

Melissa DiBernardino  
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August 17, 2020

**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;

**Melissa DiBernardino Response to SPLP's Motion for Partial Summary  
Judgement On Consequence Without Probability**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Rebecca Britton's reply to Sunoco Pipeline L.P.'s Motion for Partial Summary Judgment on Consequence Without Probability.

If you have any questions regarding this filing, please contact the undersigned.

Sincerely,

Melissa DiBernardino

*Pro se*

August 17, 2020

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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-2018-3005025

**Consolidated**  
**MEGAN FLYNN *et al***

:

**Docket Nos.C-2018-3006116**

v.

:

**SUNOCO PIPELINE L.P.**,  
Respondent.

:

:

**Melissa DiBernardino Response to SPLP’s Motion for Partial Summary  
Judgement On Consequence Without Probability**

Pursuant to 52 Pa. Code § 5.102, Sunoco Pipeline L.P. (“SPLP”) has moved for partial summary judgment of the above-captioned matter. SPLP has once again ‘dumbed down’ my issue(s) and allegations, and not so cleverly changed words around to make it more easily argued, I assume. My argument is not that Mariner East pipelines are unsafe within the meaning of Section 1501 of the Pennsylvania Public Utility Code, 66 P.S. § 1501 simply **because** they are located in high consequence areas in Chester and Delaware counties. A release of highly volatile liquids from ME2 (and other pipelines that are part of the ME system) in any population without public awareness, a credible warning system and adequate, reliable emergency plan is unsafe. A release in these highly populated areas could cause significantly high numbers of injuries and death. The consequences to this unmitigated, unplanned for, involuntary threat are unacceptable.

I am in no position to argue what the probability/likelihood of a failure happening. Neither my finances nor background allow it. What I will confidently assert is that while I do not know what the probability of this type of event is, neither does SPLP and, as a result, neither do their regulating agencies. Using non standard installation, such as HDD, is not used as a factor to determine the probability of an event. Using such a factor, if even possible with the limited data, is extremely difficult at best. Additionally, the difficulties in knowing the extent of coating damage from pullback, knowing if the cathodic protection system is sufficient and working properly or even repairing an anomaly on deeply buried pipe should also affect the probability of the pipes failing. How much higher is the probability for a segment of pipe that traverses through a karst area? How about a karst area that experiences thirteen plus sinkholes due to SPLP's HDD and 'inadvertent returns' (that was labeled as "low risk" of an IR?

SPLP, with one of the worst track records of pipeline leaks, does not even use their own leak history as a factor. They use the industry's data, as a whole instead. This is the data that was used when determining the probability of a leak on the Dakota Access Pipeline in a memo to USACE. "The likelihood of a release into any single waterbody would be low, with a predicted occurrence interval of no more than once every 1,430 to 476,642 years". It's already happened.

For reasons stated above:

- A. SPLP and counsel, even if willing, could not provide the actual probability/likelihood of a leak on the Mariner East Pipelines.
- B. Without the ability to determine the probability, there is no credible way to determine the risk. We already know the potential consequences and the Pa PUC has acknowledged this.
- C. Without a proper risk analysis, one cannot create an adequate integrity management plan and therefore, out of compliance with **49 CFR § 195.452 - Pipeline integrity management in high consequence areas.** *(i) What preventive and mitigative measures must an operator take to protect the high consequence area? -*  
*(1) General requirements. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include,*

but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls. **(2) Risk analysis criteria.** In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to: (i) Terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area; (ii) Elevation profile; (iii) Characteristics of the product transported; (iv) Amount of product that could be released; (v) Possibility of a spillage in a farm field following the drain tile into a waterway; (vi) Ditches along side a roadway the pipeline crosses; (vii) Physical support of the pipeline segment such as by a cable suspension bridge; (viii) Exposure of the pipeline to operating pressure exceeding established maximum operating pressure; Without knowing the likelihood of a leak while knowing the consequences to be potentially catastrophic, (ix) Seismicity of the area.

Both the “utility” and The Public Utility Commission is unable to determine if SPLP is in compliance with 1501 and providing safe, adequate, reliable, or reasonable service without a proper integrity management plan and especially a warning system and emergency plan.

The PUC does not define the word ‘safe’ and for that reason, I assume it has the same meaning as in Marriam - Webster Dictionary.

