



October 11, 2020

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Via Electronic Filing

*RE: Flynn et. al. v. Sunoco Pipeline L.P., Dockets P-2018-3006117 and C-2018-3006116
Andover Homeowners' Association, Inc's Answer to Motion for Partial Summary
Judgment Concerning Quantitative Risk*

Dear Secretary Chiavetta,

Please find the response to the Sunoco Pipeline L.P. Motion described above.

We have served a copy of the Witness List upon the parties pursuant to the attached Certificate of Service.

Please contact me with any questions.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

MEGHAN FLYNN et al.	:	C-2018-3006116
	:	P-2018-2006117
MELISSA DIBERNARDINO	:	C-2018-3005025
REBECCA BRITTON	:	C-2019-3006898
LAURA OBENSKI	:	C-2019-3006905
ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:	C-2018-3003605
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.	:	

**ANSWER OF ANDOVER HOMEOWNERS' ASSOCIATION, INC. TO SUNOCO PIPELINE'S MOTION
FOR SUMMARY JUDGMENT CONCERNING RISK AND CONSEQUENCES**

Pursuant to 52 Pa. Code §§ 5.102, Andover Homeowners' Association, Inc.

("Association") answers Sunoco Pipeline L.P.'s ("Sunoco") answers Sunoco's Motion for Summary Judgment concerning risk and consequences, and avers in support thereof as follows:

INTRODUCTION

On July 28, 2020, Sunoco filed a Motion for Partial Summary Judgment concerning the risks and consequences of a catastrophic event on the Mariner East ("ME") system. The Association incorporates by reference the Answer of the Flynn complainants as if fully restated herein. The Association writes separately to highlight issues of uncontroverted fact, in the face of which the Commission must deny partial summary judgment.

Specifically, at the October 2019 lay hearings, Association President Eric Friedman specifically testified that Sunoco is the highest risk operator in the United States pipeline business. He specifically discussed, as admitted into evidence, release and incident data from the Pipeline and Hazardous Materials Safety Administration ("PHMSA") showing that Sunoco had more incidents and a higher incident rate than other comparable pipeline operators. Also

in evidence is a variety of consequence analyses from various sources, including Delaware County, a citizens group, and Sunoco's Canadian affiliate showing the horrific consequences of a highly volatile liquid ("HVL") hazardous materials release which could occur on the Mariner East system. Further, several witnesses at the lay hearings, including Mr. Friedman, Ms. Caroline Hughes, Ms. Rebecca Britton, and various school district representatives, testified that the Mariner East pipeline was placed within several feet, not several thousand feet, of their homes, schools, businesses, including restaurant kitchens less than 100 feet from a valve site, and extended care facilities. Finally, Mr. Tim Boyce presented uncontroverted written testimony that he, as the person responsible for Delaware County emergency response, cannot provide any reasonable response to any significant Mariner East incident.

The Association answers specific paragraphs as follows:

1. Denied as stated. The Association's compliant speaks for itself.
2. Admitted.
3. Denied as stated in the Flynn Answer.
4. Admitted.
5. Denied as stated in the Flynn Answer.
6. Admitted.
7. Admitted.
8. Admitted.
9. Denied as stated in the Flynn Answer. Further, the Association's President testified that, in his career as a safety inspector, probability is correlated to performance history. As Sunoco's performance history is, per Mr. Friedman, the worst in the industry, the

Association asserts that there are facts on record that the probability of an incident is not immaterial as Sunoco might suggest.

10. Denied as stated in the Flynn Answer.

11. Denied as stated in the Flynn Answer.

12. Admitted.

13. Denied as stated in the Flynn Answer. Further denied in that Sunoco misstates the complaints of the Association and others.

14. Admitted.

15. Admitted.

16. Denied as stated in the Flynn Answer. Risk is definitely a part of Ms. Britton's case. Mr. Friedman's direct testimony established that risk was a definite factor, and that Sunoco is, in his opinion, the highest risk operator in the domestic pipeline industry.

17. Denied as stated in the Flynn Answer.

18. Denied, substantially as stated in the Flynn Answer. However, Mr. Friedman did provide risk testimony, and other lay witnesses discussed Sunoco's operating history as a risk factor in operating such an inherently dangerous activity in a densely populated high consequence area.

19. Denied as stated in the Flynn Answer.

20. Admitted.

21. Admitted.

22. Admitted.

23. Denied as stated in the Flynn Answer. Sunoco's industry worst operations caused the Association grave concern about Sunoco's ability to operate safe, efficient and reasonable service under any conditions, including attempting to operate a service transporting a half million barrels of HVLs per day.

24. Denied as stated in the Flynn Answer.

III. ARGUMENT

25. Denied as stated in the Flynn Answer.

26. Denied as stated in the Flynn Answer. Further, the Commission never approved this project, as Sunoco withdrew its application in 2014. Any approval was by the Commonwealth Court's misguided *Martin* decision. *See, In re Sunoco Pipeline (Martin)*, 143 A.3d 1000 (Pa. Commw. 2016).

27. Denied as stated in the Flynn Answer.

28. Denied substantially as stated in the Flynn Answer. The Association has already testified that Sunoco's probability for a catastrophic incident is higher than other similarly situated operators, due to their industry worst accident and incident history gleaned from the PHMSA incident database. Further, Mr. Boyce, in his written testimony, highlights that Sunoco's public awareness plan is simply useless, as Sunoco was believed to have had a pipeline incident in 2020 where the community substantially did not respond at all.

