



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

March 6, 2019

VIA ELECTRONIC FILING

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

Re: Wilmer Baker v. Sunoco Pipeline L.P.; Docket No. C-2018-3004294; **MOTION FOR CONTINUANCE, REVISED PROCEDURAL SCHEDULE, AND PREHEARING CONFERENCE AND REQUEST FOR TEN-DAY EXPEDITED RESPONSE**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Motion for Continuance, Revised Procedural Schedule, and Prehearing Conference and Request for Expedited Response 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: Hon. Elizabeth H. Barnes, (Electronic and first class mail)
Per Certificate of Service

memorandum, including Mr. Paul Metro, Manager of Gas Safety for the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, whom Complainant sought to subpoena on February 25, 2019. Given Complainant's newly proposed evidence and witnesses, the current procedural schedule is inadequate to provide SPLP fair notice of and opportunity to respond to the allegations against it. Moreover, given the addition of witnesses and injection of additional issues, the current schedule of one hearing day is an inadequate amount of time for the evidentiary hearing. Additionally, one of SPLP's previously identified witnesses is unavailable on the currently scheduled hearing date.

To the extent the subpoena for Mr. Metro is granted (it should not be as it is a fishing expedition and an unlawful request to compel expert testimony as explained below) and Complainant is presenting expert witness testimony from witness DiGuilo, SPLP requests that a schedule be developed to provide for written testimony. Accordingly, SPLP proposes the following schedule:

Complainant Direct Testimony	April 17, 2019
Respondent Rebuttal Testimony	May 27, 2019
Complainant Surrebuttal Testimony	June 27, 2019
Respondent Rejoinder Testimony	July 10, 2019
Evidentiary Hearings	July 17-18, 2019
Main Briefs	August 30, 2019
Reply Briefs	September 26, 2019

In the alternative, if Complainant is willing to stipulate that Ms. DiGuilo is not an expert and withdraw his requested subpoena of Mr. Metro, SPLP is willing to proceed without written testimony. However, give the additional witnesses Complainant has identified and additional issues, one hearing day will not be enough time for both parties to present their cases. Additionally, one of SPLP's witnesses is not available on the currently scheduled hearing date.

II. LEGAL AND FACTUAL SUPPORT FOR MOTION.

The Commission's regulations encourage the use of written testimony, especially for expert witnesses. 52 Pa. Code § 5.412. Your Honor recognized this at the prehearing conference in this matter, carefully inquiring as to whether there should be written testimony here. Tr. at 7-9. Pre-filed testimony, especially for experts, serves an important purpose, fulfilling the due process requirement that parties have meaningful notice of the evidence to be presented against them that enables them to have an adequate opportunity to prepare a defense. *Cf., e.g., LT Intern. Beauty School, Inc. v. Com., Bureau of Professional and Occupational Affairs, State Bd. of Cosmetology*, 13 A.3d 1004, 1013 (Pa. Cmwlth. 2011) ("Adequate notice for procedural due process purposes requires, at a minimum, that the notice contain a sufficient listing and explanation of the charges against a person, so that he or she may prepare an adequate defense."). Notably, *LT Intern.* was decided under the General Rules of Administrative Procedures, which offers almost no opportunity for pretrial discovery, yet the court still recognized that a respondent is entitled to a hearing free of ambush.

Complainant's injection of additional witnesses and issues at this stage of the proceeding without modifications to the procedural schedule would deprive SPLP of due process.

At the prehearing conference, Complainant initially identified four issues in this proceeding and five witnesses. Tr. 7-9. Those four issues were:

1. Whether SPLP is in compliance with its Public Awareness Plan and Emergency Response Plan as it pertains to individuals residing and emergency responders located in Lower Frankford Township in Cumberland County.
2. Whether Sunoco should work with local authorities to accommodate an alarm system.
3. Whether the Mariner East 1 pipeline located in Lower Frankford Township is safe.
4. Whether the pipe laid for Mariner East 2 in Lower Frankford Township is up to standards.

Tr. at 5. Complainant identified the following witness:

1. Complainant, Mr. Wilmer Baker,
2. Eric Robinson,
3. Jon Baker,
4. Rolfe Bloom,
5. Kim Van Fleet, and
6. Mike Chestnut.

