

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Meghan Flynn, Rosemary Fuller, Michael Walsh,	:	
Nancy Harkins, Gerald McMullen, Caroline Hughes and	:	
Melissa Haines	:	
	:	
v.	:	C-2018-3006116
	:	P-2018-3006117
Sunoco Pipeline L.P.	:	

PREHEARING CONFERENCE MEMORANDUM OF ANDOVER HOMEOWNERS’ ASSOCIATION, INC.

TO: ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:

In accordance with the provisions of 52 Pa. Code § 5.221-5.224, Andover Homeowners’ Association, Inc. (“Association”) submits this Prehearing Conference Memorandum in advance of the scheduled April 24, 2019 hearing in the above captioned matter.

Introduction and Background. Meghan Flynn, Rosemary Fuller, Michael Walsh, Mancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (“Petitioners”) filed the initial petition on November 19, 2018. On the same day, Petitioners filed a Petition for Interim Emergency Relief, where the Pennsylvania Public Utility Commission (“PUC”) scheduled two days of hearings on the Petition on November 29 and 30, 2018.

On November 26, 2018, the Association filed to intervene on this Complaint and Petition. The Commission granted intervenor status on November 29, 2018. Since that time, the Commission has granted intervenor status to Downingtown Area School District, Rose Tree Media School District, Twin Valley School District, East Goshen Township, West Whiteland Township, Uwchlan Township, Middletown Township, Delaware County, and the County of Delaware. Additional intervenors, including Thornbury Township, Delaware County, Edgemont Township, County of Chester, West Chester Area School District, and Senator Thomas H. Killion remain pending before the Commission. The Commission’s Bureau of Investigation and Enforcement (“BIE”) has also entered this matter.

Petitioners have amended the complaint, which has been subject to significant pleadings practice in the first part of 2019. On March 18, 2019, Sunoco filed a motion with the Commission to

consolidate Flynn with complaints by *Melissa DeBernadino* (C-2018-3005025), *Rebecca Britton* (C-2019-3006898) and *Laura Obenski* (C-219-3006905). That motion remains pending consideration at this Pre-Hearing Conference.

The Association intervened concerning issues directly focused on the portions of Sunoco's current and proposed Mariner East system of hazardous, highly volatile liquids pipelines in Delaware and Chester Counties. This system includes the 1930s-era eight inch (8") diameter Mariner East I ("ME1"), the under construction twenty inch (20") Mariner East II ("ME2"), the under construction sixteen inch (16") Mariner East 2x ("ME2X"), and the 1930s-era twelve-inch (12") "Point Breeze to Montello" ("12 inch") line that Sunoco converted to natural gas liquids ("NGL") service where ME2 and/or ME2X were not constructed in Delaware and Chester Counties. ME1 and the 12-inch pipelines are repurposed and reversed former hazardous liquids lines used by Sunoco and predecessor companies to transport gasoline, diesel and related petroleum products from the former Sunoco Marcus Hook refinery to markets in central and western Pennsylvania.

In 2014, Sunoco applied to the Commission to "expand" its NGL service by adding ME2 and ME2X, reversing the flow of what is now ME1, and extending service to include new points between Houston, Washington County and Scio, Ohio by way of West Virginia. *See, e.g.*, PUC Docket P-2014-2411942 (lead case), Order Entered Oct. 29, 2014. Sunoco has repurposed a portion of the 12-inch line in Delaware and Chester Counties to provide NGL service as a work around to commence ME2 service.

The Association is a Pennsylvania not-for-profit corporation that owns approximately 17 acres of open space in Thornbury Township, Delaware County. The open space is burdened with approximately one-half mile of ME1 and 12-inch pipeline, and a valve site for each line. A similar length of ME2 and ME2X pipeline, as well as a valve site for each, is proposed for the Association open space. The pipelines run southeastwardly roughly parallel to State Route 352 for the entire length of Route 352 frontage on Association property, then turn westward along the southern property

boundary before turning southbound again to adjacent parcels.

Thornbury Township, Delaware County borders Chester County, specifically Westtown Township. All of the Mariner East pipelines, existing and proposed, enter Delaware County at State Route 926, which forms the northwest border of Association property.

The valve sites, existing and proposed, are or are anticipated to be constructed on the southeast portion of Association property, less than one hundred feet (100') from residences of the nearest Association members (down-slope from the valve sites) and less than 50 feet from an adjacent restaurant operation (up-slope from the valve sites).

1. **Persons to be Listed on Service List.** The Association requests that all documents be served upon Association's counsel, who consents to electronic service from the Pennsylvania Public Utility Commission ("PUC"):

Rich Raiders, Esq.
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2. **Settlement.** The Association is willing to address settlement of all or part of the proceedings with the other parties. To date, no such discussions have occurred.

