

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Flynn, Rosemary Fuller,	:	
Michael Walsh, Nancy Harkins,	:	
Gerald McMullen, Caroline Hughes,	:	Docket No. P-2018-3006117
and Melissa Haines,	:	Docket No. C-2018-3006116
<i>Complainants,</i>	:	Docket No. C-2018-3005025
v.	:	Docket No. C-2019-3006898
	:	Docket No. C-2019-3006905
Sunoco Pipeline, L.P.,	:	Docket No. C-2018-3003605
<i>Respondents.</i>	:	

**JOINT POST-HEARING BRIEF OF INTERVENORS THE DOWNINGTOWN AREA  
SCHOOL DISTRICT, THE ROSE TREE MEDIA SCHOOL DISTRICT, EAST GOSHEN  
TOWNSHIP AND SENATOR THOMAS KILLION<sup>1</sup>**

Intervenors, the Downingtown Area School District, the Rose Tree Media School District, East Goshen Township and Senator Thomas Killion respectfully submit this Joint Post-Hearing Brief pursuant to the Order dated October 23, 2020, and in accordance with 52 Pa. Code § 5.501.

Respectfully submitted,

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Senator Thomas H. Killion*

Dated: December 16, 2020

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<sup>1</sup> The Intervenors incorporate herein the post-hearing submissions of the Flynn Complainants, the *Pro Se* Plaintiffs, all other intervenors and all parties deemed aligned with them.

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## I. INTRODUCTION

Intervenors, the Downingtown Area School District, the Rose Tree Media School District, East Goshen Township and Senator Thomas H. Killion are three municipal entities and one public servant respectively seeking relief for the benefit of thousands of residents placed at an admitted risk as a result of Sunoco's pipeline operations throughout Chester and Delaware Counties. Those at risk include a large and diverse section of the population – from school children and their families, to public employees delivering essential services to the community and to the community at large, which look to society's municipal governments to reduce, as conscientiously as possible, the risks posed by the transportation of HVLs by Sunoco through their neighborhoods.

During the hearings in this matter, and through their submissions, the Intervenors have empathized to the Court four overarching, compelling and common-sense requests for relief: 1) timely reporting on line inspection and geophysical testing; 2) a mass early warning notification system within close proximity of vulnerable public institutions and immediately notice of a leak, potential explosion or other failure in the pipeline system; 3) specific public education and emergency response plans designed to inform and educate the relevant population on proper and effective disaster prevention and response (including the engagement of an independent expert to produce studies relating to the impact of the pipeline in Chester and Delaware Counties, including, but not limited to, a remaining life study of ME1 and the 12 inch workaround pipeline), and; 4) cessation of operations in the event these achievable goals remain unmet. The Intervenors respectfully request that these, and the other relief set out in their Petitions to Intervene, be granted and included in any final Order entered in this matter.

## II. STATEMENT OF THE CASE

Intervenors were granted intervenor status in a matter filed on November 19, 2018, by Petitioners/Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (collectively the “Flynn Complainants”) filed a Complaint against Respondent Sunoco Pipeline, L.P. (“Sunoco”) at Docket No. C-2018-3006116, consolidated with Docket No. P-2018-3006117. The Flynn Complainants averred that their properties in Chester and Delaware Counties were in close proximity to the Mariner East 1 (“ME1”) pipeline and/or a work-around 12-inch diameter pipeline that circumvents stopped construction on the Mariner East 2 (“ME2”) and Mariner East 2X (ME2X). At times, these Sunoco pipelines are referred to collectively as “the ME Pipelines”. The Flynn Complainants also averred that ME1, ME2, ME2X and the work-around pipelines carrying or intended to carry HVLs are inherently dangerous and due to their location in Chester and Delaware Counties (high consequence areas), a pipeline rupture there would be catastrophic.

The Flynn Complainants further contended that ME1 is being operated and the work-around pipeline is about to be operated without an adequate public awareness program, emergency notification system, or credible emergency management plan in violation of 49 CFR § 195.440. The Flynn Complainants contended that Sunoco is violating 49 CFR § 195.248 in that ME1 and the work-around pipeline are located within 50 feet of private dwellings or industrial buildings or places of public assembly without at least 4 feet of cover. The Flynn Complainants’ three-count Complaint requested that the Commission enter an Order directing Sunoco permanently to (a) cease operation of the 8-inch ME1 pipeline; (b) cease operation of the work-around pipeline, ME2, and ME2X; and (c) grant such other and further relief as may be appropriate.

