



Thomas J. Sniscak  
(717) 703-0800  
tjsniscak@hmslegal.com

Kevin J. McKeon  
(717) 703-0801  
kjmckeon@hmslegal.com

Whitney E. Snyder  
(717) 703-0807  
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

October 10, 2019

**BY 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., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)  
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)  
Rebecca Britton; Docket No. C-2019-3006898 (consolidated)  
Laura Obenski; Docket No. C-2019-3006905 (consolidated)  
v.  
Sunoco Pipeline L.P.


Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P.; Docket No. C-2018-3003605

**SUNOCO PIPELINE L.P.'S MOTION TO CONSOLIDATE**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Motion to Consolidate in the above-referenced proceedings. Because this motion does not contain any new averments of fact, no verification is included.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		
<hr/>			
ANDOVER HOMEOWNERS'	:		
ASSOCIATION, INC.	:		
	:	Docket No.	C-2018-3003605
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**NOTICE TO PLEAD**

TO:

- Rich Raiders, Esquire for Andover Homeowner's Association, Inc.
- Michael S. Bomstein, Esquire for Flynn Complainants
- Anthony D. Kanagy, Esquire for Range Resources-Appalachia LLC
- Erin McDowell, Esquire for Range Resources-Appalachia LLC
- Vincent M. Pompo, Esquire for West Whiteland Township, Downingtown Area School District, Rose Tree Media School District
- Leah Rotenberg, Esquire for Twin Valley School District
- Margaret A. Morris, Esquire for East Goshen Township and County of Chester
- Mark L. Freed, Esquire for Uwchlan Township
- James C. Dalton, Esquire for West Chester Area School District
- James R. Flandreau, Esquire for Middletown Township
- Patricia Sons Biswanger, Esquire for County of Delaware
- James J. Byrne, Esquire for Thornbury Township
- Michael P. Pierce, Esquire for Edgmont Township
- Josh Maxwell, Mayor of Downingtown
- Thomas Casey
- Melissa DiBernardino
- Virginia Marcille-Kerslake
- Rebecca Britton
- Laura Obenski
- Joseph Otis Minott, Esquire for Clean Air Council

**PLEASE TAKE NOTICE THAT YOU HAVE TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THE ATTACHED MOTION WITHIN WHICH TO FILE AN ANSWER**

OR OTHER RESPONSE TO THE MOTION. FAILURE TO FILE A RESPONSIVE PLEADING WITHIN THE TIME ALLOWED MAY RESULT IN A RULING ON THE MOTION ADVERSE TO YOUR INTERESTS.

Thomas J. Sniscak

Thomas J. Sniscak, Attorney I.D. # 33891  
Kevin J. McKeon, Attorney I.D. # 30428  
Whitney E. Snyder, Attorney I.D. # 316625  
Hawke McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[wcsnyder@hmslegal.com](mailto:wcsnyder@hmslegal.com)

/s/ Robert D. Fox

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
MANKO GOLD KATCHER & FOX, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430 5700  
[rfox@mankogold.com](mailto:rfox@mankogold.com)  
[nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

Dated: October 10, 2019

*Attorneys for Respondent Sunoco Pipeline L.P.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		
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ANDOVER HOMEOWNERS'	:		
ASSOCIATION, INC.	:		
	:	Docket No.	C-2018-3003605
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

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**SUNOCO PIPELINE L.P.'S MOTION TO CONSOLIDATE**

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In accordance with 52 Pa Code §§ 5.81 and 5.103(b), Sunoco Pipeline L.P. ("SPLP") moves for the consolidation of the *Andover HOA* complaint<sup>1</sup> (Docket No. C-2018-3003605) with the complaints concerning the Mariner East pipelines that have already been consolidated<sup>2</sup> (*Flynn et al.* complaint (Docket Nos. C-2018-3006116 and P-2018-3006117), *DiBernardino* complaint (Docket No. C-2018-3005025), *Britton* complaint (Docket No. C-2019-3006898), and *Obenski* complaint (Docket No. C-2019-3006905) (collectively, "Mariner East Complaint Proceeding")).

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<sup>1</sup> On September 27, 2018 the Commonwealth Court stayed proceedings in this matter. After the Commonwealth Court ordered the Commission to dismiss State Senator Dinniman's Complaint, which was consolidated with Andover's Complaint, the Commission entered an order on September 19, 2019 that dismissed the Dinniman complaint and bifurcated the consolidated docket.

<sup>2</sup> *Flynn et al v. SPLP*, Docket Nos. C-2018-3006116 *et al*, June 6, 2019 Procedural Order at P 1 (June 6, 2019 Mariner East Complaint Proceeding Procedural Order). *See* Attachment A.

## I. INTRODUCTION

1. Consolidation here will conserve the Commission's, Your Honor's, Andover HOA's (who is already an intervenor in the Mariner East Complaint Proceeding), SPLP's, and other parties' time and resources and eliminate the risk of inconsistent rulings. There can be no doubt that all of these proceedings involve the same questions of both fact and law as evidenced, if not admitted, by the many cross-interventions between and among the proceedings. Moreover, Andover HOA is already an Intervenor in the Mariner East Complaint Proceeding. Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Andover HOA had the opportunity to be heard concerning scheduling in the Mariner East Complaint Proceeding (which as discussed below, is more advantageous to Andover HOA than the prior schedule set in its own complaint proceeding). Andover HOA's Complaint can proceed on the litigation schedule already developed in the Mariner East Complaint Proceeding. The circumstances here clearly meet the standard for consolidation in 52 Pa. Code § 5.81(a).

The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

*Id.*

2. As Andover HOA argued in support of consolidating its Complaint with State Senator Dinniman's Complaint:

The reason we ask for this consolidation is because so many of these issues merge because it's the same project. It's the same pipe. It would be the same emergency response. Their ability to operate this pipeline safely in West Whiteland Township would be part and parcel of their ability to operate the pipeline safely in Thornberry Township, Delco.

There are specific issues associated with difficult geology in West Whiteland Township just like there are issues with difficult but different geology a mile from West Whiteland, but I don't think that that's an insurmountable issue in that the ultimate nexus of these cases is their ability to properly and safely operate the pipeline in the public interest.

...

The case law also says that the Commission has significant discretion about consolidation, and I appreciate Your Honor's understanding that that discretion is available to you.

*State Senator Dinniman v. SPLP*, August 28, 2018 Transcript, N.T. 18:16-19:4, 23:18-21 (Attorney Raiders). Those same arguments apply equally here.

3. Moreover, no party is prejudiced from consolidation. Andover HOA was granted intervenor status in the Mariner East Complaint Proceeding. Andover HOA raised the same issues in its Petition to Intervene there as it raised in its complaint here, identified the same witnesses to present at hearing, and was heard on the Mariner East Complaint Proceeding scheduling. From the date of this Motion there are still 98 days until written Complainant and Complainant-aligned Intervenors direct testimony must be filed. *See Attachment A*. When Your Honor issued the litigation schedule in the Andover HOA proceeding on September 5, 2018 prior to the stay, there were only 93 days between the litigation schedule order issuance until Andover HOA's direct testimony would have been due in that proceeding<sup>3</sup>. *See Attachment B*. The timing here is more advantageous to Andover HOA than the prior litigation schedule in its own case. This timing comparison (98 days until testimony is due here versus the 93 days until testimony was due in Andover HOA's proceeding) also shows that the outstanding preliminary objections and discovery issues<sup>4</sup> in the Andover HOA proceeding are of no moment – if that case had not been stayed,

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<sup>3</sup> *Andover HOA v. SPLP*, Docket Nos. C-2018-3003605, September 5, 2018 Procedural Order at P 2.

<sup>4</sup> SPLP filed timely objections to Andover's discovery after the Commission bifurcated the Andover case from the Dinniman Complaint.

Andover HOA would be in the same position then as it would be if the proceedings here are consolidated.

4. Likewise, the date of the Lay Witness Hearing is not prejudicial to Andover HOA. First, Andover HOA is already presenting the only lay witness it identified in both proceedings at that hearing – Eric Friedman<sup>5</sup> (Flynn Complainants’ also listed Mr. Friedman as a witness, further demonstrating the common issues of fact between the cases). *See Attachment C*. Second, the schedule in the Andover HOA proceeding prior to the Commonwealth Court’s stay did not allow for any such hearing and there is no right to any such hearing, so there can be no prejudice from the existence and timing of the Lay Witness Hearing.

5. Your Honor has significant discretion to consolidate these proceedings, all factors weigh heavily in favor of consolidation, and the proceedings should be consolidated.

## II. ARGUMENT

6. On July 24, 2018, Andover HOA, which consists of residents of Delaware County, filed a formal complaint with the Commission that alleges concerns regarding the safety and integrity of the Mariner East pipelines, including Mariner East 1 (“ME1”), Mariner East 2 (“ME2”), Mariner East 2X (“ME2X”), and a 12-inch diameter pipeline that is being utilized in the Mariner East system (the “12-inch pipeline”). Andover HOA alleges that SPLP lacks an adequate public awareness program, that SPLP’s emergency response procedures and training for the Mariner East pipeline system are inadequate, that SPLP has failed to comply with integrity management requirements, and argue that the location of the pipelines near residential properties and schools is unsafe. Andover HOA seeks an order from the Commission that, inter alia, would

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<sup>5</sup> Compare *Andover HOA v. SPLP*, Docket Nos. C-2018-3003605, August 24, 2018 Andover HOA Pre-Hearing Memo at P 4; with *Flynn et al v. SPLP*, Docket Nos. C-2018-3006116 et al, April 19, 2019 Andover HOA Pre-Hearing Memo at P 4. *See Attachment C*.

suspend service on the Mariner East pipelines, require “risk assessment” as well as any other appropriate relief. *See Attachment D* (Andover HOA’s Complaint).

7. On November 19, 2018, the Flynn complainants, who are residents of Chester and Delaware Counties, filed a formal complaint<sup>6</sup> with the Commission that alleges concerns regarding the safety and integrity of the Mariner East pipelines, including Mariner East 1 (“ME1”), Mariner East 2 (“ME2”), Mariner East 2X (“ME2X”), and a 12-inch diameter pipeline that is being utilized in the Mariner East system (the “12-inch pipeline”). The Flynn complainants allege that SPLP lacks an adequate public awareness program, that SPLP’s emergency response procedures and training for the Mariner East pipeline system are inadequate, that SPLP has failed to comply with integrity management requirements, and argue that the location of the pipelines near residential properties and schools is unsafe. The Flynn complainants seek an order from the Commission that, *inter alia*, would suspend service on ME1, ME2, ME2X, and the 12-inch pipeline, require an independent “remaining life study” of ME1 and the 12-inch pipeline, and for the Commission to evaluate SPLP’s integrity management program.

8. On October 1, 2018, Melissa DiBernardino, a Chester County resident, filed a *pro se* formal complaint with the Commission that also alleges concerns regarding the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline. Like the Flynn complainants, DiBernardino alleges that SPLP’s public awareness program and emergency response procedures and training are inadequate, and that the location of the pipelines is unsafe. DiBernardino also alleges that using horizontal directional drilling to construct ME2 and ME2X is unsafe. Similar to the Flynn complainants, DiBernardino seeks an order from the Commission that, *inter alia*, would

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<sup>6</sup> The Complaint has been amended twice since its initial filing. The amended versions of the complaint contain the same issues.



suspend service on ME1, suspend further construction of ME2 and ME2X, and prohibit SPLP from using the 12-inch pipeline as part of the Mariner East pipeline system.

9. On December 27, 2018, Rebecca Britton, a Chester County resident, filed a *pro se* formal complaint with the Commission alleging that the locations of ME1, ME2, ME2X and the 12-inch pipelines are unsafe. Like the Flynn complainants and DiBernardino, Britton also alleges that SPLP's public awareness program and emergency response procedures and training are inadequate, and alleges concerns regarding SPLP's integrity management program, including alleged inadequate leak detection protocols. Britton also alleges that the locations of valve stations are unsafe and that the use of horizontal directional drilling to construct ME2 and ME2X has the potential to impact natural resources. Britton seeks the Commission to determine: whether SPLP's public awareness program and emergency response procedures and training are adequate; if the locations of the pipelines and related equipment (i.e. valve stations) are safe; if the pipelines are safe without the use of odorants in the products transported in the pipelines; whether alternative water supplies should be provided to local residents; whether the use of horizontal directional drilling is safe; and whether SPLP must further assess and address potential environmental impacts from the pipelines.

10. Lastly, on January 2, 2019, Laura Obenski, a resident of Chester County, filed a *pro se* formal complaint with the Commission that also alleges concerns regarding the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline. Like the Flynn complainants, DiBernardino, and Britton, Obenski also alleges that SPLP's public awareness program and emergency response procedures and training are inadequate. Obenski also alleges that schools in the Downingtown Area School District are at an increased risk due to their proximity to the pipelines, and argues that the locations of certain valve stations are unsafe. Obenski seeks an order

from the Commission that, *inter alia*, would suspend service on ME1, ME2, ME2X, and the 12-inch pipeline, suspend further construction of ME2 and ME2X, find that SPLP's public awareness program and emergency response procedures and training are inadequate, and find that locating valve stations near schools is unsafe.

11. Recognizing the commonality of fact and law and lack of prejudice to any party, these four (Flynn, DiBernardino, Britton and Obenski) proceedings were consolidated. *See* June 6, 2019 Mariner East Complaint Proceeding Procedural Order, **Attachment A**.

12. While SPLP disputes the allegations in each of the five complaints, the complaints involve common questions of law and fact such that consolidation of the matters is appropriate.

13. Since the filing of the Complaints, various other litigation events have also taken place showing the commonality of these proceedings. For example, Andover HOA intervened in the Mariner East Complaint Proceedings. Andover HOA's Petition to Intervene raises the same issues as Andover HOA's Complaint. *Compare Attachment D* (Andover HOA's Complaint) *with Attachment E* (Andover's Petition to Intervene)<sup>7</sup>. Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Moreover, Andover HOA filed prehearing memoranda in each proceeding where it was required to identify witnesses. It identified the same witnesses in each: Eric Friedman and Jeff D. Marx. *See Attachment C* (Andover HOA Prehearing Memoranda). Andover HOA has no legal right to litigate essentially the same complaint twice despite the weak arguments of its counsel for a second at bat and the

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<sup>7</sup> Indeed, Andover admitted substantial overlap regarding the issues raised by *Flynn et al* and Andover HOA, "that their interests in this matter substantially overlap" regarding intervention and the *Flynn et al* emergency hearings. *See* Andover's Petition to Intervene, Paragraph 47. (Attachment E).

practical result of causing duplicative legal time and expense not to mention the same for all parties, Your Honor, and the Commission. Indeed, Andover HOA cross intervention into *Flynn* refutes its very arguments against not consolidating.

14. Section 5.81(a) of the Commission's Rules of Practice and Procedure provides for consolidation of proceedings that involve common questions of law or fact:

The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa. Code § 5.81(a).

15. Consolidation is appropriate when there are sufficient common legal and factual issues between the cases, and where a party opposing consolidation will not suffer prejudice from the consolidation. *See e.g., Hartman v. PECO*, Dkt. Nos. C-2015-2471129 and C-2015-2469877, 2015 WL 1780140 (Order entered Apr. 15, 2015) (consolidating payment complaints because second complaint “requires no more factual or legal development than the first, consolidation is justified as it furthers judicial efficiency and is not at all prejudicial to the parties.”); *In re PECO Energy Company and Enron Energy Serv's Power, Inc.*, Dkt. Nos. R-00973953 and P-00971265, 87 Pa. P.U.C. 718 (Order entered Oct. 9, 1997) (granting motion to consolidate where the same “factual, legal, and policy considerations” were presented in both actions, and where “it would be extraordinarily difficult for this Commission to make an informed decision concerning one petition without contemporaneous consideration of the other.”); *Poole v. Columbia Gas of Pa., Inc.*, Dkt. No. Z-00109922, 1995 WL 945815 (Order entered June 19, 1995) (affirming consolidation where an additional legal issue in second case was necessarily included in the consideration of a broader legal issues in primary case).

16. The Commission has consolidated interrelated cases when doing so will reduce costs and create efficiencies for the Commission and the parties, particularly where the issues in one proceeding are also central to another proceeding. *See e.g., Middletown Taxi Co.*, Dkt. Nos. 99339 and 99378, 1976 WL 41682, (Order entered Sept. 8, 1976) (consolidation appropriate where common issues exist, individual issues will not “cloud” the proceedings, and when costs would be reduced and efficiencies gained by consolidation).

17. In addition to evaluating whether the matters involve common questions of law or fact, the Commission will also balance eight factors to determine whether the cases are interrelated and whether efficiencies can be gained through consolidation:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
3. Do issues in one proceeding go to the heart of an issue in the other proceeding?
4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
5. Will different statutory and legal issues be involved?
6. Does the party with the burden of proof differ in the proceedings?
7. Will consolidation unduly delay the resolution of one of the proceedings?
8. Will supporting data in both proceedings be repetitive?

*PUC v. City of Lancaster Sewer Fund*, Dkt. No. R-2012-2310366, at 3-4 (Order entered Nov. 26, 2012).

18. Consolidation is appropriate because the *Andover HOA*, *Flynn*, *DiBernardino*, *Britton*, and *Obenski* complaints involve common questions of law and fact, and each of the eight factors established by the Commission in *City of Lancaster Sewer Fund* is met.

19. All five complaints assert six central issues: (1) the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline; (2) the safety of the locations of the pipelines and related

equipment (i.e. valve stations); (3) the adequacy of SPLP's public awareness program; (4) the adequacy of SPLP's emergency response procedures and training; (5) SPLP's integrity management protocols; and (6) the safety of the construction of ME2 and ME2X. And all five complaints seek similar (if not identical) relief to address the complainants' concerns with the Mariner East pipelines in Chester and Delaware Counties.

