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January 24, 2019

VIA ELECTRONIC FILING

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

Re: Rebecca Britton v. Sunoco Pipeline L.P.; Docket No. C-2019-3006898;
SUNOCO PIPELINE L.P.'S PRELIMINARY OBJECTIONS

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections 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**

REBECCA BRITTON,

Complainant/Petitioner,

v.

SUNOCO PIPELINE L.P.,

Respondent.

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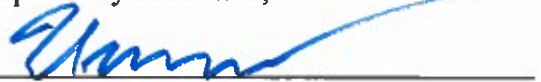
Docket No. C-2019-3006898

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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Dated: January 24, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

REBECCA BRITTON,	:	
	:	
Complainant/Petitioner,	:	
	:	
v.	:	
	:	Docket No. C-2019-3006898
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	
	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE FORMAL COMPLAINT OF REBECCA BRITTON**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Formal Complaint¹ of Rebecca Britton (Complainant) 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)(2) because the Complainant has failed to conform the Complaint with governing rules concerning verification of allegations. Throughout the Complaint, Complainant relies on scientific assertions, opinions, and alleged facts which are not supported by any expert verification. *See* Complaint at Paragraphs G, H, L, 1, 3, 4, 6, 10, 15, 16, 17, 25, 29, 30, 32, and Relief Requested 3, 11, and 12. These paragraphs form the very basis of the Complaint. Complainant is not an expert in pipeline safety, risk, public awareness, or pipeline siting and any averments used for the basis of the Complaint consisting of technical conclusions require expert

¹ The Complainant did not properly number her complaint. In order to prepare a response, SPLP numbered the complaint. *See Attachment A.*

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.

2. In the alternative, portions of the Complaint should be stricken pursuant to 52 Pa. Code § 5.101(a)(1) for lack of Commission jurisdiction over the allegations. Complainant alleges: violations of various Health and Safety Statutes (*See* Complaint Paragraphs J, 2, 5, 8, 11, 20, 21, 37-46, and Relief Requested 13 and 14), violations of various Environmental Statutes, Regulations and Public Use of Lands (*See* Complaint Paragraphs G, H, M, 15-19, 22-28, 30, 31, 49, and Relief Requested 6-10), and other agency or entity actions (*See* Complaint Paragraphs H, N, 15, 25, 29, 34, 36, and Relief Requested 1). These statutes, regulations, or other entity actions are outside the jurisdiction of the Commission. *See* 66 Pa. C.S. § 701. The Commission cannot hear a complaint for a claimed violation of a statute or regulation that is beyond its jurisdiction, including a pseudo-appeal of a separate agency action. *See* 52 Pa. Code § 5.21. Therefore, Complaint Paragraphs G, H, J, M, N, 2, 5, 8, 11, 15-28, 29-31, 34, 36-38, 40-46, 49, and Relief Requested 1, 6-10, 13, and 14 should be stricken.

3. Portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(7) because Complainant lacks standing to bring claims regarding SPLP's pipelines outside the geographic area of her residence, on behalf of other individuals, schools or entities, general public concerns, or regarding remote events where Complainant's children "will attend school, kindergarten through 12th grade..." for which Complainant claims standing based on her children's future attendance at those schools. Complaint at Paragraph G (emphasis added); *See also* Complaint Paragraph B. The Paragraphs to be stricken include G-I, L, N, 3, 4, 6, 9, 12, 13, 30-32, 35, 38, 39, 46, 47, 49, and Relief Requested 4, 5, and 12. These paragraphs all make allegations regarding areas disconnected from the geographic area surrounding Complainant's residence or make allegations of general public concern. Complainant does not have standing to

bring claims for these allegations. Events and locations regarding other individuals, schools or entities, or having nothing to do with the Complainant's property, or regarding remote, future events have no "discernable effect"² on Complainant. Events of general public concern likewise do not give rise to "substantial interests."³ Accordingly, Complainant has no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas. Further, the relief in this proceeding should be limited based on Complainants' geographic standing. As Your Honor recognized in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), "Complainant does not have standing to represent other individuals, schools or entities." In that proceeding, Your Honor limited the relief requested to the Township in which Complainant resides, and Your Honor should do the same here. *Id.* Accordingly, Complaint paragraphs G-I, L, N, 3, 4, 6, 9, 12, 13, 30-32, 35, 38, 39, 46, 47, 49, and Relief Requested 4, 5, and 12 should be stricken.

4. Complaint Paragraphs 1-3 and Relief Requested 1 should be stricken in its entirety pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency of a pleading. Complainant makes allegations regarding early warning systems under CFR 195.452, while at the same time admitting that the regulation "does not say specifically that, SPLP must have an early warning system for the public." *See* Complaint Paragraph 2. Complainant then goes on to request relief that the Commission determine "...if, service is safe, and reasonable to the public, without a SPLP created early warning system..." *See* Complaint Paragraph Relief Requested 1. This relief is legally insufficient because of Complainant's own admissions in the pleading and the lack of

² *See Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018)

³ For an interest to be substantial, "there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 at 282 (1975)

regulatory requirement for such alarm system. Accordingly, Complaint Paragraphs 1-3 and Relief Requested 1 should be stricken.

5. Complainant's Exhibit 2, attached to her complaint, should be stricken as it includes impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2). Complainant's Exhibit 2 contains a SPLP "Emergency Response Procedures Manual" for a pipeline in Sarnia, Ontario, Canada. This manual was prepared under the laws, regulations, and requirements of a foreign nation and its contents have no bearing on Complainant's claim. Complainant's Exhibit 2 is impertinent matter which has no basis in a complaint under the PA Public Utility Code, or even U.S. Federal Pipeline Regulations. Accordingly, Complainant's Exhibit 2 should be stricken as it includes impertinent matter that cannot form the basis of any finding on this Complaint.

II. ARGUMENT

A. Legal Standard

6. 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).

7. 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 fails to conform with the governing rules and should be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

8. The Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because it does not conform with the governing rules concerning verifications. The Complaint relies on scientific assertions, opinions, and averments that are not supported by any expert verification. *See* Complaint at Paragraphs G, H, L, 1, 3, 4, 6, 10, 15, 16, 17, 25, 29, 30, 32, and Relief Requested 3, 11, and 12. These paragraphs form the very basis of the Complaint.

9. Complainant is a lay person, not an expert in pipeline safety, and any allegations used for the basis of her Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36.

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

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

2. Preliminary Objection 2: Portions of the Complaint should be stricken for lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1).

