41.

13. Moreover, the processes, decisions, and management of these emergency response agencies is completely outside the control of SPLP.

14. Accordingly, Complaint Paragraphs 10-13, 18, 19, 24-26, 32-34, 37, the Relief Requested II and III should be stricken because the Commission lacks jurisdiction over the statutes allegedly violated and the entities that have allegedly violated them.

3. Preliminary Objection 3: Complainant does not have standing 52 Pa. Code § 5.101(a)(7) to bring claims outside of her residence in Uwchlan Township, Chester County and thus relief should be limited by geographic scope.

15. 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 Uwchlan Township, where the

Complainant resides. Instead they relate to concerns on behalf of other entities including schools and political subdivisions, concerns generally on behalf of the public, and concerns generally at a statewide level. See Complaint at Paragraphs 1 (allegations of “statewide integrity concerns,” general operations and construction, and general public concerns with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 8 (alleging Complainant’s children “*will* spend their entire kindergarten through 12th grade” and general concerns within Chester County with no attempt to tie the allegations to the Complainant’s residence where she claims standing)(emphasis added); ¶ 19 (alleging inability for political subdivisions to provide for public safety with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 25 (alleging duties and tasks of political subdivisions with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 29 (allegations on behalf of schools, Uwchlan Township, and the County of Chester with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 31 (allegations on behalf of “5,800 students and staff within DASD” with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 35 (allegations on behalf of “several impacted school districts” with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 36 (allegations on behalf of the “public’s pertinent concerns for safety” with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 37 (allegations on behalf of DASD, Uwchlan township, and the County of Chester with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 38 (allegations of a valve station located at Dorlan Mills Road near two schools with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 40 (allegations regarding the Dorlan Mills Rd valve station with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 42 (allegations

regarding an expansion of “the affected geographical area” of the Mariner East 2 project with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 43 (allegations regarding the valve site on Dorlan Mills Rd on behalf of two schools, housing “approximately 1,800 students and staff” with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 44 (allegations demanding the relocation of the valve site with no attempt to tie the allegations to the Complainant’s residence where she claims standing); Requested Relief II (requesting and alleging on behalf of “schools and political subdivisions” under Title 35 with no attempt to tie the allegations to the Complainant’s residence where she claims standing); Requested Relief III (requesting and alleging on behalf of “DASD, Uwchlan Township, and County of Chester” under Title 35 with no attempt to tie the allegations to the Complainant’s residence where she claims standing); and Requested Relief IV (requesting and alleging regarding the “location of the valve adjacent to two facilities within the DASD” with no attempt to tie the allegations to the Complainant’s residence where she claims standing).

16. 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”), a 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.*”).

17. Complainant does not have standing to bring a claim regarding the pipeline for issues outside the geographic region for which she claims 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.”). 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.*

18. Therefore, Paragraphs 1, 8, 19, 25, 29, 31, 35-38, 40, 42-44, and the Relief Requested II-IV should be stricken and Your Honor should limit any relief requested to the Township in which the Complainant resides.

4. Preliminary Objection 4: Portions of the Complaint should be stricken for failure to comply with requirements for formal complaints pursuant to 52 Pa. Code § 5.101(a)(2).

19. 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)(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.

20. The Complaint relies on documents but fails to attach such documents. *See* Complaint at 21 (relying upon “other independently commissioned studies”). 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.

21. Accordingly, Complaint Paragraph 21 should be stricken for failure to comply with the requirements for formal complaints for failure to attach documents relied upon.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Complaint be dismissed in its entirety under 52 Pa. Code § 5.101(a)(2) because the complaint failed to conform with the governing rules requiring expert verification of scientific and technical assertions. In the alternative, SPLP respectfully requests that portions of the Complaint be stricken, including Paragraphs 10-13, 18, 19, 24-26, 32-34, 37, and Relief Requested II-III for lack of Commission jurisdiction over the allegations, Paragraphs 1, 8, 19, 25, 29, 31, 35-38, 40, 42-44, and Relief Requested II-IV for lack of standing under 52 Pa. Code § 5.101(a)(7), Paragraph 21 under §

5.101(a)(2) for failure to attach a relied upon document. SPLP also respectfully requests that the Complainant's Relief Requested II-IV be limited in light of the above requested preliminary objections.

