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December 11, 2018

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116
and P-2018-3006117; **SUNOCO PIPELINE L.P.'S PRELIMINARY
OBJECTIONS TO FORMAL COMPLAINT**

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 Flynn et al. 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**

MEGHAN FLYNN	:		
ROSEMARY FULLER	:		
MICHAEL WALSH	:		
NANCY HARKINS	:		
GERALD MCMULLEN	:		
CAROLINE HUGHES and	:		
MELISSA HAINES	:		
	:		
Complainants,	:	Docket No.	C-2018-3006116
	:		P-2018-3006117
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

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: December 11, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	
CAROLINE HUGHES and	:	
MELISSA HAINES	:	
	:	
Complainants,	:	Docket No. C-2018-3006116
	:	P-2018-3006117
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE FORMAL COMPLAINT OF MEGHAN FLYNN ET AL.**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Formal Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Complaints) in the above captioned proceeding and requests that the Complaint be dismissed, or, in the alternative, portions of the Complaint be stricken.

I. INTRODUCTION

1. The Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101 (a)(4) as the Complaint is legally insufficient to allow further proceedings. The Complaint brings allegations on the adequacy of SPLP’s public awareness program (See Complaint ¶¶ C, D, 11, 36-

40, 43, 44, and 55)¹ and the safety of operations of ME1 and ME2/ME2X (See Complaint ¶¶ A, 10, 24, 26, 35, 61, 62). While it is unclear whether or not Complainants challenged the integrity of ME1, ME2, or ME2X in their complaint, Complainants' counsel confirmed that such issues are not a part of their case,² and thus any allegations as such are legally insufficient as plead to support the remainder of their claims (See Complaint ¶¶ A, 10, 24, 26, 35, 61, 62). The Commission has already ruled on the very allegations Complainants bring. First, the Commission decided that SPLP's public awareness program for ME1 does not merit injunction of its pipelines. *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 *et al.*, June 15, 2018 Order at pp. 5-6, 48, Ordering Paragraphs 1, 3, 6, August 2, 2018 Order at pp. 10, 20-22, 24-25. Second, for the ME2 and ME2X pipelines currently under construction, SPLP is not required to develop a written Pipeline Integrity Management Plan until one year after each begins operation. 49 C.F.R. § 195.452(b). Third, the Commission has already decided that ME1 is safe and any allegations to the contrary are legally insufficient to warrant the relief sought. June 15, 2018 Order at 34. These orders are *prima facie evidence* of the facts found and remain conclusive on all parties. See 66 Pa. C.S. § 316 (“Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie evidence* of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.”). Therefore, the Complaint should be dismissed in the entirety pursuant to 52 Pa. Code §

¹ The Complaint made averments in the introduction section that warrant response by Respondent. Therefore, SPLP has labeled these paragraphs as “A-D.”

² At the November 29, 2018 hearing on the emergency petition, Petitioner's Counsel failed to put forth any evidence on the safety and integrity of the ME1, ME2, or ME2X pipelines. Transcript at page 351-352. Petitioner's Counsel agreed that Petitioner's did not “provide any evidence on the integrity as it relates to Mariner East 1, Mariner East 2, Mariner East 2X, the 12-inch line or any valve stations, that that is not something that [SPLP] are required to put any evidence on because they have not put on any evidence on that issue.”

5.101 for the legal insufficiency of its claims, which all have been recently decided by the Commission.

