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August 22, 2018

VIA ELECTRONIC FILING

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

Re: Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P.; Docket No. C-2018-3003605; **SUNOCO PIPELINE L.P.'S PRELIMINARY OBJECTIONS TO THE FORMAL COMPLAINT OF ANDOVER HOMEOWNERS' ASSOCIATION, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections to the Formal Complaint of Andover Homeowners' Association, Inc. in the above-referenced proceeding.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure
cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDOVER HOMEOWNERS'
ASSOCIATION, INC.,

Petitioner,

v.

SUNOCO PIPELINE L.P.,

Respondent.

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Docket No. C-2018-3003605

NOTICE TO PLEAD

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., 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

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: August 22, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDOVER HOMEOWNERS' ASSOCIATION, INC.,	:	
	:	
	:	
Petitioner,	:	
	:	
v.	:	Docket No. C-2018-3003605
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE AMENDED COMPLAINT OF SENATOR ANDREW E. DINNIMAN**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Andover Homeowners Association (Andover HOA) (Complaint) in the above captioned proceeding and requests portions of the Complaint be stricken.

I. INTRODUCTION

1. Portions of the Complaint should be stricken pursuant to 52 Pa. Code § 5.101(a)(7) because the Andover HOA lacks standing to bring claims regarding the safety of SPLP's pipelines outside the geographic area of the Andover HOA. The paragraphs to be stricken include 26, 39(h), 39(i), 51-62, 65, 68, 75, 77, 78, and 80. These paragraphs all make allegations regarding events disconnected from the Andover HOA and its location and property. Thus, the Andover HOA does not have standing to bring claims for the allegations in an attempt to enjoin SPLP's operations or to obtain other relief beyond Andover HOA's property and the pipeline or pipelines on said property. Events and locations having nothing to do with Andover HOA's property or the pipelines

on said property, have no “discernable effect”¹ on the Andover HOA, and thus Andover HOA has no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas.

2. These same portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) because they are scandalous and impertinent. The alleged bad acts are unrelated to the claim alleged – that operations of SPLP’s Mariner East pipelines is unsafe, especially allegations related to other pipelines and non-safety related issues. Such claims are not relevant to the showing Complainant must make, that SPLP violated an applicable regulation over which the Commission has jurisdiction and that shows operation of the Mariner East pipelines in the vicinity of the Andover HOA is unsafe.

I. ARGUMENT

A. Legal Standard

3. The Commission’s regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R.C.P 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

4. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v.*

¹ See *Friends of Lackawanna infra*.

Nationwide Ins. Co., 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

B. Preliminary Objection 1: Andover HOA Does Not Have Standing to Bring Claims Outside of Thornbury Township

5. Pursuant to 52 Pa. Code § 5.101(a)(7), portions of the Complaint should be stricken because the law is clear and free from doubt that the Andover HOA does not have standing to bring certain claims. Andover HOA makes various allegations intended to raise safety issues, but none of those allegations relate to Thornbury Township, where Andover HOA is located. Instead they relate to other states, other pipelines and other Townships and areas of Pennsylvania.

6. The Public Utility Code and controlling precedent make clear that a Complainant *must* have a direct, substantial, and immediate interest in order to pursue any complaint allegation.

[A]ny person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the [PUC] has jurisdiction to administer, or of any regulation or order of the [PUC].

66 Pa.C.S. § 701. To bring a formal complaint under Section 701 (i.e. to have “an interest”), Complainant “must have a direct, immediate and substantial interest.” *See, e.g., Mun. Auth. of Borough of West View v. PUC*, 41 A.3d 929, 933 (Pa. Commw. Ct. 2012) (“In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant ‘*must have a direct, immediate, and substantial interest*’ in the subject matter of the controversy.”) (emphasis added) (quoting *Waddington v. PUC*, 670 A.2d 199, 202 (Pa. Commw.

Ct. 1995)); *Hatchigan v. PECO*, Dkt. No. C-2015-2477331 2016 WL 3997201, at * 6 (Order entered Jul. 21, 2016) (“In order to have standing to pursue a formal complaint before the Commission under Section 701, the complainant *must have a direct, immediate, and substantial interest in the subject matter of the controversy.*”).

7. For example, Andover HOA alleges various incidents and leaks occurred, but none of those incidents were in Thornbury Township. *See, e.g.*, Complaint at ¶¶ 51-62. Andover HOA does not have any interest, let alone a direct, immediate, and substantial interest in bringing claims regarding these events. Notably, some of these events did not even occur in Pennsylvania. Complaint at ¶ 80.

8. Andover HOA does not have standing to bring a claim regarding safety of the pipeline except for safety issues within the geographic region of the Andover HOA. The Commonwealth Court recently issued an opinion in *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, Dkt. No. 656 C.D. 2017 (Pa. Commw. Ct. May 7, 2018), that where standing based on proximity is alleged, there must be “discernable adverse effects” that infringe on the use and enjoyment of property, not just mere proximity or aesthetic concerns. Slip. Op. at 7 (finding homeowners within a quarter to a half mile of landfill had standing to challenge expansion of landfill where they experienced “pungent odors of rotting garbage, dust, bird droppings, and truck traffic directly affecting their properties.”). Here, the allegations relating to incidents outside of Thornbury Township have no discernable adverse effects on Andover HOA. Accordingly, Andover HOA has no standing to bring a Complaint regarding those events.

C. Preliminary Objection 2: Portions of the Complaint should be stricken as scandalous and impertinent

9. The portions of the Complaint discussed above should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) because they are scandalous and impertinent. The alleged bad acts are

unrelated to the claim alleged – that operations of SPLP’s Mariner East pipelines is unsafe, especially allegations related to other pipelines and non-safety related issues. Such claims are not relevant to the showing Complainant must make, that SPLP violated an applicable regulation over which the Commission has jurisdiction and that shows operation of the Mariner East pipelines in the vicinity of the Andover HOA is unsafe.

10. For example, the Complaint alleges inadvertent returns and other Department of Environmental Protection issues that are irrelevant to the question of whether it is safe to operate the Mariner East pipelines. *See, e.g.*, Complaint at ¶¶ 56, 60. Moreover, the Complaint fails to tie any of these allegations to the geographic region at issue, which is the Andover HOA.

11. Likewise, allegations regarding other pipelines are irrelevant to whether it is safe to operate the Mariner East pipelines and these allegations should be stricken. *See, e.g.*, Complaint at ¶ 80. Similarly, allegations regarding the Mariner East lines that involve incidents outside of the Andover HOA vicinity are irrelevant and should be stricken because they allegations regarding past occurrences that have no relationship to whether it is safe to operate the pipelines in the Andover HOA area. *See, e.g.*, Complaint at ¶ 75.

12. Accordingly, Complaint paragraphs 26, 39(h), 39(i), 51-62, 65, 68, 75, 77, 78, and 80 should be stricken because they are scandalous and impertinent.

II. CONCLUSION

WHEREFORE, SPLP respectfully requests paragraphs 26, 39(h), 39(i), 51-62, 65, 68, 75, 77, 78, and 80 of Complaint be stricken.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: August 22, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system and served via overnight mail on the following:

VIA FIRST CLASS AND E-MAIL

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Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.

Dated: August 22, 2018