11. 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 the allegations. Complainant alleges violations of various Health and Safety Statutes and Regulations (i.e. The Emergency Management Services Code at 35 Pa.C.S.A. §

7101 *et seq.*, The Stafford Disaster Relief and Emergency Assistance Act at 42 U.S.C. § 5121 *et seq.*, etc.), of various Environmental Statutes, Regulations, and Public Use of Lands (i.e. PA Title 25, Chapter 105 Dam Safety and Water Management 105.1 *et seq.*, use of public lands, state parks, water supplies, 49 CFR 195.6 – Unusually Sensitive Areas, etc.), and of other agency or entity actions (i.e. DEP Permits, “ALL state agencies” duties, PA School Code at 22 Pa. Code § 21.41, etc.). *See* Complaint Paragraphs relating to Health and Safety Statues and Regulations including The Emergency Management Services Code at 35 Pa.C.S.A. § 7101 *et seq.* Paragraphs J (alleging Title 35 applies to public utilities); ¶ 2 (alleging, generally, the duties of the Pennsylvania Emergency Management Agency (PEMA) under Title 35); ¶ 5 (alleging, generally, the duties of the PEMA under Title 35); ¶ 8 (alleging duties of political subdivisions under Title 35); ¶ 11 (alleging duties of political subdivisions, PEMA under Title 35); ¶ 20 (alleging application of Title 35 § 721.2 regarding drinking water); ¶ 21 (alleging Title 35 § 7701(b) requires DEP and PEMA shall continue study structures and facilities for susceptibility to catastrophic occurrence); ¶ 37 (alleging, generally, the duties of Political Subdivisions and PEMA under Title 35); ¶ 38 (alleging the Mariner East Pipeline “does not currently meet the requirement of having ‘entire’ public that is warned and informed” under Title 35); ¶ 40 (alleging, generally, the duties of PEMA); Relief Requested ¶ 13 (requesting the Commission to determine if SPLP service conforms with Title 35); *See also* The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. § 5121 *et seq.*) Paragraphs 40 (alleging Title 35’s obligation to comply with the Stafford Act); ¶ 41 (alleging responsibilities of governments to carry out the Stafford Act pursuant to “U.S.C. Title 44 CFR”); ¶ 43 (alleging Stafford Act mitigation planning requirements); ¶ 44 (alleging Stafford Act mitigation planning requirements); ¶ 45 (alleging government responsibilities under the Stafford Act); ¶ 46 (alleging SPLP’s “lack of information provided” violates PEMA’s duties under the Stafford Act); and

Relief Requested ¶ 14 (requesting “the PA PUC MUST determine, if, current PEMA hazard insurance policy is safe”); *See also* U.S.C. Title 44 CFR – Emergency Management and Assistance Paragraph 42 (alleging standard state mitigation plan application to the Complaint). *See* Complaint Paragraphs relating to Environmental Statutes, Regulations, and Public Use of Lands including 49 CFR 195.6 – Unusually Sensitive Areas Paragraphs ¶ 18 (alleging, generally, the definition of Unusually Sensitive Areas and Source Water Protection areas); ¶ 19 (alleging, generally, the definitions of Unusually Sensitive Areas); Relief Requested ¶ 6 (requesting that the Commission determine if “the Mariner East Pipeline System is comparable under CFR 195.6” and if SPLP can support “backup water supplies”); *See also* PA Title 25, Chapter 105 Dam Safety and Water Management 105.1 et seq. Paragraphs ¶ 22 (alleging the purpose of PA Title 25 at § 105.2); ¶ 23 (alleging value and function of wetlands as defined under Title 25); ¶ 25 (alleging PA DEP Permits under chapter 105 were insufficient because they did not look for “potential leaks during operations”); ¶ 26 (alleging that the Marsh Creek State Park and Watershed are “wetlands... of significant value exhibiting 2 qualifiers under PA Code § 105.17”); ¶ 30 (alleging “assessment, mitigation, and preparedness plans” must be put in place in line with § 105.17); Relief Requested ¶ 8 (requesting the Commission to determine if SPLP’s service is “safe adequate and reasonable given the lack of study to dam encroachments”); *See also* PA Title 17, Chapter 17 State Parks Natural Areas – Statement of Policy et seq. Paragraph 24 (alleging, generally, the policy statement for State Parks and Natural Areas under Title 17); *See also* general claims to use of public lands, state parks, water supplies Paragraphs G (alleging reliance on Marsh Creek Lake Reservoir’s water supply); ¶ H (alleging, generally, pipeline proximity to schools, public water supplies, and the alleged need for mitigation and preparedness planning); ¶ M (alleging “the PUC is only, *one*, state agency meant to define ‘safe, adequate and reasonable’” in regards to risks involuntarily imposed on taxpayers and their public lands); ¶ 15

(alleging Mariner East system “traverse[s] the Marsh Creek Lake and Reservoir in, at least, 4 locations,” and general allegations of the watershed’s characterization by DEP); ¶ 16 (alleging “the 12 inch line is also near the dam”); ¶ 17 (alleging application of Title 17 as the “first consideration”); ¶ 26 (alleging, generally, the characteristics of the Marsh Creek Watershed, and threatened or endangered flora or fauna); ¶ 27 (alleging concerns of water scarcity in the event of a leak within the watershed, and concerns of ignitions near the dam); ¶ 28 (alleging inherent public use of Marsh Creek State Park as a citizen of Pennsylvania); ¶ 31 (alleging concerns for drinking supply, public water, home value, and “lack of regulations, lack of study of subsurface release at low depths, and a lack of mitigation”); ¶ 49 (alleging lack of mitigation to protect common property); Relief Requested ¶ 7 (requesting the Commission determine whether service is safe, adequate and reasonable given the “lack of study for ‘resource scarcity’ to the reservoir and large populations that depend on the water resource”); Relief Requested ¶ 9 (requesting the Commission determine if transporting NGL’s through a state park is safe, adequate and reasonable); Relief Requested ¶ 10 (requesting the Commission determine if “it is safe, adequate and reasonable to transmit NGL’s through the state park given the mission of the park and the protections that is outline by Title 17”). *See* Complaint Paragraphs relating to other agency or entity actions including Chester County Emergency Services, DEP Permits, “ALL state agencies” duties and Political Subdivisions Paragraphs H (alleging “lack of study from ALL state agencies with emergency management duties”); ¶ N (alleging “lack of study by ALL state agencies involved in land use, hazard planning and mitigation”); ¶ 15 (alleging duties of the Chester County Water Resource Authority and the Department of Environmental Protection); ¶ 25 (alleging PA DEP permitting process inadequacies as “these permits only looked at installation of pipeline not potential leaks during operations”); ¶ 29 (alleging PA DEP permit inadequacies as they did not assess mitigation, prevention or cleanup of an NGL release); ¶ 36

(alleging responsibilities of the Chester County Emergency Services Dept, and it's failure to include the "possibility of a large release of NGL's"); ¶ 38 (alleging Chester County emergency management services do not meet the requirement "to prepare and mitigate 'all hazards'"); Relief Requested ¶ 1 (requesting the Commission to review whether "our local political subdivisions have implemented" early warning systems); *See also* PA School Code - 22 Pa. Code § 21.41 Paragraph 34 (alleging, generally, the requirements of the School Code for School Siting requirements of 22 Pa. Code § 21.41).

