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REPLY TO:

Center City

September 1, 2020

Electronic Filing

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

Re: Flynn, et al. v. Sunoco Pipeline L.P.,
Docket Nos. C-2018-3006116, P-2018-3006117
DiBernardino, Docket No. C-2018-3005025 (consolidated)
Britton, Docket No. C-2019-3006898 (consolidated)
Obenski, Docket No. C-2019-3006905 (consolidated)
Andover, Docket No. C-2018-3003605

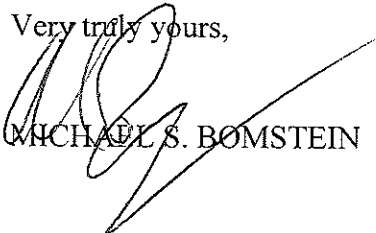
**AMENDED MOTION OF FLYNN COMPLAINANTS FOR PARTIAL
SUMMARY JUDGMENT BASED UPON SUNOCO'S FAILURE TO
PRODUCE EVIDENCE OF RISK ANALYSES**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Amended Motion for Partial Summary Judgment Based Upon Sunoco's Failure to Produce Evidence of Risk Analyses. The motion is being amended due to an error in the identification of moving parties.

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

Very truly yours,


MICHAEL S. BOMSTEIN

MSB:mik

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NO. C-2018-3006116
CAROLINE HUGHES and	:	DOCKET NO. P-2018-3006117
MELISSA HAINES,	:	DOCKET NO. C-2018-3005025
<i>Complainants,</i>	:	DOCKET NO. C-2019-3006898
v.	:	DOCKET NO. C-2019-3006905
	:	DOCKET NO. C-2018-3003605
	:	
SUNOCO PIPELINE L.P.,	:	
<i>Respondent.</i>	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that, if you do not file a written response to the enclosed **Flynn Complainants' Amended Motion for Partial Summary Judgment Based Upon Sunoco's Failure to Produce Evidence of Risk Analyses** within twenty (20) days from service of this notice, a decision may be rendered against you. Any Response to the Motion for Partial Summary Judgment must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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<i>Complainants,</i>	:	DOCKET NO. C-2019-3006898
v.	:	DOCKET NO. C-2019-3006905
	:	DOCKET NO. C-2018-3003605
	:	
SUNOCO PIPELINE L.P.,	:	
<i>Respondent.</i>	:	
	:	

**AMENDED MOTION OF FLYNN COMPLAINANTS FOR PARTIAL
SUMMARY JUDGMENT BASED UPON SUNOCO'S FAILURE TO
PRODUCE EVIDENCE OF RISK ANALYSES**

Flynn Complainants, by their attorneys, hereby move for partial summary judgment against Sunoco based upon the absence of evidence of risk analyses, and in support hereof aver as follows:

I. INTRODUCTION

52 Pa. Code § 59.33 explicitly adopts federal pipeline safety laws as the minimum safety standards for hazardous liquid public utilities. Federal law requires that an HVL pipeline operator must have an integrity management plan (an "IM Plan") for its HVL pipelines. Federal law also mandates that HVL pipeline operators such as Sunoco must ensure that its pipeline integrity assessments are *based on the risk that the pipeline poses to high consequence areas*, such as Chester and Delaware Counties.

Count IV of the Second Amended Complaint (the “Complaint”) challenges Sunoco’s IM Plan and Sunoco’s implementation of the IM Plan. The Complaint expressly alleges violation of Sunoco’s obligation to perform a risk assessment for Chester and Delaware Counties.

Sunoco was directed by ALJ Barnes to produce risk assessment documents for the two counties. In response to ALJ Barnes’s order, however, Sunoco produced only hazard/spill/consequence assessments. Moreover, Sunoco’s rebuttal testimony and rejoinder outlines have now been served, but still no risk assessments have been identified or produced.

It is obvious at this juncture that Sunoco has no risk assessments. Absent any risk assessments, Sunoco is in direct violation of both laws and regulations and its integrity management practices fail to meet minimum standards.

The Commission has both the power and the duty to declare Sunoco’s operations unlawful and to shut down all Mariner East HVL pipelines until such time as Sunoco comes into compliance.

It is time for the Commission to exercise that power.

II. UNDISPUTED FACTS

1. It is undisputed that ¶¶ 139 - 142 of the Complaint allege Sunoco has an obligation under federal regulations to conduct a baseline risk analysis in high consequence areas.
2. It is undisputed that Sunoco does in fact have an obligation under federal regulations to conduct a baseline risk analysis in high consequence areas. 49 U.S.C. § 60109.
3. It is undisputed that Sunoco witness John Zurcher has stated that the said risk analysis required by regulations and standards “is the mathematical product of the consequence of a pipeline failure times the likelihood of a pipeline failure. (Excerpt from Zurcher Rebuttal testimony at 18, Ex. “C”).