3. **Proposed Plan and Schedule of Discovery.** 52 Pa. Code § 5.321 *et. seq.* will govern discovery. The Association does not propose to modify the discovery rules. The Association joins with the Petitioners in the Proposed Plan and Schedule of Discovery, subject to modifications to be proposed to the Administrative Law Judge as necessary.

4. **Other Proposed Orders with Respect to Discovery.** The Association does not propose any additional discovery orders at this time.

5. **Site Visit Necessity.** The Association believes that a site visit of the Association Open Space, especially the valve site upon Association property, would assist the Commission in evaluating the

Association's claims in this matter.

6. **Litigation Schedule.** The Association, having worked closely with the Complainants during the injunction hearing, continues to adopt the Complainants' schedule, as may be amended during the pendency of this matter.

7. **Witnesses Expected to be Called.** The Association currently expects to call the following witnesses, without being limited thereto:

- a. Eric Friedman, 2 Fallbrook Lane, Glen Mills, PA 19342. Current President of the Andover Homeowner's Association, Inc., Andover property owner. Will testify concerning the Association property, layout, nearby features, populations, membership concerns.
- b. Jeff D. Marx, PE, Quest Consultants Inc., 908 26th Avenue NW, Norman, OK 73069, (405) 329-7475, jdm@questconsult.com – risk consultant for the Association. Will testify concerning Risk Assessment matters for NGL systems in terms of consequences and probability, engineering and safety considerations, specifically upon Association property and nearby residents, businesses and features.
- c. Other witnesses may be called as appropriate, as discovery or analysis of party or intervenor positions may dictate.

8. **Issues and sub-issues of This Proceeding and Party's Position.** The following list represents the Association's preliminary determination of potential issues in these proceedings, pending discovery and analysis of party positions. The Association specifically reserves the right to address other appropriate issues that may emerge during discovery. The preliminary issues are as follows:

- a. Consolidation. The Association notes that the *pro se* parties who may become subject to consolidation do not agree on consolidation. Specifically, Rebecca Britton notes that this cumbersome case would become substantially more cumbersome if the Commission were to consolidate her case with the others. Laura Obenski supports, and moves for, consolidation, though the Association, as an existing intervenor, was never served with

any such motion and was not aware of it until it had received responses from other parties.

The Association is concerned with case management, conflicting evidence, and coordination with potentially differing claims, especially in the Britton matter. The Association understands why common questions of fact might need to be coordinated, but is concerned that differing issues may need to be addressed separately from the issues raised by the Complainants here.

- b. Petitions to Intervene. The Association notes that a number of people and entities have proposed to intervene on this matter, or on one or more of the matters proposed for consolidation. As an intervenor, the Association does not in any way wish to discourage other intervenors from contributing to a case the Association believes is of substantial importance to the communities in Delaware and Chester Counties. However, the Association is concerned that case management could become utterly unruly and schedules may need to be enlarged to accommodate everyone's viewpoints, evidence and legal arguments. The Association suggests that case management decisions might be best managed using the outline offered by Her Honor in the Order concerning this Prehearing Conference, where each party and intervenor may or may not join each of the sub-issues the Commission has identified as before it. The Association is also concerned that some of the ancillary matters raised by consolidated parties and/or intervenors may complicate scheduling, and scheduling modifications may be necessary to allow those wishing to participate the full opportunity to be heard.
- c. Protective Order. Association's Counsel has already executed the appropriate documents to bind him as anticipated in the current Protective Order in this matter. In response to Sunoco's April 17, 2019 Motion, it proposes to amend the Protective Order to which Association Counsel is already bound to incorporate "EXTREMELY SENSITIVE INFORMATION" that would be subject to in-camera review. The process Sunoco proposes

seems to be substantially modeled after the “RMP Reading Rooms” that the United States Environmental Protection Agency (“EPA”) set up for similarly potentially safety-sensitive information, only here organized by one of Sunoco’s counsel. *See*, 40 C.F.R. § 1400 et. seq. Sunoco then proposes a procedure to obtain documents found in the reading room consistent with handling of information which may be restricted from public view. The Association understands the need to secure certain information, but suggests that the Commission, through Her Honor, may need to determine, on a case-by-case basis and on a secured record, if the “EXTREMELY SENSITIVE” designations made by Sunoco may become overreaching. The Association requests that any Protective Order include language allowing a party or intervenor, through those covered by the Protective Order, to raise questions about the appropriateness of “EXTREMELY SENSITIVE” classification to the ALJ under appropriate confidentiality protections and, likely, use of the Commission’s Highly Confidential Record procedures during resolution of any such dispute. Otherwise, the Association understands the concerns raised in this issue.

