

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	C-2018-3006116
Rosemary Fuller	:	P-2018-3006117
Michael Walsh	:	
Nancy Harkins	:	
Gerald McMullen	:	
Caroline Hughes and	:	
Melissa Haines	:	
	:	
Andover Homeowners Association	:	C-2018-3003605
	:	
	:	
Melissa DiBernardino	:	C-2018-3005025
	:	
Rebecca Britton	:	C-2019-3006898
	:	
Laura Obenski	:	C-2019-3006905
	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

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**MAIN BRIEF OF LAURA OBENSKI**

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Dated: December 16, 2020

**STATEMENT OF THE CASE**

In January of 2019, I filed my complaint before the Commission seeking relief that would address the risks imposed upon my family by the construction and operation of the Mariner East pipelines. As I have testified to, the risk of this project is ever present in my family's daily lives as we live, learn, recreate, and frequent locations that are in close proximity to the many Sunoco pipelines that traverse our neighborhood and community.

Since my initial filing, a flood of complainants and interveners that align with the concerns brought forth in my complaint have similarly filed before the Commission, also feeling the burden of the enormous health and safety risks that were imposed on them in their homes, school, places of employment and recreation, absent their consent and absent their knowledge. The

consolidation of these cases became a necessary task to manage the overwhelming amount of complaints against Sunoco from the communities they are operating in.

Most specifically, the very political subdivisions that have statutory duties and obligations to provide for and protect the health and safety of my family became interveners in this proceeding - Uwchlan Township, The County of Chester, and the Downingtown Area School District. Together with the Megan Flynn et al complainants and the Andover Homeowner's Association, I find that the issues originally raised in my complaint have been reinforced with layer upon layer of supporting evidence by way of testimony and aligned legal arguments by the very entities that hold the authority to represent my interests.

I do not wish to burden the court with additional content that only serves to duplicate matters already on record. As a pro se complainant, I have not navigated this legal process without enormous challenges and frustrations. Out of enormous respect for Your Honor and this Commission, I have done my best to summarize my findings, evidence, and personal experiences in my role as a member of the public that has a right to the protections afforded to me under all applicable federal and state laws.

This collaborative evidence and legal argument is now laid before the Commission by way of mountains of evidence, exhibits, legal arguments, and honestly- grief on behalf of the everyday members of the community who have done the work to document and share their experiences without the legal knowledge needed to navigate a case of this magnitude. I look to the Commission, who has the primary role to regulate public utilities in a way that is harmonious at best and non-damaging at worst to the duties and obligations of our local, state, and federal agencies, to not just acknowledge, but also feel the weight and burden of the issues spoken to truth throughout this lengthy proceeding.

## **EVIDENCE RELIED UPON**

There has been a tsunami of evidence presented by the many witnesses throughout the course of this proceeding. Out of respect for the court and in the interest of not producing duplicative finding already on the record, I align with and incorporate by reference the evidence entered into record on behalf of The County of Chester, Downingtown Area School District, Uwchlan Township, The Flynn Complainants, and the Andover Homeowner's Association through their main briefs. I believe the evidence presented on my own behalf into the record throughout the course of this proceeding speaks for itself.

## **SUMMARY/ARGUMENT**

- 1. Sunoco's public awareness program has failed to appropriately educate all members and stakeholders of the community who are at risk from the operation of the Mariner East network on how to safely and properly identify, report, and make decisions regarding evacuation in the event of a pipeline related emergency.**

*49 CFR §195.440 (a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3). (b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.*

Sunoco has specific requirements under RP 4.3.2 on advising community stakeholders on how to recognize a pipeline leak. Because the natural gas liquid (NGL) products transported via the Mariner East pipeline network are colorless and do not contain added odorant, the physical characteristics of a leak may not be easy to identify, especially in the event of a slow leak.

RP 4.3.3 goes on to outline that “*information should address an outline of the appropriate actions to take if a pipeline leak or release is suspected.*” However, given the characteristics of the products and the many variables that need to be taken into account to safely evacuate or shelter in place (wind direction, weather, topography, etc.), the ability of the general public (including children at play in their neighborhoods) to expediently make a decision and safely evacuate is not reasonable.

Title 35 Part III §7503, relating to powers and duties of political subdivisions, directs and authorizes every political subdivision to “(5) Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.” and “ (7) Cooperate and coordinate with any public and private agency or entity in achieving any purpose of this part.”