2. The Complaint should also be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because the Complainants have failed to conform their complaint with the governing rules. Throughout their complaint, Complainants rely on scientific assertions, opinions, and alleged facts which are not supported by any expert verification. Complaint at ¶¶ 21, 22, 23, and 41. These paragraphs form the very basis of their complaint, that the characteristics of the Mariner East Project require a public outreach program sufficient to warn the public. Complainants are not experts in pipeline safety, and any factual averments used for the basis of their Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36. Without this basis, the Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

3. The Complaint should also be stricken in its entirety pursuant to 52 Pa. Code § 5.101(a)(5) because Complainants failed to join necessary parties that will be directly adversely affected if the relief requested is granted, including SPLP's current and future shippers, royalty owners who will lose their payments if the petroleum products from their land is shut in because it cannot be delivered due to enjoining operation/constructions of the Mariner East pipelines, and the businesses and labor force that rely on deliveries or future deliveries from the Mariner East pipelines, such as the Marcus Hook Industrial Plant. These are all parties who will sustain substantial injury to their personal and property interests and whom under the Commission's rules must be joined as a prerequisite to their rights being affected due to this action on an interim and permanent basis being adjudicated.

4. In the alternative, portions of the Complaint should be stricken pursuant to 52 Pa. Code § 5.101(a)(7) because Complainants have failed to aver facts to show they have standing to bring certain claims regarding SPLP's pipelines. Complaint at ¶¶ 12-16. The paragraphs to be stricken include Complaint ¶¶ 26-28, 41, 42, 45-48, 73, and 76. These paragraphs make allegations regarding events with no factual averments to connect such events to the geographic area surrounding Complaints alleged basis for standing. Thus, Complainants have not sufficiently pled standing to bring claims for these allegations in an attempt to enjoin SPLP's operations. Events and locations with no averred relationship to the Complainant's alleged basis for standing have no "discernable effect"³ on Complainants, and thus Complainants have no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas. The alleged acts or events are unrelated to the claim alleged – that operations of SPLP's Mariner East public awareness program is inadequate, especially allegations related to other pipelines and non-safety related issues. Such claims are not relevant to the showing Complainants must make and therefore should be stricken.

5. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) for failure to comply with requirements for formal complaints at 52 Pa. Code 5.22(a)(7) ("a document, or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the

³ See *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018)

document or material part thereof”). The Complaint relies on various documents but fails to attach such documents. Accordingly, Complaint ¶¶ 25, 46-48 should be stricken.

6. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(1) for lack of Commission jurisdiction over the allegations. Complainants allege inadequacies with the Chester and Delaware Counties emergency response agencies and the services they provide regarding “reverse 911” capabilities. See Complaint ¶¶ 49, 51, and 52. The Commission does not have jurisdiction over these entities, nor does SPLP have any control over the procedures and decisions of these agencies. Therefore, Complaint ¶¶ 49, 51, and 52 should be stricken.

I. ARGUMENT

A. Legal Standard

7. 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).

8. 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. 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 Objections Warranting Complete Dismissal

1. Preliminary Objection 1: The Complaint is legally insufficient and should be dismissed pursuant to 52 Pa. Code § 5.101 (a)(4).

9. The Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101 (a)(4) as the Complaint is legally insufficient to allow further proceedings.

10. First, the Complaint brings allegations on the adequacy of SPLP's public awareness program. See Complaint at ¶ C (alleging that SPLP's public notice is inadequate); ¶ D (alleging the PUC must review SPLP's alleged inadequate public awareness program); ¶ 11 (alleging that SPLP is operating ME1 without an adequate emergency notification system or legally adequate emergency management plan); ¶ 36 (alleging SPLP's sole, one-size-fits-all emergency response plan); ¶ 37 (alleging an early version of SPLP's public awareness program document contents); ¶ 38 (alleging a list of SPLP's inadequate public awareness program contents); ¶ 39 (alleging SPLP failed to provide a credible and workable plan for the self-evacuation of at-risk individuals); ¶ 40 (alleging SPLP failed to provide any legally adequate guidance); ¶ 43 (alleging SPLP failing to provide proper public awareness and intentionally withholding crucial information from the public); ¶ 44 (alleging SPLP failed to provide a legally adequate public awareness program); and ¶ 55 (alleging that "no emergency response plan can be deemed safe or legally adequate").