4. It is undisputed that the Flynn Complainants reside in high consequence areas in Chester County and Delaware County.

5. It is undisputed that Paragraph 142 of the Complaint specifically alleges that “Sunoco claims to have an integrity management program and to have prepared a risk analysis. Despite numerous requests from the public, Sunoco has refused to share its written integrity management program or risk analysis, or relevant portions thereof, with the public.”

6. It is undisputed that Sunoco has in fact claimed to have an integrity management program and to have prepared a risk analysis. *See, e.g.,* Rebuttal Testimony of John Zurcher, Ex. “C” at 18 and 24.

7. It is undisputed that, in spite of numerous requests from the public, Sunoco has refused or failed to share its written integrity management program or risk analysis, or relevant portions thereof, with the public.

8. It is undisputed that Interrogatory No. 173 in the Flynn Complainants’ First Interrogatories asked the respondent to “[i]dentify all risk assessments, studies, reports, memos and other documents in your possession, custody or control regarding the safety of ME1 and the workaround pipeline.”

9. It is undisputed that Interrogatory No. 174 in Flynn Complainants’ First Interrogatories asked Sunoco to “[i]dentify all risk assessments, studies, reports, memos, test results and other documents in your possession, custody or control that have evaluated the consequences or probable consequences of the ignition of gaseous HVLs following their release from pipelines as a result of punctures, leaks and ruptures.”

10. It is undisputed that Sunoco objected to and refused to answer both Interrogatories Nos. 173 and 174.

11. It is undisputed that Judge Barnes ruled that “Sunoco is compelled to provide responses to Questions Nos. 173 and 174 confined to Delaware and Chester Counties within ten (10) days of the date of issuance of this Order.”¹ (Ex. “E”).

12. It is undisputed that, on or about June 17, 2019, Sunoco furnished responses to Interrogatories Nos. 173 and 174, stating that the sought-after documents were Extremely Sensitive Information (“ESI”) and that the documents would be produced, reserving the right to supplement the responses including through testimony.

13. It is undisputed that Sunoco followed through by identifying certain ESI documents by Bates stamp and offering to allow in-person review of other documents.

14. It is undisputed that in August 2019, an in-person review was conducted in Pittsburgh, with attorneys Raiders and Bomstein in attendance under the supervision of attorney Snyder.

15. It is undisputed that at that time, Raiders and Bomstein were shown all ESI documents set aside by Sunoco’s counsel as responsive to Interrogatories 173 and 174.

16. It is undisputed that the in-person review documents included IM Plans as well as four hazard/spill assessments. The executive summary for each of the hazard/spill assessments identified the document as a “consequence” assessment. Not one was identified as or appeared to be either a probability or risk assessment. *See* Ex. “A” (Verified Statement of Rich Raiders, Esq., hereinafter referred to as “Raiders Statement”).

17. It is undisputed that Sunoco’s rejoinder outlines now have been submitted. Except for the rebuttal testimony of John Zurcher, *see infra* ¶ 18, Sunoco’s document production included no documents or other testimony reflecting any probability or risk assessments that

¹ The judge separately required Sunoco to produce risk assessment documents.

Sunoco conducted relative to the Mariner East pipelines in their entirety or to Chester County or Delaware County in particular.

18. John S. Zurcher is Sunoco's expert on public awareness, integrity management, and regulatory compliance for pipelines, including HVL transmission pipelines. *See* Ex. "B" at 375 (Excerpt from Zurcher 2018 live testimony) and Ex. "C" at 8 (Excerpt from Zurcher Rebuttal). In his 2018 live testimony and in his 2020 rebuttal testimony, Mr. Zurcher testified that Sunoco has conducted risk assessments based on calculations of probability and consequences. *See* Ex. "C" at p.17- 21 (Excerpt from Zurcher Rebuttal). At no point, however, did Mr. Zurcher testify that he has actually seen these supposed assessments, nor did he identify any such documents by date or Bates number. *See generally* Exs. "B" & "C".

III. ARGUMENT

A. Applicable Statutory and Regulatory Standards

19. Public utilities such as respondent are governed in part by the provisions of 49 U.S.C.A. §§ 60101 to 60503.

20. Those provisions are adopted in 52 Pa. Code § 59.33, which provides in pertinent part that "[t]he minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101 -- 60503 and as implemented at 49 CFR Parts 191 -- 193, 195 and 199, including all subsequent amendments thereto."

21. One of the said pipeline safety laws is found in 49 U.S.C. § 60102(a), which provides that:

(1) Purpose. The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities

22. In furtherance of the statute, 49 CFR § 195.401(a) states that “[n]o operator may operate or maintain its pipeline systems at a level of safety lower than that required by this subpart and the procedures it is required to establish under § 195.402(a) of this subpart.” See 49 CFR § 195.401(a).

23. 49 U.S.C. § 670108, also one of the federal laws adopted in 52 Pa. Code § 59.33, provides that an HVL pipeline operator must have and carry out a written inspection and maintenance plan “for inspection and maintenance of each facility used in the transportation and owned or operated by the person.” See 49 U.S.C. § 670108.

