

Melissa DiBernardino
1602 Old Orchard Lane.
West Chester Pa 19380

June 7, 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 Exceptions

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is my Exceptions. .

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

Sincerely,

Melissa DiBernardino
Pro se
June 7, 2021

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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.

:

DiBernardino Exceptions

Below I, complainant, Melissa DiBernardino, have highlighted the reasons I strongly feel that Her Honor, Judge Barnes, did not come to an adequate ruling on our proceedings. I believe that 'kicking the can' and pushing most of the relief requested by the parties to the rule making process only puts us at greater risk for an unneeded length of time. I've listed the authorities and obligations that the ALJ/Commissioners have that don't seem to be used in the order when we desperately need it.

Judge Barnes dismisses multiple relief requests, pushing them off to the rule making process that the Pa PUC started in 2019. This process is still going on now and there is no indication of

how long it will take. An agency can create rules by (1) promulgating a regulation pursuant to its legislative grant of authority, "legislation rulemaking" (2) by issuing interpretive rules like policy statements (interpretive rules and (3) adjudicating cases (quasi judicial). While Judge Barnes is within her authority to do so, it seems as though 'kicking the can' and prolonging this process is simply putting the public in danger for much longer than necessary. This has been one of, if not the most scrutinized project in recent Pennsylvania history. After four years of SPLP having consistent issues with safety concerns, violations, warnings, etc., they still can't get things right. It is completely reasonable to expect the PUC to take every action within their authority to ensure the safety of the public. Plaintiffs are entitled to have claims settled within the confines and timeframes of this case. To simply refer Plaintiffs to a process outside of the case, does not resolve or address the claims.

Administrative adjudication is the exercise of judicial powers by an administrative agency. Legislative body delegates judicial powers to the agency. In the **1977 PENNSYLVANIA HUMAN RELATIONS COMMISSION v. NORRISTOWN AREA SCHOOL DISTRICT** case, the court articulated the distinction between substantive rules which must be promulgated through rule-making procedures and statements of policy which require no such procedures:

*"An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rule-making procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents. A general statement of policy is the outcome of neither a rulemaking nor an adjudication; *350 it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. A general statement of policy, like a press release, presages an upcoming rulemaking or announces the course which the agency intends to follow in future adjudications. The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. . . . A properly adopted substantive rule establishes a standard of conduct which has the force of law. . . . The underlying policy embodied in the rule is not generally subject to challenge before the agency. A general statement of policy, on the other hand, does not establish a 'binding norm'. . . . A policy statement announces the agency's tentative intentions for the future. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued."*[30]

Judge Barnes and the Commission are absolutely within their power to create rules through this process - adjudication.

Below is from Judge Barnes' ORDER GRANTING IN PART AND DENYING IN PART PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, Her Honor quotes the following:
"In Paul v. PECO and Frompovich v. PECO Energy Co., Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018), the Commission noted that pursuant to Section 1501 of the Code, the Commission developed regulations governing electric safety standards. Under these regulations, an electric distribution company (EDC) must use reasonable efforts to properly warn and protect the public from danger. The EDC must also exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and

facilities. See 52 Pa. Code § 57.28(a)(1). Similarly, in the instant case, a pipeline operator utility must comply with Section 59.33, which provides that it should use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a). Whether the actions of Sunoco are reasonable efforts to properly warn and protect the public from danger is an issue over which the Commission has jurisdiction.”

Her honor found SPLP “negligent” In her April 2021 order. This seems far from SPLP making “reasonable efforts to properly warn and protect the public from danger”. Our expert witnesses who, unlike SPLP’s, are directly involved with the project and needing to respond to an emergency, made it clear that they did not have the information needed.

Judge Barnes states that Her Honor does not have the authority to order SPLP to add odorants to their pipelines. This is incorrect. In addition to the above, according to **49 USC 60102** –

(1) Purpose.—The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) Minimum safety standards.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to any or all of the owners or operators of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(6) Exceptions from application.—The requirements of subparagraphs (D) and (E) of paragraph (2) do not apply when—

(C) the Secretary finds, pursuant to section 553(b)(3)(B) of title 5, United States Code, that notice and public procedure are not required.

I cannot think of a more reasonable ask than for an effort to warn and protect the public, than to simply add odorant. Mariner East transports a commodity that is both hazardous liquids and gas, depending on the pressure and temperature. It was discussed in Baker V. Sunoco that Mariner East 2 and 2X are even built to 192 standards. Given the regulation already exists for natural gas pipelines, it is perfectly reasonable to require it for highly volatile liquids pipelines that are artificially made liquid. A logical step towards a warning for the public. There is technology that allows the odorant to be removed prior to shipping the commodity over seas and can be done at Marcus Hook.

I respectfully request that the Commission use their authority/powers under: **PA Title 66 Public Utility Code, Chapter 3. Public Utility Commission, Subchapter B. Investigations and Hearings, Section 331. Powers of Commission and Administrative Law Judges**

(b) Assignment of proceedings; powers of chairman.--All on-the-record proceedings shall be referred to an administrative law judge for decision except that in those proceedings involving a rate determination, safety matters, rulemaking procedures, unopposed applications or matters covered by section 335(a)(1) (relating to initial decisions), the commission may authorize the chairman to assign cases as provided in paragraphs (2) and (3); and, in addition, the commission may authorize the chairman to:

(1) Designate the time and place for the conducting of investigations, inquiries and hearings.

(2) Assign cases to a commissioner or commissioners for hearing, investigation, inquiry, study or other similar purposes.

(3) Assign cases to special agents or administrative law judges for the taking and receiving of evidence.

(4) Direct and designate officers and employees of the commission to make investigations, inspections, inquiries, studies and other like assignments for reports to the commission.

(5) Be responsible through the secretary for specifically enumerated daily administrative operations of the commission.

Section § 335. Initial decisions and release of documents.

(a) Procedures.--When the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case, unless the commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding officer makes an initial decision, that decision then shall be approved by the commission and may become the opinion of the commission without further proceeding within the time provided by commission rule. On review of the initial decision, the commission has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the commission makes the decision in a rate determination proceeding without having presided at the reception of the evidence, the presiding officer shall make a recommended decision to the commission in accordance with the provisions of this part. Alternatively, in all other matters:

(1) the commission may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the commission finds on the record that due and timely execution of the functions imperatively and unavoidably so requires.

I respectfully request that you use this and all jurisdiction above to thoroughly review/investigate all of the cases proceedings and reconsider Judge Barnes order and the relief requested by all parties. The Pennsylvania Public Utility Commission has the authority and obligation to ensure that the utilities they regulate are not hazardous to life, property and the environment. The last four years of this project and the commission's interactions with them and these proceedings has, at the very least, made it hard, if not impossible to make this an acceptable relief. Please use every avenue at your disposal to investigate these proceedings. Thank you.

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.

Respectfully,
Melissa DiBernardino

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