12. 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" within the powers granted to it by the General Assembly. 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).

13. The Commission does not have jurisdiction over complaints regarding the Health and Safety Statutes and Regulations cited, over the Environmental Statutes, Regulations and the Public Use of Lands cited, or over other agency or entity actions. The Commission does not

have jurisdiction to enforce: 35 Pa. C.S.A. § 7101 *et seq.*; 42 U.S.C. § 5121 *et seq.*; U.S.C. Title 44 CFR; 49 CFR 195.6; PA Title 25, Chapter 105, 105.1 *et seq.*; PA Title 17, Chapter 17 *et seq.*; 22 Pa. Code § 21.41; or actions or duties of other state agencies. Further, the Commission does not have jurisdiction over complaints regarding the activities of political subdivisions and Chester County’s emergency response agencies.

14. Moreover, the processes, decisions, and management of these other agencies, political subdivisions, and emergency response agencies are completely outside the control of SPLP.

15. Accordingly, Complaint Paragraphs G, H, J, M, N, 2, 5, 8, 11, 15-28, 29-31, 34, 36-38, 40-46, 49, and Relief Requested 1, 6-10, 13, and 14 should be stricken because the Commission lacks jurisdiction over the statutes or regulations allegedly violated, the subject matter of portions of the complaint, or other entities actions.

3. Preliminary Objection 3: Complainant does not have standing pursuant to 52 Pa. Code § 5.101(a)(7) to bring claims that are not direct, immediate, or substantial including general public concerns or allegations outside of her residence in Uwchlan Township, Chester County and thus relief should be limited by geographic scope.

16. 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 Complainant does not have standing to bring certain claims. Complainant makes various allegations intended to raise safety issues, but most of those allegations are general, abstract interests of the public or do not relate to the area Uwchlan Township, where the Complainant resides. Instead they relate to concerns on behalf of other entities including schools and political subdivisions, concerns generally on behalf of the public, and concerns generally at a statewide level. See Complaint at Paragraphs G (alleging Complainant’s children “will attend school, Kindergarten through 12th grade...”)

alleging on behalf of Lionville Elementary, Lionville Middle school, and Downingtown East High School, and Marsh Creek Sixth Grade Center with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ H (alleging, generally, concerns on behalf of the people of Chester County, the public and schools with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ I (alleging inability for political subdivisions to provide for public safety with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ L (alleging portions of I&E's Complaint to SPLP, C-2018-3006534 with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ N (alleging "lack of study conducted by *ALL* state agencies" with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ 3 (alleging concerns at Uwchlan Township's population increase near ME1 on behalf of "my fellow Township residents" with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ 4 (allegations on behalf of "my neighbors" who did not receive SPLP's public awareness program mailer); ¶ 6 (allegations on behalf of the public and residents of Chester County, including "thousands of lives"); ¶ 9 (allegations on behalf of the "Citizens of the Commonwealth"); ¶ 12 (allegations on behalf of "all residents along the pipeline easement(s)"); ¶ 13 (allegations on behalf of public areas including "Uwchlan Township community fields, local parks, local shopping areas and the busiest intersections in the county"); ¶ 30 (alleging a study should be conducted on "ALL Chester County Areas that could have an affect on my public drinking water supply" with no attempt to tie the allegations to the Complainant's residence where she claims standing); ¶ 31 (allegations on "preserving the... economic vitality of the region"); ¶ 32 (allegations regarding "the above ground valve station located at Dowlin Mill Rd... across the street from 1800 student and staff from Shamona Creek Elementary School and the Marsh Creek Sixth Grade Center... My children will both attend

school for their 6th grade year at the center” (emphasis added); ¶ 35 (allegations on behalf of “PA public school children... and the communities tax payers...” with no attempt to tie the allegations to the Complainant’s residence where she claims standing); ¶ 38 (allegations that the “entire’ public” is not “warned and informed” in an emergency response); ¶ 39 (allegations on behalf of the entire Chester County based on 2010 census data); ¶ 46 (allegations that “Chester County residents would not be entitled to FEMA relief; nor, would our publicly owned facilities”); ¶ 47 (allegations that Complainant’s “5 schools my children will attend and my community of Exton with approximately 19,000 people...”); ¶ 49 (allegations on behalf of Pennsylvanians common property, community resources, and public schools); Relief Requested ¶ 4 (requesting the Commission determine if the pipeline is safe, adequate and reasonable to the public regarding evacuation plans); Relief Requested ¶ 5 (requesting the Commission determine if the pipeline is safe for the public “given the lack of awareness program for children,” subjective evacuations, and properties of NGL’s); Relief Requested ¶ 12 (requesting the Commission to determine if “the valve at Dorlin Mill Rd” is safe with no attempt to tie the allegations to the Complainant’s residence where she claims standing).

17. 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”), a 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.*”).

18. Complainant does not have standing to bring a claim regarding the pipeline for issues outside the geographic region for which she claims 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.”). As Your Honor recognized in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), “Complainant does not have standing to represent other individuals, schools or entities.” In that proceeding, Your Honor limited the relief requested to the Township in which Complainant resides, and Your Honor should do the same here. *Id.*

19. Further, Complainant cannot raise concerns on behalf of the public or other persons. See *Goncharoff v. Verizon Pennsylvania, Inc.*, No. C-20042371, 2005 WL 1959192 (July 19, 2005) (citing *George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282 (Pa. Commw.

Ct. 1999)). In particular, the requirements laid out in *William Penn Parking Garage, Inc. V. City of Pittsburgh*, indicate that to have a “substantial interest,” “there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 at 282 (1975); *See also Pennsylvania Pub. Util. Comm'n Office of Consumer Advocate Jason Dolby Peoples Nat. Gas Co. LLC James Fedell Office of Small Bus. Advocate Duquesne Indus. Intervenors*, No. C-2018-3001029, 2018 WL 3093586, at *9 (June 14, 2018). General public concern of compliance with the law does not give rise to “an interest” under Section 701 as an individual does not have a direct, immediate, or substantial interest on behalf of the public as a whole.

20. Therefore, Paragraphs G-I, L, N, 3, 4, 6, 9, 12, 13, 30- 32, 35, 38, 39, 46, 47, 49, and Relief Requested 4, 5, and 12 should be stricken and Your Honor should limit any relief requested to the Township in which the Complainant resides.

4. Preliminary Objection 4: Portions of the Compliant are legally insufficient due to Complainant’s own admission and should be stricken pursuant to 52 Pa. Code § 5.101(a)(4).