11. The Commission has already ruled on the very allegations Complainants bring. The Commission decided that SPLP's public awareness program for ME1 does not merit injunction of its pipelines. *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-

3001453 *et al.*, June 15, 2018 Order at pp. 5-6, 48, Ordering Paragraphs 1, 3, 6, August 2, 2018 Order at pp. 10, 20-22, 24-25. The Commission determined that SPLP's public awareness program for ME1 is adequate for the continued operation of ME1. *Id.* For the ME2 and ME2X pipelines which are currently under construction, SPLP is not required to develop a written Pipeline Integrity Management Plan until one year after each begins operation. 49 C.F.R. § 195 .452(b).

12. Second, the Commission has already decided that ME1 is safe and any allegations to the contrary are legally insufficient to warrant the relief sought. June 15, 2018 Order at 34.

13. Third, while it is unclear whether Complainants challenged the integrity of ME1, ME2, or ME2X in their complaint, Complainants' counsel confirmed that such issues are not a part of their case, and thus any allegations as such are legally insufficient as plead to support the remainder of their claims. See Complaint ¶ A (allegations regarding SPLP's repurposed "1930s-era" HVL pipeline, ME1); ¶ 10 (alleging belief of risk from ME1, ME2, and/or ME2X and any "HVL pipelines which [SPLP] may yet attempt to construct"); ¶ 24 (alleging ME1, ME2, and/or ME2X poses an "unnecessary and unacceptable risk to public safety"); ¶ 26 (alleging ME1, ME2, and/or ME2X valve site near a restaurant endangers patrons, workers, and hundreds of neighboring residences); ¶ 35 (alleging SPLP has not maintained adequate and safe service and facilities); ¶ 61 (alleging ME1, ME2, and/or ME2X poses a danger to Complainants); and ¶ 62 (alleging ME1, ME2, and/or ME2X "have leaked multiple times in the past and are likely to leak again").

14. The June 15, 2018 and August 2, 2018 orders are *prima facie* evidence that SPLP's public awareness and emergency response programs are adequate, and the Commission's findings are binding and case dispositive. *See* 66 Pa. C.S. § 316 ("Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the

facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.”).

15. Under the standards discussed above, Complainants have failed to sustain their case. It is free and clear of doubt that the Commission has already ruled on the exact issues Complainants alleged. By the record, dismissal of the issues and claims is clearly warranted given the governing decisions by the Commission on the same issues.

16. Therefore, the Complaint should be dismissed in the entirety pursuant to 52 Pa. Code § 5.101 for the legal insufficiency of its claims.

2. Preliminary Objection 2: The Complaint fails to conform with the governing rules and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

17. The Complaint should also be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because the Complainants have failed to conform their complaint with the governing rules. Throughout their complaint, Complainants rely on scientific assertions, opinions, and averments which are not supported by any expert verification. Complaint at ¶¶ 21, 22, 23, and 41.

18. These paragraphs form the very basis of their complaint, that the characteristics of the Mariner East Project require a public outreach program sufficient to warn the public.

19. Complainants are lay persons, not experts in pipeline safety, and any factual averments used for the basis of their Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36.

20. Therefore, the Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

3. Preliminary Objection 3: The Complaint fails to join necessary parties and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

21. Pursuant to 52 Pa. Code § 5.101(a)(5), the Complaint should be dismissed because it fails to join necessary parties.

22. “A necessary party is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights.” *Pennsylvania Fish Commission v. Pleasant Tp.*, 388 A.2d 756, 759 (Pa. Commw. Ct. 1978).

23. SPLP’s shippers on the Mariner East pipelines are necessary parties because they, as public utility customers, have a right to obtain service from SPLP. The relief requested here of enjoining operation of SPLP will infringe upon those rights. Regarding ME2, SPLP held an open season and obtained binding contractual commitments to serve certain shippers. Delaying the operation of ME2 infringes on those contractual rights. Moreover, some of those shippers, such as Range Resources, pay royalties to landowners for their mineral rights. If injunction of operation/construction of the Mariner East pipelines is granted, product may become shut-in, meaning those royalty payments will stop. Likewise, a large labor force and other businesses depend on deliveries from the Mariner East Pipelines, such as the Marcus Hook Industrial Complex. Shutting down the pipelines infringes on their ability to operate their businesses.

