

Melissa DiBernardino
1602 Old Orchard Lane.
West Chester Pa 19380

December 31, 2019

VIA ELECTRONIC FILING

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

**Re: Melissa DiBernardino v. Sunoco Pipeline L.P.; Docket No.
C-2018-3005025**

Meghan Flynn. et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116 and
P-2018-3006117;

Reply to SPLP's Answer Opposing Motion to Preserve Potential Evidence

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is my Reply to
SPLP's Answer Opposing Motion to Preserve Potential Evidence.

If you have any questions regarding this filing please do not hesitate to contact me.

Sincerely,

Melissa DiBernardino
Pro se
December 31, 2019

December 31, 2019

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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Melissa DiBernardino
1602 Old Orchard Lane
West Chester Pa 19380

:

Complainant

Docket No. C-2019-3005025

Consolidated
MEGAN FLYNN *et al*
v.

Docket Nos.C-2018-3006116

:

SUNOCO PIPELINE L.P.,
Respondent.

:

Reply to SPLP's Answer Opposing Motion to Preserve Potential Evidence

1. I, Melissa DiBernardino, alleged that I had reason to believe that the pipe I photographed had possibly been removed and provided the evidence that made me believe that to be the case. At no time did I allege that the pipe had been replaced. It's unclear to me how SPLP's counsel interpreted my allegations to mean anything different, including the interpretation of replacement.
2. I had no reason to request this until right before I filed as there was no way to see the area where the pipe was sticking out of the ground once activity started back up.
3. Repetitive, and does not need to be addressed again.

4. According to **52 Pa Code § 5.349**, (2) *To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of §§ 5.321(b), 5.323 and 5.324.* Therefore, it seems that any complainant would be able to do the same and should not “create a cascading undue burden on SPLP”. Furthermore, I saw no reason to make a discovery request to document pipe that, to the best of my knowledge, (until I filed the motion) was still in the same place it was when I photographed it. Additionally, I have not filed for any discovery requests because
5. Not able to respond.
6. Not able to respond.
7. Again, I never alleged that I had reason to believe that any pipe was **replaced**. Only removed. Additionally, I would be most appreciative if counsel would pick a word and stick with it as there is a difference between alleging and “false accusations”.
Allegation - Webster dictionary defines it as “an assertion that someone has done something wrong, often without proof”. Accusation - It can be defined as “a formal charge of wrongdoing, delinquency, or fault” (Merriam-Webster Legal dictionary).
8. At no other site in East Goshen, did SPLP cut, cap and backfill their, pulled-through pipes, prior to connecting them. Horizontal Directional Drilling is considered non-standard according to CFR 49 part 195; it’s remains unclear how this particular aspect of HDD could be characterized as “part of normal, industry standard construction practices” according to counsel. Counsel continues to be confused by my motion and they use the word ‘replace’ when I never alleged such a thing. My photo of the damaged pipe was already entered into evidence and is not something we are arguing over now. Mr. Perez’s portions of his affidavit where he explains anything about the damaged pipe in exhibit 1 are nothing more than an attempt to get information on the record that was unnecessary and irrelevant in responding to my motion.
9. No response needed.
10. At no time did I state anything about having a college degree and do not see the relevance to my motion. Counsel seems more interested in bullying and insulting a concerned mother than providing useful information to make their point. It seems that SPLP’s counsel may be in violation of the Code of Civility and should consider behaving in a more professional manner after reading the following:

Code of Civility: A Lawyer's Responsibilities [5] *A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it,*

including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Rules of Professional Conduct: Rule 4.4--Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

Now that counsel has brought lack of credibility up, while trying to throw an insulting punch at me, I'd like to take the opportunity of the open door and point out some concerns of my own in this area. Lack of credentials has not seemed to be of great importance to SPLP when it comes to individuals being competent enough to form an opinion or make decisions.

For example - Mr. Larry J. Gremminger, CWB - the individual who signs the DEP re-evaluation reports for SPLP. The DEP requires a licensed geologist to sign off on these reports. Mr. Gremminger is a Certified Wildlife Biologist. To be designated as a CWB from the Wildlife Society, you simply submit an application. According to the website Mr. Gremminger's certification is defined as "Certified Wildlife Biologist® - An individual with the educational background and demonstrated expertise in the art and science of applying the principles of ecology to the conservation and management of wildlife and its habitats, and is judged able to represent the profession as an ethical practitioner, will be designated as a Certified Wildlife Biologist®. The CWB® certification is valid for 5 years and may be renewed."