Because each Intervenor has facilities and responsibilities within the “blast zone” in the event of a failure of the various ME Pipelines, they sought to intervene to advocate for and protect the interest of certain groups within their respective community interest – the School Districts for the safety of students and staff schools located nearby the pipelines and the valve stations, the Township for their residents, community facilities and first responders and Senator Killion for all residents and constituents within the 9th Senatorial District. Intervenors participated actively in the “lay witness” portion of these proceedings in 2019 and submitted live and written testimony, supported by exhibits. The Downingtown Area School District presented expert testimony during the 11-day hearing of this matter in September and October 2020, and each Intervenor was present through each day at that hearing and participated actively.

### **III. STATEMENT OF THE QUESTIONS INVOLVED**

- A. Whether the Court's authority to supervise and regulate public utilities, as well as supervise and regulate Sunoco in the operation of its pipelines, should be exercised to require timely reporting to the Intervenors on line inspection and geophysical testing, so as to assure the safety of the public?
- B. Whether the Court's authority to supervise and regulate public utilities, as well as supervise and regulate Sunoco in the operation of its pipelines, should be exercised to require Sunoco to provide a direct and mass early warning notification system to Intervenors and immediate notice of a leak, potential explosion or other failure in the pipeline system, so as to assure the safety of the public?
- C. Whether the Court's authority to supervise and regulate public utilities, as well as supervise and regulate Sunoco in the operation of its pipelines, should be exercised to require Sunoco to develop specific public education or emergency response plans designed to inform and educate the relevant population on proper and effective disaster prevention and response (including the engagement of an independent expert to produce studies relating to the impact of the pipeline in Chester and Delaware Counties, including, but not limited to, a remaining life study of ME1 and the 12 inch workaround pipelines, so as to assure the safety of the public?
- D. Whether the Court's authority to supervise and regulate public utilities, as well as supervise and regulate Sunoco in the operation of its pipelines, should be exercised to prevent Sunoco from operation the relevant pipelines in the event these above goals remain unmet?

**Suggested answer to all four questions:            Yes.**

#### **IV. PROPOSED FINDINGS OF FACT**

1. Intervenor, the Downingtown Area School District is a Public School District located in Chester County Pennsylvania.
2. Intervenor, the Rose Tree Media School District is a Public School District located within Delaware County, Pennsylvania.
3. Intervenor, East Goshen Township is a second-class township located in Chester County, Pennsylvania.
4. Senator Killion is a resident of Middletown Township, Delaware County and at the time of his intervention, was a Senator representing the 9th Senatorial District which is comprised of portions of both Chester and Delaware Counties, Pennsylvania.
5. The Intervenors are all within close proximity to the Sunoco Pipelines and within close proximity to Sunoco valve stations.
6. Assuming that there is a major release from one of the new and larger Mariner pipelines, it is possible for a flammable vapor cloud to reach an elementary school site, and it may also be possible, if that release from the pipeline is ignited into what we call a jet fire, for there to be significant thermal radiation impacts at the school and the impacts would be similar on any other school of another district within similar proximity to similar Sunoco pipelines or improvements. (N.T. 9/29/20 at 1807, 1808 and 1828).
7. The presence of the valve stations within close proximity to schools poses an increased risk to the staff and the students at that campus. (N.T. 10/1/20 at 2327).
8. Mr. Hubbard presented expert testimony written testimony on behalf of the Downingtown Area School District (January 15th, 2020, which you verified on January 14th, 2020, Downingtown Direct 1) and testified on October 30, 2020. (N.T. 10/1/20 at 2306-2373).