Mr. Baker represented that none of these witnesses are experts. Tr. at 8:17-22. On the basis of Mr. Baker's representations, SPLP agreed that written testimony would not be required in this proceeding. The Parties then agreed that they would exchange "statements" prior to the hearing that would include a list of witnesses with the subject matter of their testimony, including specific facts they would testify to and associated exhibits. SPLP received Complainant's submission on February 6, 2019. Complainant's submission is attached hereto as **Attachment A**.

Instead of listing solely the testimony of the non-expert witnesses Complainant identified at the prehearing conference and the specific facts to which these witnesses would testify, Complainant expanded his list of witnesses to include experts and now appears to be adding issues for which expert testimony will be adduced. Complainant's submission also fails to give fair notice of the proposed testimony. There is no expert report or exhibit, nor the Commission's equivalent of that, prefiled testimony and associated exhibits provided in advance of hearings for expert presentations of opinions and factual evidence. The result is that SPLP will be required to cross examine experts without having any advance notice of what they will say, what their CV/Resume is to qualify them as an expert, how they will support what they say, and identify in real time expert witnesses who can analyze and if needed respond to Complainant's experts. Although it may not be the *pro se* Complainant's intent, his failure to provide adequate notice amounts to unfair surprise to SPLP.

Mr. Baker now identifies three additional witnesses:

7. Paul Metro
8. Vincent T. DeFilippo, and
9. Christina DiGiulio.

Mr. Baker has also raised additional issues, including allegations concerning substandard steel used in the pipeline industry related to other pipelines, welding issues, and chemical properties of steel.

Regarding newly identified witness Paul Metro, Complainant has just attempted to subpoena Mr. Metro as of February 25, 2019. Complainant's identification of the subject matter of Mr. Metro's testimony is wholly inadequate to give SPLP fair notice of what that testimony would contain. For example, Complainant merely states Mr. Metro will testify to "the safety of the Sunoco pipelines that run thru Cumberland County and beyond" and "what should be done." Those are not factual allegations, but instead call for vague and broad expert opinions. Moreover, SPLP will be opposing that subpoena on the basis that it is a fishing expedition and a witness cannot be subpoenaed to provide expert testimony:

No one can compel an expert to give his testimony for the side that did not employ him. This notion derives from at least as early as 1918 when our Supreme Court stated, regarding the testimony of an expert witness:

But the private citizen has no more right to compel a citizen to give up the product of his brain than he has to compel the giving up of material things. In each case it is a matter of bargain, which, as ever, it takes two to make, and to make unconstrained.

Pennsylvania Co. for Insurances on Lives & Granting Annuities v. City of Philadelphia, 262 Pa. 439, 105 A. 630 (1918).

The idea that an expert cannot be compelled to give up the product of his or her brain has been sustained throughout the years, in a variety of circumstances. See *Evans v. Otis Elevator Co.*, 403 Pa. 13, 168 A.2d 573 (1961) (defendant not allowed to call plaintiff expert as its own witness); *Columbia Gas Transmission Corp. v.*

Piper, 150 Pa.Cmwlth. 404, 615 A.2d 979 (1992) (party may not use expert report of another party); Jistarri v. Nappi, 378 Pa.Super. 583, 549 A.2d 210 (1988) (defendant doctor could not be compelled to testify against other defendants); Spino v. John S. Tilley Ladder Co., 448 Pa.Super. 327, 671 A.2d 726 (1996) aff'd 548 Pa. 286, 696 A.2d 1169 (1997) (party may not subpoena expert report of another party).

Dolan v. Fissell, 973 A.2d 1009, 1013, 2009 PA Super 82, ¶¶ 15-16 (Pa. Super. 2009).

Moreover, SPLP will be objecting on the basis that the subpoena is calculated to seek testimony from a prosecutor regarding investigations or prosecutions in progress all of which are not discoverable under Pennsylvania Law and thus under the scope of allowable discovery under the Commission's rules. Mr. Baker is acting *pro se* but that neither excuses or allows him to discovery not allowed by law. SPLP will address this in greater detail in its opposition to Mr. Baker's subpoena request when submitted properly under the Commission's rules.

Newly identified witness DiGiulio's (whose witness statement is largely illegible) is identified as a chemist and may present opinions on "loop holes" in PHMSA regulations concerning steel standards. If so, Witness DiGiulio would be opining on issues clearly within the expert realm, although SPLP does not concede she is qualified as an expert and reserves its right to challenge such qualification and any testimony she presents. But the fact remains Complainant admits he will offer expert testimony contrary to his representations at the prehearing.

