



June 13, 2021

Rosemary Chivetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

Via Electronic Filing

**RE: Flynn et. al. v. Sunoco Pipeline L.P., Dockets P-2018-3006117, C-2018-3006116,
C-2018-3005025, C-2019-3006898, C-2019-3006905 and C-2018-3003605**

Dear Secretary Chiavetta,

Please find the attached Exceptions of the Andover Homeowners' Association, Inc. concerning the above-referenced consolidated docket. A copy of the Certificate of Service indicating service upon parties, intervenors and the Administrative Law Judge is attached. Please let me know if you have any questions. Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

BEFORE THE PENNSYLVAINA PUBLIC UTILITY COMMISSION

Michael Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, : P-2018-3006117
Gerald McMullen, Caroline Hughes and Melissa Haines : C-2018-3006116
Andover Homeowners’ Association, Inc. : C-2018-3003605
Melissa DiBernardino : C-2018-3005025
Rebecca Britton : C-2018-3006989
Laura Obenski : C-2018-3006905

**EXCEPTIONS OF COMPLAINANT AND INTERVENOR
ANDOVER HOMEOWNERS’ ASSOCIATION, INC.**

Complainant and Intervenor, Andover Homeowners’ Association, Inc. (“Association”), respectfully submits these Exceptions to the April 9, 2021 Initial Decision concerning the above referenced dockets served on April 12, 2021.

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INTRODUCTION

On April 9, 2021, the Honorable Elizabeth Barnes issued the Initial Decision of the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned consolidated docket. The Association, both as a complainant and an intervenor in the consolidated action, sought relief for the benefit of the thirty-nine (39) member property owners in Thornbury Township, Delaware County, immediately adjacent to the Chester County and Delaware County boundary. On property of which it is the fee simple owner, the Association is encumbered with

approximately one-half mile of Mariner East I (“ME I”), Mariner East II (“ME II”), Mariner East IIX (“ME IIX”) and the 12-inch Point Breeze to Montello workaround pipeline (“workaround”) (collectively known as the “Mariner East project.” The Association’s property is also encumbered with a valve site for each of these four (4) current and proposed pipelines on its property, which are situated less than 100’ from member homes, busy state roads (SR352 and SR926) and a nearby restaurant.

The Association sought relief in this matter because the Commission has failed to use its authority to regulate pipeline siting and regulate public safety of hazardous, highly volatile liquids pipelines where the operator transports colorless, odorless, heavier than air materials within feet of people’s homes, places of business, roadways and other facilities citizens use every day, all with no credible plan to protect lives and property from continued accidents on Sunoco pipelines.

The Commission fails to utilize its ample authority to regulate these pipelines which the Association believes are unsafe to operate in residential neighborhoods in heavily developed Chester and Delaware Counties, Pennsylvania. As explained below, the Commission could have, but has failed to, utilize its authority to regulate where a hazardous, highly volatile liquids pipeline could be sited. The Association also believes that Sunoco Pipeline L.P. (“Sunoco”) offers a farcical and utterly useless “public awareness program” that cannot be implemented in any way to provide for public safety. The Initial Order allows the thousands of residents burdened with living, working and traveling within a half mile or more of this pipeline to now know that they would be burned or killed in the event of a rupture release. However, the Interim Order does nothing to address how the operator would protect these people now aware that they

could die from this pipeline system. This inadequate response from the Commission does nothing to provide for the public safety for this public utility service, directly in contrast to the Commission's public duty to not endanger the public in the interest of a small number of corporate actors building and using hazardous industrial infrastructure in people's back yards.

**EXCEPTION 1: THE COMMISSION HAS, BUT HAS FAILED TO USE, ITS ADEQUATE SITING
AUTHORITY TO REGULATE ROUTING OF NATURAL GAS LIQUIDS PIPELINES**

The Association objects to the Commission's proposed Opinion in that the Commission falsely claims that it does not have siting authority. Interim Order at *79. Case law clearly requires the Commission to admit that it has siting authority which the Commission refuses to use to regulate highly hazardous natural gas liquids pipelines such as the Mariner East pipelines.

