**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andover Homeowner’s Association :

:

v. :  C-2018-3003605

:

Sunoco Pipeline, L.P. :

**ORDER GRANTING IN PART AND**

**DENYING IN PART PRELIMINARY OBJECTIONS**

On July 24, 2018, Andover Homeowner’s Association, Inc. (Andover or Complainant) filed a complaint with the Commission against Sunoco Pipeline, L.P. (Sunoco or Respondent). The Complaint was served upon Sunoco on July 26, 2018.[[1]](#footnote-1) Andover requests the Commission require a full and complete risk assessment pursuant to 49 CFR 195.452(i) and (j) to determine whether Sunoco is able to operate any or all of the Mariner East system in compliance with Commission requirements of safety. Andover requests the Commission take 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 in accordance with 66 Pa. C.S. §1501.

On or about August 2, 2018, Andover filed a Motion to Consolidate its formal Complaint with the then pending proceeding of *Senator Andrew Dinniman v. Sunoco Pipeline, L.P.* at Docket Nos. P-2018-3001453 and C-2018-3001451(*Dinniman*). Andover had already been granted Intervenor status in the *Dinniman* proceeding on July 20, 2018. Sunoco filed an Answer Opposing Motion for Consolidation on August 13, 2018.

On August 22, 2018, Sunoco filed Preliminary Objections and an Answer and New Matter to the Complaint. In its Answer, Sunoco denies the material averments in the Complaint and claims Andover has no standing to pursue actions for conduct pertaining to other pipelines in other jurisdictions outside the Township of Thornbury in its Complaint. Sunoco admits the ME1 runs across Andover property a length of .33 miles and claims it has a permanent easement on Andover property for its pipelines and valve sites. Sunoco denies the easement is an encumbrance or other condition which supports standing relative to the complaint.

A prehearing conference was held on August 28, 2018. On September 4, 2018, Andover filed an Answer to the Preliminary Objections of Sunoco. On September 5, 2018, Range Resources – Appalachia LLC filed a Petition to Intervene. Also on September 5, 2018, a Procedural Order was issued consolidating the instant Complaint with Senator Dinniman’s Complaint. Docket Nos. C-2018-3001451, P-2018-3001453 and C-2018-3003605 were consolidated at C-2018-3001451 for purposes of hearings and a decision.

The Procedural Order directed all petitions to intervene be filed by September 24, 2018. The Procedural Order set forth a litigation schedule and a hearing was scheduled for June 10-14, 2019. Subsequently, the hearing was cancelled due to a stay in proceedings as directed by the Commonwealth Court of Pennsylvania at *Sunoco Pipeline L.P. v. Pennsylvania State Senator Andrew E. Dinniman and Public Utility Commission,* Docket No. 1169 C.D. 2018, Order entered September 27, 2018.

On September 10, 2018, Andover filed a Reply to Answer and New Matter and Preliminary Objections to Sunoco’s Answer. On September 17, 2018, Andover filed an Answer to Preliminary Objections. On September 20, 2018, Sunoco filed an Answer to the Preliminary Objections of Andover Homeowners’ Association, Inc.

On September 24, 2018, the following individuals/entities filed petitions to intervene: Rosemary Fuller, Clean Air Council, Melissa DiBernardino, and East Goshen Township. On September 25, 2018, Andover filed an Answer to Range Resource’s Petition to Intervene. On November 1, 2018, Sunoco filed a letter stating that because the Commonwealth Court issued an order staying this then-consolidated proceeding before the Commission pending resolution of an interlocutory appeal Sunoco took of a Commission Order finding Senator Dinniman had standing to proceed with his Complaint, Sunoco was notifying the Commission that it will not expend time or resources objection or responding to Andover’s discovery issued in contravention of the Commonwealth Court’s stay.

On April 1, 2019, the evidentiary hearing scheduled to begin on June 10, 2019 was cancelled. On September 9, 2019, the Commonwealth Court entered an Opinion and Order reversing the Commission’s June 15, 2019 Order and remanding the matter to the Commission with instructions to dissolve the interim emergency injunction and dismiss the Complaint*. Id.* Slip Op. at 17. By Secretarial Letter issued on September 19, 2019, the Commission dissolved its interim emergency injunction of June 15, 2018, dismissed the Complaint and Petition at Docket Nos. C-2018-3001451 and P-2018-3001453, bifurcated and reassigned the instant Docket No. C-2018-3003605 to the Office of Administrative Law Judge for further proceedings.