Respectfully submitted,



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Dated: January 24, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

ATTACHMENT A

Laura Obenski
14 S Village Ave
Exton, PA 19341

For electronic filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 265
Harrisburg, PA 17105 – 3265

January 2, 2019

Dear Secretary Chiavetta,

Attached for electronic filing, please find my formal complaint. Please direct any responses or documentation electronically to ljobenski@gmail.com.

Sincerely,

A handwritten signature in black ink that reads "Laura Obenski". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Laura Obenski

Enclosure

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

January 2, 2019

FORMAL COMPLAINT OF LAURA OBENSKI

1 The Complainant, Laura Obenski, pursuant to 52 Pa. Code § 5.21, respectfully files this formal complaint with the Commission requiring Sunoco Pipeline L.P. a/k/a Energy Transfer Partners ("Sunoco") to suspend 1) operations of the Mariner East 1 pipeline ("ME1"), 2) the construction and operation of the Mariner East 2 and 2X pipelines ("ME2/2X"), and 3) plans to operate the Mariner East network utilizing the 12 inch 'Point Breeze To Montello' line, due to statewide integrity concerns, the absence of an appropriate public education program, lack of early warning system and appropriate mass notification methods for the public, and insufficient emergency plans for the public, being potentially hazardous to life, property and/or the environment.

PARTIES

2 A. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 5101, et seq

3 B. Complainant, Laura Obenski, a Chester County resident who resides in Uwchlan Township at 14 S. Village Ave Exton PA 19341

4 C. Respondent, Sunoco Pipeline L.C. LP. Utility Code A-14001, a certificated public utility in the Commonwealth of Pennsylvania, with a place of business at 4041 Market Street, Aston, Pennsylvania, 19014, and a common carrier transporter of hazardous liquids, owns, operates and is currently constructing the natural gas liquids Mariner East pipeline project, consisting of: the operational 8 inch Mariner 1, the proposed 12 inch bypass line for Mariner 2 (also known as the 'Point Breeze to Montello' line), and the Mariner 2 and 2X pipelines, and other pipelines in the Mariner East Pipeline system.

JURISDICTION

5 The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: *"In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof..."* (emphasis added).

6 Section 1501 of the Public Utility Code states that *"every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such*

service shall be reasonably continuous and without unreasonable interruptions or delay.” 66 Pa.C.S § 1501. See also, 66 Pa.C.S § 1505.

Moreover, **52 Pa. Code § 59.33** reads “*Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. Safety code. The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § 60101---60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191-193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the Pennsylvania Bulletin stating that the amendment or modification may not take effect.*

Definition. For the purposes of this section, "hazardous liquid public utility" means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

Enforcement. Each public utility shall be subject to inspections as may be necessary to assure compliance with this section. The facilities, books and records of each public utility shall be accessible to the Commission and its staff for the inspections. Each public utility shall provide the Commission or its staff the reports, supplemental data and information as it shall from time to time request in the administration and enforcement of this section.”

STANDING

The complainant’s residence is located approximately 728 feet from the easement containing ME1 and the construction of ME2/2X. The complainant’s two children will spend their entire kindergarten through 12th grade academic careers in the public school facilities of the Downingtown Area School District (DASD), in direct proximity to the Mariner East pipeline network. These facilities include Lionville Elementary, 1520 feet; Marsh Creek 6th Grade Center (MC6GC), 1005 feet; Lionville Middle School, 645 feet (this facility is flanked by ME1 and 12 inch line; and Downingtown East High School, 1150ft (measurements approximate). The MC6GC has additional risk exposure to the above ground valve site located directly across the street, located along Dorlan Mills Rd. in Upper Uwchlan Township. Additionally, the Complainant’s family is exposed to risks from the Mariner East pipeline project during every aspect of daily life, as the Mariner East network is present in areas traveled and frequented within Uwchlan Township and Chester County to attend school, work, shop, and access recreational opportunities.

SUMMARY OF ARGUMENT

9 The Commission's Bureau of Investigation and Enforcement expressed statewide concerns about the integrity of ME1 in a formal complaint filed before the Commission on December 13, 2018 (Docket #C-2018-3996534). Given the age of the pipe, corrosion control practices utilized by Sunoco, and the soundness of engineering practices applied to ME1 and the 12" line, there is reason for the Commission to hear Complainant's concerns regarding whether service can be deemed 'safe, adequate, and reasonable' to the public.