Unfortunately, the Commonwealth Court, and not the Commission, incorrectly granted Sunoco public utility status for the Mariner East project. *See, In re Sunoco Pipeline (Martin)*, 143 A.3d 1000 (Pa. Cmwlt. 2016) (*en banc*). No taking by Sunoco should have been 100 meters of a dwelling pursuant to 15 Pa. C.S. § 1511(b), which does not allow taking of property within that distance of any pipeline. *See, In re Sunoco Pipeline (Katz)*, 165 A.3d 1044, 1047 fn6 (Pa. Cmwlt. 2017). The Commission, which does not have direct jurisdiction over condemnation, should be aware of the General Assembly's disfavoring of placing hazardous pipelines within 100 meters of residential structures. However, the Commission seems perfectly fine to allow these dangerous industrial facilities within several feet of people's homes, apartments, nursing homes, and other occupied structures. The Commission should at least acknowledge that the General Assembly disfavors placing pipelines like the Mariner East system next to people's

homes. The Commissions should inquire about the General Assembly's intent of not wanting a pipeline operator to condemn land for hazardous liquids pipelines so close to people's homes. This case brings the perfect opportunity for the Commission to exercise its power to regulate the pipeline industry in the public's interest. However, Judge Barnes utterly fails to consider the existing law, and the General Assembly's intent, in allowing these hazardous liquids pipelines so close to residences in densely populated Delaware and Chester Counties.

The Commission has oversight authority to regulate condemnations on land subject to conservation easements. *See*, 26 Pa. C.S. § 208. In Section 208, a condemnor must seek Orphans' Court approval to disturb lands protected by a conservation easement unless the Commission or the Federal Energy Regulatory Commission reviews the proposed condemnation. The General Assembly anticipated that the Commission, in conjunction with the Orphans' Court, had at least some oversight authority in publishing Section 208.

The Commonwealth Court has specifically ordered, in a case that ALJ Barnes cites in her proposed Order and Opinion, that the Commission has siting authority that it just refuses to use. *Del. Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670 (Pa. Cmwlth. 2018). "[W]hile it may be true that the PUC has no regulations covering pipeline siting, this is irrelevant." *Id.* at 691. With regard to any municipal attempts to regulate siting and the Commonwealth Court's opinion that only the PUC regulates siting, "[a]ny other conclusion (that the PUC has siting authority) could prevent the PUC from compelling a public utility to render adequate and efficient service, or in anywise control the expansion or extension of the utility's facilities." *Id.* at 696; *citing*, *Duquense Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 293 (Pa. 1954). In *Riverkeeper*, the Court rejected a citing challenge concerning lands in West Goshen

Township, Chester County due to the Commission's unused siting authority. *Id.* at 690. Specifically, the Commission has "field preemption", where the Commission, and only the Commission, can regulate land use associated with pipeline siting. *Id.* at 690-692. Further, the Commission benefits from "conflict preemption", where, as the instrumentality of the Commonwealth government responsible for public utilities, any other body is not competent to regulate aspects of pipeline public utility service where the Commission has authority. *Id.* at 692-694. Further, the Commonwealth Court found that, using common statutory construction analyses common in appellate law, that the Commission is the "entity the legislature intended to have preeminent powers over a given area of regulation." *Id.* at 694.

Specifically, local governments MAY NOT regulate entities under the Commission's jurisdiction regarding land use and siting. *Id.* Now Commonwealth Court President Judge wanted to force Riverkeeper matter to the Commission's docket. *Id.* at 699-700 (concurrence and dissent of Brobson). Sunoco, a party to that matter and the instant complaint, asserted that "the PUC's regulatory authority over public utilities is broad" while arguing to disallow municipal siting authority. *Id.* at 686. Yet now, in another subsequent case, the Commission now says that Sunoco was wrong in arguing that the Commission has siting authority before the appeals court that would hear any appeal to the Commission's pending order in this matter. *Id.*

The Commission must recognize, and stop, this blatant hypocrisy. The Commission must admit that it is afraid to regulate pipeline siting within its actual documented authority and rewrite Judge Barnes' opinion to reflect that the Commission just refuses to do its job. The Commission can no longer ignore even indirect indications of the General Assembly's intent

that pipeline operators should not place hazardous liquids pipelines in neighborhoods. Required changes to the draft opinion include rejecting the analysis that the Commission cannot employ injunctive relief to address the Association's request to enjoin unsafe operations, reversing all conclusions that the Commission cannot exceed Part 195 standards to require that Sunoco must ensure the public safety, and that, as explained before, any steps Sunoco takes could possibly adequately protect the public in furtherance of safe and efficient public utility service.

**EXCEPTION 2: THE COMMISSION HAS, BUT REFUSES TO USE, ITS ADEQUATE SITING
AUTHORITY TO REGULATE ROUTING OF NATURAL GAS LIQUIDS PIPELINES**

The Association objects to the Commission's proposed Opinion in that the Commission utterly refuses to accept its duty to protect the citizens of the Commonwealth from possible mortal harm which Sunoco must now admit to the public. Interim Order at *135-36. The law clearly requires the Commission to "provide for the public safety" concerning public utility service. 66 Pa. C.S. § 1501, 49 U.S.C. § 60116(a). Specifically, the federal statute requires that pipeline operators educate the public about "what steps should be taken for public safety in the event of a pipeline release." 49 U.S.C. § 60116(a). The Commission has the duty to enforce the legal provisions of the pipeline safety rules, as well as "the full intent thereof". 66 Pa. C.S. § 501. Section 501 requires the Commission to implement the full statutory intent of providing for the public safety in the event of a pipeline release, which the Interim Order utterly fails to do.