21. Complaint Paragraphs 1-3 and Relief Requested 1 should be stricken in its entirety pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency of a pleading. Complainant makes allegations regarding early warning systems under to CFR 195.452, while at the same time admitting that the regulation “does not say specifically that, SPLP must have an early warning system for the public.” *See* Complaint Paragraph 2. Complainant then goes on to request relief that the Commission determine “...if, service is safe, and reasonable to the public, without a SPLP created early warning system...” *See* Complaint Paragraph Relief Requested 1.

22. This relief requested is legally insufficient because of Complainant's own admissions in the pleading.

23. This relief is likewise legally insufficient because it is not required under applicable regulations or law.

24. Accordingly, Complaint Paragraphs 1-3 and Relief Requested 1 should be stricken.

5. Preliminary Objection 5: Portions of the Complaint include impertinent matter which should be stricken pursuant to 52 Pa. Code § 5.101(a)(2).

25. Complainant's Exhibit 2, attached to her complaint, should be stricken as it includes impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2). Complainant's Exhibit 2 contains a SPLP "Emergency Response Procedures Manual" for a pipeline in Sarnia, Ontario, Canada. This manual was prepared under the laws and regulations of a foreign nation and its contents have no bearing on Complainant's claim. Complainant's Exhibit 2 is impertinent matter which has no basis for use in a Complaint under the PA Public Utility Code, or even U.S. Federal Pipeline Regulations.

26. Accordingly, Complainant's Exhibit 2 should be stricken as it includes impertinent matter that cannot form the basis of any finding in this complaint.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Complaint be dismissed in its entirety under 52 Pa. Code § 5.101(a)(2) because 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 G, H, J, M, N, 2, 5, 8, 11, 15-28, 29-31, 34, 36-38, 40-46, 49, and Relief Requested 1, 6-10, 13, and 14 for lack of Commission jurisdiction over the allegations pursuant to 52 PA.

Code § 5.101(a)(1), Paragraphs G-I, L, N, 3, 4, 6, 9, 12, 13, 30-32, 35, 38, 39, 46, 47, 49, and Relief Requested 4, 5, and 12 for lack of standing under 52 Pa. Code § 5.101(a)(7), Paragraphs 1-3 and Relief Requested 1 for being legally insufficient due to Complainant's own admissions pursuant to 52 Pa. Code § 5.101(a)(4), and Complainant's Exhibit 2 for including impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2). SPLP also respectfully requests that the Complainant's Relief Requested be limited in light of the above requested preliminary objections.

Respectfully submitted,



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Dated: January 24, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

ATTACHMENT A

December 27, 2018

Via Electronic Filing

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

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission please find a Formal Complaint for Rebecca Britton, *pro se*. Please direct all responses and any documents via electronic format to rbrittonlegal@gmail.com.

If your office has any questions please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink that reads "Rebecca Britton". The signature is written in a cursive, flowing style.

Rebecca Britton
211 Andover Drive
Exton, PA 19341
rbrittonlegal@gmail.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

REBECCA BRITTON,

Petitioner

v.

SUNOCO PIPELINE L.P.,

Respondent.

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Docket No.

REBECCA BRITTON FORMAL COMPLAINT

The Petitioner, Rebecca Britton, pursuant to 52 Pa. Code § 5.21 requiring Pa Public Utility Commission to evaluate Sunoco Pipeline L.P., to evaluate, if, all pipelines in the Mariner East Pipeline System are safe, adequate and reasonable to the public. In support of this, the following is presented:

PARTIES

A The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, et seq

B The Petitioner, I, Rebecca Britton, is a Chester County resident who resides at 211 Andover Drive, Exton, Pa. 19341.

C Respondent, Sunoco Pipeline L.C. LP., Utility Code A-14001, a certificated public utility in the Commonwealth of Pennsylvania, with a place of business at 4041 Market Street, Aston, Pennsylvania, 19014, and a common carrier transporter of hazardous liquids, owns, operates and is currently constructing the natural gas liquids Mariner East Pipeline Project, consisting of: the operational 8 inch Mariner 1, the proposed 12 inch bypass line for Mariner 2 (also known as the Point Breeze to Montello line), and the proponent for Mariner 2 and 2X pipelines, other pipelines in the Mariner East Pipeline system.

JURISDICTION

D The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: "In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof ...".

E Section 1501 of the Public Utility Code states that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such service shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S § 1501. *See also*, 66 Pa.C.S § 1505.

F Moreover, 52 Pa. Code 59.33 reads: Each public utility shall at all times 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.

Safety code. The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline

safety laws as found in 49 U.S.C.A. § § 60101---60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191-193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

Definition. For the purposes of this section, "hazardous liquid public utility" means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

Enforcement. Each public utility shall be subject to inspections as may be necessary to assure compliance with this section. The facilities, books and records of each public utility shall be accessible to the Commission and its staff for the inspections. Each public utility shall provide the Commission or its staff the reports, supplemental data and information as it shall from time to time request in the administration and enforcement of this section.

STANDING

My home is downhill of the Mariner East Pipeline System and is approximately 450 feet from the easement that all *known* pipelines transmitting NGL's reside in. Additionally, the planned construction of the 20 and 16 inch lines will reside in same easement, and, the imminent inservice 12 inch line. My 2 children will attend school, kindergarten through 12th grade in the probable impact zone of the various lines associated with the Mariner East Pipeline System. This includes Lionville Elementary, 1520 feet; Marsh Creek 6th Grade Center, 1005 feet; Lionville Middle School, 645 feet (this school is flanked by the 8 inch and 12 inch line on other side; and Downingtown East High School, 1150 feet. Marsh Creek Sixth Grade Center has the additional risk of the above ground valve station located in Upper Uwchlan along Dorlan Mill Rd. My family relies upon the Marsh Creek Lake Reservoir and Great Marsh to maintain our water supply. The 12 and 8 inch lines traverse this water

resource. My family does not live solely in our dwelling; we live in our community, and have rights to the use of public lands and trails near, or in, the Marsh Creek State Park, Marsh Creek Lake Dam, and Marsh Creek Marsh. My children and I face a compounded risk of multiple pipelines filled with NGL's essentially 24 hours a day.

I. SUMMARY OF ARGUMENT

The people of Chester County including, my family and I, are now faced with an NGL pipeline(s) constituting a new hazard. When the Mariner East Pipeline route was approved in the 1930's the populations were sparse. Since that time, the areas populations has grown exponentially.

H The public has no early warning system, no easy to understand self evacuation plans, and inadequate/insufficient public awareness programs. Chester County is a high consequence area; the multiple pipe system traverses past schools and our public water supplies. Lack of study from ALL state agencies with emergency management duties means meaningful and comprehensive hazard mitigation and preparedness planning has not taken place.