**safe**

- 1 : free from harm or risk : UNHURT
- 2a : secure from threat of danger, harm, or loss
- b : successful at getting to a base in baseball without being put out
- 3 : affording safety or security from danger, risk, or difficulty
- 4 obsolete, of mental or moral faculties : HEALTHY, SOUND

5a : not threatening danger : HARMLESS

b : unlikely to produce controversy or contradiction

6a : not likely to take risks : CAUTIOUS

b : TRUSTWORTHY, RELIABLE

I do not believe that The Mariner East Pipeline project is providing safe or adequate service for the reasons provided. At best, it should be considered undetermined and still not in compliance.

**49 U.S. Code § 60112. Pipeline facilities hazardous to life and property. (a) General**

**Authority.**—*After notice and an opportunity for a hearing, the Secretary of Transportation may decide that a pipeline facility is hazardous if the Secretary decides that—*

*(1) operation of the facility is or would be hazardous to life, property, or the environment; or*

*(2) the facility is or would be constructed or operated, or a component of the facility is or would be constructed or operated, with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.*

*(b) Considerations.*—*In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant—*

*(1) the characteristics of the pipe and other equipment used in the pipeline facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment;*

*(2) the nature of the material the pipeline facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are [1] transported, and the pressure required for transporting the material;*

*(3) the aspects of the area in which the pipeline facility is located, including climatic and geologic conditions and soil characteristics;*

*(4) the proximity of the area in which the hazardous liquid pipeline facility is located to environmentally sensitive areas;*

*(5) the population density and population and growth patterns of the area in which the pipeline facility is located;*

*(6) any recommendation of the National Transportation Safety Board made under another law; and*

*(7) other factors the Secretary considers appropriate.*

I hope that Your Honor can see from filings during this long procedure, the above and my responses below, Counsel's motion is a desperate attempt to SPLP's reckless project in operation and construction moving forward and keeping the truth from being highlighted.

1. Admitted.
2. Admitted.
3. Admitted in part. I am arguing that SPLP's Mariner East Pipeline PROJECT is inherently dangerous. Denied in part - I am not arguing that what makes the pipelines inherently dangerous is the fact that they are in densely populated areas. The irresponsible route chosen makes the consequences higher and other issues but this project is dangerous anywhere near lives.
4. Denied in part. I was not part of the Interim Emergency Relief Petition filed by the Flynn Complainants and didn't not have the opportunity to present anything during that hearing. I did have the opportunity to testify at the November 20, 2019 hearing. After listening to counsel whine about wasting the court's time and repetition (after motioning to consolidate this circus which I objected to), I assumed that they would be pleased to avoid repeat expert testimonies. Not providing written expert testimony, it's my understanding that it's not my place to participate in written rebuttals and surrebuttals and that my chance to participate would be during the hearing while cross examining the experts.
5. Admitted in part as I did not provide expert testimony. Denied in part as the hearing for interim emergency relief does not pertain to this case..
6. Denied as stated in 5.
7. Admitted in part. Denied as stated previously. This hearing is separate from the current proceedings and it was prior to consolidation.
8. Please see 7.
9. Please see 7.
10. Please see 7.
11. Please see 7..
12. Admitted in part. Denied in that counsel is trying to make it seem the Commission was confirming what their alleging here and it's not the case.. Also, again, Please see 7.
13. Admitted in part. Flynn complainants were given a second opportunity while pro se' complainants were given their first opportunity to present Lay testimony.
14. Does not pertain to my complaint.