RP 6.1 allows for considerations for supplemental enhancements for the baseline program, and “*recognizes that there are differences in pipeline conditions, consequences, population, property development, excavation activities, and other issues along pipeline systems.*” RP 6.2 goes on to state “*Another factor to consider is the hazard associated with the pipeline as perceived by either the operator or the audience.*” “*If the public’s confidence in pipeline safety is undermined by a high profile emergency, even though an individual operator is experiencing no upward trend in incidents, that operator could consider expanding it’s public awareness communications to it’s public audiences to further increase awareness of its nearby pipeline system.*”

The Mariner East pipeline network has been an intense focus of public and regulatory scrutiny relating to the large number of *actual* violations and delays incurred during both construction and operation. The news media has produced article after article and dominated the news loop with Mariner related incidents and activities.

During the 10/14/2020 hearing, Sunoco’s expert witness John Zurcher testified “Publicity brings awareness” (Pg. 4426, line 22). I agree with his statement, and in this circumstance, the negative publicity Sunoco has solicited for itself has created a profound awareness of the public’s perception of the risks they are exposed to at the hands of an operator that has continued to evade positive relationships with community stakeholders and behave in a way that classifies them as ‘good neighbors’.

I will refer back to the additional testimony, argument and overwhelming supporting evidence in the briefs produced by The County of Chester, the Downingtown Area School District, The Flynn Complainants, and the Andover Homeowner’s Association which highlight and align with my personal testimony and supporting evidenced as offered into the record throughout the course of this proceeding.

In light of the self-inflicted harm Sunoco has incurred as a result of their reckless construction and operation attitudes in the communities they do business in, and the subsequent dominance of the news cycle, front page headlines, and near constant negative

dialogue amongst neighbors, The Commission should consider requiring extensive public safety awareness efforts.

The Commission must also determine if service can be deemed ‘safe and reasonable’ to the public in the absence of actionable guidance on how, when, and where to safely evacuate during a pipeline related emergency.

**2. The tools and available technology accessible and utilized by emergency services personnel for early detection of a leak and mass notification in event of a pipeline related emergency are in direct conflict with federal safety recommendations.**

Under Title 35 § 7503, political subdivisions are required to “(2) Establish, equip and staff an emergency operations center, consolidated with warning and communication systems to support government operations in emergencies and provide other essential facilities and equipment for agencies and activities assigned emergency functions.” Political subdivisions are also tasked with the responsibility to “(4) Organize, prepare and coordinate all locally available manpower, materials, supplies, equipment, facilities and services necessary for disaster emergency readiness, response and recovery. (5) Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.”

I will refer back to the testimony, argument and overwhelming supporting evidence in the briefs produced by The County of Chester, the Downingtown Area School District, The Flynn Complainants, and the Andover Homeowner’s Association which highlight and align with my personal testimony and supporting evidenced as offered into the record throughout the course of this proceeding.

In the absence of appropriate early detection measures and a proven, safe notification system for the public, the Commission should determine if service can be deemed ‘safe and reasonable’ to the public.

**3. The Lionville Elementary School, Lionville Middle School, Downingtown East High School, Shamona Creek Elementary School, and Marsh Creek Sixth Grade Center are put at risk by the Mariner East pipeline network due to pipeline integrity concerns and the inability of the DASD, Uwchlan Township and the County of Chester to maintain updated, actionable and reliable emergency preparedness plans.**

49 C.F.R. §195.210(a) states “Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly.”

Title 35, § 7701(g), related to duties concerning disaster prevention, states “Every school district and custodial child care facility, in cooperation with the local Emergency Management Agency and the Pennsylvania Emergency Management Agency, shall develop and implement a comprehensive disaster response and emergency preparedness plan consistent with the guidelines developed by the Pennsylvania Emergency Management Agency and other pertinent State requirements.”

Title 35 §7503 also outlines “the powers and duties of political subdivisions (1) Prepare, maintain and keep current a disaster emergency management plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to

*disaster and disaster emergency relief and recovery in consonance with the Pennsylvania Emergency Management Plan.”*

Title 35 § 7103 states the purpose of the Emergency Management Services Code is to “(1) *Reduce vulnerability of people and communities of this Commonwealth to damage, injury and loss of life and property resulting from disasters.* (2) *Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by disaster.*”

Lack of cooperation from Sunoco and the absence of a state conducted study to identify the extent of risk from the Mariner East pipeline network has resulted in difficulty for the DASD, Uwchlan Township, and the County of Chester to comprehensively conduct their required duties under Title 35.