20. These six issues are at the heart of all both cases (the Andover HOA Complaint and the Mariner East Complaint Proceeding) and addressing them jointly will allow the Commission to determine the issues once, rather than in a serial and repetitive manner for each individual proceeding. Separate adjudications in each of the two proceedings is inefficient both for the Commission and the parties, particularly since each party's advocacy and witnesses will be largely duplicative in both proceedings.

21. Furthermore, consolidation of these proceedings is in the public interest, because it will conserve the Commission's and the parties' respective resources, eliminate the risk of any inconsistent rulings, and avoid unnecessary additional costs and delays if each matter proceeded individually.

22. While each of the complaints may raise certain additional individual issues, those issues are subordinate to the six common issues shared by all complaints, such that any individual issues will not "cloud" the determination of the primary issues in all the cases.

23. Moreover, in the context of granting certain petitions to intervene in the *Flynn* matter, Your Honor has already recognized that judicial efficiency can be gained by joining matters that "raise issues essentially overlapping issues previously raised by [the Flynn] Complainants concerning safety and emergency preparedness in Chester and Delaware County areas." *See* Second Interim Order, Dkt. No. C-2018-3006116 at 17 (Mar. 12, 2019).

24. Various other litigation events in both proceedings also demonstrate the commonality of these proceedings. For example, Andover HOA intervened in the Mariner East Complaint Proceedings. Andover HOA's Petition to Intervene raises the same issues as Andover HOA's Complaint. *Compare Attachment D* (Andover HOA's Complaint) *with Attachment E* (Andover's Petition to Intervene). Likewise, two of the Complainants in the Mariner East Complaint Proceeding (Ms. DiBernardino and Ms. Fuller who is one of the Flynn Complainants) petitioned to intervene in the Andover HOA proceeding. Moreover, Andover HOA filed a prehearing memo in each proceeding where it was required to identify witnesses. It identified the same witnesses in each: Eric Friedman and Jeff D. Marx. *See Attachment C* (Andover HOA Prehearing Memoranda).

25. Finally, consolidation will not prejudice any party. Andover HOA was granted intervenor status in the Mariner East Complaint Proceeding. Andover HOA raised the same issues in its Petition to Intervene there as it raised in its complaint here, identified the same witnesses to present at hearing, and was heard on the Mariner East Complaint Proceeding scheduling. From the date of this Motion there are still 98 days until written Complainant and Complainant-aligned Intervenors direct testimony must be filed. When Your Honor issued the litigation schedule in the Andover HOA proceeding prior to the stay, there were only 93 days between the litigation schedule order issuance until Andover HOA's direct testimony would have been due. This timing comparison (98 days until testimony is due here versus the 93 days until testimony was due in Andover HOA's proceeding) also shows that the outstanding preliminary objections and discovery issues<sup>8</sup> in the Andover HOA proceeding are of no moment – if that case had not been stayed,

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<sup>8</sup> SPLP filed timely objections to Andover's discovery after the Commission bifurcated the Andover case from the Dinniman Complaint.

Andover HOA would be in the same position then as it would be if the proceedings here are consolidated.

26. Likewise, the date of the Lay Witness Hearing is not prejudicial to Andover HOA. First, Andover HOA is already presenting the only lay witness it identified in both proceedings at that hearing – Eric Friedman (Flynn Complainants’ also listed Mr. Friedman as a witness, further demonstrating the common issues of fact between the cases). Second, the schedule in the Andover HOA proceeding prior to the Commonwealth Court’s stay did not allow for any such hearing and there is no right to any such hearing, so there can be no prejudice from the existence and timing of the Lay Witness Hearing.

### III. CONCLUSION

WHEREFORE, SPLP respectfully requests that the Commission consolidate Docket No. C-2018-3003605 with consolidated Docket Nos. C-2018-3006116, P-2018-3006117, Docket No. C-2018-3005025, Docket No. C-2019-3006898, and Docket No. C-2019-3006905.

Respectfully submitted,

Thomas J. Sniscak

Thomas J. Sniscak, Attorney I.D. # 33891  
Kevin J. McKeon, Attorney I.D. # 30428  
Whitney E. Snyder, Attorney I.D. # 316625  
Hawke McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
tjsniscak@hmslegal.com  
kjmckeon@hmslegal.com  
wesnyder@hmslegal.com

/s/ Robert D. Fox, Esq.

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
MANKO GOLD KATCHER & FOX, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430 5700  
rfox@mankogold.com  
nwitkes@mankogold.com  
dsilva@mankogold.com

*Attorneys for Respondent Sunoco Pipeline L.P.*

Dated: October 10, 2019

# **ATTACHMENT A**



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	
Rosemary Fuller	:	
Michael Walsh	:	P-2018-3006117
Nancy Harkins	:	
Gerald McMullen	:	C-2018-3006116
Caroline Hughes and	:	
Melissa Haines	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	
	:	
Melissa DiBernardino	:	
	:	
v.	:	C-2018-3005025
	:	
Sunoco Pipeline, L.P.	:	
	:	
Rebecca Britton	:	
	:	
v.	:	C-2019-3006898
	:	
Sunoco Pipeline, L.P.	:	
	:	
Laura Obenski	:	
	:	
v.	:	C-2019-3006905
	:	
Sunoco Pipeline, L.P.	:	

**PROCEDURAL ORDER**

Telephonic Prehearing Conferences were held in the above-captioned cases on April 24, 2019 and May 10, 201, respectively. Appearing at both conferences were: Michael Bomstein, Esquire on behalf of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (collectively Flynn Complainants); Rich Raiders,

Esquire, on behalf of Andover Homeowners' Association; Thomas J. Sniscak, Esquire, Bryce Beard, Esquire, Whitney Snyder, Esquire, Neil Witkes, Diana Silva, Esquire for Sunoco Pipeline, L.P. (Sunoco or Respondent); Melissa DiBernardino, *pro se*; Rebecca Britton, *pro se*; Laura Obenski, *pro se*; Garrett Lent, Esquire, for Range Resources – Appalachia; Guy Donatelli, Esquire, Vincent Pompo, Esquire and Alex Baumler, Esquire for Pennsylvania State Senator Thomas Killion; Margaret Morris, Esquire for East Goshen Township and the County of Chester; Leah Rotenberg, Esquire for the Twin Valley School District; Mark Freed, Esquire for Uwchlan Township; Michael Pierce, Esquire for Edgmont Township; Kelly Sullivan, Esquire for Thornbury Township; James Dalton, Esquire and Daniel LePera, Esquire for West Chester Area School District; and James Flandreau, Esquire for Middletown Township. On May 10, 2019, I noted the additional appearances of Patricia Biswanger, Esquire for County of Delaware, Virginia Marcille Kerslake, *pro se* Intervenor, and Robert Fox, Esquire for Sunoco Pipeline, L.P.

The following matters were addressed, although not necessarily in this order: (1) consolidation of proceedings; (2) petitions to intervene; (3) site visits/evidentiary hearings; (4) Sunoco's Motion to Amend Protective Order; (5) procedural schedule; (6) service requirements and parties list; (7) transcript turnaround; and (8) discovery modifications.

#### Procedural consolidation

The Commission's regulations pertaining to consolidation appear at 52 Pa. Code § 5.81, and state in relevant part:

#### **§ 5.81. Consolidation.**

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

Whether to consolidate particular cases is left to the sound discretion of the Commission or the presiding officer. In deciding whether to consolidate certain cases, the Commission or presiding officer must first determine that the proceedings involve a common question of law or fact. In such cases as *Application of Philadelphia Electric Co.*, 43 Pa. PUC 781 (1968), *Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pennsylvania*, 46 Pa. PUC 568

(1973) and *Pa. Pub. Util. Comm'n v. Butler Twp. Water Co.*, 52 Pa. PUC 442 (1978), as well as those cited above, the Commission has established that the Commission or presiding officer should evaluate considerations in addition to the presence of common questions of law or fact in ruling on a motion to consolidate. These other considerations include:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
3. Do issues in one proceeding go to the heart of an issue in the other proceeding?
4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
5. Will different statutory and legal issues be involved?
6. Does the party with the burden of proof differ in the proceedings?
7. Will consolidation unduly delay the resolution of one the proceedings?
8. Will supporting data in both proceedings be repetitive?

No single consideration or group of considerations or the presence of a common question of law or fact is dispositive in determining whether to consolidate proceedings. Rather, the Commission or presiding officer must evaluate all of these considerations and balance those favoring versus those disfavoring consolidating the proceedings.

Ms. Obenski filed a motion to consolidate her complaint with the Flynn Complainants' Complaint at C-2018-3006116 and P-2018-3006117. Sunoco filed a Motion to Consolidate and Response to Obenski's Motion to Consolidate. Sunoco moves for the consolidation of the Flynn et al. complaint (Docket Nos. C-2018-3006116 and P-2018-3006117), with the DiBernardino complaint (Docket No. C-2018-3005025), the Britton complaint (Docket No. C-2019-3006898), and the Obenski complaint (Docket No. C-2019-3006905). At the prehearing conference on April 24, 2019, no one objected to Sunoco's Motion to Consolidate and a procedural order was discussed. However, after the notice of hearing was issued,

Complainant DiBernardino requested a further prehearing conference as she wished for a more expedited procedural schedule. The further prehearing conference was held on May 10, 2019. Complainants DiBernardino, Britton and Obenski expressed concerns that a July 2020 hearing date was too long to wait for a proper emergency plan. Tr. 691-693, 708-709, 714. Conversely, Sunoco argued to keep the agreed upon procedural schedule and to consolidate the cases as the cases involve technical issues, best addressed through written pre-served expert testimony, and the issues are substantially overlapping in nature involving the same Respondent and witnesses. The Complainants can call witnesses in October in Delaware or Chester Counties at an initial hearing, which would alleviate some of the burden in prosecuting their respective complaints. Tr. 698-702. Additionally, Ms. Obenski never formally withdrew her motion for consolidation. Ms. Britton has witnesses in common that intervened in the Flynn et al. complaint proceeding. Ms. DiBernardino has three witnesses in common, one of which is Ms. Hughes, a complainant in the Flynn et al. complaint proceeding. Tr. 705-706.

After reviewing these considerations, the four cases shall be consolidated for purposes of discovery, evidentiary hearings, and decision writing. Consolidation is appropriate because the Flynn, DiBernardino, Britton, and Obenski complaints involve common questions of law and fact, and each of the eight factors established by the Commission in *City of Lancaster Sewer Fund* is met. All four complaints assert six central issues: (1) the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline; (2) the safety of the locations of the pipelines and related equipment (i.e. valve stations); (3) the adequacy of SPLP's public awareness program; (4) the adequacy of SPLP's emergency response procedures and training; (5) SPLP's integrity management protocols; and (6) the safety of the construction of ME2 and ME2X. All four complaints seek similar relief to address the complainants' concerns with the Mariner East pipelines in Chester and Delaware Counties. These six issues are at the heart of all four cases and addressing them jointly will allow the Commission to determine the issues once, rather than in a serial and repetitive manner for each individual complaint. Separate adjudications in each of the four proceedings is inefficient both for the Commission and the parties, particularly since each party's advocacy and witnesses will be largely duplicative in all four proceedings. Consolidation of these four proceedings is in the public interest, because it will conserve the Commission's and the parties' respective resources, eliminate the risk of any inconsistent rulings, and avoid unnecessary additional costs and delays if each matter proceeded individually.

While each of the four complaints may raise certain additional individual issues, those issues are subordinate to the six common issues shared by all four complaints, such that any individual issues will not “cloud” the determination of the primary issues in all the cases. Ms. Obenski initially agreed that consolidation of these matters is appropriate, and filed a motion to consolidate her complaint with the Flynn matter on February 26, 2019, asserting that there are “interrelated issues in both proceedings.” See Motion to Consolidate, C-2019-3006905 (Feb. 26, 2019). She has not formally withdrawn her motion. The Flynn Complainants did not object to consolidation of the Obenski complaint. Moreover, in the context of granting certain petitions to intervene in the Flynn matter, the Commission has already recognized that judicial efficiency can be gained by joining matters that “raise issues essentially overlapping issues previously raised by [the Flynn] Complainants concerning safety and emergency preparedness in Chester and Delaware County areas.” See Second Interim Order, C-2018-3006116 at 17 (Mar. 12, 2019). Finally, consolidation will not prejudice any party, as prehearing schedules have not yet been established in any of the four cases, and a joint prehearing schedule will allow for an efficient, consistent, and streamlined adjudication of the overlapping issues presented in all four matters. Complainants will be permitted to participate at hearings via telephone and an initial hearing for layperson testimony will be scheduled to be held in October in Delaware or Chester Counties for the convenience of the pro se Complainants.

#### Petitions to intervene

The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76. The provision at 52 Pa. Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

#### **§ 5.72. Eligibility to intervene.**

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

Senator Thomas Killion petitioned to intervene on March 20, 2019, in his capacity as a legislator for Senate District No. 9 and in his individual capacity as a resident of Middletown Township, Delaware County. Sunoco argues Senator Killion has no standing to represent his constituency and requests his standing be limited to his individual capacity. In the case of *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.* at Docket No. C-2018-3001451 *et al.* the Commission held Senator Dinniman had individual standing, but agreed to certify this issue for interlocutory review at the Commonwealth Court. Pending a disposition by the Commonwealth Court, I am granting Senator Killion intervention to proceed in his individual capacity. I am reserving judgment on legislative standing pending disposition in the case of *Sunoco Pipeline, L.P. v. Pennsylvania Public Utility Commission* at 1169 C.D.

Thornbury Township, Chester County, Edgmont Township, and West Chester Area School District will all be granted Intervenor status as they have interests which may be directly affected and which are not adequately represented by existing participants, and as to which these petitioners may be bound by the action of the Commission in the proceeding.

#### Procedural Schedule

The following procedural schedule will be adopted.

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October 2019
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	June 15, 2020 (30 days from Surrebuttal)
Hearings	July 15, 2020-July 29, 2020 (30 days from Rejoinder outlines)
Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

#### Coordination of witnesses

Counsel for Sunoco Pipeline, L.P. is directed to coordinate an agreement as to the order of witnesses and hearing time needed for each witness and will present that agreement to me and the parties in writing no later than two business days before a hearing date.

#### Service of documents/parties' list

The parties are in agreement that they will accept electronic delivery of documents by 4:30 p.m. on the due date as satisfying the in-hand requirement, if followed by hard copy sent via first class mail or interoffice mail. I will also accept service of documents in this manner, but request that I be provided one (1) hard copy and an electronic version of all filed documents in an electronic copy in Word format or Excel as appropriate. In addition, I also request one (1) hard copy and an electronic version of all served testimony.

For purposes of this proceeding, the parties of record are those entities which appeared at the Prehearing Conference. A service list is attached for the convenience of the parties.

The parties can request that electronic service be provided to multiple persons, and these requests, as stated at the Prehearing Conference, will be honored.

E-mail distribution list

The following is the e-mail distribution list and is subject to change.

[Curtis.stambaugh@energytransfer.com](mailto:Curtis.stambaugh@energytransfer.com)

[rfox@mankogold.com](mailto:rfox@mankogold.com)

[nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)

[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com);

[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

[akanagy@postschell.com](mailto:akanagy@postschell.com)

[glent@postschell.com](mailto:glent@postschell.com)

[emcdowell@rangeresources.com](mailto:emcdowell@rangeresources.com)

[jjbyrne@mbmlawoffice.com](mailto:jjbyrne@mbmlawoffice.com)

[ksullivan@mbmlawoffice.com](mailto:ksullivan@mbmlawoffice.com)

[mppierce@pierceandhughes.com](mailto:mppierce@pierceandhughes.com)

[gdonatelli@lambmcerlane.com](mailto:gdonatelli@lambmcerlane.com)

[rich@raiderslaw.com](mailto:rich@raiderslaw.com)

[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

[rotenberg@mcr-attorneys.com](mailto:rotenberg@mcr-attorneys.com)

[vpompo@lambmcerlane.com](mailto:vpompo@lambmcerlane.com)

[abaumler@lambmcerlane.com](mailto:abaumler@lambmcerlane.com)

[mlf@curtinheefner.com](mailto:mlf@curtinheefner.com)

[jflandreau@pfblaw.com](mailto:jflandreau@pfblaw.com)

[maddrenm@co.delaware.pa.us](mailto:maddrenm@co.delaware.pa.us)

[patbiswanger@gmail.com](mailto:patbiswanger@gmail.com)

[jdalton@utbf.com](mailto:jdalton@utbf.com)

[rbrittonlegal@gmail.com](mailto:rbrittonlegal@gmail.com)



[lisssdiBernardino@gmail.com](mailto:lisssdiBernardino@gmail.com)

[liobenski@gmail.com](mailto:liobenski@gmail.com)

[tcaseylegal@gmail.com](mailto:tcaseylegal@gmail.com)

[jmaxwell@downingtowntown.org](mailto:jmaxwell@downingtowntown.org)

[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)

[vkerslake@gmail.com](mailto:vkerslake@gmail.com)

### Transcript turnaround

There will be a fifteen-day hearing transcript turnaround so that the briefs can be prepared in accordance with the procedural schedule.

### Initial hearing(s) in Delaware/Chester Counties

All parties agree to an initial hearing for layperson testimony from *pro se* complainants and lay-witnesses in Delaware and/or Chester Counties. Tr. 635-638. The hearing will be held in October at a time and place to be announced at a later date. A *pro se* complainant can either testify at this hearing or submit written testimony according to the procedural schedule. Possible venues include the Delaware County Courthouse and Chester County Courthouse during the day and a school auditorium in the West Chester Area School District in the evening. Tr. 667. The parties will coordinate with each other and the presiding officer to select a time and place for initial hearings in Delaware and/or Chester Counties.