15. Does not pertain to my complaint.
16. Does not pertain to my complaint.
17. Denied. I have clarified that probability was part of my complaint as well.
18. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
19. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
20. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
21. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
22. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
23. Does not pertain to my complaint. Counsel for Flynn and Andover can answer to this.
24. Does not apply to my complaint.
25. Does not apply to my complaint.
26. Denied.
27. Denied. Mr. Marx has shown how high the consequences are when pipelines of this nature run through densely populated areas like Delaware and Chester Counties. Complainants' remedy is right here within the PUC as it regulates utilities' safe, adequate, reliable and reasonable service. Until such a time that Title 35 compliant emergency plans specific for Mariner East Pipelines are created and an adequate public awareness program is available to the potentially impacted public (in which PHMSA has ordered them to become compliant with by the end of this month), it is impossible for SPLP to be complaint with section 1501 of the Public Utility Code. While the commission may not have the authority to ensure that compliance with Title 35 is met by forcing SPLP to create certain plans, it is certainly within its regulating authority to find SPLP in violation of 1501 because of this noncompliance.
28. Denied. SPLP is no more entitled to judgement summary than Complainants are entitled to their due process. It is my belief that they are actually less entitled.
29. Denied. See 28.
30. Denied. As much as SPLP and counsel concentrate on financials and economic benefits for themselves and only concentrate on others' benefits when it fits their agenda, it doesn't work here. If so concerned about the time and economy of the court, needless and repetitive filings (like the current 3) would be avoided. As would motions for stays and consolidations that create two week long hearings.
31. Admitted in part. While the Commission's regulation allows any party to move for one, the party needs to prove why they are entitled to such an order. Counsel has failed to do

so in this filing. Complainants, on the other hand, do not need to prove (although have) that they are entitled to their due process. It is their right.

32. Denied.

33. Admitted.

34. Admitted and we are in the process of just this. It is not simply our opinion that SPLP is out of compliance with their public awareness program. PHMSA issues an order confirming non compliance on June 25, 2020. It is not our opinion that an adequate warning system or preparedness/emergency plans are not in place. Our municipal and county governments have been requesting information regarding this for years. Even after SPLP sent a consulting company to schools, giving the impression that this meeting with Delta would be to help create emergency plans, they were only left with unanswered questions.

35. Denied. **Rule 56. Summary Judgment** *(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order. “The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlth. 1976). Summary judgment will be granted only where the right is clear and free from doubt.* I cannot provide the probability/likelihood of Mariner East Pipeline failure and neither can SPLP. Not only has counsel failed to provide the necessary information to strengthen their argument, their client continues in the third year of destruction in the path of the project. The latest blunders include a collapsed borehole resulting in approximately 10,000 gallons (and counting) of drilling mud spilling into a portion of Marsh Creek, sending a plume into the lake. It is currently still not contained and has contaminated a drinking source for the public. In another area close by, which they also considered ‘low risk’, their drilling has caused over 13 sinkholes around heavily traversed Route 30 and a valve station. This blunder has resulted in ongoing geophysical testing for stability. Just up the road from here, also in West Whiteland Township, crews continue stabilization efforts and feed



grout into the ground at Lisa Drive. Over two years ago, the public was assured the area was stable. Ironically, almost all drill analysis documents and re-evaluations reports (even **after** ‘inadvertent returns) occurred multiple times) filed with the DEP and a signed and notarized risk assessment for the overall project, clearly state that the probability/likelihood of ‘inadvertent returns’ was low. If SPLP’s ability, or desire for that matter, to even understand the likelihood/probability for issues during construction instills any opinion or judgement with the public, the Commission and Your Honor, it’s distrust, concern, incompetence at hand and at best, **doubt**.

36. Denied.

37. Denied as stated.

38. Denied.

39. Denied. Counsel cannot “narrow down” for the courts what should and could be ruled on in the middle of a court proceeding.

40. Denied as stated.

41. Denied in part, admitted in part. Speaking only for myself, I am seeking relief by requesting that Your Honor and the Commission make various determinations regarding the safety of the construction, operation and maintenance of the Mariner East Pipeline Project.

42. Denied.

43. Denied.

44. Does not apply to my complaint.

45. Does not apply to my complaint.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

## **Conclusion**

So that all consolidated complainants' due process is met and the Public Utility Commission can be confident, without a doubt, that a utility that they have the responsibility to regulate and see that they are providing safe, adequate, reliable and reasonable service, I respectfully ask that Your Honor deny this motion for partial summary judgement. Counsel is inappropriately citing rulings, playing word games, lumping complainants together continuing to be nauseatingly repetitive.

Respectfully,  
Melissa DiBernardino

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing 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 via electronic filing:

### **VIA ELECTRONIC FILING**

Pennsylvania Public Utility Commission  
efiling system

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Rebecca Britton

Pro se

August 14, 2020

### VERIFICATION

I, Rebecca Britton, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Rebecca Britton

*Pro se*

August 14, 2020