24. The people and businesses that depend on the Mariner East public utility service are all necessary parties. The Complaint failed to join these parties, and these parties have not been given formal notice of the Complaint given it was not required to be published in the Pennsylvania Bulletin. Accordingly, the Complaint should be dismissed for failure to join necessary parties.

C. In the Alternative, Portions of the Complaint Should be Stricken

1. Preliminary Objection 4: Complainants do not have standing 52 Pa.

Code § 5.101(a)(7) to bring claims outside of their locations in Chester and Delaware Counties.

25. 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 Complainants have not alleged facts to show that they have standing to bring certain claims. Complainants make various allegations intended to raise safety issues, but none of those allegations provide factual averments to relate to the area of Chester and Delaware Counties where Complainants claim standing. Complaint at ¶ 26 (allegations regarding Duffers, a restaurant that make no attempt to relate such claims to geographic area for which Complainants claims standing); ¶ 27 (allegations regarding various schools including Glenwood Elementary School and Marsh Creek Sixth Grade Center that make no attempt to relate such claims to geographic area for which Complainants claim standing); ¶ 28 (allegations referring to “many other locations” and “any location along ME1 or the workaround pipeline” that make no attempt to relate such claims to geographic area for which Complainants claim standing); ¶ 41 (allegations referring Lawrence and Andover, MA, unrelated to the geographic area for which the Complainants claim standing); ¶ 42 (general allegations on behalf of three school districts, many municipalities, numerous state legislators, and several thousand Pennsylvania residents with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 45 (allegations referring to events in Carmichael, Mississippi with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 46 (allegations referring to events in Lively, Texas with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 47 (allegations referring to events in Franklin County, Missouri

with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 48 (allegations referring to events of “many other serious accidents” with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 73 (general allegations on behalf of all dwellings, schools, and elder care facilities and facilities for adults with disabilities within 50 feet of the pipeline with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 76 (general allegations on behalf of all private dwellings within 50 feet of the pipelines in Chester and Delaware Counties with no attempt to relate to the geographic area for which the Complainants claim standing).

26. 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”), Complainants “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.*”).

27. For example, Complainants allege various incidents and leaks occurred, but none of those allegations provide factual averments to relate them to the geographic areas of Chester and Delaware Counties where Complainants allege standing. *See, e.g.*, Complaint at ¶ 41 (allegations referring Lawrence and Andover, MA, unrelated to the geographic area for which the Complainants claim standing); ¶ 45 (allegations referring to events in Carmichael, Mississippi with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 46 (allegations referring to events in Lively, Texas with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 47 (allegations referring to events in Franklin County, Missouri with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 48 (allegations referring to events of “many other serious accidents” with no attempt to relate to the geographic area for which the Complainants claim standing). Complainants have not shown 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. Also, Complainants allege interests on behalf of a wide array of parties and entities. *See, e.g.*, Complaint at ¶ 26 (allegations regarding Duffers, a restaurant that make no attempt to relate such claims to geographic area for which Complainants claims standing); ¶ 27 (allegations regarding various schools including Glenwood Elementary School and Marsh Creek Sixth Grade Center that make no attempt to relate such claims to geographic area for which Complainants claim standing); ¶ 28 (allegations referring to “many other locations” and “any location along ME1 or the workaround pipeline” that make no attempt to relate such claims to geographic area for which Complainants claim standing); ¶ 42 (general allegations on behalf of three school districts, many municipalities, numerous state legislators, and several thousand Pennsylvania residents with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 73 (general

allegations on behalf of all dwellings, schools, and elder care facilities and facilities for adults with disabilities within 50 feet of the pipeline with no attempt to relate to the geographic area for which the Complainants claim standing); ¶ 76 (general allegations on behalf of all private dwellings within 50 feet of the pipeline in Chester and Delaware Counties with no attempt to relate to the geographic area for which the Complainants claim standing). Complainants do not have any interest, let alone a direct, immediate, and substantial interest in bringing claims regarding these parties. Notably, these generalizations and unrelated businesses, schools, municipalities, senior living facilities, etc., are all outside the scope of Complainants alleged standing.