10 The Mariner East project has been plagued by numerous environmental violations and legal challenges resulting in significant delays and intense media coverage. Because Pennsylvania does not have a pipeline siting agency, local government should have jurisdiction over local land use planning. However, due to the 'public utility' status granted for this project, political subdivisions and schools have not been able to provide input or work collaboratively with Sunoco in a way that permits them to accomplish their duties under state code, such as Title 35, relating to public safety.

11 The Emergency Management Services Code, through Title 35 § 7103, outlines the responsibility to "*assist in prevention of disaster caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.*"

12 Additionally, PA School Code § 21.41, designates provisions for department review of site reports. "*(a) The Department will review proposed construction site reports based on safety, accessibility, proximity to present and projected population and economy of development in order to advise the district on construction site acquisition.*"

13 The Commission should determine whether service can be considered "safe, reasonable and adequate" and in compliance with section 1501 of the PA Public Utility Code, while considering the recently raised concerns of pipeline integrity and correspondence from political subdivisions regarding their ability to appropriately plan and mitigate for the hazards of the Mariner East project to comply with their obligations under Title 35 and all other state code.

ARGUMENT

14 1. **Sunoco's public awareness program has failed to appropriately educate all members and stakeholders of the community who are at risk from the operation of the Mariner East network on how to safely and properly identify, report, and make decisions regarding evacuation in the event of a pipeline related emergency.**

15 49 CFR §195.440 (a) *Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3). (b) The operator's program must follow*

the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

16 Sunoco has specific requirements under RP 4.3.2 on advising community stakeholders on how to recognize a pipeline leak. Because the natural gas liquid (NGL) products transported via the Mariner East pipeline network are colorless and do not contain added odorant, the physical characteristics of a leak may not be easy to identify, especially in the event of a slow leak.

17 RP 4.3.3 goes on to outline that “*information should address an outline of the appropriate actions to take if a pipeline leak or release is suspected.*” However, given the characteristics of the products and the many variables that need to be taken into account to safely evacuate or shelter in place (wind direction, weather, topography, etc.), the ability of the general public (including children at play in their neighborhoods) to expediently make a decision and safely evacuate is not reasonable.

18 Title 35 Part III §7503, relating to powers and duties of political subdivisions, directs and authorizes every political subdivision to “(5) Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.” and “ (7) Cooperate and coordinate with any public and private agency or entity in achieving any purpose of this part.”

19 The failure of Sunoco to provide reasonable guidance to the Complainant and the Complainant’s schools is evidenced in a letter from DASD to Governor Wolf dated July 16, 2018 (Exhibit A). It should be deemed unacceptable that the characteristics of the products transported via the Mariner East pipeline network creates an inability for political subdivisions to be in compliance with their duty to provide for public safety through requirements set forth in Title 35.

20 Sunoco self reports that their public awareness program includes sending a mailer to all neighbors within 1,000 feet. The Complainant, who has mapped her place of residence utilizing the Chester County Pipeline Portal website mapping tool (Exhibit B) lives approximately 700-800 feet from the Mariner East pipeline easement containing ME1 and the construction of ME2/2X, but has not to her knowledge received an educational mailer. The Complainant has, however, received public awareness materials from other operators, which are geographically much further away from her residence.

21 In the absence of a publicly available risk assessment or study, other independently commissioned studies to evaluate the risks of the Mariner East network have identified a wide range of probable impact radius, all of which are greater than 1,000 feet which leaves a large gap between those receiving public awareness from Sunoco and those that may actually be placed at risk.

22 RP 6.1 allows for considerations for supplemental enhancements for the baseline program, and “*recognizes that there are differences in pipeline conditions, consequences, population, property development, excavation activities, and other*

issues along pipeline systems.” RP 6.2 goes on to state “Another factor to consider is the hazard associated with the pipeline as perceived by either the operator or the audience.” “If the public’s confidence in pipeline safety is undermined by a high profile emergency, even though an individual operator is experiencing no upward trend in incidents, that operator could consider expanding it’s public awareness communications to it’s public audiences to further increase awareness of its nearby pipeline system.”

23 The Mariner East pipeline network has been an intense focus of public and state scrutiny relating to the large number of *actual* violations and delays incurred during both construction and operation. Due to many recent pipeline explosions and incidents of worker injury or death involving Sunoco pipelines or affiliated partners, and the recent opening of a criminal investigation related to safety concerns by the Chester County District Attorney Tom Hogan (Exhibit C). The Commission should consider requiring extensive public safety awareness efforts. The Commission must also determine if service can be deemed ‘safe and reasonable’ to the public in the absence of actionable guidance on how, when, and where to safely evacuate during a pipeline related emergency.