9. Mr. Hubbard gave the following credible and factually supported opinions:
- a. If there is an emergency (whether it be an explosion, a rupture, a leak) or some other incident that requires a response, Sunoco does not provide the School District any meaningful information or assistance which would enhance the School District's ability to respond quickly and effectively. For example, the ME1 eight inch pipe transports HVL's. However, there is no information sharing with the School District or local emergency management and emergency response. If there was an event, a rupture or a leak, Sunoco provides inadequate information which is insufficient to formulate an appropriate response in real time to a pipeline emergency – especially as it relates to HVL's. And any information it does provide is provided on an irregular basis. These products react differently to say gasoline – they are odorless, gaseous and form clouds of vapor. We would have no idea what the volume or the rate of release from the pipeline would be, which way the vapor was traveling, whether to shelter in place or evacuate, if evacuation was the option, in what direction. And that's assuming that Sunoco hadn't changed the material being transported in the pipeline.
  - b. Additionally, these HVL's have a higher explosive potential than natural gas. And the HVL's will potentially pool in low areas. The risk to “running into” or evacuating into these areas is asphyxiation as well as subjecting the school population to evacuating toward a potential explosion, ignited perhaps by a passing vehicle.
  - c. Sunoco, in my opinion, should be providing on a regular basis information regarding the materials flowing through the pipelines, the volume, rates and risks



associated therewith and have that information complete enough to enable an emergency response plan to be developed.

- d. Sunoco has not provided to the School District any plan to enable the School District to implement an emergency response in the event of a pipeline incident specific to a School District or a school building whose population are young students, many young special education children with physical and intellectual disabilities. In the event of an occurrence, Sunoco has no plan for the schools. The Downingtown schools, as the video and photographs show, have challenging traffic patterns and topography. So when confronting an invisible gas whose lethality depend on temperature and wind direction, it is not enough to say walk uphill and upwind for ½ of a mile from the leak. Which way is the wind blowing; how fast; in what direction? You cannot expect hundreds of children, many with disabilities, or autistic children, or children in wheel chairs to do this. Sunoco does not communicate the risk or how to react. In my opinion, Sunoco should develop and provide to the School District plans which address the specific risks posed by its pipelines.
- e. Detecting a leak can be a time consuming process. Let's assume it's immediate. The pipeline company will contact the County. In Chester County, the dispatch services for the vast majority of police, fire and EMS agency is handled through the Chester County Department of Emergency Services. The way that they function is, they have call takers and they have dispatchers. So what would happen, the call taker would receive that 911 call, get some basic information, which would then go via computer over to the dispatch center. The dispatch is housed in one room, across

the room from each other. The dispatcher would then take that information, enter the computer aided dispatch system which would begin to identify location information, to allow that dispatcher to know what agencies cover the area in question. It then may take 20 minutes for the local emergency responders (other than the police to respond. Sunoco would also dispatch its field workers and field crew. However, in my opinion, Sunoco should be providing an early warning system, either an on-site vapor detection system of some other system that would give the schools immediate warning of a release/leak or other failure. In order to respond to the risks encountered by a pipeline incident, the warning and the information needs to be communicated to the School and the School District immediately. That's not happening now. The District needs to respond within minutes at most to be able to start safely evacuating or sheltering in place.

- f. Sunoco provides no useful School District-specific public education or awareness plan, with actual information, designed to inform and education the students, families and School District Staff on proper and effective disaster prevention and response. In my opinion, Sunoco must provide School District-specific public education and awareness plans and programs that will allow the School District to formulate an effective emergency response to a pipeline event near its schools.
  - g. And all of these concerns are equally applicable to the Dorlan Mill valve station, which present another failure point right across the street from two schools.
10. At least up to December of 2018, the Downingtown Area School District didn't have proper information with respect to the pipeline, its contents, pressures, and things of that nature –

up until that point and even beyond, it has been met with what can be referred to as “a brick wall”. (N.T. 10/1/20 at 2363).