Due to provisions in Act 156, per PA Code 102.1 that allow public utilities to designate their own material as confidential in nature, and the utilization of non-disclosure agreements related to sensitive information it has not been possible for first responders to present information in response to the public’s pertinent concerns of safety in a satisfactory way. If the information shared with emergency planning and response officials technically meets the requirements of Sunoco’s emergency response requirements under 49 CFR §195.440 but is not able to be presented in a way that is actionable to the affected public, the Commission should consider how the public’s health and safety can be reasonably managed by our local and state agencies tasked with the statutory duty to do so.

The Commission must determine if service can be deemed ‘safe and reasonable’ to the staff and students exposed to the Mariner East pipeline network within the DASD in the absence of data fully exploring the health and safety risks of the project. The Commission should also consider the ability of the DASD, Uwchlan Township and the County of Chester to create appropriate and actionable disaster response and emergency preparedness plans mandated under Title 35, to protect the safety of the public.

**4. The proximity of the valve station located at Dorlan Mills Road in Upper Uwchlan Township to the Shamona Creek Elementary School and the MC6GC presents a significant safety risk to staff and students, should an internal or external pipeline related emergency occur.**

49 C.F.R. 195.258(a) states that “*each valve must be installed in a location that is accessible to authorized employees and that is protected from damage or tampering.*”

Additionally, 49 C.F.R. §195.260(c) states that valves must be installed at specific locations, such as “*at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas.*”

Sunoco’s expert witness John Zurcher testified in the 10/14/2020 hearing as to the potential of this type of infrastructure to leak (Page 4404, Lines 20-21) and it’s designation as a potential target for terrorist attacks, which is concerning enough to earn it oversight from the TSA as a homeland security concern (Page 4410, Lines 21-25, Page 4411 Lines 1-17).

Sunoco has failed to demonstrate or provide evidence that it has established a respectable relationship with the County of Chester, Uwchlan Township or the Downingtown Area School District, three entities expressing concern in this proceeding regarding this valve site. Sunoco has also failed to show that it has hardened this facility in an appropriate matter that takes into account the county or school district's concerns regarding potential adverse events involving the valve, such as a vehicle strike, incident of vandalism or trespass- and how that type of incident could be prevented, identified, and responded to. Sunoco has failed to show that the security of the valve site has been approved or is actively monitored by TSA and other regulatory oversight.

I will refer back to the additional testimony, argument and overwhelming supporting evidence in the briefs produced by The County of Chester, the Downingtown Area School District, The Flynn Complainants, and the Andover Homeowner's Association which highlight and align with my personal testimony and supporting evidenced as offered into the record throughout the course of this proceeding.

Therefore, the Commission shall find the location of the valve "unreasonable" and demand the relocation of the valve site.

The Commission has explicit authority to make this request until Title 66 § 1501, which says "*Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.*"

The Commission must determine whether the Mariner East pipeline network provides "safe and reasonable" service while taking into account the location of the Dorlan Mills Rd valve site and surrounding facilities and populations.

## **STATEMENT OF QUESTIONS INVOLVED**

1. Has Sunoco's public awareness program failed to appropriately and reasonably educate all members and stakeholders of the community who are at risk from the operation of the Mariner East network on how to safely and properly identify, report, and make decisions regarding evacuation in the event of a pipeline related emergency?

*Suggested Answer: Yes.*

2. Are the tools and available technologies available to and utilized by emergency services personnel for early detection of a leak and mass notification in event of a pipeline related emergency in direct conflict with federal safety recommendations?

*Suggested Answer: Yes.*

3. Are the Lionville Elementary School, Lionville Middle School, Downingtown East High School, Shamona Creek Elementary School, and Marsh Creek Sixth Grade Center put at risk by the Mariner East pipeline network due to pipeline integrity concerns and the inability of the DASD, Uwchlan Township and the County of Chester to maintain updated, actionable and reliable emergency preparedness plans, even after extensive attempts to work with Sunoco to resolve their concerns?

*Suggested Answer: Yes.*

4. Does proximity of the valve station located at Dorlan Mills Road in Upper Uwchlan Township to the Shamona Creek Elementary School and the Marsh Creek Sixth Grade Center present a significant safety risk to staff and students, should an internal or external pipeline related emergency occur?

*Suggested Answer: Yes.*

5. Is it safe and reasonable to site a pipeline valve station (infrastructure classified as a soft target for terrorist attacks and an identified homeland security risk) directly across the street and both visible to and accessible from a public school campus housing over 1,800 staff and students?

*Suggested Answer: No.*

6. Does the evidence presented in this case demonstrate under 49 U.S.C. § 60112 that operation of the Mariner East pipeline network, absent the requested relief of parties in this proceeding, is hazardous to life, property and the environment?

