

Melissa DiBernardino
1602 Old Orchard Lane.
West Chester Pa 19380

January 19, 2021

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;

DiBernardino reply to
SPLP Hearing Brief

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is my Post Hearing
Brief..

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

Sincerely,

Melissa DiBernardino
Pro se
January 19, 2021

January 19, 2021

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*
v.

Docket Nos.C-2018-3006116

:

SUNOCO PIPELINE L.P.,
Respondent.

:

DiBernardino reply to SPLP Hearing Brief

My argument is not as simple as running HVL pipelines through densely populated areas is unsafe only because they are high consequence areas. Counsel has clearly paid little attention to my complaint and every single communication for two years if that is what they believe. While this may have been part of conversations held in the confidential portions of the hearing, being a pro se' complainant, I was forbidden to sign a non disclosure agreement and subsequently left out of critical portions of my own hearing, despite having 'due process rights'. I now digress - It is inherently dangerous to construct and operate these types of pipelines in close proximity to populated areas when there is no adequate or reasonable emergency/evacuation plan or

reliable warning to the public in the event of a pipeline failure. To make matters worse, the use of HDD, causing ground instability in numerous cases, is enhancing the risk of such a failure. Below you can find the Merriam Webster definition of inherently dangerous.

Legal Definition of inherently dangerous

1 : of, relating to, or being an activity or occupation whose nature presents a risk of grave injury without the use of and sometimes despite the use of special skill and care

2 : of, relating to, or being an instrumentality or product that poses a risk of danger stemming from its nature and not from a defect

With or without SPLP's 'defects' of construction or lack of adequate plans, this project is inherently dangerous by nature. According to *49 U.S. Code § 60112*, the commission has the authority to take action on a pipeline facility that is or would be hazardous to life and property. Please see below.

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.

SPLP uses the statement "We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility." This does not necessarily apply to our consolidated complaint. In addition to the PUC regulating SPLP as a public utility and having as much evidence as they desire at their disposal, more than enough evidence has been presented to show that there is no adequate evacuation plan or credible warning system. Even if there were a plan, that plan is useless without the warning and time to carry it out.

While these proceedings have seemed to amount to parties simply repeating themselves over and over, I'll continue to do so in a way that takes up the least amount of time and pages as possible. Without these safety precautions that we are entitled to, SPLP is forcing our state and local government out of compliance with Statute Title 35. This automatically puts SPLP in violation of section 1501 as the project is not safe, adequate or reasonable. While it may not be the responsibility of the commission to see that they become compliant with Title 35, they certainly have the authority and responsibility to take action and stop the construction and operations until SPLP is able to provide safe, adequate and reasonable service.

Counsel goes on to state "Dr. Zamanzadeh's testimony is so equivocal, admittedly speculative, and inconclusive on the issues he did address that it is neither credible nor competent evidence and, therefore, does not meet Complainants' and aligned Intervenors'". It was clear by all of the testimony given that Dr. Zee poured through far more data than any of SPLP's expert

witnesses. SPLP provided minimal data to their experts, in fact, it was just enough for them to come to the 'expert opinion' that SPLP hired for them to provide. These 'experts' had little to no direct knowledge or experience of the project, nor the numerous 'snafus' construction has experienced.

SPLP's so called safety expert, John Zurcher, while their seemingly 'Star witness' for all of their litigation, is quite literally a witness for hire. He is a professional expert witness with zero first hand experience or knowledge of the safety (or lack there of) of the Mariner East Pipeline Project. He was hired as an expert witness, testifying on behalf of the company responsible for the San Bruno pipeline explosion in 2010. That same company was found guilty.

While Sunoco wants to pretend that they know the probability and that it's low, they do not know. And regardless of whether it's low or high, we are not prepared and we should be. Our expert witnesses made that clear.

I cannot help but think of all of the irony and hypocrisy I'm seeing during this pandemic. My children wear masks to school every day while they stay six feet from their friends. I take temps and fill out health forms every day and take other precautions to keep people safe from Covid 19. Meanwhile they're sit 100 feet from a pipeline system without an emergency plan or warning system. We're taking these precautions because of an unprecedented situation we know little about, except for that it's inherently dangerous. This is unavoidable. The unprecedented danger being involuntarily pushed on us is most certainly avoidable.

Respectfully,
Melissa DiBernardino

Thomas J. Sniscak, Esq
tjsniscak@hmslegal.com

Kevin J. McKeon
kjmckeon@hmslegal.com

Whitney E. Snyder
whitneysnyder@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

vkerslake@gmail.com

James J. Byrne, Esq.

Kelly S. Sullivan, Esq.

jjbyrne@mbmlawoffice.com

ksullivan@mbmlawoffice.com

Honorable Elizabeth Barnes

ebarnes@pa.gov