SPLP's previous acquiescence in a hearing without prefiled testimony from the Complainant assumed the presentation of a very different case than the one Complainant apparently now intends to present. SPLP did not consent to Complainant presenting oral expert testimony for the first time at hearing. Given Complainant's revised and expanded intended evidentiary presentation, SPLP objects to the current procedural schedule coupled with the presentation of oral expert testimony by the Complainant. With the addition of these new issues

and potential expert testimony, SPLP does not have adequate information to prepare its defense. It does not know the specific facts these witnesses will testify to, the opinions these witnesses hold, or the basis for such opinions. Without that information SPLP cannot determine what types of experts it may need to present to rebut Complainant's allegations, or what types of analyses its experts may need to conduct and present. The procedural schedule must be modified to ensure SPLP's due process rights are not infringed.

SPLP believes that Complainant's addition of new potential expert witnesses and issues into this proceeding merits written testimony where Complainant must submit all testimony and accompanying evidence in full as part of his direct case. That will provide SPLP the adequate opportunity to prepare a defense.

III. CONCLUSION

WHEREFORE, Sunoco Pipeline L.P. respectfully requests Your Honor continue the hearing currently schedule for March 28, 2019 and set a prehearing conference to address the procedural schedule. SPLP proposes the following schedules:

A. Modify the procedural schedule to require written testimony as follows:

Complainant Direct Testimony	April 17, 2019
Respondent Rebuttal Testimony	May 27, 2019
Complainant Surrebuttal Testimony	June 27, 2019
Respondent Rejoinder Testimony	July 10, 2019
Evidentiary Hearings	July 17-18, 2019
Main Briefs	August 30, 2019
Reply Briefs	September 26, 2019

Or, in the alternative:

If Complainant stipulates none of his witnesses are experts and withdraws his request for a subpoena of Mr. Metro, SPLP is available for hearing on the following dates:

April 30, May 1, May 6, May 30, May 31.

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
wesnyder@hmslegal.com

Dated: March 6, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

ATTACHMENT A

Wilmer Baker's List of Witnesses

ATTACHMENT A

9. On or before February 8, 2019, Complainant is directed to serve a list of witnesses with a brief description of the subject matter of their testimony and copies of exhibits intended to be submitted at the hearing upon Respondent pursuant to 52 Pa. Code § 5.412(a).

Witness 1 name and address:

WILMER J. BAKER 430 RUN RD CARLISLE PA. 17015

Witness 1 brief description of testimony:

WILMER BAKER WILL TESTIFY TO THE FACTS
PERTAINING TO CASE FILE (WILMER BAKER VS
SUNOCO PIPELINE L.P., C-2018-3004294) MY
TRAINING AS A FIRST RESPONDER.
UNITED STEELWORKER'S

Witness 1 exhibits and description:

EXHIBITS A1 THRU F1 IN THE CASE FILE.
(A1, THRU A5) LEGAL PAPERS TO THIS PROCEEDING.
(B1, B2, B3) PAPERWORK ON SUBSTANDARD STEEL PIPES
(C1 THRU C10) PICTURES OF INTERIOR PIPES (D1, KIM
VAN FLEETS COMPLAINT, 2016 (E1 THRU E14, TOWNSHIP
COUNTY COMMISSIONERS, PAPERWORK, TWO MANUALS
FROM SUNOCO)!.
(F1) COMMISSIONERS LETTER OF SUPPORT!

Witness 2:

ERIC A ROBINSON 411 WEST NORTH STREET CARLISLE PA 17013

Witness 2 brief description of testimony:

I WAS WITNESS FOR WILMER BAKERS ANSWERS (A2)
I CAN WITNESS TO (B1 THRU B3) SUBSTANDARD STEEL!
(C1 TO C4) PICTURES OF PIPES I SAW AT GAP
ROAD. (C5, C6A, B, C7, C8, C9, C10, PLUS D1) I DONT RECALL,
I ATTENDED SEVERAL TOWNSHIP MEETING,
ESPECIALLY, JULY 10, WHERE SUNOCO FAILED
TO SHOW' THESE I REMEMBER (E2C, E3A (JULY)
E3D, E10, 11, I REMEMBER!
I DONT REMEMBER (E3B, E3C, E3D, E5, E6,
E7, E8, E9, E12, F13, F14, (F1) I NEVER SAW.
(G1, G2, G6,) I REMEMBER

Witness 2 exhibits and description:

(A2) I WAS A WITNESS.
(B1, B2, B3) I'VE SEEN THIS PAPERWORK.
I CAN WITNESS TO (C1, THRU C4) IN THIS FILE
I DONT REMEMBER (C5, C6A, B, C7, C8, C9, 10, PLUS D1)
(E2C, E3A, E3D, E10, E11) I REMEMBER.
(E3B, C, D, E5, E6, F7, E8, E9, E12, E13, E14, F1)
I DONT RECALL
(G1, G2, G6,) OF WITNESS LIST I RECALL.