### Site view

The Flynn Complainants, Melissa DiBernardino, Downingtown School District, Rose Tree Media, Uwchlan Twp., Rebecca Britton, East Goshen Twp., Andover Homeowner's Assn., Laura Obenski, Twin Valley School District, Middletown Twp., and Chester Area School District have requested site views in the Delaware/Chester Counties (primarily to see the Chester County Library, Sts. Peter and Paul School, Duffer's Tavern, Glenwood Elementary School, Tunbridge Apt. Complex, and the Granite Farms Estates retirement community). Complainants

contend the site visit would highlight an inadequate emergency plan that is not site specific. Tr. 643-645. A main complaint is that Sunoco's emergency preparedness plans are inadequate and non-specific to the high consequence area surrounding the pipeline and its appurtenances. Complainants request mass warning systems and better emergency plans. Viewing these sites would enable the fact finder to better understand evidence regarding the complaints.

Sunoco generally opposes a site visit by the ALJ, but in the alternative advocates for a visit whereby there is no taking of evidence in the form of testimony or exhibits involved. Tr. 647-654.

Although I am willing to conduct a site view, I have not been able to secure permission for one as this is not a high voltage transmission line siting case. Therefore, the requests for a site view will be denied.

#### Discovery modifications

Sunoco requested a modification to the discovery rules effective after the service of Complainants' and any Aligned Intervenor's Surrebuttal testimony. SPLP proposes to have objections to discovery requests due five (5) days after receipt of requests, that a Motion to Compel be due within five (5) days of service of any objections, and that an answer to a Motion to Compel be due within three (3) days of service of a Motion to Compel. SPLP requests that the presiding officer rule on the motion in an expedited fashion, ideally within three (3) days of receipt of the answer to the Motion to Compel. As Flynn Complainants objected wanting more than 5 days, the discovery rules will be modified to 7 days instead of the proposed 5, accordingly. Tr. 670-674.

#### Protective Order

Sunoco Pipeline, L.P. filed a Motion for Amended Protective Order on April 17, 2019 and a Motion to Strike Untimely Intervenor's Answer to Motion for Amended Protective Order filed on May 17, 2019, Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines Response to Sunoco's Motion for Amended Protective Order was filed on April 24, 2019. Intervenor Andover

Homeowners' Association's Answer to Sunoco Pipeline L.P.'s Motion for Amended Protective Order was filed on May 8, 2019. Intervenor Chester County, Delaware County, East Goshen Township, Downingtown School District, and Rose Tree Media School District filed a joint Opposition on May 19, 2019. The main objections to the proposed Amended Protective Order are that it would be burdensome to Complainants and Intervenor to have their representatives travel to Bala Cynwyd, Pennsylvania to inspect documents marked "EXTREMELY SENSITIVE MATERIALS" when their experts are located in Pittsburgh and Ontario, Canada. Some Intervenor propose the use of cloud-based software applications providing restrictive private portals by which all three categories of documents can be accessed. Additionally, an objection was raised regarding the lack of provision for the resolution of disputes regarding the designation of materials as "EXTREMELY SENSITIVE MATERIALS" and whether Sunoco reasonably provides copies of these materials upon request.

Although the Commission's regulations do not specifically provide for a third-tiered category of "EXTREMELY SENSITIVE MATERIALS," I acknowledge the company's efforts to keep Confidential Security Information secure and free from dissemination on the internet or to hackers and potential terrorists. However, the limitation of one location near Philadelphia seems unduly burdensome on the Representatives of Complainants and Intervenor, who have named experts located in Pittsburgh and Ontario, Canada. Accordingly, Sunoco's motion will be granted in part and denied in part. Sunoco's proposed Amended Protective Order, will be adopted as modified giving the parties' Representatives the ability to inspect documents in two additional locations in Pennsylvania, Harrisburg or Pittsburgh, upon request. Additionally, a clause providing for a dispute resolution process will be added to an Amended Protective Order that will be issued separately. It appears Sunoco does not object to the parties being able to challenge the third designation. Tr. 674-675. I encourage Sunoco to share as many discovery responses as practicable through password-restricted access portals such as Case Anywhere, Q Discovery or DropBox to reduce the cost and burden of prosecution to *pro se* and governmental complainants and intervenors.

Electronic filing of admitted testimony

In the event there is no settlement, and an evidentiary hearing is held, admitted written testimony shall be electronically filed with the Commission within 30 days after the hearing date. If there is a settlement, and there is no cross-examination regarding pre-served and admitted testimony, then there is no need to file an electronic copy of the testimony.

### Settlement

The parties are reminded that if a settlement is reached, they should file a petition for settlement as well as individual party's statements in support of the settlement petition. Additionally, it may be necessary to enter written testimony and other evidence into the record with a settlement petition, in order to provide the presiding officer with enough evidence to support findings that the proposed settlement is in the public interest and in accordance with the Public Utility Code. Evidence may be moved into the record with a written verification, or with the testimony of a live witness attesting to the truthfulness of the testimony offered. Any settlement petitions are to be filed in hard copy as well as in a CD in searchable PDF format. In addition, any settlement petitions are to be delivered to me in hard copy as well as electronically in Word format.

THEREFORE,

IT IS ORDERED:

1. That Docket Nos. C-2018-3006117, P-2018-3006117, C-2018-3005025, C-2018-3006905 and C-2019-3006898 are consolidated for purposes of discovery, hearings, briefs and decisions in these cases.

2. That the procedural schedule is as follows.

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October, 2019 (same day following a TBD site visit by ALJ Barnes)
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
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Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

3. That, except for good cause, any requests for a change in the scheduled hearing dates, briefing deadlines, or other deadlines must be submitted to me in writing no later than five (5) days prior to the scheduled date, if possible. 52 Pa. Code §1.15(b). Requests for changes must state the agreement or opposition of other parties, and must be sent to the presiding officer and all parties of record.

4. That the discovery rules are modified such that effective after the service of Complainants' and any Aligned Intervenor's Surrebuttal testimony, discovery requests shall be due seven (7) days after receipt of requests, that a Motion to Compel be due within seven (7) days of service of any objections, and that an answer to a Motion to Compel be due within three (3) days of service of a Motion to Compel.

5. That Thornbury Township is granted Intervenor status.

6. That the County of Chester is granted Intervenor status.

7. That Edgmont Township is granted Intervenor status.

8. That West Chester Area School District is granted Intervenor status.

9. That Senator Killion is granted Intervenor status in his individual capacity.

10. That in the event an evidentiary hearing is held, admitted written testimony shall be electronically filed with the Commission within 30 days after the hearing date(s).

11. That Sunoco Pipeline, L.P.'s Petition for an Amended Protective Order is granted in part and denied in part and an Amended Protective Order shall be issued under separate order.

12. That there will be a fifteen-day hearing transcript turnaround so that the briefs can be prepared in accordance with the procedural schedule.

13. That Complainants' and Intervenor's requests for a site view are denied.

Date: June 6, 2019

/s/  
Elizabeth H. Barnes  
Administrative Law Judge

*(Revised 6.6.19)*

MICHAEL BOMSTEIN ESQUIRE  
PINNOLA & BOMSTEIN  
SUITE 2126 LAND TITLE BUILDING  
100 SOUTH BROAD STREET  
PHILADELPHIA PA 19110  
**215.592.8383**  
*Representing Complainants*

MEGHAN FLYNN  
212 LUNDGREN ROAD  
LENNI PA 19052  
*Complainant*

ROSEMARY FULLER  
226 VALLEY ROAD  
MEDIA PA 19063  
**610.358.1262**  
**Accepts E-Service**  
*Complainant*

MICHAEL WALSH  
12 HADLEY LANE  
GLEN MILLS PA 19342  
*Complainant*

NANCY HARKINS  
1521 WOODLAND RD  
WEST CHESTER PA 19382  
**484.678.9612**  
**Accepts E-Service**  
*Complainant*

GERALD MCMULLEN  
200 HILLSIDE DRIVE  
EXTON PA 19341  
*Complainant*

CAROLINE HUGHES  
1101 AMALFI DRIVE  
WEST CHESTER PA 19380  
**484.883.1156**  
**Accepts E-Service**

MELISSA HAINES  
176 RONALD ROAD  
ASTON PA 19014  
*Complainant*

CURTIS STAMBAUGH ASSISTANT  
GENERAL COUNSEL  
SUNOCO PIPELINE LP  
212 N THIRD STREET SUITE 201  
HARRISBURG PA 17101  
**717.236.1731**  
**Accepts E-Service**  
*Representing Sunoco Pipeline LP*

NEIL S WITKES ESQUIRE  
ROBERT D FOX ESQUIRE  
DIANA A SILVA ESQUIRE  
MANKO, GOLD, KATCHER & FOX LLP  
401 CITY AVENUE  
VALA CYNWYD PA 19004  
**484.430.2314**  
**484.430.2312**  
**484.430.2347**  
**Accepts E-Service**  
*Representing Sunoco Pipeline LP*

THOMAS J SNISCAK ESQUIRE  
HAWKE MCKEON AND SNISCAK LLP  
100 N TENTH STREET  
HARRISBURG PA 17101  
**717.236.1300**  
**Accepts E-Service**  
*Representing Sunoco Pipeline LP*

RICH RAIDERS ATTORNEY  
606 NORTH 5<sup>TH</sup> STREET  
READING PA 19601  
**484.509.2715**  
**Accepts E-Service**  
*Representing Intervenor Andover  
Homeowners' Association Inc.*

ANTHONY D KANAGY ESQUIRE  
GARRET P LENT ESQUIRE  
POST & SCHELL PC  
17 N SECOND ST 12<sup>TH</sup> FL  
HARRISBURG PA 17101-1601  
**717.612.6034**  
**Accepts E-Service**  
*Representing Intervenor Range  
Resources Appalachia*

ERIN MCDOWELL ESQUIRE  
3000 TOWN CENTER BLVD  
CANONSBURG PA 15317  
**725.754.5352**

*Representing Intervenor Range  
Resources Appalachia*

LEAH ROTENBERG ESQUIRE  
MAYS CONNARD & ROTENBERG LLP  
1235 PENN AVE  
SUITE 202  
WYOMISSING PA 19610  
**610.400.0481**

**Accepts E-Service**  
*Representing Intervenor Twins Valley  
School District*

MARGARET A MORRIS ESQUIRE  
REGER RIZZO & DARNALL  
2929 ARCH STREET 13TH FLOOR  
PHILADELPHIA PA 19104  
**215.495.6524**

**Accepts E-Service**  
*Representing Intervenor East Goshen  
Township*

VINCENT MATTHEW POMPO  
ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
PO BOX 565  
WEST CHESTER PA 19381  
**610.701.4411**

**Accepts E-Service**  
*Representing Intervenor West Whiteland  
Township*

MARK L FREED ESQUIRE  
JOANNA WALDRON ESQUIRE  
CURTIN & HEEFNER LLP  
DOYLESTOWN COMMERCE CENTER  
2005 S EASTON ROAD SUITE 100  
DOYLESTOWN PA 18901  
**267.898.0570**

**Accepts E-Service**  
*Representing Intervenor Uwchlan  
Township*

JAMES R FLANDREAU  
PAUL FLANDREAU & BERGER LLP  
320 WEST FRONT ST  
MEDIA PA 19063  
**610.565.4750**

**Accepts E-Service**  
*Representing Intervenor Middletown  
Township*

PATRICIA BISWANGER ESQUIRE  
PATRICIA BISWANGER  
217 NORTH MONROE STREET  
MEDIA PA 19063  
**610.608.0687**

**Accepts E-Service**  
*Representing Intervenor County of  
Delaware*

ALEX JOHN BAUMLER ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
BOX 565  
WEST CHESTER PA 19381  
**610.701.3277**

**Accepts E-Service**  
*Representing Intervenor Downingtown  
Area School District, et al.*

GUY DONATELLI ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
BOX 565  
WEST CHESTER PA 19381  
**610.430.8000**

*Representing Intervenor Rose Tree  
Media School District*

JAMES DALTON  
UNRUH TURNER BURKE & FREES  
PO BOX 515  
WEST CHESTER PA 19381  
**610.692.1371**

*Representing Intervenor West Chester  
Area School District*



JAMES BYRNE ESQUIRE  
MCNICHOL BYRNE & MATLAWSKI PC  
1223 N PROVIDENCE RD  
MEDIA PA 19063  
**610.565.4322**  
**Accepts E-Service**  
*Representing Intervenor Thornbury  
Township*

MICHAEL P PIERCE ESQUIRE  
MICHAEL P PIERCE PC  
17 VETERANS SQUARE  
PO BOX 604  
MEDIA PA 19063  
**610.566.0911**  
**Accepts E-Service**  
*Representing Edgmont Twp.*

MELISSA DIBERNARDINO  
1602 OLD ORCHARD LANE  
WEST CHESTER PA 19380  
**484.881.2829**  
**Accepts E-Service**

VIRGINIA MARCILLE KERSLAKE  
103 SHOEN ROAD  
EXTON PA 19341  
**215.200.2966**  
**Accepts E-Service**  
*Intervenor*

LAURA OBENSKI  
14 S VILLAGE AVE  
EXTON PA 19341  
**484.947.6149**  
**Accepts E-Service**

REBECCA BRITTON  
211 ANDOVER DR  
EXTON PA 19341  
**215.776.7516**  
**Accepts E-Service**

JOSH MAXWELL  
MAYOR OF DOWNINGTOWN  
4 W LANCASTER AVENUE  
DOWNINGTON PA 19335  
*Intervenor*

THOMAS CASEY  
1113 WINDSOR DR  
WEST CHESTER PA 19380  
*Intervenor*

KELLY SULLIVAN ESQUIRE  
MCNICHOL BYRNE & MATLAWSKI  
1223 NORTH PROVIDENCE RD  
MEDIA PA 19063  
**610.565.4322**  
**Accepts E-Service**  
*Representing Thornbury Twp.*

# **ATTACHMENT B**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania State Senator Andrew E. Dinniman	:	
	:	C-2018-3001451
v.	:	
	:	P-2018-3001453
Sunoco Pipeline, L.P.	:	
Andover Homeowner's Association	:	
	:	
v.	:	C-2018-3003605
	:	
Sunoco Pipeline, L.P.	:	

**PROCEDURAL ORDER**

On August 28, 2018, a prehearing conference was held regarding the above-captioned cases. Appearing for Senator Dinniman was Mark L. Freed, Esquire. Appearing for Sunoco Pipeline, LP was Robert Fox, Esquire, Diana Silva, Esquire, Thomas Sniscak, Esquire, and Whitney Snyder, Esquire. Appearing for Range Resources Appalachia, LLC was Garrett P. Lent and Anthony D. Kanagy. Appearing for the Clean Air Council was Kathryn Urbanowicz, Esquire. Appearing for West Whiteland Township was Vincent Pompo, Esquire. Appearing for Andover Homeowners' Association, Inc. was Rich Raiders, Esquire. On September 5, 2018, a further telephonic prehearing conference was held. All parties and intervenors appeared. This order sets forth the procedural matters addressed at the prehearing conferences.

THEREFORE,

IT IS ORDERED:

1. That Docket Nos. C-2018-3001451, P-2018-3001453 and C-2018-3003605 are hereby consolidated at C-2018-3001451 for purposes of hearings and a decision.

2. That the deadline for Petitions to Intervene is September 24, 2018.

3. That pursuant to 52 Pa. Code §1.55, the service list is as attached to this order.

4. That the following procedural schedule is adopted.

Petitions to Intervene Deadline	September 24, 2018
Complainant and Complainant aligned Intervenor Direct Testimony	December 7, 2018
Respondent and Respondent aligned Intervenor Rebuttal	February 5, 2019
Complainant and Complainant Aligned Intervenor Surrebuttal	April 8, 2019
Rejoinder Outlines	May 8, 2019
Hearings	June 10-14, 2019
Main Briefs	July 26, 2019
Reply Briefs	August 16, 2019

5. That the evidentiary hearing will be held in Harrisburg in an available hearing room in the Commonwealth Keystone Building and will begin at 10:00 a.m. on June 10, 2019.

6. That the transcript turnaround time for the evidentiary hearing shall be five (5) days.

7. That the parties are encouraged to discuss settlement negotiations and in the event that an amicable agreement is reached prior to the hearing, the parties are given leave to file a Joint Petition for Approval of Settlement with attached statements in support.

8. That counsel for Sunoco Pipeline, L.P. shall coordinate the order of witnesses and estimated time for cross-examination by each party and will supply a copy of the witness order to the presiding officer at least one (1) day prior to the evidentiary hearings.

9. That motions or objections with respect to written testimony must be presented in writing and provided to the parties and the presiding officer no later than close of business on Monday, June 3, 2019.

10. That the parties shall conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officer no later than 4:30 p.m. on the dates listed, unless otherwise indicated. Parties may serve the documents listed in Ordering Paragraph No. 7 via e-mail to meet this requirement, with hard copy to follow by regular first class mail, so long as the electronic version is Microsoft Word compatible. Parties shall not file testimony with the Commission, but shall file a certificate of service.

11. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers. Parties serving preserved testimony pursuant to 52 Pa.Code § 5.412(f) are required, within thirty (30) days after the final hearing, to either eFile with or provide to the Secretary's Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission's Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

12. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373.

13. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

14. That the evidentiary hearings in this matter constitute a formal legal proceeding and will be conducted in accordance with the Commission's Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

15. That any provision of this Order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: September 5, 2018

/s/  
Elizabeth H. Barnes  
Administrative Law Judge

P-2018-3001453 - Pennsylvania State Senator Andrew E. Dinniman v Sunoco Pipeline, L.P.  
C-2018-3001451 - Pennsylvania State Senator Andrew E. Dinniman v Sunoco Pipeline, L.P.  
C-2018-3003605 - ANDOVER HOMEOWNERS ASSOCIATION INC v. SUNOCO PIPELINE LP

Revised 8/29/2018

MARK L FREED ESQUIRE  
JOANNA WALDRON ESQUIRE  
CURTIN & HEEFNER LLP  
DOYLESTOWN COMMERCE CENTER  
2005 S EASTON ROAD SUITE 100  
DOYLESTOWN PA 18901  
**267.898.0570**

**Accepts E-Service**

*Representing Senator Andrew E. Dinniman*

THOMAS J SNISCAK ESQUIRE  
KEVIN J. MCKEON ESQUIRE  
WHITNEY E. SNYDER ESQUIRE  
HAWKE MCKEON AND SNISCAK LLP  
100 N TENTH STREET  
HARRISBURG PA 17101  
**717.236.1300**

**Accepts E-Service**

*Representing Sunoco Pipeline, L.P.*

CURTIS STAMBAUGH ASSISTANT  
GENERAL COUNSEL  
SUNOCO PIPELINE LP  
212 N Third Street Suite 201  
HARRISBURG PA 17101  
**717-236-1731**

**Accepts E-Service**

*Representing Sunoco Pipeline L.P.*

DIANA A SILVA ESQUIRE  
ROBERT D FOX ESQUIRE  
NEIL S WITKES ESQUIRE  
MANKO GOLD KATCHER & FOX LLP  
401 CITY AVE  
SUITE 901  
BALA CYNWYD PA 19004  
**484.430.2347**  
**484.430.2312**  
**484.430.2314**

**Accepts E-Service**

*Representing Sunoco Pipeline, L.P.*

KATHRYN URBANOWICZ ESQUIRE  
JOSEPH OTIS MINOTT  
CLEAN AIR COUNCIL  
135 SOUTH 19TH STREET SUITE 300  
PHILADELPHIA PA 19103  
**215.567.4004**

**Accepts E-Service**

VIRGINIA MARCILLE KERSLAKE  
103 SHOEN ROAD  
EXTON PA 19341  
**215.200.2966**

**Accepts E-Service**

RICH RAIDERS ESQUIRE  
RAIDERS LAW  
321 EAST MAIN STREET  
ANNVILLE PA 17003  
**484.638.6538**

**Accepts E-Service**

*Council for Andover Homeowners' Association, Inc.*

VINCENT MATTHEW POMPO ESQUIRE  
ALEX J BAUMLER ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST BOX 565  
WEST CHESTER PA 19382-0565  
**610.430.8000**

**Accepts E-Service**

*Solicitor for West Whiteland Township*

ANTHONY D KANAGY ESQUIRE  
GARRETT P LENT ESQUIRE  
POST & SCHELL PC  
17 NORTH SECOND STREET  
12TH FLOOR  
HARRISBURG PA 17101-1601  
**717.612.6032**

**Accepts E-Service**

*Counsel for Range Resources - Appalachia LLC*

ERIN MCDOWELL ESQUIRE  
RANGE RESOURCES -  
APPALACHIA LLC  
3000 TOWN CENTER BOULEVARD  
CANONSBURG PA 15317  
**725.754.5352**  
*Counsel for Range Resources -  
Appalachia LLC*

LEAH MINTZ ESQUIRE  
DUANE MORRIS  
30 SOUTH 17<sup>TH</sup> STREET  
PHILADELPHIA PA 19101-4196  
**215.979.1263**  
*Representing Sunoco Pipeline, L.P.*



# **ATTACHMENT C**



# Raiders Law

August 24, 2018

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

RE: *Dinniman v. Sunoco Pipeline L.P.*, Docket C-2018-3001451 and P-2018-3001453  
Pre-Hearing Memorandum

Dear Secretary Chiavetta:

Please find the attached Pre-Hearing Memorandum for the above-referenced matter.

Please let me know if you have any questions. Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

Enclosure

cc: Hon. Elizabeth Barnes  
Distribution

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania State Senator Andrew E. Dinniman	:	
	:	P-2018-3001453
v.	:	C-2018-3001451
	:	
Sunoco Pipeline, L.P.	:	

**PREHEARING CONFERENCE MEMORANDUM OF INTERVENOR,  
ANDOVER HOMEOWNERS' ASSOCIATION, INC.**

**TO: ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:**

In accordance with the provisions of 52 Pa. Code § 1.222(d), Andover Homeowners' Association, Inc. ("Association"), Intervenor, submits this Prehearing Conference Memorandum in advance of the scheduled August 28, 2018 hearing in the above captioned Matter.

1. **Introduction and Background.** Senator Andrew E. Dinniman ("Dinniman") filed this Amended Complaint (Docket C-2018-3001451) and an Amended Petition for Emergency Relief (Docket P-2018-3001451) with the Pennsylvania Public Utility Commission ("Commission" or "PUC") against Sunoco Pipeline L.P. ("Sunoco") on July 24, 2018 concerning issues directly focused on Sunoco's Mariner East system. At the time of Senator Dinniman's complaint, Mariner East consisted of three pipelines. This system includes the 1930s eight-inch (8") diameter Mariner East I ("ME1"), the under construction twenty-inch (20") Mariner East II ("ME2") and the under construction sixteen inch (16") Mariner East 2x ("ME2X"). Since Senator Dinniman filed these actions, Sunoco added the 1930s twelve-inch (12") "Point Breeze to Montello" ("12-inch") line to the Mariner East system. Sunoco announced in July 2018 that the 12-inch line would be reversed and converted to natural gas liquids ("NGL") service. ME1 and the 12-inch lines are repurposed and reversed former liquids lines used by Sunoco and predecessor companies to transport gasoline, diesel and

related liquid petroleum products from the former Sunoco Marcus Hook refinery to markets in Central and Western Pennsylvania and beyond.

In 2014, Sunoco applied to the Commission to expand and extend its NGL service by adding ME2 and ME2X, reversing the flow of what is now ME1, and extending service to include new points between Houston, Washington County and Scio, Ohio by way of West Virginia. *See, e.g.*, PUC Docket P-2014-2411942 (lead case), Order Entered Oct. 29, 2014. In July 2018, Sunoco announced that it intended to repurpose the 12-inch line in Delaware and Chester Counties to provide NGL service.

The Commission, in its July 20, 2018 Order, granted the Association intervenor status in the instant matter. The Commission found that the Association, as hosts of valve sites and pipeline segments that could be involved in an incident in West Whiteland Township, as members who utilize resources in or near the West Whiteland Township areas in dispute, and, as residents outside West Whiteland Township or Senator Dinniman's Senatorial District, the Association has interests not necessarily fully represented by Senator Dinniman. The Association also expressed a common interest with the Senator concerning various pipeline safety aspects and reviews it wished the Commission to order.

2. **Persons to be Listed on Service List.** The Association requests that all documents be served upon the Association's counsel, where counsel consents to electronic service from the Pennsylvania Public Utility Commission ("PUC"):

Rich Raiders, Esq.  
Raiders Law PC  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
484 509 2715 voice  
610 898 4623 fax

3. **Statement Regarding Possible Settlement.** No settlement discussions have occurred. The Association will consider potential settlement in due course.
4. **Proposed Plan and Schedule of Discovery.** 52 Pa. Code 5.321 et. seq. will govern discovery. The Association does not propose to modify the rules to discovery. The Association is open to give due consideration to any discovery modifications proposed by any other party. The Association has moved to consolidate this case with the matters of *Andover Homeowners' Association, Inc., v. Sunoco Pipeline, L.P.*, Docket C-2018-3003605. The Association is willing and able to conform its discovery schedule request to accommodate the *Andover* matter as will be discussed in the August 28, 2018 hearing.
5. **Other Proposed Orders with Respect to Discovery.** Protective Orders may be necessary to allow for proper discovery of pertinent portions of Sunoco's Part 195 Manual, 49 C.F.R. § 195, which may contain confidential, trade secret or national security restricted information. Other records, including detailed safety, emergency response or pipeline design information, could require coverage under such a Protective Order. The Association understands that Sunoco has already filed a Motion for Protective Order in this matter, to be disposed of before the Commission before substantial discovery begins.
6. **Need for Public Input Hearings.** The Association understands that public hearings have been conducted concerning the Petition for Emergency Relief. However, the Association suggests that additional issues may arise that warrant public participation, at least one public hearing, preferably near the subject site at Lisa Drive, West Whiteland Township, would be appropriate in this matter.

**7. Proposed Schedule of Submission of Written Testimony, In-Person Hearings and Briefs.**

The Association will cooperate with the ALJ and the parties at the Prehearing Conference to develop an appropriate procedural schedule, including a schedule for submitting written testimony, conducting an in-person hearing and submitting briefs, and discovery rules in accordance with the Commission's regulations and any directives issued by the ALJ. The Association understands that, in moving for consolidation with the *Andover* matter that concerns of that matter may dictate such schedules should the Commission order consolidation.

**8. Witnesses Expected to be Called and Subject Matter.** The Association currently expects to call the following witnesses, without being limited thereto:

- a. Eric Friedman, 2 Wellfleet Lane, Glen Mills, PA 19382, (210) 365-6903, [eric.law.friedman@gmail.com](mailto:eric.law.friedman@gmail.com) – President of the Andover Homeowner's Association, Inc., property owner. Will testify concerning the Association property, layout, nearby features, populations, membership concerns.
- b. Jeff D. Marx, PE, Quest Consultants Inc., 908 26th Avenue NW, Norman, OK 73069-8069, (405) 329-7475, [jdm@questconsult.com](mailto:jdm@questconsult.com) – risk consultant for the Association. Will testify concerning Risk Assessment matters for NGL systems, engineering and safety considerations impacting various land uses near potential incident sites.

Other witnesses may be called as appropriate, as discovery or analysis of party positions may dictate.

**9. Issues and sub-issues of This Proceeding and Party's Position.** The following list represents the Association's preliminary determination of potential issues in these proceedings,

pending discovery and analysis of party positions. The Association specifically reserves the right to address other appropriate issues that may emerge during discovery. The preliminary issues are as follows:

- a. Sunoco does not operate natural gas liquids pipelines upon Association property in a manner to adequately protect public safety.
- b. Sunoco does not operate natural gas liquids pipelines, including to but not limited to those lines upon Association property, using a practically viable emergency alert system to notify neighbors, visitors or passers-by of an incident.
- c. Sunoco cannot demonstrate that it can safely and effectively evacuate populations within an anticipated incident impact radius of its pipeline or valve sites in a timely and orderly manner to avoid loss of life, bodily injury or extensive property damage.

**10. Statement Describing Proposed Evidence.** Substantial evidence would include expert testimony from one or more expert witnesses and fact testimony by one or more Association members, officers, and stakeholders. Expert witness testimony would include, but may not be limited to, pipeline safety concerning NGL transportation, emergency response for densely populated residential and commercial areas near NGL pipelines, consequence analyses for areas near and along pipeline segments including or relating to Association property and equipment onsite thereto, and other matters to be discerned in discovery. Additional written testimony may be solicited from other fact or expert witnesses as appropriate.

**11. Statement Concerning Consolidation.** The Association moved for consolidation between this matter and *Andover Homeowners' Association, Inc. v. Sunoco Pipeline L.P.*, Docket C-

2018-3003053. The Association filed this Motion for Consolidation for several reasons, as fully described below and in the Association's Motion. Further, the Association addresses Sunoco's issues raised in its August 13, 2018 Answer to the Association's Motion below.

A. Consolidation is Appropriate Here. As Sunoco describes in its Answer, 52 Pa. Code 5.81 allows the Commission to consolidate matters with "sufficient common questions of law or fact and where a joint proceeding would avoid unnecessary delay." Sunoco Answer at unnumbered \*2-3 (additional citations omitted). Sunoco fails to aver that any party would suffer any delay in consolidation.

The Association notes that the Prehearing Conferences for the Association matter and the *Andover* matter are scheduled for the same time, at the same place, before the same Administrative Law Judge. As the Judge will be hearing scheduling argument at the August 28, 2018 hearing, any discussion of delays in discovery are premature at best. Sunoco further admits that the Commission will grant motions to consolidate where "it would be extraordinarily difficult for this Commission to make an informed decision concerning one petition without contemporaneous consideration of the other". *In re PECO Energy Company and Enron Energy Serv's Power, Inc.*, Docket R-009373943 and P-00971265, 87 Pa. P.U.C. 718 (Order entered Oct. 9, 1997).

Here, the issues at dispute here concern the segment of the Mariner East 2 system common between the *Andover* matter and Lisa Drive. The Commission has already found that the Association has a significant nexus with the *Andover* matter when it allowed the Association to intervene herein. *See*, Order of July 20, 2018.

Sunoco misstates the relevance of site-specific geology and geography. Sunoco



objects to consolidation because these sites are six miles apart and in different counties. However, the crux of both complaints is not geology, but Sunoco's ability to safely transport NGLs through several very densely populated Philadelphia suburbs. Judge Barnes recognized that any incident on the Mariner East system in West Whiteland Township could impact the Association and its members, especially any ME2 or ME2X incident where the valve on Association property is likely to be closed in response to any such incident in West Whiteland Township or along the corridor between West Whiteland and Thornbury Townships. *Id.* Both complaints concern the exact same ME2 and ME2x pipeline segments. These issues are sufficiently intertwined to support consolidation.

- B. Both Actions Involve the Mariner East System. First, both matters involve the Mariner East system. Mariner East is a system of several pipelines providing or proposed to provide NGL transportation from Ohio to Pennsylvania, through West Virginia. *In re Condemnation of Sunoco Pipeline, L.P. (Martin)*, 143 A.3d 1000, 1008 (Pa. Commw. 2016); *See also; Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 674 (Pa. Commw. 2018); *Clean Air Council v. Sunoco Pipeline L.P.*, \_\_\_ A.3d \_\_\_, 1112 C.D. 2017 at \*3-4 (Pa. Commw. April 30, 2018); *In re Sunoco Pipeline L.P. (Katz)*; 165 A.3d 1044, 1053 (Pa. Commw. 2017); appeal denied, \_\_\_ A.3d \_\_\_ (Pa. 2018).

The number of pipelines in this system has changed over time, starting with one ("ME1") 1930s legacy pipeline that was reversed and converted to NGL service in 2016. Sunoco then proceeded to construct two additional pipelines, known as ME2 and ME2X, between 2017 and present. Recently, and during the pendency of Senator Dinniman's

complaint, Sunoco announced that it will add a fourth pipeline, a twelve inch (12") line between Delaware County and Berks County known as the "Point Breeze to Montello" line, to the Mariner East project. Bill Rettew, *Mariner East 2 pipeline may take alternate route*, West Chester (Pa.) Daily Local News (Jul. 5, 2018)

<http://www.dailylocal.com/article/DL/20180705/NEWS/180709904> (last visited Aug. 20, 2018); Jon Hurdle, *Sunoco wants to use older pipeline to pump NGLs over unfinished sections of ME2*, Stateimpact.org (Jul. 3, 2018)

<https://stateimpact.npr.org/pennsylvania/2018/07/03/sunoco-wants-to-use-older-pipeline-to-pump-ngls-over-unfinished-sections-of-me2/> (last visited Aug. 20, 2018).

On August 13, 2018, Sunoco answered the Association's Motion to Consolidate. However, it misstates the nature of both the Association's and the Senator's complaint. Section C of Sunoco's answer alleges that the Mariner East system does not include all of the pipeline assets included in the Mariner East system. Our Commonwealth Court has repeatedly ruled against Sunoco's argument, holding that the Commission regulates the Mariner East system, not just one or more pieces of pipe comprising the system. Sunoco's attempt to differentiate between parts of the Mariner East system, including the part it only added to Mariner East in July 2018, after Senator Dinniman filed his complaint, directly contradict Sunoco's repeated argument in our courts that the new phases of pipelines added to the Mariner East 1 pipeline are nothing more than an extension of Mariner East service. Sunoco cannot now be allowed to escape consideration of all parts of the Mariner East system simply because Senator Dinniman did not wait for Sunoco to add a fourth pipeline to Mariner East before he filed his

complaint. Therefore, Sunoco's arguments about different projects scopes are irrelevant and already disclaimed by Sunoco in several appellate proceedings.

- C. Consolidation Will Not Materially Impact the Schedule. Sunoco offers a red herring that this new proceeding will materially impact the schedule for this matter. First, the Association recognizes that injunction hearings have already occurred that have had some impact on the scope of that matter. The Association also recognizes that Sunoco has questioned the Senator's standing in this matter. However, the Commission has allowed to proceed, to the point of scheduling this Pre-hearing and the *Andover* Pre-hearing at the same time before the same ALJ. The Association believes, and therefore avers, that the Commission is fully capable of reacting to whatever opinion the Commonwealth Court hands down concerning the Senator's standing in the instant matter.

The Association disagrees that the Commission or Sunoco would suffer significant prejudice if the schedules were consolidated. The "broader issues" Sunoco cites to all revolve around safety and Sunoco's ability to protect the public in the event of a pipeline failure. Sunoco is believed to have one "195 Manual" for Mariner East or its entire pipeline operation system. The Association does not believe that Sunoco has separate processes and procedures applicable to its pipeline operations in West Whiteland Township as it has in Thornbury Township. Any Mariner East 2 or 2X review of West Whiteland safety necessarily involves a review of the next downstream valve site – which is located on Andover's open space. Any incident on ME2 or ME2X in West Whiteland Township necessarily and directly impacts the Association. Therefore, the

Association asserts that discover in the two matters, and the related schedules for ongoing proceedings, could easily be coordinated without causing any party undue delay.

- D. The Association and the Senator Seek Similar Relief. Sunoco offers a red herring that the Association and Senator Dinniman seek different relief. First, if ME2 and ME2X are prohibited from operating in West Whiteland Township, then the ME2 and ME2X valve sites on Association open space would be removed, redesigned or otherwise impacted by whatever engineering Sunoco would be required to complete to implement the Commission's Order. Sunoco cannot argue otherwise. Second, the Senator seeks a written Integrity Management Plan, which is a major component of the integrated safety review the Association requests. Any credible notification and evacuation plan would necessarily include the same elements in West Whiteland Township as it would in Thornbury Township, Delaware County, even if the implementation methods would vary slightly based on each Township's emergency response capabilities.

