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September 18, 2019

**VIA ELECTRONIC FILING**

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

Re: Wilmer Baker v. Sunoco Pipeline L.P.; Docket No. C-2018-3004294; **SUNOCO PIPELINE L.P.'S MOTION TO STRIKE PORTIONS OF COMPLAINANT'S MAIN BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Motion to Strike Portions of Complainant's Main Brief in the above-captioned proceeding.

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

Very truly yours,

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

WES/das  
Enclosure

cc: Hon. Elizabeth H. Barnes, (Electronic [ebarnes@pa.gov](mailto:ebarnes@pa.gov) and first class mail)  
Per Certificate of Service



Respectfully submitted,



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*Attorneys for Respondent Sunoco Pipeline L.P.*

Dated: September 18, 2019



Attachment A to this Motion is Complainant’s Brief as served on SPLP.<sup>1</sup> SPLP moves to strike:

<p><b>“Extra Exhibits”<sup>2</sup> - Attachment A Pages 261-297 and portions of Brief relying thereon at Pages 7 and 8</b></p>	<p>These materials attempt to improperly introduce new evidence after the close of the record in violation of 52 Pa. Code § 5.431(b) (“After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.”), 52 Pa. Code § 5.501 (content of briefs), and SPLP’s due process rights.</p>
<p><b>Exhibits Not Admitted into Record – Attachment A Pages 101-102 and 108-109</b></p>	<p>These pages attempt to introduce and rely upon evidence Your Honor excluded from the record by providing inaccurate copies of an exhibit admitted at hearing and a copy of an exhibit excluded from admission at hearing in violation of 52 Pa. Code § 5.501 and SPLP’s due process rights.</p>

SPLP has provided red strikethrough markings of the materials to be stricken in Attachment A.

**I. ARGUMENT**

Complainant cannot now, after the record has closed and hearings have concluded,<sup>3</sup> introduce new evidence or evidence already excluded at hearing and such materials cannot be relied upon. Mr. Baker must understand that he is in a legal proceeding subject to rules and regulations for the presentation and status of evidence of record which, unfortunately, he has violated by his decision to proceed without counsel or his own understanding of basic rules

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<sup>1</sup> Complainant’s Brief served on SPLP does not match the submission on the Commission’s website in that some pages are omitted from SPLP’s copy, some pages are omitted from the PUC’s copy, there is disorganization between the copies, and SPLP’s copy contains markings and highlighting not present on the PUC’s copy. For purposes of decisions and citations in this proceeding, SPLP requests that the copy of Complainant’s Brief attached to this Motion be the operative copy.

<sup>2</sup> Complainant identifies these materials as “Extra Exhibits,” acknowledging they have not been admitted into the record or introduced at hearing. Complainant Brief at page 8.

<sup>3</sup> On July 25, 2019, Your Honor entered an Interim Order closing the evidentiary record and ordering that briefs must comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502. *Wilmer Baker v. Sunoco Pipeline L.P.*, Docket No. C-2018-3004294, Interim Order at Ordering paragraphs 5 and 6 (Order entered July 25, 2019).

designed to protect the integrity of Commission case records. Both Commission regulations<sup>4</sup> and fundamental due process<sup>5</sup> prohibit this. That Complainant is *pro se* is no excuse,<sup>6</sup> particularly where his actions violate SPLP's substantive rights and he already had more than a full and fair opportunity to be heard.

Pages 261-297 and the portions of pages 7 and 8 that rely thereon must be stricken as an attempt to introduce new evidence after the record has closed with no good cause and in violation of SPLP's due process rights. These pages consist of various hearsay statements from individuals (some of whom testified at trial) in the form of letters, some of which attach pictures, additional documents, links to websites, a Delaware County Resolution, emails, comments, etc. Commission regulations clearly prohibit admission or reliance on these materials: "After the record is closed, additional matter may not be relied upon or accepted into the record unless

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<sup>4</sup> 52 Pa. Code § 5.431(b) ("After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.").

<sup>5</sup> The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014); *Bridgewater Borough v. Pa. Pub. Util. Comm'n*, 124 A.2d 165 (Pa. Super. 1956); *McCormick v. Pa. Pub. Util. Comm'n*, 30 A.2d 327 (Pa. Super. 1943). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246,266 (Pa. Cmwlth. 2014); *Davidson v. Unemployment Compensation Bd. o/Review*, 151 A.2d 870 (Pa. Super. 1959); *In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946).