In Pennsylvania there is *NO* pipeline siting agency. "If the state has no agency in charge of pipeline siting, then the responsibility falls to the regular land use authority of local governments along proposed pipeline routes." (FEMA, USDOT and PHMSA; *Hazard Mitigation Planning: Practices for Land Use Planning and Development near Pipelines* 2015 pg. 6) Political subdivisions in the Commonwealth do not have the expertise, knowledge or finances to navigate the potential hazards associated with NGL's; or are they experts in pipeline siting. Political subdivisions do NOT staff experts on NGL's characteristics and were never presented with adequate information from SPLP to adequately prepare and mitigate for the public health and safety; specifically, under 49 CFR 195.440 Public Awareness.

J Title 66 § 1501 says, Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. PA Title 35, the Health and Welfare Statute is the guidance that exists to provide for the safety of the public from hazard; and, is meant to guide the Commonwealth State Agencies to provide for the safety of Pennsylvanians defining “safe” standards for the public.

K On December 18, 2018, I&E filed a notice of intervention into a matter before the Commission Docket Nos. C-2018-3006116 and P-2018-3006117, it reads in part, “Safe” is defined as “not exposed to danger; not causing danger.” Black’s Law Dictionary 1362 (8th ed 2004). It further states, that “the duty and responsibility of I&E Safety Division is to make a concerted effort to ensure the pipeline operator upholds *its* responsibilities to comply with all applicable state and federal regulations.” As such, the Pennsylvania Public Utility Commission, is only responsible for the safe transmission of public utilities; which includes, assuring, *if*, public is provided with adequate and efficient emergency services rendering it “safe”.

L Further, on December 13th PA PUC I&E Safety Division issued Summons of Formal Complaint to Sunoco Pipeline LP Docket Nos. C-2018-3006534. It reads in part; “While the data reviewed was largely specific to the site of the leak, SPLP’s procedures and overall application of corrosion control and cathodic protection practices are relevant to all of ME1 and, thus, I&E alleges that there is a statewide concern with SPLP’s corrosion control program and soundness of SPLP’s engineering practices with respect to cathodic protection.” I&E recognizes in the same complaint that, the 12 inch line is co-located in the same easement; and, is operated by the same operator. I&E did not

mention a statewide concern over 12 inch pipe; however, given the facts as outlined in complaint, age of pipe, associated corrosion control and engineering practices; the concern must extend to the 12 inch line.

M The PUC is only, *one*, state agency meant to define “safe, adequate and reasonable” to the public when it comes to new risks imposed involuntarily to the taxpayer on their public lands, buildings, and their fundamental rights to safety. Given the facts as laid out above; along with, letter dated, December 14, 2018, from Jan H. Freeman Executive Director PA PUC to H. Justus Brambley IV Supervisory Special Agent Office of Attorney General added to Docket No C-2018-3006116, “The Commission will not treat the, Fuller, Britton, Obiensi complaints attached to your letter as formal complaints filed with Commission.” I find that, I must file to ensure the safety of my family at this time.

N The PUC should determine, *if*, service is safe, adequate and reasonable given; no pipeline siting agency having original jurisdiction over route, SPLP’s engineering and corrosion control practices, lack of study conducted by *ALL* state agencies involved in land use, hazard planning and mitigation; and, insufficient subsequent hazard and mitigation planning by all applicable state agencies as defined by Title 35.

II. ARGUMENT

A. Early Warning System

1. Mariner East Pipelines contents are comprised of NGL’s; have no guarantee of odorant, are colorless, and heavier than air.

2. SPLP’s must follow CFR 195.452 (3) Leak detection. “An operator must have a means to detect leaks on its pipeline system”; it does not say specifically that, SPLP must have an early warning

system for the public. However, Title 35 part III § 7313 (6) designates Pennsylvania Emergency Management Agency as the agency that, supply(s) appropriate Commonwealth and local agencies and officials and the general public with precautionary notices, watches, and warnings relating to actual and potential disasters; and Title 35 part III 7313 (12) indicates; to cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery.

3. There is a total of 19,000 people living in Uwchlan Township which is designated a high consequence area. When just ME1 pipeline easement was in use there was approximately 11,000 people living in “buffer areas” based on “buffer zone” of 2100 feet. My family and my fellow Township residents do not now/nor have they ever had, since date of first transmission, a siren, odor, or other form of early detection and mitigation in place. Those numbers are likely increased with additional pipelines with varied easements in use in the system. (Exhibit 1)

B. Public Awareness

4. The probable impact radius of NGL’s is approximately 3168 feet depending on leak severity and outside conditions. SPLP’s public awareness programs account for those living within 1000 feet. While I receive the mailer and am informed of the risks; upon exiting my home and traveling up wind, on foot, to a distance of a half a mile; my neighbors, including my neighbor just across the street, does not have same information and awareness. (Exhibit 2)¹

5. SPLP must comply with CFR 195.440/1162; states, SPLP’s public awareness contain “provisions to educate the public”. Under 195.440(f) it states; “The program and media used must be as comprehensive as necessary to reach all areas in which the operator transports hazardous liquid”.

¹ This document was retrieved from, https://www.energytransfer.com/docs/SPLP_Sarnia_ERM.pdf; it should be considered in its entirety.

Furthermore, Title 35 Part III § 7503(4) Organize, prepare and coordinate all locally available manpower, materials, supplies, equipment, facilities and services necessary for disaster emergency readiness, response and recovery. Title 35 Pa § 7313 (5) establishes that, the Pennsylvania Emergency Management Agency (PEMA) has the powers and duties to “establish and operate or assist political subdivisions in establishing and operating training programs and programs of public information”; and Title 35 part III 7313 (12) indicates PEMA has the power and duty; “to cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery”. (Exhibit 3)

6. The lack of public awareness between the first 1000 feet of “buffer” and the rest of the affected area could result in those outside of the initial 1000 feet creating an ignition source, putting thousands of lives, including my family, in increased risk. Chester County is a high consequence area with involuntary risk imposed on the public; and, residents have no comprehensive public awareness program informing all those at risk.

C. Emergency Alert System

7. SPLP’s public awareness program says, homeowners should not use a cell phone in the event of a leak. This is in line with federal guidelines. County Emergency Management Officials says they will use Ready Chesco to notify residents if a leak event occurs. I don’t know how to determine what is an appropriate Emergency Alert System given mobile nature of cell phone service and counter guidance being offered between SPLP and County EMS.

8. CFR 195.440 (d) (5) states “the operator must have procedures to report the event”; it does not say, they have to have a provision to warn the general public. However, Title 35 PART III §7503 (2) Political subdivisions shall establish, equip and staff an emergency operations center, consolidated

with warning and communications system to support government operations in emergencies and provide other essential facilities and equipment and activities assigned emergency functions. Title 35 PART III §7503 (9) Each political subdivision shall provide prompt and accurate information regarding local disaster emergencies to appropriate Commonwealth and local officials and agencies and the general public. Title 35 PART III. §7312 (h) the agency (PEMA) shall develop and maintain an integrated communications capability designed to provide to all areas and counties warnings and direction and control of all emergency preparedness functions in the Commonwealth; and and Title 35 part III §7313 (12) indicates PEMA has the power and duty; “to cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery”. (Exhibit 4)

9. Chester County is a densely populated area, as such, we have cell phone users everywhere. Citizens of the Commonwealth, including my family, are entitled to a proven, studied, safe and appropriate Emergency Alert System.