Witness 3:

JON. J. BAKER, 430 RUN RD. CARLISLE PA 17015

Witness 3 brief description of testimony:

(B1, B2, B3) I READ THESE STANDARDS OF
SUBSTANDARD STEEL USED IN THE PIPELINE
INDUSTRY (2007 TO 2009)

I VE SEEN ALL (C1 THRU C10) MINUS (C6B, D1)

I ATTENDED SEVERAL TOWNSHIP MEETINGS

I SAW (E2B, E2C, E3C, E10,) ALSO (F1)

(G3) IS MY STATEMENT

(G6) I READ MIKE CHESTNUT STATEMENT
OF BEING FIRE POLICE FOR NORTH
MIDDLETOWN FIRE COMPANY'

Witness 3 exhibits and description:

(B1, B2, B3, SUBSTANDARD STEEL

(C1 THRU C10) PICTURES OF SUBSTANDARD
PIPES THAT ARE BEING USED'

(E2B, E2C, E3C, E10) THESE ARE TOWNSHIP
MEETING I REMEMBER' (F1, I READ THIS)

G3 MY WITNESS STATEMENT, G6, MIKE
CHESTNUTS WITNESS STATEMENT.

Witness 4

Rolfe Blume, 43 Wildwood Rd. Newville PA 17241

Witness 4 brief description of testimony

Attended several township meeting in Upper and Lower Frankford Townships between July and December 2018

Upper Frankford meetings include: July 30, Aug. 27, Sept 10, Sept. 24, Oct. 30 and Dec 3 of 2018-

Lower Frankford Twp. meetings on July 10 and Aug. 7 2018

At each meeting I brought up the topic of public safety and alarm system along the Mariner pipelines with twp. supervisors. No resolution

I took pictures of X-65 and X-70 pipe segments laying in my field. The grade of these pipes is lower than that used in areas of higher population levels. I am concerned that my safety and that of my wife are at greater risk due to the selection of lower grade pipe.

There should be an alarm system installed along the entire length of this pipeline so so people can be warned if a leak occurs. Especially for people with small children, elderly or those with handicaps As stated in the PA Emergency Management handbook for Elected Officials.

Witness EXAMPLE of exhibit and description

Witness will provide copy of Emergency Management Handbook and photos of pipeline segments in field

Testimony description of Witness 5

Kim Van Fleet

1705 McClures Gap Rd.

Carlisle PA 17015

I have been a resident at above address from late March 1979 through present (February 2019)

I will be testifying to the Following:

The letter I submitted in support of Wilmer Baker (G5).

Photographs I took of pipe segments labeled as X70M (made in Greece) and X65 along with uncoated segments with indistinguishable identification information during the pipeline construction period on the property of 1705 McClures Gap Rd. The images are of pipeline segments that were stored above ground, welded together both above ground and later in the pipeline trench. These images include photographs labeled as C4, C5, C6, C7, C9 and C10; some of which were provided to Wilmer Baker at an earlier date

General observations I made at the above mentioned location during the construction phase of this project that caused me concerns: proximity of pipelines to one another in trench, slippage of soils on hillside after pipelines were buried, welding of pipeline segments to each other in the trench, cutting previously welded pipe into segments, loading them onto a flatbed and transporting it off the property to an unknown location.