On October 1, 2019, Sunoco filed Objections to Interrogatories and Requests for Production of Documents Set I. On October 9, 2019, Sunoco filed an Answer opposing the petitions to intervene of: East Goshen Twp., Rosemary Fuller, Clean Air Council, and Melissa DiBernardino. On October 11, 2019, Andover filed a Motion to Strike and Answer to Sunoco’s Objections to Interrogatories and a Motion to Quash and Answer to Sunoco’s Objections to Interrogatories, which I am treating as a motion to compel pursuant to 52 Pa. Code § 5.342.

Preliminary Objections

Sunoco’s Preliminary Objections to Andover’s formal Complaint are ripe for a decision. The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code §5.101(a) as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa. Code §5.101(a).

Sunoco’s Position

First, Sunoco’s preliminary objections allege that portions of the Complaint should be stricken pursuant to Section 5.101(a)(7) for lack of standing to bring claims regarding the safety of Sunoco’s pipelines outside the geographic area of Thornbury Township. Sunoco requests paragraphs 26, 39(h), 39(i), 51-62, 65, 68, 75, 77, 78 and 80 be stricken as the events and locations have nothing to do with Andover’s property or the pipelines on said property and have no “discernable effect” on Andover. Sunoco requests they be stricken on the grounds that they are scandalous and impertinent.

Sunoco argues that the Public Utility Code and controlling precedent make clear that a Complainant musthave a direct, substantial, and immediate interest in order to pursue any complaint allegation. For example, Andover alleges various incidents and leaks occurred, but none of those incidents were in Thornbury Township. Andover does not have any interest, let alone a direct, immediate, and substantial interest in bringing claims regarding these events. Some of these events did not occur in Pennsylvania.

Sunoco argues that Andover does not have standing to bring a claim regarding safety of the pipeline except for safety issues within the geographic region of the Andover in Thornbury Township as there is no “discernable adverse effects” that infringe on the use and enjoyment of the Andover property not mere proximity to any alleged incidents occurring outside of Thornbury Twp. *F**riends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, Dkt. No. 656 C.D. 2017 (Pa. Commw. 2018). Accordingly, Andover has no standing to bring a Complaint regarding those events.

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

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

Andover’s Position

Conversely, Andover argues the paragraphs Sunoco moves to strike from the complaint reach the scope, hazards, accident history, precautions, procedures and methods Sunoco uses or proposes to use to address the safety and emergency response issues at the heart of the Complaint. For example, Sunoco has failed to comply with 49 CFR § 195.440; 66 Pa. C.S. § 315(c) as its public awareness program is noncompliant. These issues arise not just in Thornbury Township, but also across the Mariner East Project in Pennsylvania. Sunoco did not plead that there is a separate 195 Manual or public awareness program for Thornbury Twp. Sunoco did not plead that various hazards of transporting highly volatile natural gas liquids in pipelines immediately adjacent to densely populated suburban areas are different in Thornbury from other locations.

Andover claims its Paragraph 26 specifically alleges that the twelve inch (12”) “Point Breeze to Montello” pipeline, added by Sunoco to the Mariner East project in 2018, has leaked in and near the areas where Sunoco now proposes to convert this line to NGL service. Sunoco cannot now claim that, once it adds this pipeline to its Mariner East certificated service that the Commission may ignore the history of this line’s operations in deciding if Sunoco provides safe and efficient Mariner East NGL service.

Paragraph 39(h) alleges that Sunoco has a long history of failing to report public safety and environmental impacts of its projects, including sinkholes and pipeline releases. Paragraph 39(i) avers Sunoco has a history of receiving federal enforcement actions for probable violations of rules relating to pipeline construction and it cites to string-cites of PHMSA reports. Paragraphs 51-62 detail compliance, construction, design, operation and safety problems Andover avers Sunoco has had with its Mariner East Project. Paragraph 68 avers Sunoco was unable to detect a leak in Sweetwater Texas in 2016 and in Edgemont Township, PA in 1988. Andover argues these averments may be proven through expert testimony regarding Sunoco’s history. Paragraph 75 introduces information that the ME1 has leaked three times within 1 year during 2016-2017, including once in Delaware County. Andover intends to prove accident history. Paragraphs 77 and 78 pertain to Sunoco’s history on the 12” pipe, which Sunoco proposes to make part of its ME system. Paragraph 80 shows history of accidents outside of Thornbury.