Mr. Gremminger is not a licensed Professional Geologist (P.G.). In fact he holds no professional license at all. Meanwhile, he is overseeing the ground subsidence issues occurring along the pipeline route and the geophysical studies happening as a result. In fact, after the DEP requested further studies in the area of an HDD site here in East Goshen, Mr. Gremminger agreed to perform them but never followed through with the agreement. Instead, SPLP changed the name of the sites on the form in East Goshen and proceeded with construction without the studies. This resulted in a DEP notice of violation. The same studies were agreed to be performed and never done at an HDD site in Middletown Township, where there have been multiple ground subsidence/sinkhole events over the last six months.

Another example is Matthew Gordon. According to his LinkedIn profile, his current title is Senior Director of Operations. The following describes the responsibilities he has: *Responsible for all aspects of the safe, reliable operations of liquid pipelines in the six state Eastern area.*

This is following his last title - Director of Special Projects (which he still holds as well), which includes the following responsibilities:

Manage a team of 13 project managers, executing multi-year, multi-billion-dollar capital projects consisting of hundreds of miles of new pipeline, pump stations, meter sites, and valve stations.

·Establish project protocols and procedures in accordance with all federal, state, and local regulations while implementing company standards and specifications.

·Drive a results focused culture that both anticipates project challenges and overcomes them in a timely fashion to maintain cost and schedule.

·Represent the company and the projects in public meetings often in confrontational circumstances.

·Meet with elected officials to review projects and compliance/ exceedance of regulatory requirements.

·Testify on behalf of the company in hearings and in court.

·Liaison with government entities including but not limited to US Army Corps of Engineers, US Fish and Wildlife Service, Department of Environmental Protection, Environmental Protection Agency, Pipeline Hazardous Material Safety Administration (under US Department of Transportation), Pennsylvania Historic Museum Commission, and other federal, state and local entities.

Mr. Gordon testified on October 22, 2015 in an Ohio eminent domain case in which Sunoco sought to condemn (seize) private property. Here is an excerpt from the transcript of that testimony where he describes his education/experience background:

MATTHEW GORDON, HAVING BEEN FIRST DULY SWORN BY THE COURT, TESTIFIED AS FOLLOWS:

THE COURT: Mr. Gordon, will you please state your name for the record and spell your last name?

THE WITNESS: Matthew Lee Gordon, G-o-r-d-o-n.

THE COURT: Counsel, you may inquire.

CROSS EXAMINATION BY MR. ANDERSEN:

Q You want to go ahead and give us your business address for the record as well?

A 535 Fritztown, one word, F-r-i-t-z-t-o-w-n, Road, in Sinking Spring, Pennsylvania, 19608.

Q And you're an employee of Sunoco Pipeline LP, correct?

A Yes, sir.

Q And you have -- we've met before. Well, sort of, on Skype, at a deposition, correct?

A Yes, sir.

Q And so we know some things about you. For instance, you have a Mechanical Engineering Degree from North Carolina State, correct?

A Yes, sir.

Q You do not have a Master's Degree.

A No.

Q You do not have a Doctorate?

A No.

Q So you have no post-graduate degrees.

A No, just a Bachelor's.

Q Are you a PE, a Professional Engineer, in the state of Ohio?

A No, sir.

Q Are you a Professional Engineer in the state of Pennsylvania?

A No, sir.

Q Do you possess a contractor's license in the state of Ohio?

A No, sir.

Q Do you possess a contractor's license in the state of Pennsylvania?

A No, sir.

Q What do you do for Sunoco?

A My title is Principal Engineer. I am a Project Manager for the Mariner East pipeline.

Q We talked about this at your deposition, your linked in page says you're directly responsible for all aspects of NGL pipeline design/permitting/acquisition and safe construction, is that correct?

A Yes, sir.

Q Is that accurate?

A I believe so.

Q And so you are the project -- can you state your title again for this particular pipeline?

A Project Manager.

Q Have you ever personally performed an economic impact study on either Pennsylvania or Ohio for the building of the pipeline?

A Personally, no. We hire people to do that for us.

Q You didn't do it personally.

A No, sir.

Q Are you an economist?

A No, sir.

Q Do you have an Economics Degree or any kind of training in Economics?

A I took courses in college but not specifically trained with an economic emphasis.

Q Do you hold any type of professional certifications?