- d. Public Awareness/Emergency Preparedness. The Association intends to offer evidence that Sunoco has failed offer any substantive public awareness or emergency preparedness program, in spite of its testimony in the November 2018 injunction hearing that it allegedly complies with PHMSA standards. The Association argues that none of the evidence offered in that proceeding meets Sunoco’s obligation to offer safe and efficient pipeline service per Pennsylvania requirements. The Association further suggests that the interest that this case has generated from those responsible for the public safety also shows that Sunoco utterly fails to comply with its mandate to provide safe and efficient, even if not perfect, service.
- e. Mass Warning System. The Association intends to offer evidence that a Mass Warning System, while wholly inadequate to address the harms of being subjected to living, working

and conducting business in and around Mariner East pipelines and valve sites, is necessary to alert local citizens, visitors, workers and others of impending or ongoing harms caused by a pipeline system failure. The Association suggests that such a warning system should at least be as protective as the warning systems used by Sunoco at its fixed facilities, including but not limited to the Marcus Hook Industrial Complex and other facilities hosting natural gas liquids facilities.

- f. Pipeline Integrity Management. The Association remains very concerned that the Mariner East system, with its mix of technologies, unfortunate routing, and the operator's compliance history, is not safe and efficient as required by the PUC. The Association believes, and anticipates offering evidence to show, that substantial pipeline integrity management issues persist.
- g. Leak Detection Protocols. The Association remains very concerned that SCADA systems, which do not detect all pipeline leaks unless the leak emerges from SCADA data enough to show a remote operator a significant anomaly in operating parameters, adequately provides a reasonable margin of safety to allow Sunoco to operate safe and efficient pipeline service. The Association believes, and anticipates offering evidence to show, that substantial leak detection protocol issues persist. Sunoco should be required to operate in a manner no less protective than industry standard for its fixed facilities, including but not limited to the Marcus Hook Industrial Complex.
- h. Remaining Life Studies. The Association shares and adopts the Complainants' concerns that the Remaining Life Studies should be conducted, should be conducted with increased transparency, and should be reviewable as part of this ongoing process.
- i. Locations of Pipelines Close to Dwellings and Public Gathering Places. In the Injunction Hearing, the Association offered into evidence some of its concerns about Sunoco's placing valve sites less than one hundred feet (100') from a smoking patio at a nearby restaurant,

that restaurant's kitchen, and other facilities that would, in a matter of seconds, ignite any vapor cloud emanating from the valve site on Association property. Across from this valve site, less than 200' away, are Association Member residences, where basic living activities could, in the event of an incident or a deinventory event from said valve site, immediately ignite a vapor cloud or NGL liquid pool. Perpendicular to these features is a Pennsylvania State Route, traversed by thousands of vehicles per day, less than 100' away from said valve site. The Association intends to offer evidence that such placement, plus the placement of these pipelines within 100' of many of the Association's Members, ensures that Sunoco in no way could possibly offer safe and efficient pipeline service. Consistent with the Association's concerns about advance warning systems, leak detection systems, and general emergency preparedness, the Association believes that, given the current state of the pipeline industry and this operator's compliance history, no operator can possibly operate natural gas liquids pipelines in a safe and efficient manner in Delaware and Chester Counties.

- j. Valve spacing. As the Association showed in the Injunction Hearing, the Association is gravely concerned about valve spacing, design, operation, emergency management, and the fate of materials which must be deinventoried from valves in the event of an emergency. The Association does not believe that the current or proposed valve systems adequately protect the public, and intends to identify evidence to offer the Commission to document its concerns about valve systems, siting and other concerns.
- k. Horizontal Directional Drilling. The Association's concerns with HDD and other trenchless technologies substantially involve how trenchless technologies impact emergency response, public awareness and integrity management systems which could impact Delaware and Chester Counties. The Association may identify other HDD related issues as it continues its discovery in this matter.

9. **Statement Describing Proposed Evidence.** Substantial evidence would include expert testimony from one or more expert witnesses and fact testimony by one or more Association members, officers, and stakeholders. Expert witness testimony would include, but may not be limited to, pipeline safety concerning NGL transportation, emergency response for densely populated residential and commercial areas near NGL pipelines, consequence analyses for areas near and along pipeline segments including or relating to Association property and equipment onsite thereto, and other matters to be discerned in discovery. Additional written testimony may be solicited from other fact or expert witnesses as appropriate.

Respectfully Submitted,

Date: April 19, 2019

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I have served the foregoing document filed with the Commission's electronic filing system, copying the Administrative Law Judge, upon following via electronic mail:

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