11. Likewise, there are deficiencies in the information that Sunoco provides necessary for East Goshen Township’s emergency operation plan. (N.T. 10/24/19 at 1448).
12. For example, East Goshen Township seeks increased transparency for safety and communication particularly specific location of facilities along the pipeline for consideration in assessment of emergency preparedness. (N.T. 10/24/19 at 1448).
13. Increased information, which would not be made publicly available and which would be subject to Non-Disclosure Agreement to protect security concerns, would assist in the development of a more refined plan. (N.T. 10/24/19 at 1449).
14. And advanced notice to the Township of any planned work or activity along the pipeline would be a benefit to the Township as well. (N.T. 10/24/19 at 1449).
15. Range Resources does not know whether any of the relief requested by the Intervenors, if granted, would have any adverse effect on Range Resources. (N.T. 10/5/20 at 2834).
16. Range Resources does not know whether the installation of a mass early warning system along the pipeline would have any adverse effect on Range Resources. (N.T. 10/5/20 at 2835).
17. Range Resources does not know whether providing municipalities specific comprehensive public education and emergency response plan would have any adverse effect on Range Resources. (N.T. 10/5/20 at 2835).
18. Mr. Gregory G. Noll Sunoco’s expert in emergency planning, emergency response and planning training, testified that “folks” who were confronting a pipeline event would start to take measures to protect themselves. (N.T. 10/7/20 at 3292-3293, 3368).

19. Mr. Noll, although preferring the 9-1-1 or PSAP system for notification to school districts, municipalities and other institutions of a pipeline event, could not provide a single reason why Sunoco could not provide critical facilities like a school or a nursing home or a hospital and have a protocol where Sunoco immediately at or about the same time they notify 9-1-1, notify those critical facilities (N.T. 10/7/20 at 3369-3370, 3378).

## V. SUMMARY OF ARGUMENT

It is respectfully submitted that this Court look farther than the discretion Sunoco has suggested it has when determining viable, commercially reasonable and needed safeguards for the protection of the more vulnerable members of the community. The record is replete with Sunoco's assertions that it goes "above and beyond" or "exceeds" regulations, regulatory requirements and expectations and what the code requires. (N.T. 10/5/20 2907-2908, 2969; N.T. 10/6/20 3144, 3245, 3175; N.T. 10/9/20 3934; N.T. 10/13/20 4090). If true, this is laudable. It also reinforces the well-documented and well-reasoned requests of the Intervenors that additional safeguards are needed to promote effectively the purposes of the safety regulations at issue in the instant case.

The Intervenors' fundamental requests for relief, when reduced to their essence are two-fold – a direction to Sunoco to notify and warn immediately community institutions put at risk by the pipelines; and; an order requiring Sunoco to develop site or use-specific emergency response plans for the Intervenors that when a pipeline event occurs, the response is robust and relevant. There was nothing presented by Sunoco or its witnesses that indicated that any of the relief requested by the Intervenors was not feasible, or overly expensive or burdensome, or created a financial hardship for Sunoco or its contractors. Indeed, the requests of the Township are as simple and reasonable as the provision of written information (location of specific facilities and advanced notice of planned work on the pipeline) for the purposes of assessing emergency preparedness.

If the proofs have demonstrated anything, it is that Sunoco is imbued with great power and authority. But it has been said in other contexts that with great power, comes great responsibility. Here, Intervenors request that Sunoco be given the responsibility to abate the risks it has created.

## VI. ARGUMENT

The relief requested by the Intervenors is narrow in scope and is focused to address directly the risks presented by the Sunoco Pipelines and the Sunoco valve stations. It is respectfully submitted that the record in this case establishes that Sunoco's efforts to reduce those risks are inadequate, and this Court may provide relief to correct these deficiencies.<sup>2</sup>

First, (and without repeating the Proposed Findings of Fact as set forth above) the record establishes that Sunoco's safety program increases the dangers facing the school districts, the Township and the community at large from the risks of a pipeline or valve station event near the Glenwood Elementary school site, the Shamona Creek Elementary School site and the Marsh Creek Sixth Grade Center site. Intervenor opinion testimony relating to the assistance provided by Sunoco in the event an emergency response is necessary, establishes that Sunoco does not provide meaningful information or assistance which would enhance the ability to respond quickly and effectively. The evacuation vs. "shelter in place" direction provided by Sunoco is inadequate and could result in more harm being done by the incorrect response itself. And the indirect method of Sunoco's preferred notification of a potential emergency is unwise – Sunoco's delay in providing direct notification to at-risk targets inhibits a prompt response.