Concerns as to my safety and the safety of my husband, friends, neighbors and anyone visiting those living in close proximity to this pipeline due to this company's record of safety violations, environmental violations, accidents through to the present and quality of pipe used in its construction. These concerns include the 80 plus year old repurposed eight inch pipeline that has had several leaks since it went into operation as Mariner 1 and the other pipelines identified as part of the overall Mariner East Pipeline Project

Exposed portion of the Mariner 1 pipeline in a stream on the same property and in the same pipeline ROW, safety concerns and email correspondence between Ian Woods (at PHMSA) and me concerning this issue. The pipe is still exposed. Email D1 and photos C8

The need for a public warning system along the entire length of the Mariner East Pipeline Project corridor and a comprehensive emergency response plan as outlined in the Commonwealth of Pennsylvania's Emergency management Handbook for Elected Officials January 2010 so that people living along the pipeline have an opportunity to respond and or seek safety should a leak accident occur. The cost and installation of the warning system should be the full responsibility of the corporation responsible for the pipeline that has put Pennsylvania citizens at risk - Energy Transfer Equity/Energy Transfer Partners/Sunoco Logistics - as was the case with the warning system that Metropolitan Edison was required to pay for and install after the accident at Three Mile Island in March 1979.

The need for an odorant such as ethyl mercaptan to be put into the NGLs (ethane, butane, propane) that are and will continue to be transported across the state through the Mariner pipeline due to the volatility and explosive nature of the above-mentioned gases and for

additional public safety. There is evidence to support this in the peer-reviewed scientific literature.

I attended two township meetings to discuss safety concerns and the need for a warning system with township supervisors. The first meeting was held at Upper Frankford Township July 30, 2018; the second meeting was August 7, 2018 in Lower Frankford Township. In both cases we articulated our concerns and suggestions to the supervisors, the supervisors listened to concerns, told us they would communicate our concerns with others including County Commissioners and get back to us.

Witness 6:

PAUL METRO, PUC PIPELINE SAFETY DIVISION

Witness 6 brief description of testimony:

TO THE SAFETY OF THE SUNOCO
PIPELINES THAT RUN THRU CUMBERLAND
COUNTY AND BEYOND!

TO TESTIFY TO THE CASE FILE

SECTIONS (B1, B2, B3)

ALSO (C1 THRU C10)

AND THE COMPLAINT THAT WAS

FILED (2016, D1)

(E26)(E10) FALSE OUT REACH PROGRAM'S

(E14) REPLY TO WHAT SHOULD BE

DONE, THAT ISN'T FOR THE PUBLIC'S SAFETY

Witness 6 exhibits and description:

(B1, B2, B3) SUBSTANDARD STEEL PIPES!

(C1, C2, C3, C4, C5, C6, C7, C8, C9, C10,

PICTURES OF FOREIGN STEEL, BELOW
STANDARDS!

(D1) KIM VAN FLEET'S COMPLAINT

AND REPLY

(E26)(E10) SUNOCO'S MANUAL

(E14) PUC ANSWER TO COUNTY COMMISSIONERS!

Witness 7:

Christina DiGiulio 782 N Reeds Rd. Downingtown Pa 19335

Witness 7 brief description of testimony:

Wilmer Baker, will call Christina DiGiulio to testify to the following:

1. what Christina DiGiulio will testify about is a A2 (table of contents for Wilmer Baker)

statements #1 - alarm system, specifically the need of an early detection system ^{is necessary} to have an alarm system,

#2 - use of an odorant, ~~#1~~ better communication, clarification - will testify to exhibit A2

2. what Christina DiGiulio will testify about is related to contents in Wilmer Baker's complaint table of contents B1, B2, B3, C1, C2, C3, C4 because I have collected several magazines ~~of~~ well, researched and read regulations for substandard steel/ steel pipe make up according to federal regulations and less system in 49CFR. I am a witness to the use of the products mentioned in exhibit above (B1-C4)

Witness 7 exhibits and description:

Christina DiGiulio, for testimony will rely on

1. Experience, knowledge of chemical sensors technologies which are necessary for an early warning system as requested in A2 exhibit.

2 Exhibit B1, B2, C1, C2, C4 included in Wilmer Baker's complaint.

Witness 8:

HONORABLE, VINCENT T. DIFILIPPO

Witness 8 brief description of testimony:

(E5, E6, E7, E8, E12, F1)

PAPERWORK SENT IN BY CUMBERLAND
COUNTY COMMISSIONERS

Witness 8 exhibits and description:

E5, E6, E7, E8, E12, F1

OUR INVOLVEMENT WITH

(WILMER BAKER VS SUNOCO PIPELINE L.P.)

(C-2018-3004294)

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 electronically filed with the Commission.

VIA FIRST CLASS

WILMER JAY BAKER
430 RUN ROAD
CARLISLE PA 17015

Thomas J. Sniscak

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

Dated: March 6, 2019