The Association is unaware of what different factual or legal considerations would be in place concerning one end of a pipeline segment as opposed to the middle of the same pipeline segment. Any incident on any portion of the ME2 or ME2X pipeline segment in West Whiteland Township would likely involve a response on Association property and would likely impact Association members both at home and along the Mariner East corridor. Any incident on Association property for these two sites would necessarily involve changing operations in West Whiteland Township. Population densities are similar along the Chester to Delaware County corridor.

The Association rejects Sunoco's unsupported claims that an incident on Association property, which borders Chester County, would not impact Chester County. Likewise, the Association also rejects any implication that an incident in West Whiteland Township would not impact the Association, its property and its members. Inadequate emergency response in either county would necessarily impact both the Senator, in his standing as a pipeline neighbor and resident of West Whiteland Township, Senator Dinniman's constituents, and the Association and its members at home or visiting West Whiteland Township or points between.

Respectfully Submitted,

Date: August 24, 2018

/s/ Rich Raiders  
Rich Raiders, Esq.  
Attorney ID 314857  
Raiders Law PC  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
484 509 2715 voice  
610 898 4623 fax  
[rich@raideslaw.com](mailto:rich@raideslaw.com)

## 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 US Mail on the following:

### VIA FIRST CLASS AND E-MAIL

Mark L. Freed, Esquire  
Curtin & Heefner LLP  
Doylestown Commerce Center  
2005 South Easton Road, Suite 100  
Doylestown, PA 18901  
mlf@curtinheefner.com  
*Attorney for Pennsylvania State Senator  
Andrew Dinniman*

Erin McDowell, Esquire  
Range Resources - Appalachia LLC  
3000 Town Center Boulevard  
Canonsburg, PA 15317  
emcdowell@rangeresources.com  
*Counsel for Range Resources - Appalachia  
LLC*

Anthony D. Kanagy, Esquire  
Garrett P. Lent, Esquire  
Post & Schell PC  
17 North Second Street, 12th Floor  
Harrisburg, PA 17101-1601  
akanagy@postschell.com  
glent@postschell.com  
*Counsel for Range Resources- Appalachia  
LLC*

Virginia Marcille Kerslake  
103 Shoen Road  
Exton PA, 19341  
vkerslake@gmail.com  
*Pro Se Intervenor*  
Vincent Matthew Pompo, Esquire  
Alex J. Baumler, Esquire  
Lamb McErlane PC  
24 East Market Street, Box 565  
West Chester, PA 19382-0565  
vpompo@larnbmcerlane.com  
abaumler@lambmcerlane.com  
*Solicitor for West Whiteland Township*

Joseph O. Minott, Esquire  
Kathryn Urbanowicz, Esquire  
Clean Air Council  
135 S 19th Street, Suite 300  
Philadelphia, PA 190103-4912  
joe.minott@cleanair.org  
kurbanowicz@cleanair.org  
*Attorneys for Intervenor Clean Air Council*

Thomas J. Sniscak, Esq. (PA ID No. 33891)  
Kevin J. McKeon, Esq. (PA ID No. 30428)  
Whitney E. Snyder, Esq. (PA ID No. 316625)  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
tjsniscak@hmslegal.com  
kjmckeon@hmslegal.com  
[wesnyer@hmslegal.com](mailto:wesnyer@hmslegal.com)

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
rfox@mankogold.com  
nwitkes@mankogold.com  
dsilva@mankogold.com  
*Attorneys for Respondent Sunoco Pipeline L.P.*

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn, Rosemary Fuller, Michael Walsh,	:	
Nancy Harkins, Gerald McMullen, Caroline Hughes and	:	
Melissa Haines	:	
	:	
v.	:	C-2018-3006116
	:	P-2018-3006117
Sunoco Pipeline L.P.	:	

**PREHEARING CONFERENCE MEMORANDUM OF ANDOVER HOMEOWNERS' ASSOCIATION, INC.**

**TO: ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:**

In accordance with the provisions of 52 Pa. Code § 5.221-5.224, Andover Homeowners' Association, Inc. ("Association") submits this Prehearing Conference Memorandum in advance of the scheduled April 24, 2019 hearing in the above captioned matter.

**Introduction and Background.** Meghan Flynn, Rosemary Fuller, Michael Walsh, Mancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines ("Petitioners") filed the initial petition on November 19, 2018. On the same day, Petitioners filed a Petition for Interim Emergency Relief, where the Pennsylvania Public Utility Commission ("PUC") scheduled two days of hearings on the Petition on November 29 and 30, 2018.

On November 26, 2018, the Association filed to intervene on this Complaint and Petition. The Commission granted intervenor status on November 29, 2018. Since that time, the Commission has granted intervenor status to Downingtown Area School District, Rose Tree Media School District, Twin Valley School District, East Goshen Township, West Whiteland Township, Uwchlan Township, Middletown Township, Delaware County, and the County of Delaware. Additional intervenors, including Thornbury Township, Delaware County, Edgemont Township, County of Chester, West Chester Area School District, and Senator Thomas H. Killion remain pending before the Commission. The Commission's Bureau of Investigation and Enforcement ("BIE") has also entered this matter.

Petitioners have amended the complaint, which has been subject to significant pleadings practice in the first part of 2019. On March 18, 2019, Sunoco filed a motion with the Commission to



consolidate Flynn with complaints by *Melissa DeBernadino* (C-2018-3005025), *Rebecca Britton* (C-2019-3006898) and *Laura Obenski* (C-219-3006905). That motion remains pending consideration at this Pre-Hearing Conference.

The Association intervened concerning issues directly focused on the portions of Sunoco's current and proposed Mariner East system of hazardous, highly volatile liquids pipelines in Delaware and Chester Counties. This system includes the 1930s-era eight inch (8") diameter Mariner East I ("ME1"), the under construction twenty inch (20") Mariner East II ("ME2"), the under construction sixteen inch (16") Mariner East 2x ("ME2X"), and the 1930s-era twelve-inch (12") "Point Breeze to Montello" ("12 inch") line that Sunoco converted to natural gas liquids ("NGL") service where ME2 and/or ME2X were not constructed in Delaware and Chester Counties. ME1 and the 12-inch pipelines are repurposed and reversed former hazardous liquids lines used by Sunoco and predecessor companies to transport gasoline, diesel and related petroleum products from the former Sunoco Marcus Hook refinery to markets in central and western Pennsylvania.

In 2014, Sunoco applied to the Commission to "expand" its NGL service by adding ME2 and ME2X, reversing the flow of what is now ME1, and extending service to include new points between Houston, Washington County and Scio, Ohio by way of West Virginia. *See, e.g.*, PUC Docket P-2014-2411942 (lead case), Order Entered Oct. 29, 2014. Sunoco has repurposed a portion of the 12-inch line in Delaware and Chester Counties to provide NGL service as a work around to commence ME2 service.

The Association is a Pennsylvania not-for-profit corporation that owns approximately 17 acres of open space in Thornbury Township, Delaware County. The open space is burdened with approximately one-half mile of ME1 and 12-inch pipeline, and a valve site for each line. A similar length of ME2 and ME2X pipeline, as well as a valve site for each, is proposed for the Association open space. The pipelines run southeastwardly roughly parallel to State Route 352 for the entire length of Route 352 frontage on Association property, then turn westward along the southern property

boundary before turning southbound again to adjacent parcels.

Thornbury Township, Delaware County borders Chester County, specifically Westtown Township. All of the Mariner East pipelines, existing and proposed, enter Delaware County at State Route 926, which forms the northwest border of Association property.

The valve sites, existing and proposed, are or are anticipated to be constructed on the southeast portion of Association property, less than one hundred feet (100') from residences of the nearest Association members (down-slope from the valve sites) and less than 50 feet from an adjacent restaurant operation (up-slope from the valve sites).

1. **Persons to be Listed on Service List.** The Association requests that all documents be served upon Association's counsel, who consents to electronic service from the Pennsylvania Public Utility Commission ("PUC"):

Rich Raiders, Esq.  
Raiders Law PC  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
484 509 2715 voice  
610 898 4623 fax  
[rich@raiderslaw.com](mailto:rich@raiderslaw.com)

2. **Settlement.** The Association is willing to address settlement of all or part of the proceedings with the other parties. To date, no such discussions have occurred.

3. **Proposed Plan and Schedule of Discovery.** 52 Pa. Code § 5.321 *et. seq.* will govern discovery. The Association does not propose to modify the discovery rules. The Association joins with the Petitioners in the Proposed Plan and Schedule of Discovery, subject to modifications to be proposed to the Administrative Law Judge as necessary.

4. **Other Proposed Orders with Respect to Discovery.** The Association does not propose any additional discovery orders at this time.

5. **Site Visit Necessity.** The Association believes that a site visit of the Association Open Space, especially the valve site upon Association property, would assist the Commission in evaluating the

Association's claims in this matter.

6. **Litigation Schedule.** The Association, having worked closely with the Complainants during the injunction hearing, continues to adopt the Complainants' schedule, as may be amended during the pendency of this matter.

7. **Witnesses Expected to be Called.** The Association currently expects to call the following witnesses, without being limited thereto:

- a. Eric Friedman, 2 Fallbrook Lane, Glen Mills, PA 19342. Current President of the Andover Homeowner's Association, Inc., Andover property owner. Will testify concerning the Association property, layout, nearby features, populations, membership concerns.
- b. Jeff D. Marx, PE, Quest Consultants Inc., 908 26th Avenue NW, Norman, OK 73069, (405) 329-7475, [jdm@questconsult.com](mailto:jdm@questconsult.com) – risk consultant for the Association. Will testify concerning Risk Assessment matters for NGL systems in terms of consequences and probability, engineering and safety considerations, specifically upon Association property and nearby residents, businesses and features.
- c. Other witnesses may be called as appropriate, as discovery or analysis of party or intervenor positions may dictate.

8. **Issues and sub-issues of This Proceeding and Party's Position.** The following list represents the Association's preliminary determination of potential issues in these proceedings, pending discovery and analysis of party positions. The Association specifically reserves the right to address other appropriate issues that may emerge during discovery. The preliminary issues are as follows:

- a. Consolidation. The Association notes that the *pro se* parties who may become subject to consolidation do not agree on consolidation. Specifically, Rebecca Britton notes that this cumbersome case would become substantially more cumbersome if the Commission were to consolidate her case with the others. Laura Obenski supports, and moves for, consolidation, thought the Association, as an existing intervenor, was never served with

any such motion and was not aware of it until it had received responses from other parties.

The Association is concerned with case management, conflicting evidence, and coordination with potentially differing claims, especially in the Britton matter. The Association understands why common questions of fact might need to be coordinated, but is concerned that differing issues may need to be addressed separately from the issues raised by the Complainants here.

- b. Petitions to Intervene. The Association notes that a number of people and entities have proposed to intervene on this matter, or on one or more of the matters proposed for consolidation. As an intervenor, the Association does not in any way wish to discourage other intervenors from contributing to a case the Association believes is of substantial importance to the communities in Delaware and Chester Counties. However, the Association is concerned that case management could become utterly unruly and schedules may need to be enlarged to accommodate everyone's viewpoints, evidence and legal arguments. The Association suggests that case management decisions might be best managed using the outline offered by Her Honor in the Order concerning this Prehearing Conference, where each party and intervenor may or may not join each of the sub-issues the Commission has identified as before it. The Association is also concerned that some of the ancillary matters raised by consolidated parties and/or intervenors may complicate scheduling, and scheduling modifications may be necessary to allow those wishing to participate the full opportunity to be heard.
- c. Protective Order. Association's Counsel has already executed the appropriate documents to bind him as anticipated in the current Protective Order in this matter. In response to Sunoco's April 17, 2019 Motion, it proposes to amend the Protective Order to which Association Counsel is already bound to incorporate "EXTREMELY SENSITIVE INFORMATION" that would be subject to in-camera review. The process Sunoco proposes

seems to be substantially modeled after the “RMP Reading Rooms” that the United States Environmental Protection Agency (“EPA”) set up for similarly potentially safety-sensitive information, only here organized by one of Sunoco’s counsel. *See*, 40 C.F.R. § 1400 et. seq. Sunoco then proposes a procedure to obtain documents found in the reading room consistent with handling of information which may be restricted from public view. The Association understands the need to secure certain information, but suggests that the Commission, through Her Honor, may need to determine, on a case-by-case basis and on a secured record, if the “EXTREMELY SENSITIVE” designations made by Sunoco may become overreaching. The Association requests that any Protective Order include language allowing a party or intervenor, through those covered by the Protective Order, to raise questions about the appropriateness of “EXTREMELY SENSITIVE” classification to the ALJ under appropriate confidentiality protections and, likely, use of the Commission’s Highly Confidential Record procedures during resolution of any such dispute. Otherwise, the Association understands the concerns raised in this issue.

- d. Public Awareness/Emergency Preparedness. The Association intends to offer evidence that Sunoco has failed offer any substantive public awareness or emergency preparedness program, in spite of its testimony in the November 2018 injunction hearing that it allegedly complies with PHMSA standards. The Association argues that none of the evidence offered in that proceeding meets Sunoco’s obligation to offer safe and efficient pipeline service per Pennsylvania requirements. The Association further suggests that the interest that this case has generated from those responsible for the public safety also shows that Sunoco utterly fails to comply with its mandate to provide safe and efficient, even if not perfect, service.
- e. Mass Warning System. The Association intends to offer evidence that a Mass Warning System, while wholly inadequate to address the harms of being subjected to living, working

and conducting business in and around Mariner East pipelines and valve sites, is necessary to alert local citizens, visitors, workers and others of impending or ongoing harms caused by a pipeline system failure. The Association suggests that such a warning system should at least be as protective as the warning systems used by Sunoco at its fixed facilities, including but not limited to the Marcus Hook Industrial Complex and other facilities hosting natural gas liquids facilities.

- f. Pipeline Integrity Management. The Association remains very concerned that the Mariner East system, with its mix of technologies, unfortunate routing, and the operator's compliance history, is not safe and efficient as required by the PUC. The Association believes, and anticipates offering evidence to show, that substantial pipeline integrity management issues persist.
- g. Leak Detection Protocols. The Association remains very concerned that SCADA systems, which do not detect all pipeline leaks unless the leak emerges from SCADA data enough to show a remote operator a significant anomaly in operating parameters, adequately provides a reasonable margin of safety to allow Sunoco to operate safe and efficient pipeline service. The Association believes, and anticipates offering evidence to show, that substantial leak detection protocol issues persist. Sunoco should be required to operate in a manner no less protective than industry standard for its fixed facilities, including but not limited to the Marcus Hook Industrial Complex.
- h. Remaining Life Studies. The Association shares and adopts the Complainants' concerns that the Remaining Life Studies should be conducted, should be conducted with increased transparency, and should be reviewable as part of this ongoing process.
- i. Locations of Pipelines Close to Dwellings and Public Gathering Places. In the Injunction Hearing, the Association offered into evidence some of its concerns about Sunoco's placing valve sites less than one hundred feet (100') from a smoking patio at a nearby restaurant,

that restaurant's kitchen, and other facilities that would, in a matter of seconds, ignite any vapor cloud emanating from the valve site on Association property. Across from this valve site, less than 200' away, are Association Member residences, where basic living activities could, in the event of an incident or a deinventory event from said valve site, immediately ignite a vapor cloud or NGL liquid pool. Perpendicular to these features is a Pennsylvania State Route, traversed by thousands of vehicles per day, less than 100' away from said valve site. The Association intends to offer evidence that such placement, plus the placement of these pipelines within 100' of many of the Association's Members, ensures that Sunoco in no way could possibly offer safe and efficient pipeline service. Consistent with the Association's concerns about advance warning systems, leak detection systems, and general emergency preparedness, the Association believes that, given the current state of the pipeline industry and this operator's compliance history, no operator can possibly operate natural gas liquids pipelines in a safe and efficient manner in Delaware and Chester Counties.

- j. Valve spacing. As the Association showed in the Injunction Hearing, the Association is gravely concerned about valve spacing, design, operation, emergency management, and the fate of materials which must be deinventoried from valves in the event of an emergency. The Association does not believe that the current or proposed valve systems adequately protect the public, and intends to identify evidence to offer the Commission to document its concerns about valve systems, siting and other concerns.
- k. Horizontal Directional Drilling. The Association's concerns with HDD and other trenchless technologies substantially involve how trenchless technologies impact emergency response, public awareness and integrity management systems which could impact Delaware and Chester Counties. The Association may identify other HDD related issues as it continues its discovery in this matter.

9. **Statement Describing Proposed Evidence.** Substantial evidence would include expert testimony from one or more expert witnesses and fact testimony by one or more Association members, officers, and stakeholders. Expert witness testimony would include, but may not be limited to, pipeline safety concerning NGL transportation, emergency response for densely populated residential and commercial areas near NGL pipelines, consequence analyses for areas near and along pipeline segments including or relating to Association property and equipment onsite thereto, and other matters to be discerned in discovery. Additional written testimony may be solicited from other fact or expert witnesses as appropriate.