*Suggested Answer: Yes.*

## **FINDINGS OF FACT**

Out of respect for the court and in the interest of not producing duplicative content already on the record, I align with and incorporate by reference the findings of fact presented by The County of Chester, Downingtown Area School District, Uwchlan Township, The Flynn et al complainants, and the Andover Homeowner's Association briefs. I believe my testimony and associated exhibits on record speaks for itself.

## **PROPOSED ORDERING PARAGRAPHS**

- I. The Commission shall find the public awareness program provided by Sunoco to be inadequate in both material content and distribution, and order the development of material that includes precise actionable and understandable instructions that apply to all community stakeholders and establishes a greater range of distribution to ensure contact with all affected community members, consistent with the potential impact radius of the Mariner East pipeline network.
- II. The Commission shall find that technologies currently available to schools and political subdivisions for the purpose of providing an early detection system and mass notification for the public, per their requirements under Title 35, are not adequate or reasonable for acquisition or use, and therefore service cannot be deemed 'safe and reasonable' to the populations placed at risk by the Mariner East project.
- III. The Commission shall find that the lack of cooperation and good faith efforts to hear and address concerns has resulted in significant gaps in the abilities of the DASD, Uwchlan Township, and County of Chester to appropriately plan for the hazards introduced by the Mariner East Project, compromising their duty to provide for the health and safety of their communities under the requirements of Title 35. With this in mind, the Commission shall find that service cannot be deemed to be 'safe and reasonable' to the populations placed at risk by the Mariner East project.
- IV. The Commission shall find the location of the valve adjacent to two facilities within the DASD, located at Dorlan Mills Road in Upper Uwchlan Township, as neither "safe" nor

“reasonable” to the affected populations placed at risk by the Mariner East project, and order the relocation of the valve site.

In light of these findings, Sunoco shall immediately suspend operation and construction of the ME1, ME2/2X, and “Point Breeze to Montello” line until their service can be assured “safe and reasonable” by the Commission, and in full regulatory compliance in light of the above arguments. This includes the specific itemized relief requested by the following interveners whom additionally represent my interests as a member of the public: the County of Chester, Uwchlan Township, and the Downingtown Area School District. These measures shall be considered in addition to any such relief that the Commission deems appropriate.

## CONCLUSION

I believe that the overwhelming amount of testimony and evidence entered into record in this proceeding on behalf of the aligned complainants demonstrates the moral and legal negligence of allowing the continued construction and operation of the Mariner East pipelines. On the contrary, none of the testimony proffered by Sunoco to rebut those claims has been based on their knowledge and assessment of the detailed and personal matters raised in this case- only the textbook application of their knowledge in the industry at large. This academic assessment of the issues without an understanding or acknowledgement of how it is being applied, perceived and put to action in our communities is incomplete if it does not take into account the feedback from those burdened, harmed, and put at risk by the actions of Sunoco.

As a member of the general public faced with the potential need to react to a pipeline emergency in my community, I have pursued a formal complaint with the Commission which has put me in a position to personally question, challenge, and seek advanced understanding of the measures I need to take to ensure my personal safety and the safety of my family. Despite spending multiple days in the company of Sunoco’s operational and industry experts and having an extremely reasonable opportunity to ask questions, as facilitated by the Commission through this proceeding, I am still unable to understand what actions I can and should be executing to keep myself safe. In fact, my confusion over the right steps to take has only increased and my perspective of whether Sunoco is an operator that exists in my community as the “good neighbor” they claim to be has only continued to deteriorate.

At the end of the day, I leave my argument in the hands of the Commission in the same way that I delivered it- from the perspective of a mother that is only seeking to do everything within my power to protect the safety of my kids. The risk that Sunoco has brought to my front door is ever present- not just visually through the visceral image of a pipeline that physically cuts through the heart of my neighborhood, but in my heart as I grapple with the realization that even after giving what I have to give in this proceeding, it isn’t enough. That while I sat in a courtroom waiting for my turn to share my testimony and seek resolution to my questions, my children were sitting at their desks in school while the Superintendent stood before me to tell the court she did not feel she could look a parent in the eye and tell them their child was safe. If that does not describe the position that our community has been put in at the hands of Sunoco, nothing else could.

Respectfully Submitted,



Laura Obenski, Pro Se  
December 16, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have served this main brief upon those listed on the attached service list.

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Date: December 16, 2020

  
Laura Obenski, Pro Se

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