Second, these issues can be easily resolved through early warning by Sunoco, direct early notice by Sunoco to the immediately affected areas and a well-developed site-specific Sunoco generated emergency response plan which address the specific risks posed by its pipelines. Sunoco failed to establish any adverse effect on its operations (or the operations of its contractors) if these

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<sup>2</sup> The PUC may determine whether Sunoco's service and facilities "are reasonable, unsafe, inadequate, insufficient, or unreasonable, discriminatory, or otherwise in violation of the Public Utility Code." *Delaware Riverkeeper Network v. Sunoco Pipeline, L.P.*, 179 A.3d 670, 693 (Pa. Cmwlth. 2018) (citing 66 Pa.C.S. § 1505(a))

measures were put into place. Nor did Sunoco offer any compelling reason why these measures, even the supplying of simple information to the Township, would not assist parties responsible for students, patients, first responders and vulnerable members of the community at large who were confronting a pipeline event to take measures to plan and protect themselves.

The Intervenors have met their burden supporting the institution of the sound safety measures set forth above and they should be incorporated into any Order issued in this case.

## **VII. PROPOSED CONCLUSIONS OF LAW**

Intervenors incorporate herein the Proposed Conclusions of Law of Flynn Complainants' Unredacted Post-Hearing Brief and Appendix upon counsel for Sunoco and the Post-Hearing Brief of Intervenor Chester County. Nothing contained in the Intervenor's Joint Post-Hearing Brief contains confidential information and draws upon only the public hearing notes of testimony and exhibits.



## VIII. RELIEF REQUESTED

Intervenors respectfully request that the following relief be incorporated into any Order issued in this matter:

- a. That Sunoco be ordered to perform continued and ongoing line inspection and geophysical testing and analysis in the Intervenors' high consequence areas where the ME Pipelines are operating;
- b. That Sunoco be ordered to provide on a timely basis the results of that line inspection and geophysical testing;
- c. That in the absence of either the above testing or inspection, or the delivery of the result of same, or in the absence of testing or inspection results that establish that the ME Pipelines or the valve station are determined by the Bureau of Inspection and Enforcement ("BI & E") and the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") to not pose any risk to the School District's properties, that the ME Pipelines shall immediately cease operations until such time as Sunoco performs all necessary corrective actions and acquires approval of BI & E and PHMSA prior to receiving Commission approval to resume operation and/or construction;
- d. That Sunoco develop and submit testing and inspection protocols appropriate to ensure the safe operation and maintenance of ME Pipelines in close proximity to Intervenors, to be approved by BI & E and PHMSA on a regular basis;

- e. That Sunoco develop and install a mass early warning notification system at all potentially affected Intervenor sites which would provide immediately notice of a leak, potential explosion or other failure in the pipeline system;
- f. That Sunoco provide an Intervenor-specific public education or emergency response plan designed to inform and educate the relevant population on proper and effective disaster prevention and response (including the engagement of an independent expert to produce studies relating to the impact of the pipeline in Chester and Delaware Counties, including, but not limited to, a remaining life study of ME1 and the 12-inch workaround pipeline), and;
- g. That Sunoco relocate the valve station currently on Dorlan Mill Road and near Glenwood Elementary School.
- h. That Sunoco provide the Township increased information (in writing, to be kept confidential), such as the specific location of facilities along the pipeline for consideration in assessment of emergency preparedness and advanced notice of any planned work or activity along the pipeline.

**IX. CONCLUSION**

Intervenors, the Downingtown Area School District, the Rose Tree Media School District, East Goshen Township and Senator Thomas H. Killion respectfully request that this Court grant the relief requested in the Petition to Intervene. There is no limitation on the Court's ability to institute these common sense and much needed safety measures, which have been supported by the lay and expert testimony in this case. Sunoco provided no prejudice if such relief was granted and it is respectfully submitted that once instituted, there will be little, if any, impact on Sunoco's operations. The only result will be the increased safety and security of the communities directly at risk.

Respectfully submitted,

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Dated: December 16, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that this day I have served a copy of the Intervenor's Post-Hearing Brief upon the persons listed below electronically in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

See attached pages.

Dated: December 16, 2020

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