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CELEBRATING OVER 80 YEARS

MARK L. FREED
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May 31, 2018

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.
Docket Nos. C-2018-3001451 and P-2018-3001453**

Dear Secretary Chiavetta:

Attached for filing is Senator Andrew E. Dinniman's Preliminary Objections to Sunoco Pipeline, L.P.'s Preliminary Objections to be filed in the above-referenced matter.

Thank you.

Very truly yours,



Mark L. Freed
For CURTIN & HEEFNER LLP

MLF:jmd

Enclosure

cc: The Honorable Elizabeth Barnes (via email: ebarnes@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	Docket No.: C-2018-3001451
	:	Docket No.: P-2018-3001453
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §5.101(a), You are hereby notified to file a written response to the enclosed Preliminary Objections within ten (10) days from service hereof or the Preliminary Objections may be granted. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Mark L. Freed, Esquire
Curtin & Heefner LLP
2005 S. Easton Road, Suite 100
Doylestown, PA 18901

Dated: May 31, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	Docket No.: C-2018-3001451
	:	Docket No.: P-2018-3001453
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

**SENATOR ANDREW E. DINNIMAN’S PRELIMINARY OBJECTIONS TO SUNOCO
PIPELINE, L.P.’S PRELIMINARY OBJECTIONS**

COMES NOW, Petitioner, Senator Andrew E. Dinniman (hereinafter “Senator Dinniman” or “Complainant”), by and through his attorneys, Curtin & Heefner LLP, pursuant to 52 Pa. Code § 5.101(f)(1), and respectfully files these Preliminary Objections to Sunoco Pipeline, L.P.’s Preliminary Objections, and in support thereof avers the following:¹

1. On or about May 21, 2018, Sunoco filed Preliminary Objections to the Amended Formal Complaint in the above-captioned matter.

2. Sunoco’s Preliminary Objection #3 avers that Counts II, III, IV and V of the Amended Formal Complaint should be dismissed for “legal insufficiency” under 52 Pa. Code § 5.22(a)(4). Among other things, Sunoco avers that Counts II through V of the Amended Formal Complaint are legally insufficient under the doctrines of “illegality” and “laches.”

¹Simultaneous with the filing of these preliminary objections, Complainant is filing an Answer to Sunoco’s preliminary objections containing substantive responses to its claims.

3. For the purpose of evaluating the legal sufficiency of a challenged pleading, all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts must be accepted as true. *Mazur v. Trinity Area School Dist.*, 961 A.2d 96, 101 (Pa. 2008); *Marinoff v. Bell Telephone Co. of Pennsylvania*, 75 Pa. PUC 489, 491 (1991). The tribunal cannot consider matters collateral to the complaint, but must limit itself to such matters as appear therein. *Armstrong County Memorial Hosp. v. Department of Public Welfare*, 67 A.3d 160 (Pa. Cmwlth 2013). An effort to supply facts missing from the objectionable pleading makes the preliminary objection in the nature of a demurrer an impermissible “speaking demurrer.” *Id.*

4. “Illegality” is not a proper basis for a preliminary objection. *See DeAngeles v. Laughlin*, 258 A.2d 615 (Pa. 1969). Rather, it is an affirmative defense that should be plead by way of new matter. *Id.*

5. Laches “should never be declared unless the existence thereof is clear on the face of the record.” *In re Marushak’s Estate*, 413 A.2d 649 (Pa. 1980). For the purposes of preliminary objections, the record is the complaint, which must be construed most favorably towards the non-moving party.

Preliminary Objection #1 – Paragraphs 3.a and 23 of Sunoco’s Preliminary Objections Should be Stricken for Legal Insufficiency

6. In its preliminary objections, Sunoco claims that “Count II [of the Amended Formal Complaint] is legally insufficient because the Senator seeks relief that is illegal pursuant to the Public Utility Confidential Security Information Disclosure Act, 35 P.S. §§ 2141.1 *et seq.* . . .” See Sunoco’s Preliminary Objections ¶¶ 3.a., 23.

7. A preliminary objection alleging illegality is, as a matter of law, insufficient. Rather, claims of illegality must be plead as new matter. Accordingly, Paragraphs 3.a and 23 of Sunoco’s Preliminary Objections must be stricken.

Preliminary Objection #2 – Paragraphs 3.b and 31 of Sunoco’s Preliminary Objections Should be Stricken for Legal Insufficiency

8. In its preliminary objections, Sunoco claims that “Count III [of the Amended Formal Complaint] is barred by the doctrine of laches.” *See* Sunoco’s Preliminary Objections, ¶¶ 3.b.; 30-32.

9. In support of this claim, Sunoco claims that it has been “public knowledge since at least 2014 that the ME2/ME2X pipeline would be located in the right-of-way of the ME1 pipeline.” *See* Sunoco’s Preliminary Objections, ¶¶ 3.b., 31. Such a claim is based on information from outside the “face of the record” and is, therefore, legally insufficient to present by way of preliminary objection. Accordingly, Paragraphs 3.b. and 31 of Sunoco’s Preliminary Objections must be stricken.

Preliminary Objection #3 – Paragraphs 3.c and 35 of Sunoco’s Preliminary Objections Should be Stricken for Legal Insufficiency

10. Sunoco alleges that Count IV [of the Amended Formal Complaint] is legally insufficient because there is no applicable regulation governing the depth of the ME1 pipeline . . .” *See* Sunoco’s Preliminary Objections ¶¶ 3.c., 35.

11. In support of this claim, Sunoco relies upon a 2014 PHMSA Advisory Bulletin purportedly addressing conversion of steel pipelines. *See* Sunoco’s Preliminary Objections ¶¶ 3.c., 35. It also relies on statements from one of its experts regarding alleged pressure testing of ME1. *Id.* Such alleged facts are collateral to the complaint and constitute an impermissible

“speaking demurrer.” Accordingly, Paragraphs 3.c. and 35 of Sunoco’s Preliminary Objections must be stricken.

WHEREFORE, Complainant respectfully requests that Paragraphs 3.a, 3.b, 3.c, 23, 31 and 35 of Sunoco’s Preliminary Objections be stricken and that the Commission grant such other relief as it finds to be just and appropriate.

Respectfully submitted,
CURTIN & HEEFNER LLP

By:



Date: May 31, 2018

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:	
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v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on this date, served a true and correct copy of the foregoing on the following:

Via electronic service

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Respectfully submitted,
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Date: May 31, 2018