A Nothing that isn't specific to my field like welding inspection, credentials for operator qualifications, stuff like that.

Q And you've been with Sunoco for approximately 10 years, correct?

A Yes. In January it will be 10 years.

Q And you've been out of college for about 14?

A Have to do the math -- '03 -- I think I graduated '03, so 12.

Q 12 years. So, is it fair to say you've worked for Sunoco pretty much your entire professional career?

A More or less. I worked for another company right out of college and I worked for a general contractor before I went to college. So I have hands on experience in addition to education and years of experience in the field.

Q The past 10 years have been with Sunoco?

A Yes, sir.

While Mr. Gordon holds a degree in engineering, he does not hold a Pa license in engineering. Nor does he seem to have the credentials for any other area of responsibility that falls under his title(s).

A final example of credentials playing a role in pipeline safety is the testimony of John Zurcher, SPLP's "expert witness", at the Baker v. Sunoco Pipeline Hearing in July. Responding to Mr. Baker's request for early detection and alarms, Mr. Zurcher states that "We do know it's feasible but just not practical," Zurcher said, citing the difficulty of calibrating detection devices to the needed volume of ethane, butane, methane and other chemicals carried in the HVL pipeline. And concluded that "The best leak detection system we have is the public and first responders".

While Counsel wants to discredit my concerns because I do not have a college degree, their client seems to be more than comfortable relying on myself and countless other members of the public who don't have college degrees (many not even out of grade school) to be their "best leak detection". The ridiculous nature of this assertion is simply preposterous.

It is for the reasons stated above that SPLP and their counsel should determine how important someone's background is when it comes to their opinion in the Mariner East Pipeline Project (sometimes also known as The Pennsylvania Pipeline Project)

when it comes to safety. When and if that determination is reached, it is my opinion that it would be beneficial for all involved/affected if they were to stay consistent.

11. No response needed.

2. No response needed.

3. No response needed

4. No response needed.

5. It appears to me that the 'Deadman' pipes seem to have coating on them and I'm failing to see the reason that would be needed. Additionally, I would imagine that with the abuse these pipes (apparently used as anchors and rammed into the ground) go through, they would be even more damaged than my photos depict. However, with no college degree, common sense may be something I lack.

6. - 10. No response needed

11.2. Mr. Perez's assurance of testing after installation does not fully address my concerns because of the accuracy and reliability issues with testing pipes installed via HDD. The following is an excerpt from a 2016 NACE International Conference & Expo - *"HDD installed pipelines are typically installed at locations where repair is not practical therefore absolute compliance with the design life requirements of the pipeline is necessary to avoid the very costly and only alternative of replacement. However, due to limited options in inspection techniques and technology, the acceptance criteria for a HDD pipeline are lower than that for usual trenched construction.*

Pipelines installed by horizontal directional drilling (HDD) have an increased likelihood of experiencing coating damage than those constructed through conventional open trench techniques. Current methods for identifying damaged coating regions on buried pipe cannot always provide absolute or accurate information on the location, size and geometry of the holidays.

Cathodic protection monitoring at HDD locations is typically limited to the entry/exit extremities, with protection levels in the intervening span either assumed or speculated. There are situations where cathodic protection of a HDD pipeline may not be accomplished, although anticipated. For instance, it is reasonable to assume the pipeline will have the most coating damage in vicinity of the pilot entry and adequately protected by using the majority of available CP current to this point. However, if there is coincidental damage situated in the mid-region of the HDD, in a high resistivity rock stratum the resistance to earth may be too high for adequate current to reach and protect defects at locations of this type. Under these circumstances, this location will not be protected and may corrode. CP will also be ineffective within regions of the HDD section where coating defects

exist but no electrolyte in the annular space. Comprehensive evaluation of CP performance and monitoring techniques at HDD locations needs to be established. Therefore, the objectives of this work were to:

Determine whether Finite Element Analysis (FEA) is a feasible approach to confirming effective cathodic protection is being achieved throughout the entire length of an HDD location.

Establish optimal ground bed types, anode selection and configurations to maximize cathodic protection effectiveness at HDD locations

CP MONITORING - Monitoring CP through a HDD section is extremely challenging, if not impossible, due to the depth of pipe installation and access challenges presented by the physical obstruction which necessitated the HDD. It is plausible to consider pulling CSE reference cells in the borehole with the pipe during construction which could offer better opportunity for measuring more reliable pipe to soil potentials, however seldom practiced.