Disposition

Section 701 of the Public Utility Code provides in pertinent part:

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

66 Pa.C.S. § 701. To bring a formal complaint under Section 701 (i.e. to have “an interest”), Complainant “must have a direct, immediate and substantial interest.” *See, e.g.*, *M**un. Auth. of Borough of West View v. PUC*, 41 A.3d 929, 933 (Pa. Commw. Ct. 2012) (“In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant ‘must have a direct, immediate, and substantial interest in the subject matter of the controversy.’”) (emphasis added) (quoting *W**addington v. PUC*, 670 A.2d 199, 202 (Pa. Commw. Ct. 1995)); *H**atchigan v. PECO*, Dkt. No. C-2015-2477331 2016 WL 3997201, at \* 6 (Order entered Jul. 21, 2016) (“In order to have standing to pursue a formal complaint before the Commission under Section 701, the complainant must have a direct, immediate, and substantial interest in the subject matter of the controversy.”).

The statute at 66 Pa.C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.,* 372 A.2d 1203 (Pa. Super. 1977) *aff’d* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. §1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.,* Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 PAPUC 662 (1993).

The Commission regulations at 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. The Commission regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines.

Viewing the complaint in this case in the light most favorable to Andover, it has alleged that Sunoco has violated 66 Pa.C.S. § 1501 and regulations by operating ME 1, repurposing the 12” pipeline next to ME1 and constructing ME 2 of its Mariner East pipeline project in Thornbury Township and specifically on its property in a manner not consistent with the Public Utility Code or Commission’s regulations. Accepting as true all of the facts alleged in Andover’s complaint, Sunoco’s right to relief is not clearly warranted or free from doubt. The Complaint alleges that Andover is a nonprofit corporation with an address of 9 Fallbrook Lane, Glen Mills, Thornbury Twp., Delaware County, Pennsylvania 19342. The Complaint alleges Sunoco’s operation of a 12-inch hazardous liquids pipeline built in 1937 approximately one-half mile long on Association property (the 12” Point Breeze to Montello pipeline) is immediately adjacent to ME1. Andover avers that Sunoco proposes to construct a segment of ME2 approximately one-half mile long on the open space owned by the Association, parallel to Sunoco’s existing ME1 pipeline. Approximately thirteen (13) Association Members reside immediately adjacent to ME1, the 12” pipeline and proposed route of ME2. The Association avers it has a direct, immediate and substantial interest in the pipelines existing and proposed for construction and valve sites on its property. Andover contends 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. A hearing is necessary to determine what steps Sunoco has taken in siting the Mariner East Project on Andover property, in developing a risk analysis, public awareness and emergency response plan for Andover and Thornbury Township and whether those actions comply with applicable statutes, regulations and orders. Sustaining in part and overruling in part Sunoco’s preliminary objections is appropriate under the circumstances.

I agree with Sunoco that certain paragraphs exceed the scope of the proceeding for which Andover has standing to claim and will strike the following paragraphs: 39(h) and (i), 51-62 , 65, 68, and 80. The other paragraphs are sufficiently pled including: 26, 77 and 78.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Sunoco Pipeline, L.P. at Docket No. C-2018-3003605 are sustained in part and overruled in part.
2. That Andover Homeowner’s Association’s Complaint Paragraph Nos. 39(h) and (i), 51-62 , 65, 68, and 80 are stricken from the Complaint.
3. That the remainder Complaint shall proceed to hearing.

Date: October 21, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

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1. It is noted that a copy of the original Complaint was served upon Thomas J. Sniscak, Esquire on July 26, 2018. The Complaint was reserved on August 2, 2018 upon Curtis N. Stambaugh, in-house counsel for Sunoco Pipeline, L.P. Mr. Sniscak, Kevin McKeon, Whitney Snyder, Robert Fox, Neil Witkes, and Diana Silva entered their appearances on August 1, 2018. August 2, 2018 is the date of proper service of the Complaint and the Answers thereto filed on August 22, 2018 are deemed timely filed. [↑](#footnote-ref-1)