Respectfully Submitted,

Date: April 19, 2019

/s/ Rich Raiders  
Rich Raiders, Esq.  
Attorney ID 314857  
Raiders Law PC  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
484 509 2715 voice  
610 898 4623 fax  
[rich@raideslaw.com](mailto:rich@raideslaw.com)  
*Counsel for Andover Homeowners' Association, Inc.*



**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn, Rosemary Fuller, Michael Walsh,	:	
Nancy Harkins, Gerald McMullen, Caroline Hughes and	:	
Melissa Haines	:	
	:	
v.	:	C-2018-3006116
	:	P-2018-3006117
Sunoco Pipeline L.P.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, I have served the foregoing document filed with the Commission's electronic filing system, copying the Administrative Law Judge, upon following via electronic mail:

MICHAEL BOMSTEIN ESQUIRE  
PINNOLA & BOMSTEIN  
SUITE 2126 LAND TITLE BUILDING 100  
SOUTH BROAD STREET  
PHILADELPHIA PA 19110  
[mbomstein@gmail.com](mailto:mbomstein@gmail.com)  
*Representing Complainants*

MEGHAN FLYNN  
212 LUNDGREN ROAD  
LENNI PA 19052  
*Complainant*

ROSEMARY FULLER  
226 VALLEY ROAD  
MEDIA PA 19063  
*Complainant*

MICHAEL WALSH  
12 HADLEY LANE  
GLEN MILLS PA 19342  
*Complainant*

NANCY HARKINS  
1521 WOODLAND RD  
WEST CHESTER PA 19382  
*Complainant*

GERALD MCMULLEN  
200 HILLSIDE DRIVE  
EXTON PA 19341  
*Complainant*

CAROLINE HUGHES  
1101 AMALFI DRIVE  
WEST CHESTER PA 19380  
*Complainant*

MELISSA HAINES  
176 RONALD ROAD  
ASTON PA 19014  
*Complainant*

CURTIS STAMBAUGH  
ASSISTANT GENERAL COUNSEL  
SUNOCO PIPELINE LP  
212 N THIRD STREET SUITE 201  
HARRISBURG PA 17101  
[Curtis.stambaugh@energytransfer.com](mailto:Curtis.stambaugh@energytransfer.com)  
*Representing Sunoco Pipeline LP*

NEIL S WITKES ESQUIRE  
ROBERT D FOX ESQUIRE  
DIANA A SILVA ESQUIRE  
MANKO, GOLD, KATCHER & FOX LLP  
401 CITY AVENUE  
BALA CYNWYD PA 19004  
[rfox@mankogold.com](mailto:rfox@mankogold.com)  
[nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)  
*Representing Sunoco Pipeline LP*

THOMAS J SNISCAK ESQUIRE  
HAWKE MCKEON AND SNISCAK LLP  
100 N TENTH STREET HARRISBURG PA  
17101 717.236.1300  
[tjsnisack@hmslegal.com](mailto:tjsnisack@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)  
*Representing Sunoco Pipeline LP*

ANTHONY D KANAGY ESQUIRE  
POST & SCHELL PC  
17 N SECOND ST 12TH FL  
HARRISBURG PA 17101-1601  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)  
*Representing Intervenor Range  
Resources Appalachia*

ERIN MCDOWELL ESQUIRE  
3000 TOWN CENTER BLVD  
CANONSBURG PA 15317  
[emcdowell@rangeresources.com](mailto:emcdowell@rangeresources.com)  
*Representing Intervenor Range  
Resources Appalachia*

STEPHANIE M WIMER ESQUIRE  
MICHAEL L SWINDLER ESQUIRE  
PUC BUREAU OF INVESTIGATION AND  
ENFORCEMENT  
400 NORTH STREET  
PO BOX 3265  
HARRISBURG PA 17105-3265  
[mswindler@pa.gov](mailto:mswindler@pa.gov)

*Representing PUC Bureau of  
Investigation and Enforcement*

LEAH ROTENBERG ESQUIRE  
MAYS CONNARD & ROTENBERG LLP  
1235 PENN AVE SUITE 202  
WYOMISSING PA 19610  
[rotenberg@mcr-attorneys.com](mailto:rotenberg@mcr-attorneys.com)  
*Representing Intervenor Twin Valley  
School District*

MARGARET A MORRIS ESQUIRE  
REGGER RIZZO & DARNALL  
2929 ARCH STREET 13TH FLOOR  
PHILADELPHIA PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)  
*Representing Intervenor East Goshen  
Township*

VINCENT MATTHEW POMPO ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST PO BOX 565  
WEST CHESTER PA 19381  
[vpompo@lambmcerlane.com](mailto:vpompo@lambmcerlane.com)  
*Representing Intervenor West Whiteland  
Township*

MARK L FREED ESQUIRE  
CURTIN & HEEFNER LLP  
DOYLESTOWN COMMERCE CENTER  
2005 S EASTON ROAD SUITE 100  
DOYLESTOWN PA 18901  
[mlf@curtinheefner.com](mailto:mlf@curtinheefner.com)  
*Representing Intervenor Uwchlan  
Township*

JAMES R FLANDREAU  
PAUL FLANDREAU & BERGER LLP  
320 WEST FRONT ST  
MEDIA PA 19063  
[jflandreau@pfbllaw.com](mailto:jflandreau@pfbllaw.com)  
*Representing Intervenor Middletown  
Township*

PATRICIA BISWANGER ESQUIRE  
217 NORTH MONROE STREET  
MEDIA PA 19063  
[patbinswanger@gmail.com](mailto:patbinswanger@gmail.com)  
[maddrenm@co.delaware.pa.us](mailto:maddrenm@co.delaware.pa.us)  
*Representing Intervenor County of  
Delaware*

ALEX JOHN BAUMLER ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST BOX 565  
WEST CHESTER PA 19381  
[abaulmer@lambmcerlane.com](mailto:abaulmer@lambmcerlane.com)  
*Representing Intervenor Downingtown  
Area School District, Rose Tree Media  
School District and West Whiteland  
Township*

GUY DONATELLI ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET STREET  
WEST CHESTER PA 19381  
[gdonatelli@lambmcerlane.com](mailto:gdonatelli@lambmcerlane.com)  
*Representing Intervenor Rose Tree Media  
School District*

JAMES DALTON  
UNRUH TURNER BURKE & FREES  
PO BOX 515  
WEST CHESTER, PA 19381  
[jdalton@utbf.com](mailto:jdalton@utbf.com)  
*Representing Intervenor West Chester  
Area School District*



# **ATTACHMENT D**



July 24, 2018

Thomas J. Sniscak, Esquire  
Hawke McKeon & Sniscak LLP  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17101

RE: **Andover Homeowners Association, Inc v Sunoco Pipeline L.P**

Dear Thomas:

Please find enclosed *a Notice to Defend, Formal Complaint, and Certificate of Service.*

Please feel free to contact me with any questions or concerns.

Sincerely,

Rich Raiders, Esq.

JUL 26 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andover Homeowners' Association, Inc.,	:	Docket No. C-2018-_____
Petitioner	:	
	:	
v.	:	
Sunoco Pipeline L.P.,	:	
Respondent	:	

**NOTICE TO DEFEND**

Pursuant to 52 Pa. Code § 5.63(b), you are hereby notified to file a written response to the enclosed Formal Complaint within twenty (20) days from service of this notice, or a decision may be rendered against you. All pleadings, such as an Answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel for the Complainant, and, where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Rich Raiders, Esq.  
606 North 5<sup>th</sup> Street  
Reading, PA 19601

Dated: July 24, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andover Homeowners' Association, Inc., : Docket No. C-2018-\_\_\_\_\_  
Petitioner :  
 :  
v. :  
Sunoco Pipeline L.P., :  
Respondent :

**FORMAL COMPLAINT**

COMES NOW Andover Homeowners' Association, Inc. ("Association"), by and through its below-signed counsel, and respectfully files this Formal Complaint pursuant to 52 Pa. Code § 5.21, and in support thereof avers as follows:

1. Complainant is a Pennsylvania nonprofit corporation with an address of 9 Fallbrook Lane, Glen Mills, Thornbury Township, Delaware County, Pennsylvania 19342, (210) 365 6903.
2. Respondent, Sunoco Pipeline L.P. ("Sunoco") is a Texas Limited Partnership with offices at 525 Fritztown Road, Sinking Spring, Berks County, Pennsylvania.
3. Respondent operates a 1930s-era hazardous, highly volatile natural gas liquids ("NGL") pipeline marketed as Mariner East 1 ("ME1"), extending across Pennsylvania.
4. Respondent operates a second 1930s-era hazardous liquids pipeline, believed to be twelve inches in diameter (12"), believed to provide hazardous liquids transportation between Marcus Hook Borough, Delaware County ("Point Breeze") and Montello Terminal, Berks County ("Montello") and points beyond.
5. Respondent also is constructing two additional hazardous, highly volatile NGL pipelines known as Mariner East 2 and Mariner East 2X (collectively, "ME2").

6. Complainant is represented by Rich Raiders, Esq., Attorney ID 314857, with offices at Raiders Law PC, 606 North 5<sup>th</sup> Street, Reading, PA 19601, 484 509 2175, [rich@raiderslaw.com](mailto:rich@raiderslaw.com). Counsel for Complainant consents to service via electronic mail at the e-mail address listed in this paragraph, as provided by 52 Pa. Code § 154(b)(3).

### **JURISDICTION**

7. All above paragraphs are incorporated by reference as if fully stated herein.
8. The Pennsylvania Public Utility Commission ("Commission") has jurisdiction over this Formal Complaint 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..." (emphasis added).
9. The Public Utility Code at 66 Pa. C.S. § 1501 requires that each public utility "shall furnish and maintain adequate, efficient, safe and reasonable service and facilities" in providing service to the public.
10. The Commission may, upon notice and hearing, prescribe that a regulated entity must take actions ordered by the Commission to make a regulated activity safe within the Commission's authority. 66 Pa. C.S. § 1505.
11. "Each public utility shall at all time 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. 52 Pa. Code. § 59.33.

12. The Commission may review issues related to health, safety and welfare impacts of regulated activity along the route of a regulated entity's pipelines. *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 682 (Pa. Commw. 2018); citing, 66 Pa. C.S. § 1505).
13. The Commission may review Sunoco's decisions to determine if Sunoco operations "are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. . . ." *Id.* at 693; citing, 66 Pa. C.S. § 1505(a) (quotations in original).
14. 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. §§ 60101 through 60503, and the implementing regulations at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto. 52 Pa. Code 59.33.
15. For the purposes of 52 Pa. Code § 59.33, "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. Thus, for the purpose of this complaint, Sunoco is a hazardous liquid public utility.
16. 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.
17. Thus, the Commission has the authority and responsibility to enforce the provisions of 49 CFR part 195 on Sunoco's current and proposed transport of hazardous liquids, including the hazardous, highly volatile liquids it is transporting and proposing to transport in the Commonwealth on its Mariner East system.
18. The Commission provides a forum to determine if a regulated entity provides unsafe service in violation of the Public Utility Code. *Riverkeeper*, 179 A.3d at 693-94; citing 66 Pa. C.S. §§ 701, 1505(a).
19. On July 20, 2018, the Commission granted standing to the Association in a related matter, *Dinniman v. Sunoco Pipeline*, Docket P-2018-3001453. See, Docket P-2018-3001453, Order of July 20, 2018.
20. The Association fully incorporates its May 23, 2018 Notice of Intervention filed with the Commission in the *Dinniman* docket, and its exhibits, as if included in this Complaint.

#### **STANDING**

21. All above paragraphs are incorporated by reference as if fully stated herein.
22. The Association has standing in this matter pursuant to 52 Pa. Code § 5.72(a).
23. Sunoco operates a section of ME1, including a valve site, approximately one-half mile long on property owned by the Association, the Open Space of the Andover residential subdivision.
24. Sunoco operates a section of a 12" hazardous liquids pipeline approximately one-half mile long on Association property. This pipeline, the so-called 12" Point Breeze to

Montello pipeline ("the 12" pipeline") is immediately adjacent to ME1. It also includes a valve site on Association property.

25. Both ME1 and the 12" pipeline were originally constructed in or about 1937.

26. The 12" pipeline has leaked hazardous liquids at least four separate times in Delaware and Chester Counties since 1987. The most recent accident on this pipeline involved a leak of hazardous liquids into Darby Creek, Delaware County, and was reported by a train crew in June 2018.

<https://stateimpact.npr.org/pennsylvania/2018/07/10/sunocos-stand-in-me2-line-leaked-gasoline-at-darby-creek-pipeline-map-indicates/> (last visited July 24, 2018).

27. Sunoco proposes to repurpose and reverse the flow on the 12" pipeline to transport hazardous, highly volatile liquids across Association property.

28. Sunoco also proposes to construct a segment of ME2 approximately one-half mile long on the Open Space owned by the Association, roughly parallel to Sunoco's existing ME1 pipeline.

29. Sunoco proposes to construct an ME2 pipeline valve site on Association property.

30. Approximately thirteen (13) Association Members reside immediately adjacent to ME1, the 12" pipeline and the proposed route of ME2.

31. All thirty-nine (39) Association Members, owners of building lots within the Andover subdivision, reside within 800 feet of ME1, the 12" pipeline and the proposed route of ME2.

32. On information and belief, if a leak occurs on ME1, the 12" pipeline, ME2, or any associated valve site on Association property, the Association and its Members, guests, visitors and others would be harmed.
33. Association Members and their families frequent many areas along ME1, the 12" pipeline and proposed route of ME2 for work, school, transportation, entertainment, shopping and other uses.
34. For example, Association Members regularly travel State Route 352, which runs parallel to ME1, ME2, 12" pipeline and the Association's open space.
35. All these pipelines follow State Route 352 for several miles north and south of the Association's open space.
36. Commission rules specifically allow standing for various reasons, including "[a]nother interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.21.
37. Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the instant subject matter. *Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-2014-2451241; *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-21087F01 (Opinion and Order entered on July 9, 1988); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-84 (Pa. 1975); *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199, 202 (Pa. Commw.

1995); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (Pa. Pub. Util. Comm'n. 1993).

38. In fact, the Association has a direct, immediate and substantial interest in the instant matter.

39. The Association suffers several ME1/ME2 impacts:

- a. The Association's private property is encumbered with valve sites for ME1 and the 12" pipeline.
- b. Sunoco proposes to further encumber the Association's private property with an ME2 valve site.
- c. The Association understands that these valve site may be one valve site downstream from the valve site servicing the segment crossing the Lisa Drive area.
- d. This valve site could be impacted should Sunoco continue to suffer incidents on ME1 and the 12" pipeline or begins to suffer similar incidents on ME2 if it begins operation, where Sunoco may be required to take remedial or emergency steps to manage ME1, the 12" pipeline, or ME2 from valve sites on Association property.
- e. The ME2 valve site proposed for the Association's open space is believed to be either the next or the second valve site after the situs of the instant action in West Whiteland Township.

- f. Sunoco proposes that such construction of ME2 on Association property will include horizontal directional drilling (“HDD”) operations, the very construction method which the Commission previously found impacted the integrity of ME1.
- g. Sunoco has a long history of leaking hazardous liquids from its pipelines, including at least three leaks of hazardous, highly volatile liquids from ME1 during 2016-2017.
- h. Sunoco has a long history of failing to report public safety and environmental impacts of its projects, including sinkholes and pipeline releases. *See, Dinniman v. Sunoco*, Docket C-2018-3001451, May 27, 2018 Order of the PUC at \*17-18, Elizabeth Barnes, Administrative Law Judge, presiding.
- i. Sunoco has a history of receiving federal enforcement actions for “probable violations” of rules relating to pipeline construction, including on its so-called Permian Express II pipeline in April 2016 (this pipeline ruptured in August 2016 shortly after being placed in service) and on ME2 in January 2018. *See* [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011\\_NOPV%20PCP%20PCO\\_04282016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_NOPV%20PCP%20PCO_04282016_text.pdf), [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H\\_Corrective%20Action%20Order\\_09142016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf), and [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120185002/120185002\\_NOPV%20PCO\\_01112018\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120185002/120185002_NOPV%20PCO_01112018_text.pdf).
- j. Sunoco has failed to credibly respond to numerous technical and community issues concerning its operations; including but not limited to failures to report

operator qualification issues and releases. *See, Dinniman v. Sunoco*, Docket C-2018-3001451, May 27, 2018 Order of the PUC at \*17-18, Elizabeth Barnes, Administrative Law Judge, presiding.

- k. The Association is concerned that Sunoco undertook ME2 construction without an adequate understanding of the complex geology in southeast Pennsylvania, and how such construction might impact the integrity of ME1. *Id.* at 13.
- l. The Association is concerned that Sunoco undertook ME2 design and construction without adequately considering the risk (in terms of consequences and probability) associated with construction of a hazardous, highly volatile liquids pipeline in close proximity to both ME1 and residential neighborhoods like the Andover subdivision. *See, Id.* at 21-22.
- m. Sunoco has recently announced plans to repurpose an inactive twelve inch (12") hazardous liquids pipeline, believed to have been constructed in the 1930s, as a bridge between approximately Montello Terminal, Berks County, and Twin Oaks Terminal, Delaware County. *See, Bill Rettew, Mariner East 2 Pipeline May Take Alternate Route*, Daily Local News (Jul. 5, 2018) <http://www.dailylocal.com/article/DL/20180705/NEWS/180709904> (last visited July 12, 2018); Jon Hurdle, Sunoco Wants To Use Older Pipeline To Pump NGLs Over Unfinished Sections of ME2, Stateimpact Pennsylvania (July 3, 2018) <https://stateimpact.npr.org/pennsylvania/2018/07/03/sunoco-wants-to-use-older-pipeline-to-pump-ngls-over-unfinished-sections-of-me2/> (last visited July 12, 2018).

- n. The 12" pipeline Sunoco proposes to use as an ME2 substitute traverses the Association's property.
- o. The Association's property is encumbered with a valve site for this 12" pipeline.
- p. The Association is concerned that operation of Sunoco's ME1 pipeline, especially in proximity to ME2 construction, poses unacceptable risk to the Association, its property, its Members and its neighbors. *See, Id.* at 15-16.