It is recommended that at minimum, CP test stations equipped with coupons be installed at each end of the HDD. The test station leads and the coupons should be located as far down the bore path as possible so the measurements are in the area of pipe to drilling fluid interface. Four wire test stations on both sides of the HDD crossing may provide ability to measure current discharge through the HDD span.

©2016 by NACE International.”

11.3 - 11.5. Either address steps taken **prior** to the pipe being installed or mentioned testing is irrelevant to coating.

12. Counsel's assertion that Mr. Perez's affidavit "proves" anything at all is wholly unfounded and is merely their opinion. The affidavit does nothing more than attempt to describe to Your Honor what we can't see and expect the reader to take it as fact. Furthermore, it is concerning that Energy Transfer's Joseph Perez and SPLP's counsel are being dishonest in stating that November 20, 2019 was the first time I brought my concerns about the damaged pipe to SPLP. Please see **Exhibit 1** where my concerns were expressed in email to Ivana Wolfe - Director of The Bravo Group. The Bravo Group is a third party company hired by Energy Transfer/Sunoco for community relations in our area. Ms. Wolfe is a liaison and the way that residents communicate with the company. I would imagine that Ms. Wolfe, while well established on the chain of command at the Bravo Group, is not permitted to come up with technical responses on her own and believe that SPLP was well aware of my concerns over a year prior to the lay testimony hearing continuance.

13. SPLP keeps referring to only a portion of pipe that can be seen in the photo. Again, we are expected to trust that the rest of the pipe that can't be seen does not have any damage to it. Not at the time that I first brought this concern to multiple government entities, regulating agencies and even SPLP, did I did not mention UV light in my motion and do not see the reason it is brought up. Additionally, there is no reason for counsel to be spending the time that they are on an argument that is not in my motion.

14. Counsel has been objecting for 7 pages now. They have not been deprived of anything.
15. No response needed.
16. Repetitive. SPLP is more than welcome to show me another pipe that has been pulled through a borehole. My concerns are valid . SPLP, Joseph Perez nor counsel have presented anything meaningful to show otherwise.
17. Repetitive and does not need to be answered again.
18. - 24. No further response.

Conclusion

SPLP is not being honest about my concerns about the damaged pipe at New Kent Apartments being brought to them over a year prior to the hearing. It is my understanding that although they knew it was part of my complaint (included in exhibits of my original complaint filed), had contacted their liaison about it and had previously never cut, capped and back filled a pipe prior to 'tie in' in East Goshen - They found it necessary to 'scrap' the portion of pipe that showed my concerns.

With the 'deadman' pipes shown in my photos no longer at the site and apparently the top 5.9 feet of the pipe of concern being 'scrapped', my request would seem useless and even impossible now. However, I would respectfully request that SPLP pull through the remainder of the pipe of concern to show whether or not the damage continues throughout the pipe.

Respectfully,
Melissa DiBernardino

Exhibit 1

From: Melissa DiBernardino <lissdibernardino@gmail.com>
Sent: Tuesday, July 24, 2018 10:01 AM
To: Wolfe, Ivana L (Contractor)
Cc: Comi a, Carolyn; Rick Smith
Subject: Re: Email follow-up

Ms. Wolfe,

Thank you for the response. I'm referring to the areas of Boot Road that were previously meant to be HDD. I'm aware that directly in front of the shopping center is open cut but I was told all along boot road is being considered now. If I need to give you an exact location to receive an answer, I'd like to know about Saints Peter and Paul School/Church. Has the method of installation changed? Will it now be open trench?

<https://mail.google.com/mail/u/0?ik=9632e824d6&view=pt&search=all&permthid=thread-f%3A1611502103678650389&siml=msg-f%3A161150210...> 11/14

9/13/2018

Gmail - Fwd: Undeliverable: Re: Email follow-up

Additionally, I was also told by Richard Kuprewicz last night that you should be looking into this photo. PHMSA and PUC haven't been able to give me a satisfactory answer yet to date. What does the rest of this pipe look like after blindly pulling it through a bore hole? How many others look just like this? What information can you provide to show that by using a "non-standard" method of installation that is not recognized by the industry, that damage has been done to speed up corrosion or worse?