D. Evacuation Plans

10. Evacuation plans are unclear to me as a homeowner, parent, and community member. Emergency evacuations are highly varied based on weather conditions, wind direction and land topography. Lack of odorant means I cannot depend on my senses to know when to commence these exercises. The subjective nature that these outside condition variables present are daunting for person(s) without expert knowledge of how these gases behave, and lack of knowledge could result in my family being put in increased danger.

11. CFR 195.402 (e) 6 is SPLP’s required mandates for evacuation practices. It states, “Minimization of public exposure to injury and probability of accidental ignition by assisting with

evacuation of residents and assisting with halting traffic on roads and railroads in the affected area, or taking other appropriate action.”; it does not say, SPLP is responsible for evacuating persons or formulating plans for individuals. This falls on the individual; and the political subdivisions. However, 195.440 (e) states, the program must include activities to to advise the municipalities”. Title 35 PART III §7503 Powers and Duties of Political Subdivisions (1) Prepare, maintain and keep current a disaster emergency management plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disaster and disaster emergency relief and recovery in consonance with the Pennsylvania Emergency Management Plan. Further, and Title 35 part III §7313 (1) (iii) PEMA is to provide, “assistance to Commonwealth Agencies, local government officials”....”in designing emergency management plans”. Title 35 part III §7313(12) indicates PEMA has the power and duty; to cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery.

12. Plans to evacuate should have been simplified for all residents along the pipeline easement(s). Lack of awareness of gas characteristics and behaviors under specific conditions make Sunoco’s public awareness program instructions to run up wind, on foot, a half a mile only part of the directions that should be given to public.

E. Family Emergency Preparedness Planning

13. Preparing my children for an emergency with potential high consequences and risks while they are at play in my community is a challenge. As a parent it is my job to prepare them for an emergency. The pipeline system takes a varied and elongated path through my community. It traverses through Uwchlan Township community fields, local parks, local shopping areas, and the busiest

intersections in the county approximately within a mile of my home. The pipeline system runs close to school play areas where my children attend school. These locations are places where people congregate. These “people” will likely have varying levels of awareness for these risks, thus implying additional risks.

14. While Sunoco has to comply with the public awareness program in C.F.R. 195.440; there are no available resources for me to teach my children about the dangers of HVL’s and how to prepare them for risks and threats as outlined in numbers 1-13 of my petition.

F. Water Resources/Marsh Creek Watershed/Marsh Creek State Park

15. The 12 and 8 inch pipelines in the Mariner East System traverse the Marsh Creek Lake and Reservoir in, at least, 4 locations. This is an important water resource for Chester County especially in times of water scarcity. The Watershed is managed by the Chester County Water Resource Authority and is a high quality water source as characterized by the DEP; but, qualifies as exceptional quality water source per DEP application received by DEP Secretary’s Office October 6, 2016.(Exhibit 7)

16. The 8 inch SPLP pipeline, known as the Twin Oaks to Icedale line, is named as part of the Mariner East Pipeline System. This line, may/may not be, currently transporting NGL’s. PHMSA data suggests that this line is approximately 750 feet from the Marsh Creek Lake Dam; USGS STATION 01480685, drainage area 20.3 sq. miles. The 12 inch line is also near the dam. The Marsh Creek Lake Dam maintains water levels for the region as the lake is a reservoir for Chester County. (Exhibit 15) (Exhibit 16) (Exhibit 17)

17. Marsh Creek Lake is the closest State Park to my home. The lake, and it’s headwaters, the Marsh Creek Great Marsh is an unusually sensitive area (USA). The land is entitled to the conservation of the natural, scenic, aesthetic, and historical values of state parks; and should be given first

consideration as stated in the PA Bureau of State Park's mission and in Title 17. Mariner East 8 inch, 12 inch, and, proposed 20 & 16 inch lines run through this area. (Exhibit 8)

18. In CFR §195.6 Unusually Sensitive Areas (USAs). As used in this part, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release. Further, 195.6. 2 (a) Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA.

19. 49 CFR §195.6 - Unusually Sensitive Areas (USAs)As used in this part, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release. (b) states; An USA ecological resource is: (1) An area containing a critically imperiled species or ecological community; (2) A multi-species assemblage area; (3) A migratory waterbird concentration area; (4) An area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range; or (5) An area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition, as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality).

20. Title 35 P.S. Health and Safety § 721.2 (a) Findings.--The General Assembly finds and declares that 1) An adequate supply of safe, pure drinking water is essential to the public health, safety and welfare and that such a supply is an important natural resource in the economic development of the

Commonwealth. (2) The Federal Safe Drinking Water Act provides a comprehensive framework for regulating the collection, treatment, storage and distribution of potable water. (3) It is in the public interest for the Commonwealth to assume primary enforcement responsibility under the Federal Safe Drinking Water Act. (b) Declaration.--It is the purpose of this act to further the intent of section 27 of Article I of the Constitution of Pennsylvania by: (1) Establishing a State program to assure the provision of safe drinking water to the public by establishing drinking water standards and developing a State program to implement and enforce the standards. (2) Developing a process for implementing plans for the provision of safe drinking water in emergencies. (3) Providing public notice of potentially hazardous conditions that may exist in a water supply.

21. Title 35 Part III § 7701(b) requires that DEP and PEMA shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to floods or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.

22. Under PA Title 25 Dam Safety and Water Management Section § 105.2. Purposes. The purposes of this chapter are to: (1) Provide for the comprehensive regulation and supervision of dams, reservoirs, water obstructions and encroachments in the Commonwealth in order to protect the health, safety, welfare and property of the people. (2) Assure proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs, including preventive measures necessary to provide an adequate margin of safety. (3) Assure proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments, in order to prevent unreasonable interference with water flow and to protect navigation. (4) Protect the natural resources, environmental

rights and values secured by PA. CONST. art. I, §27 and conserve and protect the water quality, natural regime and carrying capacity of watercourses.

23. Title 25 § 96.3 (g) Functions and values of wetlands shall be protected pursuant to Chapters 93 and 105 (relating to water quality standards; and dam safety and waterway management). Finally, §105.17. Wetlands and all its related parts, Wetlands are a valuable public natural resource. This chapter will be construed broadly to protect this valuable resource.