<sup>6</sup> As the Pennsylvania Supreme Court has held, "[i]t is, we believe, preferable to simply recognize, as the Commonwealth Court has previously done, that 'any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.'" *Vann v. Com., Unemployment Comp. Bd. of Review*, 508 Pa. 139, 148 (1985)(emphasis added); quoting *Groch v. Unemployment Compensation Board of Review*, 81 Pa.Cmwlth. 26, 30, 472 A.2d 286, 288 (1984)). See also *Dolores Herring v. Metropolitan Edison Company*, No. F-2016-2540875, 2017 WL 3872590, at \*3 (Order entered August 31, 2017) (The Commission, citing *Vann* and *Groch*, adopted the ALJ's initial decision, noting "the Complainant in this case proceeded *pro se* by choice and bore the risk of doing so.").

allowed for good cause shown by the presiding officer or the Commission upon motion.” 52 Pa. Code § 5.431(b). There is absolutely no good cause to allow this information to be submitted into the record because this would violate SPLP’s due process rights and Mr. Baker already had more than the full and fair opportunity to be heard.

SPLP has the fundamental due process right in this proceeding to “an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.”<sup>7</sup> Allowing submission of the materials violates these rights in a multitude of ways, such as:

- SPLP is deprived of the right to object to the admission of these documents as violative of the rules of evidence and administrative procedure (these documents are, among other issues, uncorroborated hearsay and attempts to offer opinion testimony by non-experts as well as rely on materials and admit materials upon which non-expert cannot rely).
- SPLP is deprived of the right to cross-examination.
- SPLP is deprived of the right to offer evidence and explanation in rebuttal.
- SPLP is deprived of the right to be heard on the substance of these materials.
- SPLP is deprived of the right to advance notice of these materials.

There can be no good cause to allow admission of these additional materials where it would clearly violate SPLP’s due process rights.

Moreover, Mr. Baker had over ten months to prepare his case and present it. Your Honor at various times relaxed procedural and evidentiary rules and there can be no doubt that Mr.

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<sup>7</sup> *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246,266 (Pa. Cmwlth. 2014); *Davidson v. Unemployment Compensation Bd. o/Review*, 151 A.2d 870 (Pa. Super. 1959); *In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946).

Baker had more than a full and fair opportunity to present his case. There is absolutely no good cause to rely on or admit these materials and they must be stricken.

Pages 101-102 and 108-109 must be stricken as they were already excluded from evidence, those rulings were correct, and Complainant does not even allege that they were not, and allowing admission or reliance thereon would violate SPLP's due process rights because SPLP relied on Your Honor's ruling excluding these exhibits from the record. Pages 101-102 are pictures from the anti-pipeline blog dragonpipediaries.com that were excluded from the record. N.T. 22:12, 99:16-24. Mr. Baker's stubborn intent to disregard Your Honor's correct rulings must neither be tolerated nor allowed. This exhibit was correctly excluded because it is hearsay, not prepared by a witness testifying at trial, and could not be authenticated, among other reasons. *Id.* Pages 108-109 are a witness statement from Ms. Van Fleet that Mr. Baker identifies in his Brief as part of Exhibit C-24. Exhibit C-24 as identified and admitted at hearing solely consisted of photographs, not a witness statement. N.T. 22:16, 166:3-167:23. Your Honor expressly excluded admission of "witness statements," recognizing that the witnesses were present to testify at hearing and that there was thus no reason to admit such hearsay statements. N.T. 195:21-196:21 (disallowing admission of Ms. DiGuilio's written witness statement). These statements were already excluded from evidence and should be stricken. To the extent Mr. Baker is now trying to admit this as new evidence, the same due process concerns and lack of good cause apply as discussed above and it should be stricken for those reasons too.



**II. CONCLUSION**

WHEREFORE, SPLP respectfully requests Your Honor strike Complainant's Brief at pages 101-102, 108-109, 261-297 and portions of pages 7 and 8 as identified in Attachment A with red strikethroughs.

Respectfully submitted,



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*Attorneys for Respondent Sunoco Pipeline L.P.*

**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 on the following:

**VIA PERSONAL HAND DELIVERY ON SEPTEMBER 18, 2019  
AND OVER-NIGHT FEDERAL EXPRESS**

WILMER JAY BAKER  
430 RUN ROAD  
CARLISLE PA 17015



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

Dated: September 18, 2019