<https://mail.google.com/mail/u/0?ik=9632e824d6&view=pt&search=all&permthid=thread-f%3A1611502103678650389&siml=msg-f%3A161150210...> 12/14

9/13/2018

Gmail - Fwd: Undeliverable: Re: Email follow-up





<https://mail.google.com/mail/u/0?ik=9632e824d6&view=pt&search=all&permthid=thread-f%3A1611502103678650389&simpl=msg-f%3A161150210...> 12/14

9/13/2018

Gmail - Fwd: Undeliverable: Re: Email follow-up



This is a damaged pipe in east Goshen Township at New Kent Apartments. I'm sure you've been contacted months back about this but no one has given me any reassurance yet. I have added Rick Smith, our township manager, and State Representative Carolyn Comitta to the conversation as the answers to both questions are of great importance to them as well.

I look forward to your detailed and timely response. Thank you.

Melissa DiBernardino

On Wed, Jul 25, 2018 at 3:24 PM Wolfe, Ivana L (Contractor) <Ivana.Wolfe@energytransfer.com> wrote:

Ms. DiBernardino -

In response to your inquiry, I can confirm that there has been no change in the installation method for the Horizontal Directional Drilling (HDD) location that starts at the work site near the Wellington Community connecting to West Goshen Township.

On the topic of horizontal directional drilling, please note that HDD is an established, safe technology very common in the pipeline construction industry that is often used by city utilities to install water and sewer lines, telecommunication and fiber optic infrastructure. For additional clarity, the following video on HDD has a lot of good information on this construction method: <https://www.youtube.com/watch?v=iwtbqeaxWc8&feature=youtu.be>

The Horizontal Directional Drilling Process - YouTube

www.youtube.com

<https://mail.google.com/mail/u/0/?ik=9632e824d6&view=pt&search=all&permthid=thread-f%3A1611502103678650389&simpl=msg-f%3A161150210...> 10/14

9/13/2018

Gmail - Fwd: Undeliverable: Re: Email follow-up



Horizontal directional drilling is a steerable, trenchless method used when installing pipelines that minimizes impact on the environment and communities.

On the topic of protective coating, please note that certain sections of pipe (such as those included in your photos) are cut off prior to final connection and will not be a part of the commissioned pipeline. Additionally, pipeline coating is always inspected prior to, during and after final connection.

For additional clarity, attached you will information on pipeline safety and design that provide perspective on how the Mariner East 2 project is going above and beyond to ensure safety in your community.

Sincerely,

Ivana Wolfe

Community Relations

Mariner East 2 - PPP6

Thomas J. Sniscak, Esq
tjsniscak@hmslegal.com

Kevin J. McKeon
kjmckeon@hmslegal.com

Whitney E. Snyder
@hmslegal.com

Robert D. Fox, Esq.
Neil S. Witkes, Esp.
Diana A. Silva, Esq.

rfox@mankogold.com
nwitkes@mankogold.com
dsilva@mankogold.com

Michael Bomstein
mbomstein@gmail.com

Anthony D. Kanagy, Esquire
Garrett P. Lent, Esquire
akanazy@postschell.com
glent@postschell.com

Rich Raiders, Esq.
rich@raiderslaw.com

Vince M. Pompo, Esq.
Guy. A. Donatelli, Esq.
Alex J. Baumler, Esq.
vpompo@lambmcerlane.com
Gdonatelli@lambmcerlane.com
abaumler@lambmcerlane.com

Margaret A. Morris, Esq.
mmorris@regerlaw.com

Leah Rotenberg, Esq.
rotenberg@mcr-attorneys.com

Mark L. Freed
mlf@curtinheefner.com

James R. Flandreau
jflandreau@pfblaw.com

David J. Brooman
Richard Sokorai
Mark R. Fischer
dbrooman@highswartz.com
rsokorai@highswartz.com

mfischer@highswartz.com

Thomas Casey

tcaseylegal@gmail.com

Josh Maxwell

jmaxwell@downingtown.org

Laura Obenski

ljobenski@gmail.com

Stephanie M. Wimer

stwimer@pa.gov

Michael Maddren, Esq.

Patricia Sons Biswanger, Esq.

maddrenM@co.delaware.pa.us

patbiswanger@gmail.com

James C. Dalton, Esq.

jdalton@utbf.com

Melissa DiBernardino

lissdibernardino@gmail.com

Virginia Marcille-Kerslake

vk erslake@gmail.com

James J. Byrne, Esq.

Kelly S. Sullivan, Esq.

jjbyrne@mbmlawoffice.com

ksullivan@mbmlawoffice.com

Honorable Elizabeth Barnes

ebarnes@pa.gov