24 2. **The tools and available technology accessible and utilized by emergency services personnel for early detection of a leak and mass notification in event of a pipeline related emergency are in direct conflict with federal safety recommendations.**

25 Under Title 35 § 7503, political subdivisions are required to “(2) *Establish, equip and staff an emergency operations center, consolidated with warning and communication systems to support government operations in emergencies and provide other essential facilities and equipment for agencies and activities assigned emergency functions.*” Political subdivisions are also tasked with the responsibility to “(4) *Organize, prepare and coordinate all locally available manpower, materials, supplies, equipment, facilities and services necessary for disaster emergency readiness, response and recovery.* (5) *Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.*”

26 In the event of a pipeline related emergency, Chester County emergency services intends to utilize it’s ‘reverse 911’ system to notify affected residents and members of the public, potentially activating hundreds of phones in direct proximity to a gas leak. This is in direct contradiction to PHMSA safety recommendation, which states “DO NOT use telephone or cell phone.” (Exhibit D) The County of Chester has recently expressed concern regarding this method of mass notification in their letters, dated December 11, 2018 (Exhibit E).

27 Homeowners and community members have an important role in detecting gas leaks utilizing their senses. With no added odorant in the products transported by the Mariner East network, it is not clear on how to identify a gas leak from a nearby pipeline. It would be appropriate for additional requirements of Sunoco to

ensure that even small leaks can be reliably detected with the use of technology that is put in place within the community, not just a subjective sense of smell.

28 In the absence of appropriate early detection measures and a proven, safe notification system for the public, the Commission should determine if service can be deemed 'safe and reasonable' to the public.

29 3. **The Lionville Elementary School, Lionville Middle School, Downingtown East High School, Shamona Creek Elementary School, and MC6GC are put at risk by the Mariner East pipeline network due to pipeline integrity concerns and the inability of the DASD, Uwchlan Township and the County of Chester to maintain updated, actionable and reliable emergency preparedness plans.**

30 49 C.F.R. §195.210(a) states "*Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly.*"

31 Approximately 5,800 students and staff (including Complainant's children) within the DASD are in close proximity to the Mariner East pipeline network. This includes the Lionville Elementary School, 1520 feet; Marsh Creek 6th Grade Center (MC6GC), 1005 feet; Lionville Middle School, 645 feet (this facility is flanked by the 8 inch and 12 inch line) and Downingtown East High School, 1150ft.

32 Title 35, § 7701(g), related to duties concerning disaster prevention, states "*Every school district and custodial child care facility, in cooperation with the local Emergency Management Agency and the Pennsylvania Emergency Management Agency, shall develop and implement a comprehensive disaster response and emergency preparedness plan consistent with the guidelines developed by the Pennsylvania Emergency Management Agency and other pertinent State requirements.*"

33 Title 35 §7503 also outlines "*the powers and duties of political subdivisions (1) Prepare, maintain and keep current a disaster emergency management plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disaster and disaster emergency relief and recovery in consonance with the Pennsylvania Emergency Management Plan.*"

34 Title 35 § 7103 states the purpose of the Emergency Management Services Code is to "*(1) Reduce vulnerability of people and communities of this Commonwealth to damage, injury and loss of life and property resulting from disasters. (2) Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by disaster.*"

35 Several impacted school districts, including DASD, sent letters (Exhibit F) to state entities asking for assistance with the identification, mitigation, and development of proper emergency response plans for their affected school facilities. Lack of cooperation from Sunoco and the absence of a state conducted study to identify the extent of risk from the Mariner East pipeline network has resulted in difficulty for

the DASD, Uwchlan Township, and the County of Chester to comprehensively conduct their required duties under Title 35.

36

Due to provisions in Act 156, per PA Code 102.1, that allow public utilities to designate their own material as confidential in nature, and the utilization of non-disclosure agreements related to sensitive information it has not been possible for first responders to present information in response to the public's pertinent concerns of safety in a satisfactory way (Exhibit G). If the information shared with emergency planning and response officials technically meets the requirements of Sunoco's emergency response requirements under 49 CFR §195.440 but is not able to be presented in a way that is actionable to the affected public, the Commission should consider whether compliance with this rule is possible.

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The Commission must determine if service can be deemed 'safe and reasonable' to the staff and students exposed to the Mariner East pipeline network within the DASD in the absence of data fully exploring the health and safety risks of the project. The Commission should also consider the ability of the DASD, Uwchlan Township and the County of Chester to create appropriate and actionable disaster response and emergency preparedness plans mandated under Title 35, to protect the safety of the public.