40. It is clear that the Association, hosting a significant segment of ME1 only a few miles from Lisa Drive, West Whiteland Township, another location where Sunoco's operation of NGL pipelines is being questioned, would be directly impacted if an incident on ME1 would occur.

#### FACTS

41. All above paragraphs are incorporated by reference as if fully stated herein.
42. ME1 is an eight inch (8") pipeline that was constructed in or around the 1930s, believed to be placed in operation or around 1936. For the first several decades of service, the pipeline now known as ME1 transported gasoline, diesel, jet fuel and other petroleum hazardous liquids westbound from Marcus Hook, Delaware County to points towards Pittsburgh for domestic consumption.
43. Since 2014, ME1 has transported mostly or entirely ethane from an origin near Scio, Ohio, across West Virginia eastbound to a facility located in Marcus Hook, Pennsylvania and Claymont, Delaware for export. ME1 may also be used to transport other similar materials such as propane and butane.



44. Ethane, propane and butane are classified as hazardous, highly volatile liquids. 49 CFR § 195.2.
45. The Federal Pipeline Hazardous Materials Safety Administration ("PHMSA") does not recommend reversal of pipeline operations. *See*, "PHMSA Advisory Bulletin 2014-0040, Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service", Notice of Intervention of Andover, May 23, 2018, Exhibit "D".
46. PHMSA asserts that reversed pipeline flows on historic pipelines may increase the risk for operational problems, including but not limited to releases. *Id.*
47. Mariner East 2 is a twenty-inch (20") pipeline proposed to be routed roughly parallel to ME1.
48. Mariner East 2X is a sixteen-inch (16") pipeline proposed to be routed roughly parallel to ME1 and directly parallel to Mariner East 2.
49. Thus, four current and proposed Sunoco pipelines traverse or are proposed to traverse the Association's open space from roughly northwest to southeast.
50. Sunoco condemned the Association's property in anticipation of constructing ME2. *See*, Extract of Declaration of Taking, Exhibit "A".
51. ME2 construction has been plagued by a variety of issues from the start of construction.
52. For example, ME2 construction has compromised the operation of ME1 in and around West Whiteland Township, Chester County. *See*, Complaint in Docket C-2018-3001451, incorporated by reference herein.

53. Sunoco failed to properly report a series of sinkholes along the ME1 right-of-way and ME2 construction corridor in West Whiteland Township, Chester County. *See, See, Dinniman*, Docket P-2018-3001543, Order of May 21, 2018 at \*13.
54. One or more of said sinkholes exposed and potentially undermined an actively operating ME1, said exposure endangering public safety. *Id.*
55. In the referenced docket, the Commission suspended ME1 operation for approximately six (6) ending on June 14, 2018, due to numerous safety issues concerning the impact of ME2 construction activities on the integrity of ME1. *See, Dinniman*, Docket P-2018-3001543, Order of May 21, 2018 at \*13; Order of June 14, 2018.
56. For example, ME2 construction has caused dozens of violations of Department of Environmental Protection (“DEP”) regulations and permits. *Id.*
57. On May 21, 2018, an Aqua America service crew struck ME2 in Middletown Township, Delaware County, in the vicinity of Glenwood Elementary School. Kathleen E. Carey, “2 New Incidents Increase Residents’ Unease with Mariner East 2 Work”, Del. Co. Daily Times (Jun. 7, 2018) [www.delcotimes.com/general-news/20180607/2-new-incidents-increase-residents-unease-with-mariner-east-2-work](http://www.delcotimes.com/general-news/20180607/2-new-incidents-increase-residents-unease-with-mariner-east-2-work) (last viewed June 12, 2018).
58. The Association understands, and therefore avers, that Aqua America struck ME2 due to incomplete or incorrect information provided by Sunoco to Aqua about the location or depth of ME2. *See*, Editorial: Sunoco Can’t Bury Residents’ Pipeline Concerns”, Del. Co. Daily Times (June 11, 2018) [www.delcotimes.com/opinion/20180611/editorial-sunoco-cant-bury-residents-pipeline-concerns](http://www.delcotimes.com/opinion/20180611/editorial-sunoco-cant-bury-residents-pipeline-concerns) (last viewed June 12, 2018).

59. Previously, on March 7, 2018, the Commission's Bureau of Investigation and Enforcement petitioned the Commission on an emergency basis for an immediate suspension of ME1 operations based upon a "clear and present danger to life or property." See, PETITION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR THE ISSUANCE OF AN EX PARTE EMERGENCY ORDER, March 7, 2018; <http://www.puc.pa.gov/pcdocs/1556680.pdf> (last visited July 24, 2018); <http://www.westtownpa.org/wp-content/uploads/2018/05/2018-05-03-PUC-order-re-Sunoco-.pdf> (last visited July 24, 2018).
60. On or around January 3, 2018, DEP suspended permits it issued to Sunoco authorizing construction of ME2 pursuant to 25 Pa. Code Chapters 102 and 105 due to numerous violations by Sunoco for conducting unpermitted activities, pollution and failure to comply with reporting requirements. See, Order of DEP, Jan. 3, 2018 (Exhibit "B"); *Dinniman*, May 27, 2018 Order at \*17; <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf> (last visited July 24, 2018).
61. Sunoco paid \$12.6 million in penalties pursuant to a Consent Agreement for its conduct prior to January 3, 2018. *Id.*
62. Since resuming operations, Sunoco has reported dozens inadvertent returns ("IR" or "frac-outs") of drilling fluid, a material classified as industrial waste. <http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21456&typeid=1> (last visited July 24, 2018); <https://stateimpact.npr.org/pennsylvania/2018/03/16/sunoco-spills-drilling-fluid-into->

lebanon-county-creek-for-third-time/ (last visited July 24, 2018);

[http://www.dailylocal.com/general-news/20180425/pipeline-drilling-halted-in-](http://www.dailylocal.com/general-news/20180425/pipeline-drilling-halted-in-middle-town)

middletown (last visited July 24, 2018);

[http://www.philly.com/philly/business/energy/sunoco-etp-foes-me2-horizontal-drilling-](http://www.philly.com/philly/business/energy/sunoco-etp-foes-me2-horizontal-drilling-hdd-unsafe-philly-karst-20180406.html)

hdd-unsafe-philly-karst-20180406.html (last visited July 24, 2018).

63. On or about February 1, 2018, Thornbury Township, Delaware County is believed to have been suspended its Grading Permit issued to Sunoco to authorize earth moving activities in support of ME2 construction. *See*, Exhibit “B”.

#### **THE ASSOCIATION’S SAFETY CONCERNS**

64. All above paragraphs are incorporated by reference as if fully stated herein.
65. Between 2006-2018, Sunoco Pipeline L.P. and its predecessor Sunoco Inc. (R&M) have reported to the federal government 303 hazardous liquids pipeline leaks. *See*, *Dinniman*, May 23, 2018 Andover Notice of Intervention, Exhibit B.
- [https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM\\_opid\\_18718.html?n](https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_18718.html?nocache=949#_Incidents_tab_4)  
[ocache=949#\\_Incidents\\_tab\\_4](https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_18718.html?nocache=949#_Incidents_tab_4) (last visited July 24, 2018).
66. The Association believes, and therefore avers, that a standard way of assessing the likelihood of pipeline leaks is to review an operator’s past rate of leaks per mile per year.
67. The Association believes, and therefore avers, that ETP/Sunoco itself used such a method in estimating the probability of future leaks on its Dakota Access pipeline.
68. On information and belief, Sunoco has demonstrated an inability to reliably detect leaks in its pipeline systems. For example: Sweetwater TX, 2016 (11 days between initial control room indications that the PEX II pipeline had ruptured and its confirmation);

Tinicum, PA, 2000; Edgmont Township, PA, 1988, 1992 and 2015; Morgantown, PA, 2017 (third leak of highly volatile liquids from ME1 in less than one year); and Ridley Township, June 2018 (accident reported by a train crew). *See e.g.*, [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H\\_Corrective%20Action%20Order\\_09142016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf) (last visited July 24, 2018); <https://stateimpact.npr.org/pennsylvania/2018/07/10/sunocos-stand-in-me2-line-leaked-gasoline-at-darby-creek-pipeline-map-indicates/> (last visited July 24, 2018); <https://stateimpact.npr.org/pennsylvania/2017/04/20/sunocos-mariner-east-1-pipeline-leaked-ethane-and-propane-in-berks-county-records-show/> (last visited July 24, 2018); <http://www.readingeagle.com/news/article/mariner-east-1-pipeline-leak-in-berks-county-draws-concern> (last visited May 24, 2018);

69. On information and belief, and given this past record, Sunoco itself is unable to guarantee that ME1 will not experience additional leaks, or that ME2 or ME2X (if constructed), the temporary bypass of incomplete ME2 using the 12" pipeline, or any other Sunoco pipeline, will not experience leaks.
70. On information and belief, the Commission is unable to guarantee that any part of the Mariner East system, or any other Sunoco pipeline, will not experience additional leaks.
71. On information and belief, Sunoco itself acknowledges that even small leaks of NGLs can have very serious consequences.
72. On information and belief, if leaks occur on a hazardous, highly volatile liquids pipeline, it is possible that substantially the entire contents of the segment between block valves will volatilize and become released to the atmosphere, even if the block valves were to

close instantly. This is an enormous quantity of material, more than 500,000 liquid gallons for a six-mile segment of a 20-inch diameter pipeline.

73. The Association hosts, or is scheduled to host, block valves for each Mariner East line.

74. On information and belief, sites hosting above-ground equipment, including block valve sites, are significantly more susceptible to pipeline leaks and accidents than sites that are free of such infrastructure.

75. Sunoco has in fact reported to PHMSA three separate leaks of hazardous, highly volatile liquids from ME1 during 2016-2017. One of these leaks involved a failure of the pipeline itself, while two occurred on new, above ground equipment. Sunoco failed to detect at least one of these leaks, and all of them occurred in high consequence areas.

76. Sunoco proposes to repurpose the 12" pipeline adjacent to ME1 in Andover to transport highly volatile liquids. Sunoco calls this the 12" "Point Breeze to Montello" pipeline.

77. This pipeline has leaked hazardous liquids at least four times in Chester and Delaware Counties since 1987.

78. The most recent leak on this pipeline was reported by a train crew crossing Darby Creek, Delaware County, in June 2018.

<https://stateimpact.npr.org/pennsylvania/2018/07/10/sunocos-stand-in-me2-line-leaked-gasoline-at-darby-creek-pipeline-map-indicates/> (last visited July 24, 2018).

79. The hazardous, highly volatile NGLs that Sunoco proposes to transport in its Mariner East system, if released to the atmosphere, volatilize to gas which is colorless, odorless, heavier than air, and extremely flammable or explosive over a wide range of concentrations.

80. Past delayed-ignition accidents involving NGLs and other hazardous, highly volatile liquids have caused fatalities, injuries and property damage over very large areas. See, e.g., NTSB accident reports for Franklin County, MO; Puerto Rico, San Juan; Brenham, TX; North Blenheim, NY. See, *Dinniman*, May 23, 2018 Andover Notice of Intervention, Exhibit D; <https://www.nts.gov/investigations/AccidentReports/Reports/PAR9301.pdf> (last visited July 24, 2018); <https://www.nts.gov/investigations/AccidentReports/Reports/PAR9701.pdf> (last visited July 24, 2018); <https://www.nts.gov/investigations/AccidentReports/Reports/PAR7201.pdf> (last visited July 24, 2018); <https://www.nts.gov/investigations/AccidentReports/Reports/PAR9101.pdf> (last visited July 24, 2018)
81. Despite making numerous requests over a period of years for a credible notification system and evacuation guidance, the Association has been provided neither.
82. 49 C.F.R. § 195.402 requires all pipeline operators to prepare a “manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.” 49 C.F.R. § 195.402(a).
83. Pipeline operators must determine “which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.” 49 C.F.R § 195.402(c)(4).
84. Further, pipeline operators must minimize “the likelihood of accidental ignition of vapors in areas [like the Andover residential subdivision] near facilities identified under

paragraph (c)(4) of this section where potential exists for the presence of flammable liquids or gases. 49 C.F.R. § 149.402(c)(11).

85. Pipeline operators must also minimize “the potential for hazards identified under paragraph (c)(4) of this section and the possibility of recurrence of accidents analyzed under paragraph (c)(5) of this section.” 49 C.F.R. § 195.402(c)(6).

86. Pipeline operators must also minimize “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.” 49 C.F.R. § 195(c)(6).

87. 49 C.F.R. § 195.440 requires hazardous liquids pipeline operators to provide a “written public education program that follows the guidance provided in the American Petroleum Institute’s (“API”) Recommended Practice (“RP”) 1162. *See*, 49 C.F.R. § 195.440; *citing* Am. Pet. Inst., Public Awareness Programs for Pipeline Operations, Recommended Practice 1162, First Edition (Dec. 2003), <http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf> (last visited Jul. 12, 2018).

88. Pipeline operators must maintain integrity management programs for pipelines located in high consequence areas, including areas with populations over 1,000 people per square mile in a population center of at least 50,000, to ensure proper and safe operation of each pipeline. 49 C.F.R. §§ 195.450, 195.452(b).

89. Pipeline operators must periodically update their Part 195 Manuals. 49 C.F.R. § 195.402(a).



90. The Commission is responsible for enforcing *inter alia* 49 C.F.R. part 195. See, 52 Pa. Code §§ 59.33(b) and (d).
91. Assuming it is able to detect a leak, Sunoco's plan calls for it to inform county response agencies, which are then responsible for actually notifying residents of the need to implement Sunoco's recommended on-foot self-evacuation.
92. Delaware County, on information and belief, is without a credible notification system in the event of an unignited vapor cloud.
- a. Sunoco, if it detects a leak, intends to call Delaware County Emergency Services.
  - b. Emergency Services intends to use its Delco Alert system to advise people to self-evacuate or provide other instructions.
  - c. Delco Alert is designed to trigger hundreds or thousands of land lines, cell phones and other electronic devices right in the area where the leak is.
  - d. But the guidance from both PHMSA and Sunoco is to avoid the use of cell phones because of their potential to provide an ignition source.
  - e. According to Delaware County Emergency Services, no one has evaluated whether the use of Delco Alert might itself provide an ignition source.
93. The guidance provided by Sunoco (immediate on-foot self-evacuation in the correct upwind or uphill direction) is not credibly possible for many Association Members while they are in unsafe proximity to Mariner East in West Whiteland Township, Andover or elsewhere, particularly at night or during inclement weather, for several reasons:
- a. Sometimes people are asleep, sometimes it is raining or snowing or freezing. Expecting seniors and children to be able to quickly self-evacuate at a moment's

notice is not credible, given obstacles, limited self-evacuation routes, and potential dark or inclement conditions.

- b. Moreover, the most routine or ordinary, everyday actions could trigger ignition of an entire vapor cloud: some of the things which PHMSA and Sunoco warn people to avoid are light switches; doorbells; garage door openers; and vehicles.

94. The Mariner East valve sites on Association property rest at a higher elevation than the entire Andover development.

95. If hazardous, highly volatile liquids are released the valve site, the gas they will form is likely to sink to lower elevations, which in the case of Andover contains people's homes.

96. The valves sites in Thornbury Township are approximately forty (40) feet from an active commercial kitchen at Duffer's Tavern, 192 Middletown Road, Glen Mills, Thornbury Township, Delaware County.

97. The Commission is responsible for assessing the adequacy of Sunoco's 195 Manual, including the adequacy of its public awareness and integrity management programs, not simply accepting guidance that cannot be credibly implemented by many or most people within the potential impact radius of a leak. 52 Pa. Code § 59.33(b).

98. Sunoco's public awareness program leaves Andover Members without either a credible notification system or emergency plan.

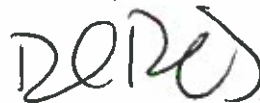
99. The Association is not aware of any publicly available risk assessment performed by any person or entity that quantifies the risk (in terms of consequences and probability) of the Mariner East project in close proximity to residences, businesses and highways.

100. Further, the Association is not aware of any comprehensive risk assessment performed by any person or entity that quantifies the risks of associated with an NGL valve site within feet of homes and commercial establishments.
101. The Association is not aware of any credible plan to allow densely populated residents near a hazardous, highly volatile liquids pipeline to receive adequate notice and evacuation instructions in the event of a pipeline failure.
102. The Association believes and understands that the public, including residents, passers-by and visitors detect many or most pipeline leaks.
103. The Association is not aware of any early detection system to alert first responders, neighbors, visitors, passers-by or others to evacuate the area at first notice of a release at the valve site or along the pipeline.
104. Because members of the general public, and not the pipeline control center, detect many or most pipeline releases, the public cannot rely upon the pipeline operator to provide first notice of a release.
105. The Association is not aware of any credible plan or guidance that explains how its Members can carry out the on-foot self-evacuation recommended by Sunoco. This is especially the case for Association Members who are elderly and who have young children, particularly at night or in inclement weather and given that the use of many ordinary devices may cause an entire combustible vapor cloud to ignite or explode.
106. Because the Association has now been granted intervention status in the *Dinniman* case, the Association asks that this matter be consolidated with *Dinniman*.

WHEREFORE, the Association respectfully requests that the Commission require a full and complete risk assessment to determine whether Sunoco is able to operate any or all of the Mariner East system in compliance with Commission requirements to safely (i.e., within a level of risk the Commission determines to be acceptable) provide transportation services. The Association requests that the Commission take any and all actions necessary to provide the maximum margin of public safety, including but not limited to restricting or enjoining Mariner East operations unless Sunoco provides a comprehensive risk assessment *and credible notification and evacuation plan* which, in the Commission's judgment and the judgment of various first responders who may be required to answer the call in the event of a release, would provide suitable public protections, as well as any other relief the Commission finds necessary and appropriate.