24. PA State Title 17.1. State Parks §2000 Natural Area policy states in part; Areas within State Parks containing outstanding, unique or sensitive resources should be set aside for protection through designation as Natural Areas to ensure their continued quality for future generations. Further, in §17.3 General management guideline. The protection of Natural Areas will be guided by the need to maintain their significant ecological values. Generally, physical and biological processes will not be subject to direct human intervention. Activities which interfere with these processes or threaten to degrade the inherent values of these areas will be prohibited. Management of surrounding lands may not adversely impact these areas.

25. The Downingtown Region and West Chester Region in Chester County; and, the City of Wilmington and Northern New Castle County in the State of Delaware rely on this reservoir. The reservoir has maintained its exceptional quality water due to unique bowl shape of topography and protections by multiple surrounding political subdivisions. The PA DEP permits indicate 401 Clean Stream permits were issued under the 105 permits; however, these permits only looked at installation of pipeline not potential leaks during operations.(Exhibit 5)²(Exhibit 6)³(Exhibit 7)

² This document was retrieved from, <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Water%20Supply%20Assessment,%20Preparedness,%20Prevention%20and%20Contingency%20Plan%20w%20appendices%20-%20Revised%20080817.pdf> it should be considered in its entirety.

26. The Marsh Creek State Park is connected to, and a part of, the Marsh Creek Great Marsh Watershed. The Marsh has been identified as the Marsh Creek Lake's headwaters. This watershed has a unique bowl formation associated with the topography. The groundwater funnels through karst formations particularly susceptible to releases of HVL's. The lands have national, regional and local protective ordinances. The surface water is of exceptional ecological significance, and qualifies under, Title 25 §93.4b (b) (2). The wetlands are of significant Value exhibiting 2 qualifiers under PA Code §105.17. First, §105.17 (1) (i) flora and fauna listed as threatened or endangered. Also §105.17 (1) (iv) groundwater and surface water quality and quantity of drinking water. The area is home to 2 state rare natural communities, 7 species of concern, and is listed as a "resource to be protected" by Chester County's Watershed Plan. (Exhibit 7) (Exhibit 8)

27. As a consumer of the public water I am concerned with possible water scarcity that could result should a leak event occur within the watershed with or without ignition. Should an ignition occur near this dam as a user of the state park trails I want to ensure the system is safe for my family. Furthermore, the dam is considered a high hazard dam, as there is, life and property downstream. (Exhibit 8)

28. As a parent and a citizen of Pennsylvania I have inherent rights to this area and want to ensure the value of these natural resources is preserved for my children and the subsequent future generations in my family. Furthermore, the Marsh Creek State Park is a source of economic prosperity for the region. Proximity of my home to this natural resource adds to the overall value of my home.

G. Horizontal Directional Drilling

³ This document was retrieved from, <http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2017/March%2021/Marsh%20Creek%20Petition/Marsh%20Creek%20Petition.pdf> and should be considered in its entirety.

29. Horizontal Directional Drilling (HDD) is the method of installation being used to install Mariner 2 and 2X. This is non-standard, or, other than recognized industry practice on pipeline installation. Based on information and belief, Sunoco Pipeline LP, has not demonstrated how they will clean up a spill of NGL's at low depth from surface. When used in more urban or populated areas in the past, HDD has been frequently used for small diameter steel utility lines and PVC piping. While there are standard practice guidelines, there are no regulations in place for HDD in Pennsylvania to address. The permits that the Department of Environmental Protection (DEP) put in place are for responses to inadvertent returns, NOT mitigation, prevention, or clean up; of release of NGL's and their unique characteristics.

30. Proper assessment, mitigation, and preparedness plans for this natural resource should be put in place as defined by Title 25 §105.17 and the provisions thereof; including, but limited to, the Clean Streams Act. Taking into consideration the HDD experimental nature of the project including depth, topography of land formations, geological formations and the unique characteristics of HVL's. This should include full study of ALL Chester County Areas that could have an affect on my public drinking water supply.

31. As a parent concerned with safety of my families drinking supply, a consumer of the public water, and as a homeowner concerned with preserving the value of my home and the economic vitality of the region; the lack of regulations, lack of study of subsurface release at low depths, and lack of mitigation to those releases has me concerned, given numbers 15-30 of my complaint.

H. Valve and School location

32. The above ground valve station located at Dowlin Mill Rd in Upper Uwchlan is across the street from 1800 students and staff from Shamona Creek Elementary School and the Marsh Creek Sixth

Grade Center of Downingtown Area School District. My children will both attend school for their 6th grade year at the Center. The valve, while secured with a metal chain link fence is roadside, and next to, 2 schools within 1000 feet of the structure. This could be a potential target for National Security. (Exhibit 9)(Exhibit 10)

33. CFR 195.258 Valves: General(a) Each valve must be installed in a location that is accessible to authorized employees and that is protected from damage or tampering. CFR §195.260 Valves: Location(c), states, on each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for populated areas. CFR §195.254 (5) states location should not be, in any area accessible to the public. (exhibit 11)

34. PA School Code 21.41 (c) School Siting, states prior to Department of Education Review, the district is responsible for obtaining the requisite approval of other agencies, including but not limited to, DEP, DOT, DOH, the State Police, and State and local planning boards which have jurisdiction over the proposed site.

35. PA public school children, including my children, and the communities tax payers, like myself, are entitled to schools located in areas that are in compliance with state laws for school siting. Public schools primary responsibility is to ensure a free and appropriate education. Safety is a fundamental right of each student including my children.

I. Emergency Operation Planning

36. The Chester County Emergency Services Dept has a responsibility to maintain a current and comprehensive Emergency Operation Plan. The current plans do not include the possibility of a

large release of NGL's. The only component that first responders have planned for in Chester County for Mariner East is a "best guess" response to a NGL release. (Exhibit 12)⁴

37. Pennsylvania Statute, Title 35 Pa.C.S.A. Health and Safety §7503. Powers and duties of political subdivisions (1) Prepare, maintain and keep current a disaster emergency management plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disaster and disaster emergency relief and recovery in consonance with the Pennsylvania Emergency Management Plan. Title 35 Part III §7313. And all its parts, powers and duties of PEMA. The agency shall have the following powers and duties: (1) To prepare, maintain and keep current a Pennsylvania Emergency Management Plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disaster and disaster emergency relief and recovery. However, 195.440 (e) states, the program must include activities to to advise the municipalities". Further, Title 35 part III §7313 (1) (iii) PEMA is to provide "assistance to Commonwealth Agencies, local government officials"...."in designing emergency management plans". Title 35 part III §7313(12) indicates PEMA has the power and duty; to cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery.

38. Mariner East Pipeline system does not currently meet the requirement of having "entire" public that is warned and informed. Mariner East Pipeline System in Chester County does not meet the requirement of emergency management services to prepare and mitigate "all hazards" as described in Title 35 Chapter 77. Emergency service planning is comprised of three components, planning,

⁴ This document was retrieved from, <https://www.chesco.org/DocumentCenter/View/43247/Emergency-Operations-Plan-2014> and should be considered in its entirety.

mitigation, and response. Without proper planning, awareness and mitigation; response is therefore inadequate.