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4. **The proximity of the valve station located at Dorlan Mills Road in Upper Uwchlan Township to the Shamona Creek Elementary School and the MC6GC presents a significant safety risk to staff and students, should an internal or external pipeline related emergency occur.**

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49 C.F.R. 195.258(a) states that "*each valve must be installed in a location that is accessible to authorized employees and that is protected from damage or tampering.*"

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The valve station is located roadside, approximately 15 feet from the painted shoulder line of Dorlan Mills Rd. It is currently protected by a chain link fence and contains concrete impact blocks approximately 18" high. This arterial road is utilized by vehicles of all types, notably school buses, and introduces the risk of a vehicle intentionally or inadvertently striking the valve station. The threat of tampering with this valve site, which is directly adjacent to a public playground on the school premises and a public walkway, is of concern to the DASD and the County of Chester, as evidenced in the letter to Paul Metro of the Commission's Bureau of Investigation and Enforcement, dated December 11, 2018 (Exhibit E).

41

Additionally, 49 C.F.R. §195.260(c) states that valves must be installed at specific locations, such as "*at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas.*"

42

Recently, Sunoco repurposed the 12" 'Point Breeze to Montello' line, where the Dorlan Mills Rd. valve is located. This segment of pipe was not originally

42

intended to be part of the 'Mariner East 2' project as proposed, but due to delays in construction caused by environmental violations and legal challenges, was introduced into the Mariner East pipeline network as a 'work around' until the original project can be completed. The addition of this segment to the Mariner East network required maintenance and overhaul to the valve station to accommodate for the change in product and has expanded the affected geographical area and introduced new hazards to the surrounding properties and populations due to the characteristics of the NGLs transported.

43

The location of the valve site on Dorlan Mills Rd. is in direct proximity to two schools, which house approximately 1,800 students and staff (Exhibit H). The possibility of a hazardous liquid discharge at this valve presents a significant threat of damage and pollution to the school population, and introduces a significant challenge to the DASD in developing plans to safely evacuate a large number of students, including Complainant's children, given the number of variables which must be considered in an expedient fashion regarding wind speed, topography, the decision to shelter in place vs. evacuate, etc.

44

Therefore, the Commission shall find the location of the valve "unreasonable" and demand the relocation of the valve site.

45

The Commission has explicit authority to make this request until Title 66 § 1501, which says *"Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public."*

46

The Commission must determine whether the Mariner East pipeline network provides "safe and reasonable" service while taking into account the location of the Dorlan Mills Rd valve site and surrounding facilities and populations.

WHEREFORE, I, the Complainant herein, respectfully submit that:

- I. The Commission shall find the public awareness program provided by Sunoco to be inadequate in both material content and distribution, and order the development of material that includes actionable and understandable instructions that apply to all community stakeholders and establishes a greater range of distribution to ensure contact with all affected community members.
- II. The Commission shall find that technologies currently available to schools and political subdivisions for the purpose of providing an early detection system and mass notification for the public, per their requirements under Title 35, are not adequate or reasonable for acquisition or use, and therefore service cannot be deemed 'safe and reasonable' to the populations placed at risk by the Mariner East project.

- III. The Commission shall find that lack of data has resulted in significant gaps in the ability of the DASD, Uwchlan Township, and County of Chester to appropriately plan for the hazards introduced by the Mariner East Project, compromising their ability to be in full compliance of Title 35, relating to public safety. With this in mind, the Commission shall find that service cannot be deemed to be 'safe and reasonable' to the populations placed at risk by the Mariner East project.
- IV. The Commission shall find the location of the valve adjacent to two facilities within the DASD, located at Dorlan Mills Road in Upper Uwchlan Township, as neither "safe" nor "reasonable" to the affected populations placed at risk by the Mariner East project, and order the relocation of the valve site.

In light of these findings, Sunoco shall immediately suspend operation and construction of the ME1, ME2/2X, and "Point Breeze to Montello" line until their service can be assured "safe and reasonable" by the Commission, and in full regulatory compliance in light of the above arguments, in addition to any such relief that the Commission deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura Obenski", with a long, sweeping horizontal line extending to the right.

Laura Obenski

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 MAIL

Laura Obenski
14 S. Village Avenue
Exton, PA 19341



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

Dated: January 24, 2019