28. Complainants do not have standing to bring a claim regarding the pipeline except for issues within the geographic regions for which they claim standing. The Commonwealth Court recently issued an opinion in *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525, 534–35 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018), holding 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.”).

29. Accordingly, Complainants have not alleged facts to show they have standing to bring a Complaint regarding Complaint paragraphs 26-28, 41, 42, 45-48, 73, and 76 and as such they should be stricken pursuant to 52 Pa. Code § 5.101(a)(7).

2. Preliminary Objection 5: Portions of the Complaint should be stricken for failure to comply with requirements for formal complaints pursuant to 52 Pa. Code § 5.101(a)(2).

30. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(2) for failure to comply with the requirements for formal complaints at 52 Pa. Code 5.22(a)(2), which states:

a document, or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof.

31. The Complaint relies on documents but fails to attach such documents. Complaint at ¶ 25 (allegations regarding a Citizens Risk Assessment that is not attached) and ¶¶ 46-48 (allegations regarding National Transportation Safety Board Reports). This clearly fails to comply with the requirement to attach documents, which is required to provide fair notice to SPLP of the allegations against it.

32. Accordingly, Complaint paragraphs 25, 46-48 should be stricken for failure to comply with the requirements for formal complaints for failure to attach a relied upon document.

3. Preliminary Objection 5: Portions of the Complaint should be stricken for lack of Commission jurisdiction over the averments pursuant to 52 Pa. Code § 5.101(a)(1).

33. Pursuant to 52 Pa. Code § 5.101(a)(1), portions of the Complaint should be stricken because the law is clear and free from doubt that the Commission does not have jurisdiction over allegations unrelated to public utilities. Complainants allege inadequacies with the Chester and

Delaware Counties emergency response agencies and the services they provide regarding “reverse 911” capabilities. See Complaint paragraphs 49, 51, and 52.

34. The Commission as a regulatory body only has the powers that the General Assembly grants to it. *See, e.g., W. Pennsylvania Water Co. v. Pennsylvania Pub. Util. Comm'n*, 370 A.2d 337, 339 (Pa. 1977) (Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute.). The Commission only has the power to entertain complaints by third parties against “public utilities.” For complaints, 66 Pa. C.S. § 701 provides:

The commission, *or any 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 commission has jurisdiction to administer, or of any regulation or order of the commission*. Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

66 Pa. C.S. § 701 (emphasis added).

35. The Commission does not have jurisdiction over complaints regarding Chester and Delaware Counties emergency response agencies, as they are not “public utilities” as defined in the Code.

36. Further, SPLP does not have any control over the procedures and decisions of these agencies. The processes, decisions, and management of these emergency response agencies is completely outside the control of SPLP.

37. Accordingly, Complaint paragraphs 49, 51, and 52 should be stricken because the Commission lack jurisdiction over the averments.

II. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Complaint be dismissed in its entirety under 52 Pa. Code § 5.101(a)(4) and (a)(2) because the complaint is legally insufficient as governed by prior commission rulings to allow further proceedings and the complaint failed to conform with the governing rules requiring expert verification of scientific and technical assertions. In the alternative, SPLP respectfully requests that portions of the Complaint be stricken, including paragraphs 26-28, 41, 42, 45-48, 73, and 76 for lack of standing under 52 Pa. Code § 5.101(a)(7), paragraphs 25, 46-48 under § 5.101(a)(2) for failure to attach a relied upon document, and paragraphs 49, 51, and 52 for lack of Commission jurisdiction over the allegations.

Respectfully submitted,



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Whitney E. Snyder, Esq. (PA ID No. 316625)
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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: December 11, 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 ELECTRONIC AND FIRST CLASS

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Pinnola & Bomstein
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