The Interim Order allows the industry-worst operator of a highly volatile hazardous liquids pipeline to feign protection of public safety by formulaic alleged compliance with

twenty-five year old regulations that do not account for the fact that Sunoco's alleged actions for community members impacted by a release of ethane, propane or butane are simply impossible. The Commission gets tied up in an administrative trap in the weeds of 49 C.F.R. Part 195, forgetting that black letter law requires the operator to "provide for the public safety in the event of a release." Announcing to the world that you will die from a rupture release, the proposed relief in the Interim Order, does not provide any useful response.

The Association's brief cites the example of Sunoco telling impacted citizens to teleport to Ohio as the equivalent of the recommended remedy offered by Judge Barnes. The Association appreciates Judge Barnes forcing the operator to at least admit that people are likely to be burned or to die if Sunoco has a major accident, and notes that if one is burned, or dies, one has not been "safe." 49 C.F.R. § 195.440, requires the operator to inform the public what it must do "for safety" in the event of continued accidents on Sunoco pipelines. Because the word "safety" isn't defined in the rule, Pennsylvania rules of statutory construction require that the term be assigned its ordinary meaning, "the absence of harm." Sunoco, in other words, must inform the public what it must do to avoid harm in the event of an accident. And, as Judge Barnes acknowledges, Sunoco has not done so.

Sunoco has instead provided an implausible, unworkable plan to the public, in which it directs the public to run away on foot. It is not remotely likely that the public can do this. In fact, at recent accidents at Sunoco's Boot Road pump station and its valve site in Middletown Township, residents were aware an accident was underway—yet the public views the "run away on foot" plan as so implausible that no witness at the hearing offered any evidence that any single person attempted to do so.

Sunoco must provide a credible and implementable “public awareness program” that complies with section 195.440. That is, it must tell the public what to do “for safety” in the event of an accident, taking into account the hazard of the materials and the proximity to densely-populated areas, including Andover. If it cannot do so, the Commission has both the authority and the responsibility to obtain Sunoco’s compliance with part 195 by any means necessary, including directing a halt to operations of Sunoco’s current and proposed HVL pipelines. The Commission does not have the authority to ignore the noncompliance, however. Judge Barnes has acknowledged the inadequacy of Sunoco’s public awareness program—the Commission is now required to take the next step and obtain that compliance. The Association briefed this issue in detail and incorporates that brief by reference as if fully restated herein.

The Commission’s interpretation of 49 C.F.R. § 195.440 is useless. It protects nobody. Not the residents, guests, workers, invitees, licensees, visitors or others who may be in the impact radius of a release. Not the first responders who will not turn off the pipeline but can only set a perimeter. Not the governmental or public entities who would be responsible for the care and transport of hundreds or thousands of innocent victims. Literally nobody. The Association asserts that such risks, imposed on innocent land owners and neighbors with no Commission oversight whatsoever, is above and beyond what anyone, especially the Commission with its public safety mandate, should have ever allowed. Such risks are just too much for the public, regardless of what probability of such an event occurring may or may not be. If the Commission wishes to allow irresponsible operators to play fast and loose with people’s lives, it should do so in an open and obvious manner, and not by back-handedly refusing to regulate within its authority.

CONCLUSION

The Association respectfully requests the Commission, if it adopts the Administrative Law Judge's Initial Opinion, has, but refuses to use, its statutory and regulatory authority to regulate siting of highly volatile hazardous liquids pipelines in the Commonwealth of Pennsylvania. By not exercising its siting authority, the Commission endorses the operator's position that it can involuntarily place the public in a position of, in the event of a rupture release, a mass casualty event for which evacuation and protection of the public safety is literally impossible. By adopting the Initial Opinion, the Commission would accept that wholly useless public awareness plans that will never, no matter what compliance with 49 CFR part 195 may occur, protect the public from continued releases of hazardous, highly volatile liquids from the industry-worst operator.

Respectfully Submitted,

June 13, 2021

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CERTIFICATE OF SERVICE

I hereby certify that today I have served the foregoing upon the parties, intervenors, counsel, and Administrative Law Judge listed below by email unless otherwise indicated.

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