IV. ARGUMENT

29. Denied as stated in the Flynn Answer. Strict compliance with Part 195, even if Sunoco ever achieves strict compliance, is not enough to show that its operations can possibly

provide the adequate margin of public safety required of the operator by statute and regulation. Sunoco attempts to hide behind a strict reading of the Part 195 regulations to project that its utterly inadequate operational history is irrelevant.

30. Denied as stated in the Flynn Answer.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Denied as stated in the Flynn Answer.

40. Denied as stated in the Flynn Answer.

41. Denied as stated in the Flynn Answer.

42. Denied substantially as stated in the Flynn Answer. The docket includes evidence that Sunoco's industry worst operational history makes them a higher risk operator. While this qualitative risk analysis is not the precise quantitative risk analysis Sunoco suggests is required, nowhere do they cite any evidence that the Commission may not view risk through a qualitative lens. As outlined in the Flynn answer, the Commission does in fact view qualitative risk as an important factor in deciding if an operator can, for instance, spray pesticides near a drinking water well. Likewise, the Association contends that

allowing the industry worst operator to operate highly hazardous HVL pipeline valve sites 80 feet from a restaurant kitchen is a risk that is just not worth any reward.

Sunoco's allegation that there is no indicia of risk must fail.

43. Denied substantially as stated in the Flynn Answer. However, the Association does request that the Commission take whatever steps are necessary to stop this project in Delaware and Chester Counties. While the Association's approach for the appropriate steps the Commission should take to reduce the risk to the Association and its Members may slightly differ from that of the Flynn complainants, the Association agrees that the Commission must guide any decision to remove this industrial operation from, inter alia, the Association's open space.

44. Denied as stated in the Flynn Answer.

45. Denied as stated in the Flynn Answer.

46. Denied as stated in the Flynn Answer.

47. Denied as stated in the Flynn Answer.

48. Denied as stated in the Flynn Answer.

49. Denied as stated in the Flynn Answer.

50. Denied as stated in the Flynn Answer.

51. Denied as stated in the Flynn Answer.

52. Denied as stated in the Flynn Answer.

53. Denied as stated in the Flynn Answer.

54. Admitted.

55. Denied as stated in the Flynn Answer.

56. Denied as stated in the Flynn Answer.

57. Denied as stated in the Flynn Answer.

WHEREFORE, Andover Homeowners' Association, Inc. respectfully requests that the Public Utility Commission deny Sunoco Pipeline L.P.'s Motion for Partial Summary Judgment.

ADDITIONAL UNDISPUTED MATTERS OF MATERIAL FACT

1. The Association fully adopts the Flynn Complainants' Additional Undisputed Matters of Material Fact as if fully recited herein.
2. Per the PHMSA incident database, Sunoco has suffered 322 release incidents between January 1, 2005 and August 11, 2019.

THE ASSOCIATION'S ARGUMENT

1. The Association adopts the Flynn Complainants' Arguments as if fully recited herein.
2. The Association has asserted that Sunoco has not designed and implemented the Mariner East project in a manner to protect the public health and welfare with respect to PUC and PHMSA requirements.
3. Specifically, the risk of placing the valve site on Association property, 80 feet from a working restaurant kitchen, would immediately imperil the lives of every person associated with the Association should a large enough incident occur at this valve site or on one or more of the pipelines associated with the Mariner East project.
4. Further, the Association asserts, and several expert witnesses agree, including Sunoco witness Zurcher, that, in the event of a substantial incident, there is literally nothing anyone within the Association's footprint can do to avoid substantial injury or death.

5. The Association asserts, that under Sunoco's 49 CFR 195.440 obligations, it is required to offer a credible public awareness plan sufficient to allow stakeholders to actually utilize the information offered to manage situations which could occur.
6. Further, the Association asserts that the Section 440 obligations are critical in allowing communities, governments and other stakeholders to fulfill their roles outlined in other Part 195 requirements, including emergency response.
7. However, the Association asserts that Sunoco's public awareness program is functionally useless, as shown by the undisputed testimony of Tim Boyce and Jeff Zurcher.
8. Sunoco also has the duty to offer service that is safe, efficient and reasonable. 26 Pa. C.S. § 1501.
9. However, the Association argues that, based on the record, including lay testimony, that Sunoco is wholly unable to offer such safe, efficient and reasonable service by installing valve sites for multiple HVL pipelines 80 feet from a working restaurant.
10. The Association further argues that Sunoco cannot offer safe, efficient and reasonable service without any credible plans to manage incidents which Sunoco has modeled (as will be shown in the Proprietary Record at hearing) as endangering or killing everyone within a substantial radius of an incident location, where such radius significantly exceeds the distance from the pipeline system to any house owned by Association membership. *See e.g., Sunoco Canada Risk Assessment.*
11. To succeed in this Summary Judgment Motion, Sunoco would have to show that it can operate this Mariner East system without risk.

12. The absence of quantitative risk calculations, as argued by Sunoco, does not equate to the absence of risk.
13. Sunoco fails to argue that this system can be operated at no risk, where its wholly inadequate public awareness program would become irrelevant because there was no operational risk.
14. As highlighted in the Flynn Answer adopted by the Association, *Mattu v. West Penn Power Co.*, C-2016-2547322 (Pa. Pub. Util. Comm'n 2018) held that the Commission may consider qualitative risk and protect the public from harms induced by a utility company solely based on qualitative risk assessment.
15. Therefore, Sunoco has not carried its burden to support any award of partial summary judgment.

Respectfully submitted,

/s/

Date: August 11, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons on the attached list, in accordance with the requirements of Rule 1.54 regarding to service by a party.

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