J. Federal Hazard Insurance

39. Should an ignition event occur from NGL gases in the Mariner East Pipeline System, located in Chester County, designated a high consequence area by 2010 census data. There are locations where within .6 miles there are 101-1000 deaths or serious injuries probable. Places where people congregate, like schools, could have over 1,000 deaths or serious injuries. These losses could result in \$100 million to \$1 billion dollars in damages. (Exhibit 13)(Exhibit 14)

40. Title 35 Health and Safety Part III. Public Safety Subchapter B. Pennsylvania Emergency Management Agency §7313. Powers and duties (12) To cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this part and in implementing programs for disaster prevention, preparation, response and recovery. (13) To administer grant programs to political subdivisions for disaster management. (14) To accept and coordinate assistance provided by Federal agencies in major disasters or emergencies in accordance with the provisions of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. §5121 et seq.), or any amendment or reenactment thereof.

41. U.S.C. Title 44 CFR - Emergency Management and Assistance §201.3 Responsibilities (a)*General*. This section identifies the key responsibilities of FEMA, States, and local/tribal governments in carrying out, Section 322 of the Stafford Act, 42 U.S.C. 35165.

42. U.S.C. Title 44 CFR §201.4 Standard State Mitigation Plans, and all its parts, included but not limited to (c) Plan content (2) Risk assessments that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments.

43. Stafford Act Title III 322 Mitigation Planning (42 U.S.C. 5165) (3) Review and approve all Standard and Enhanced State Mitigation Plans. The above Standard Risk Assessment shall include the following: (i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate; (ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas shall also be addressed; (iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the state risk assessment. The State shall estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

44. Stafford Act Title III 322. Mitigation Planning (42 U.S.C. 5165) (a) Requirement of Mitigation Plan - As a condition of receipt of an increased Federal share for hazard mitigation measures

under subsection (e) of this section, a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government. (b) Local and Tribal Plans - Each mitigation plan developed by a local or tribal STAFFORD ACT, TITLE III, and §319-322.

45. Stafford Act Title III 322 government shall - (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and (2) establish a strategy to implement those actions. (c) State Plans - The State process of development of a mitigation plan under this section shall - (1) identify the natural hazards, risks, and vulnerabilities of areas in the State; (2) support development of local mitigation plans; (3) provide for technical assistance to local and tribal governments for mitigation planning; and (4) identify and prioritize mitigation actions that the State will support, as resources become available.

46. Given that, pipelines are not a non-zero risk, lack of information provided from SPLP to emergency services, lack of subsequent hazard study from state, the potential for catastrophic damages, and associated costs to political subdivisions; I am concerned about the safety and financial well being of my community. Currently, should a large release and ignition event occur Chester County residents would not be entitled to FEMA relief; nor, would our publicly owned facilities. The economic well being of all Pennsylvanian's is also at risk considering PEMA oversees the implementation of Stafford Act.

K. Pipeline Right of Way Selection

47. The 5 schools my children will attend and my community of Exton with approximately 19,000 people make this route questionable for the practical placement of an NGL pipeline.

48. CFR 195.210 (a) states pipeline right of ways must be selected to avoid, as far as practical, areas containing private dwellings, industrial buildings and places of public assembly. The Pennsylvania Constitution Article I § 1 Inherent Rights of Mankind; All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness; and Article § 26. No discrimination by Commonwealth and its political subdivisions. Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

49. As Pennsylvanians, my family and I, are entitled to a “safe” environment. The nature of these gases combined with high consequences; and lack of adequate hazard mitigation means the protection of our common property, like water, community resources, and public schools is at stake. The economic vitality of Chester County depends on keeping it free of unnecessary and involuntary hazard; *especially* those that are unmitigated.

III. CONCLUSION

WHEREFORE, the Complainant herein, respectfully requests that the Commission direct the following:

1. determine, *if*, service is safe, and reasonable to the public, without a SPLP created early warning system, like odorant, available to all affected public; or, an appropriate system, that is in line with Federal Guidelines and is in place that our local political subdivisions have implemented.
2. determine, *if*, service is safe, adequate and reasonable given the current SPLP provided public awareness program.
3. determine, given the current Emergency Alert System limitations, *if*, this pipeline system is

safe, adequate and reasonable for the public given the characteristics of NGL's.

4. determine, *if*, this pipeline system is safe, adequate and reasonable to the public given the current evacuations procedures and plans.

5. determine, *if*, this pipeline system is safe, adequate and reasonable for the public given the lack of awareness program for children, subjective nature of self evacuation, and the characteristics and properties of NGL's.

6. determine, *if*, the Mariner East Pipeline System is comparable under CFR 195.6, *if*, backup water supplies can be supported by SPLP for the many stakeholders, including my family, that depend on this important water resource.

7. determine, *if*, service is safe, adequate and reasonable given the lack of study for "resource scarcity" to the reservoir and large populations that depend on the water resource.

8. determine, *if*, service is safe, adequate and reasonable to the public given the lack of study to dam encroachments.

9. determine, *if*, it is safe, adequate and reasonable to transmit NGL's through the state park given the mission of the park and the protections that is outlined by Title 17.

10. determine, *if*, it is safe, adequate and reasonable to transmit NGL's through our "environmentally sensitive area", known as, Marsh Creek Great Marsh Watershed.

11. determine, *if*, the Mariner East Pipeline Segments constructed using HDD, is safe, adequate and reasonable; given the lack of regulations associated with HDD, lack of, on file mitigation plans at depths associated with this project and lack of mitigation thereof.

12. determine, *if*, the valve at Dorlin Mill Rd is safe, adequate and reasonable to the students and staff given the standards set out in CFR §195 as listed in Number 34 of this complaint; and the

lack of study and requisite approvals as outlined in school code.

13. determine, *if*, service is safe, adequate and reasonable to the public given lack of planning and mitigation as outlined in Title 35 §7503 and all its pertinent parts.

14. Given Stafford Act requirements, the PA PUC MUST determine, *if*, current PEMA hazard insurance policy is a safe, adequate and reasonable risk to the Commonwealth.

15. determine, *if*, the Mariner East Pipeline System belongs in its current and planned route through the high consequence areas of Chester County.

16. Any other such relief that the Commission deems appropriate.

Respectfully submitted,

A handwritten signature in black ink that reads "Rebecca Britton". The signature is written in a cursive style with a large initial 'R'.

Rebecca Britton

Dated 12/27/18

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 MAIL

Rebecca Britton
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Thomas J. Sniscak, Esq.
Kevin J. McKeon, Esq.
Whitney E. Snyder, Esq.

Dated: January 24, 2019