Dated: July 24, 2018

Respectfully Submitted,



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Rich Raiders, Esq.  
Attorney ID 314857  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
rich@raiderslaw.com

**VERIFICATION**

I hereby verify that I am the President of the Andover Homeowners' Association, Inc., and that I have the authority to execute this verification on behalf of the Association. I further verify that the facts set forth in the foregoing Formal Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July 23, 2018

A handwritten signature in black ink, appearing to read "Eric Friedman", written over a horizontal line.

Eric Friedman

# **ATTACHMENT E**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	Docket No. P-2018-3006117
CAROLINE HUGHES and	:	Docket No. C-2018-3006116
MELISSA HAINES	:	
	:	
	:	
v.	:	
	:	
Sunoco Pipeline L.P.	:	

**PETITION TO INTERVENE OF ANDOVER HOMEOWNERS' ASSOCIATION, INC.**

COMES NOW Andover Homeowners' Association, Inc. ("Association"), by and through counsel, and respectfully petitions to intervene in the above-captioned matters pursuant to 52 Pa. Code § 5.71 *et. seq.*, and in support thereof avers as follows:

1. The Association is a Pennsylvania nonprofit corporation with a registered address of 2 Fallbrook Lane, Glen Mills PA 19342.
2. The Association is represented in this matter by Rich Raiders, Esq., Attorney ID 314857, with a mailing address of 606 North 5th Street, Reading PA 19601. Service of documents is requested via electronic mail to Association counsel at [rich@raiderslaw.com](mailto:rich@raiderslaw.com).
3. The Andover subdivision consists of approximately 42 acres of land in Thornbury Township, Delaware County. This subdivision is divided into 39 privately owned lots (each of which is occupied by a single-family dwelling) plus community open space.
4. The Association is the fee simple recorded owner of the Andover open space. Pursuant to the Pennsylvania Uniform Planned Communities Act, the Association's Articles of Incorporation and the Declaration of Andover, the Association maintains the Andover open space for the use and enjoyment of its Members.

5. The Association avers that Sunoco Pipeline L.P. (“Sunoco”) is currently transporting hazardous, highly volatile liquids (“HVL”) across the Andover open space using a 1930s-era repurposed, reverse-flowed pipeline marketed by Sunoco as Mariner East 1 (“ME1”).

6. The Association avers that these materials consist primarily of ethane, propane, or butane, or mixtures thereof. An industry term for this family of materials is “natural gas liquids” (“NGL”). The federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) classifies them as “hazardous, highly volatile liquids.” *See* 49 CFR § 195.2.

7. These materials have properties which make them much more hazardous than either methane (“natural gas”) or non-highly volatile hazardous liquids such as gasoline.

8. Specifically, these materials are pressurized to be transported through pipelines as liquids, but upon pressure reduction, accidental or otherwise, tend to vaporize or boil into the vapor state, expanding hundreds of times in the process.

9. In this vapor state, ethane, propane and butane are colorless, odorless, heavier than air, and extremely flammable or explosive. They tend to concentrate in low-lying areas and can move downwind or downhill for long distances while remaining in combustible concentrations. In a densely populated area there are many ordinary objects that might serve as ignition sources.

10. The Association avers that Sunoco is about to begin additional transportation of HVLs across the Andover open space using a second 1930s-era repurposed, reverse-flowed pipeline. This segment is known to PHMSA as the 12” Point Breeze to Montello pipeline.

11. Sunoco proposes to cobble it together with various sections of partially completed 20-inch and 16-inch newer pipe segments, marketed by Sunoco as Mariner East 2 (“ME2”) and Mariner East 2X (“ME2X”) respectively, to construct what *Flynn et. al.* refer to in



their complaint and petition for emergency relief as the workaround pipeline. (The Association will use the same terminology).

12. Sunoco has constructed a valve site on Association property that it uses or proposes to use for both ME1 and the workaround pipeline.

13. This valve site is within 100 feet of Andover residences; the kitchen and parking lot of an adjacent restaurant and bar; and Pennsylvania State Route 352 (Middletown Road).

14. The Association believes, and therefore avers, that above-ground valve sites are particularly high-risk locations.

15. On September 26, 2018, a vehicle accident resulted in a car leaving the Middletown Road in the vicinity of this valve site. The vehicle overturned and came to rest on its roof across Middletown Road from the valve site.

16. On information and belief, Sunoco's valve site on Association property is not protected from vehicle strikes.

17. This valve site is clearly visible to occupants of vehicles traveling on Middletown Road, Association residents and visitors, and patrons and workers at the adjacent restaurant.

18. The Association avers that at some point in the future Sunoco may restart its currently abandoned efforts to construct ME2 and ME2X.

19. An accident involving HVLs in or near the Andover subdivision could cause substantial economic and other harm to the Association and its Members including loss of life, injury to life, damage or destruction of property and disruption from loss of access to roadways, transportation services and utilities upon which Association members rely.

20. Every residence in the Andover subdivision is within 800 feet of each pipeline discussed above, including ME1, the workaround pipeline; and the proposed locations of ME2 and ME2X. The closest residences are less than 100 feet from these pipelines.

21. The Association avers that both ME1 and the workaround pipeline have leaked or ruptured repeatedly near the Andover subdivision. Sunoco failed to detect that many or all of these accidents were occurring.

22. Highlighting the inadequacies of both Sunoco's leak detection systems and proposed means of notifying the public of a leak, the manager of Thornbury Township, Delaware County met with a vendor of combustible vapor detection equipment on November 2, 2018 to explore the procurement of a municipal-scale leak detection system coupled to an intrinsically-safe warning system such as an air raid siren and strobe lights. The Association president also attended this meeting.

23. The Association believes that Thornbury Township, Delaware County sought this meeting because of known and documented inadequacies of Sunoco's plans to warn the public in the event of a potentially catastrophic release from one of these pipelines or the valve site on Association property.

24. The Association is not a party to any Petition before the Commission at this time.

25. However, the Association is a party to an existing Complaint before the Commission and an intervenor in a separate action, both related to Sunoco and its proposed Mariner East.

26. The Association avers that it has interests that are directly affected by the instant complaint and petition for emergency relief; that those interests may not be fully represented by the existing participants; and that it may be bound by the action of the Public Utility

Commission. Accordingly, the Association avers that it is eligible to intervene pursuant to 52 Pa. Code § 5.72(a)(2).

27. Should the Association's petition to intervene be granted, the Association intends to support the positions of petitioners/complainants *Flynn et. al.* 52 Pa. Code § 5.73(a)(3).

#### SPECIFIC SAFETY CONCERNS

28. The preceding paragraphs 1-27 are incorporated by reference as though set forth at length.

29. The Association's interest in its property, and in the lives and property of its Members, is substantial.

30. Past accidents involving HVLs have resulted in fatalities, injuries and property damage over large areas. Three such representative accidents are cited in the complaint and petition of *Flynn, et. al.*

31. Such an accident on or near Association property is likely to have substantial negative economic impacts on the Association and its Members.

32. The Association intends to demonstrate the magnitude of its economic exposure through expert estimates of potential property damage, injuries, and loss of life that would be experienced by Association Members, their families, guests, visitors and others in and near the Andover community that could result from an accident involving hazardous, highly volatile liquids.

33. Like the complainants in *Flynn, et. al.*, the Association seeks PUC review of Sunoco's public awareness program for Andover residents, visitors, neighbors and passers-by and a determination of whether this program is competent, credible, plausible, useful, and

capable of being put into practice by persons near Sunoco's hazardous, highly volatile liquids transportation infrastructure.

34. To the extent Sunoco may express an economic interest, the Association asserts a substantial countervailing economic interest, and a risk of substantial economic harm, from the proposed transport of hazardous, highly volatile liquids through the residential Andover subdivision.

35. Andover Members work hard to own their homes and sustain their families, work and effort that is now at risk because of Sunoco's project.

36. The Association avers that the lives and property of its Members are of critical importance to them.

37. The Association observes that ME1 leaked hazardous, highly volatile liquids three times in less than one year, and denies that it has ever operated "safely."

38. The Association, as host of Sunoco HVL current and proposed valve sites and significant lengths of current and proposed Mariner East pipeline, are concerned that it and its Members would be disproportionately exposed to hazardous conditions in the event of a failure of any or all Mariner East pipelines.

39. The Association's insurance carrier has informed the Association in writing that it is unwilling to insure the Association against the liability associated with Sunoco HVL pipelines on Association property.

#### SPECIFIC PUBLIC AWARENESS PROGRAM CONCERNS

40. The preceding paragraphs 1-39 are incorporated by reference as though set forth at length.

41. “In the event of a leak that it manages to detect, Sunoco intends to notify county emergency response agencies. In Chester and Delaware Counties, these agencies intend to activate their “reverse 911” capabilities. These services allow an operator to trigger hundreds or thousands of phones in the area of a problem. Both Sunoco and PHMSA, however, advise that phones should not be used. PHMSA’s warning is explicit: “DO NOT! Use a telephone or cell phone (these can ignite airborne gases).

<https://primis.phmsa.dot.gov/comm/emergencyresponse.htm>.” Complaint of *Flynn et. al.* at 15.

42. Sunoco’s sole recommendation in its public awareness program is that, in the event of a known or suspected leak, residents should “leave the area immediately on foot.” Sunoco has not explained how Andover residents who are elderly, very young, or infirm should carry out this recommendation, especially at night or during inclement weather.

43. Accordingly, the Association intends to seek Commission review of Sunoco’s boilerplate, implausible, one-size-fits-all public awareness program in consideration of the economic impacts suffered by and threatened upon the Association, its Members and neighbors (including travelers on nearby State Route 352 and State Route 926).

44. Counsel for the Association has consulted with counsel for complainants *Flynn et. al.*, and represents that complainants do not object to the Association’s petition to intervene.

45. Moreover, counsel for the Association and counsel for *Flynn et. al.* have agreed that, should Andover’s petition to intervene be granted, neither will request any additional time or witnesses at the hearing scheduled for November 29-30 concerning the instant petition for interim emergency relief.

46. The Association otherwise agrees to follow the existing order concerning the scheduling of the hearing scheduled for November 29-30, 2018 without requesting modification.

47. Respective counsel has agreed to coordinate and amicably share the presently allotted time, given that their interests in this matter substantially overlap.

#### REQUEST FOR RELIEF

WHEREFORE, the Andover Homeowners' Association, Inc. respectfully requests that the Pennsylvania Public Utility Commission grant its petition to intervene; grant the interim relief requested in the emergency petition of *Flynn, et.al.*; allow Association counsel to participate in the hearings scheduled for November 29 and 30, 2018 in coordination with petitioners *Flynn et. al.*, and grant such further relief as it may deem warranted and appropriate.

Dated: November 23, 2018

Respectfully Submitted,

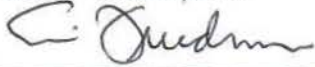


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Rich Raiders, Esq.  
Attorney ID 314857  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
rich@raiderslaw.com

## VERIFICATION

I Eric Friedman, hereby state that the facts set forth above are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Eric Friedman  
President  
Andover Homeowners' Association, Inc.

Nov, 23, 2018

Date

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	Docket No. P-2018-3006117
CAROLINE HUGHES and	:	Docket No. C-2018-3006116
MELISSA HAINES	:	
	:	
	:	
v.	:	
	:	
Sunoco Pipeline L.P.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Petition to Intervene of Andover Homeowners' Association Inc. in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) to the counsel listed on the following page. This document has been filed electronically on the Commission's electronic filing system, with a paper copy bearing original signatures also filed by U.S. Mail with the Commission's Secretary.

Respectfully Submitted,



Dated: November 23, 2018

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Rich Raiders, Esq.  
Attorney ID 314857  
606 North 5th Street  
Reading PA 19601  
rich@raiderslaw.com



Michael Bornstein  
Pinnola & Bornstein  
100 South Broad Street, Suite 2126  
Philadelphia PA 19110  
Via e-mail to [mbornstein@gmail.com](mailto:mbornstein@gmail.com)  
*Attorney for Flynn, et. al.*

Thomas Sniscak  
Kevin McKeon  
Whitney Snyder  
Hawke, McKeon & Sniscak LLP  
100 North 10th Street  
Via e-mail  
Harrisburg PA 17101

Robert Fox  
Neil Witkes  
Diana Silva  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd PA 19004  
Via e-mail  
*Attorneys for 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 persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

### **VIA ELECTRONIC MAIL ONLY**

Michael S. Bomstein, Esquire  
Pinnola & Bomstein  
Suite 2126 Land Title Building  
100 South Broad Street  
Philadelphia, PA 19110  
[mbomstein@gmail.com](mailto:mbomstein@gmail.com)

*Counsel for Flynn et al. Complainants*

Anthony D. Kanagy, Esquire  
Garrett P. Lent, Esquire  
Post & Schell PC  
17 North Second Street, 12<sup>th</sup> Floor  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
[glent@postschell.com](mailto:glent@postschell.com)

*Counsel for Intervenor  
Range Resources – Appalachia LLC*

Erin McDowell, Esquire  
3000 Town Center Blvd.  
Canonsburg, PA 15317  
[emcdowell@rangeresources.com](mailto:emcdowell@rangeresources.com)

*Counsel for Range Resources Appalachia*

Rich Raiders, Esquire  
Raiders Law  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
[rich@raiderslaw.com](mailto:rich@raiderslaw.com)

*Counsel for Intervenor and Complainant  
Andover Homeowner's Association, Inc.*

Vincent M. Pompo  
Guy A. Donatelli, Esq.  
24 East Market St., Box 565  
West Chester, PA 19382-0565  
[vpompo@lambmcerlane.com](mailto:vpompo@lambmcerlane.com)  
[gdonatelli@lambmcerlane.com](mailto:gdonatelli@lambmcerlane.com)

*Counsel for Intervenor  
West Whiteland Township,  
Downingtown Area School District,  
Rose Tree Media School District*

Leah Rotenberg, Esquire  
Mays, Connard & Rotenberg LLP  
1235 Penn Avenue, Suite 202  
Wyomissing, PA 19610  
[rotenberg@mcr-attorneys.com](mailto:rotenberg@mcr-attorneys.com)

*Counsel for Intervenor  
Twin Valley School District*

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

*Counsel for Intervenor  
East Goshen Township and County of Chester*  
Mark L. Freed  
Joanna Waldron  
Curtin & Heefner LP  
2005 S. Easton Road, Suite 100  
Doylestown, PA 18901  
[mlf@curtinheefner.com](mailto:mlf@curtinheefner.com)  
[jaw@curtinheefner.com](mailto:jaw@curtinheefner.com)

*Counsel for Intervenor  
Uwchlan Township*  
Josh Maxwell  
Mayor of Downingtown  
4 W. Lancaster Avenue  
Downingtown, PA 19335  
[jmaxwell@downingtwn.org](mailto:jmaxwell@downingtwn.org)

*Pro se Intervenor*

James C. Dalton, Esquire  
Unruh Turner Burke & Frees  
P.O. Box 515  
West Chester, PA 19381-0515  
[jdalton@utbf.com](mailto:jdalton@utbf.com)

*Counsel for West Chester Area School  
District, Chester County, Pennsylvania*  
Virginia Marcille-Kerslake  
103 Shoen Road  
Exton, PA 19341  
[vkerslake@gmail.com](mailto:vkerslake@gmail.com)

*Pro Se Intervenor*

James R. Flandreau  
Paul, Flandreau & Berger, LLP  
320 W. Front Street  
Media, PA 19063  
[jflandreau@pfblaw.com](mailto:jflandreau@pfblaw.com)

*Counsel for Intervenor  
Middletown Township*

Thomas Casey  
1113 Windsor Dr.  
West Chester, PA 19380  
[Tcaseylegal@gmail.com](mailto:Tcaseylegal@gmail.com)

*Pro se Intervenor*

Patricia Sons Biswanger, Esquire  
217 North Monroe Street  
Media, PA 19063  
[patbiswanger@gmail.com](mailto:patbiswanger@gmail.com)

*Counsel for County of Delaware*

Melissa DiBernardino  
1602 Old Orchard Lane  
West Chester, PA 19380  
[lissdibernardino@gmail.com](mailto:lissdibernardino@gmail.com)

*Pro se Complainant*

James J. Byrne, Esquire  
Kelly S. Sullivan, Esquire  
McNichol, Byrne & Matlawski, P.C.  
1223 N. Providence Road  
Media, PA 19063  
[jjbyrne@mbmlawoffice.com](mailto:jjbyrne@mbmlawoffice.com)  
[ksullivan@mbmlawoffice.com](mailto:ksullivan@mbmlawoffice.com)

*Counsel for Thornbury Township, Delaware  
County*

Michael P. Pierce, Esquire  
Pierce & Hughes, P.C.  
17 Veterans Square  
P.O. Box 604  
Media, PA 19063  
[Mppierce@pierceandhughes.com](mailto:Mppierce@pierceandhughes.com)

*Counsel for Edgmont Township*


Joseph Otis Minott, Esquire  
Alexander G. Bomstein, Esquire  
Ernest Logan Welde, Esquire  
Kathryn L. Urbanowicz, Esquire  
Clean Air Council  
135 South 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
[Joe\\_minott@cleanair.org](mailto:Joe_minott@cleanair.org)  
[abomstein@cleanair.org](mailto:abomstein@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
[kurbanowicz@cleanair.org](mailto:kurbanowicz@cleanair.org)

Rebecca Britton  
211 Andover Drive  
Exton, PA 19341  
[rbrittonlegal@gmail.com](mailto:rbrittonlegal@gmail.com)

*Pro se Complainant*

Laura Obenski  
14 South Village Avenue  
Exton PA 19341  
[ljobenski@gmail.com](mailto:ljobenski@gmail.com)

*Pro se Complainant*

  
\_\_\_\_\_  
Thomas J. Sniscak, Esquire  
Kevin J. McKeon, Esquire  
Whitney E. Snyder, Esquire

Dated: October 10, 2019