24. 49 U.S.C. § 60109 also states in relevant part that “each operator of a pipeline facility to which this subsection applies shall ensure that pipeline integrity assessments... are completed on a schedule *based on the risk that the pipeline facility poses to the high consequence area in which the pipeline facility is located.*” See 49 U.S.C. § 60109 (Italics added).

25. In addition, 49 CFR § 195.452(i) provides that the operator is responsible for “*conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection.*” See 49 CFR § 195.452(i) (emphasis added).

B. Sunoco has blatantly violated the law and must be stopped.

26. Although 49 U.S.C. § 60109 and 49 CFR § 195.452(i) discuss risk and risk analysis as the basis for proper integrity management, neither the statute nor the regulations define risk or risk analysis. See Ex. “A” at ¶ 6 (Raiders Statement) and Verified Statement of Jeff Marx, hereinafter “Marx Statement,” Ex. “D” at ¶ 3).

27. 49 CFR § 303 provides for a ranking of risk factors to take the place of pressure testing. Section 303 is not very clear and, at best, it can be described as “qualitative.” *See* Ex. “A” at ¶ 6 (Raiders Statement) and Ex. “D” at ¶ 4 Marx Statement).

28. None of the documents reviewed by counsel in Pittsburgh could be characterized as risk analysis or risk assessment, whether qualitative or quantitative. *See* Ex. “A” at ¶ 9 (Raiders Statement).

29. Judge Barnes directed Sunoco to serve Complainants with documents responsive to Nos. 173 and 173 of Complainant’s First Interrogatories. Sunoco to date has not identified any such documents. *See* Ex. “D” at ¶ 10 (Raiders Statement).

30. John Zurcher has testified that Sunoco has performed a quantitative risk analysis for the Mariner East HVL service. *See* Ex. “C” at 17-18. There is no basis in the documents produced by Sunoco to believe that a quantitative risk analysis was performed, either in Pennsylvania or in Chester and Delaware Counties in particular.

31. The duty to perform a risk analysis is not trivial or simply ministerial. It arises under a federal statutory scheme setting forth *minimum* standards. Section 60102(a) states that the purpose of the scheme “is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” *See* 49 U.S.C. § 60102(a).

32. Whether Sunoco uses qualitative or quantitative assessment to assess risk, it is required to use *some* system for this determination. 49 U.S.C. §60109, 49 CFR 195.452(i) make it clear that risk analysis is the foundation of integrity management. Ex. “D” at ¶ 13 (Marx Statement).

33. A review of the testimony by John Zurcher shows he is asserting that Sunoco employs some sort of quantitative risk assessment for its HVL pipelines. Mr. Zurcher

says that Sunoco has framed the risk as being quantitatively and proportionally lower in high consequence areas such as Chester and Delaware counties. The data in support of this claim have not been disclosed. Ex. “D” at ¶¶ 14 and 15 (Marx Statement).

34. No data have been produced in this case that would substantiate the assertion that Sunoco performed a risk analysis with subsequent risk assessment relative to the Mariner East HVL pipelines in Chester and Delaware Counties. Ex. “D” at ¶ 15 (Marx Statement).

35. The Commission has plenary authority to enforce the federal integrity management standards. *See* 66 Pa. C.S. §§ 501 & 1501; *see also* 52 Pa. Code § 59.33.

36. The Commission has both the right and the duty to make a finding that Sunoco has violated the law by not conducting a risk analysis on the HVL pipeline service in Chester and Delaware Counties.

37. Sunoco’s entire integrity management scheme fails in the absence of a risk analysis for HVL service in Chester and Delaware Counties.

38. The Commission must shut down all Mariner East HVL service pending submission of a legitimate risk analysis for HVL service in Chester and Delaware Counties.

39. The cost to Sunoco of compliance with federal law is not identified in the statute as a basis for non-compliance and, therefore, may not factor into the Commission’s decision and order.

C. Summary Judgment Standards

40. A party may move for partial summary judgment under 52 Pa. Code § 5.102 when the pleadings and testimony show that there is no genuine issue as to a material fact and the party is entitled to a judgment as a matter of law, in this case, regarding the safety of the Mariner East pipelines. In that event, no hearing is necessary. *See* 66 Pa. C.S. § 703(a). “The

commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” *See* 66 Pa. C.S. § 703(b).

41. “A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.” *See* 52 Pa. Code § 5.102(c).

42. Testimony served in a proceeding is treated as the affidavit of the submitting party for purposes of ruling on a motion for summary judgment. *See AT&T Communications of Pa, Inc.*, Dkt. No. P-880306, 80 Pa. P.U.C. 349, 1993 WL 493599, Initial Decision (ALJ Schnierle, entered Jan. 22, 1993).

43. As Judge Spaeth has noted, “The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The record must be examined in the light most favorable to the non-moving party.” *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406, 407 (Pa. Super. 1983).

44. “Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.” *See* 66 Pa. C.S. § 332(a).

45. Findings of fact must be supported by substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). “Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Republic Steel Corp. v. Workmen's Compensation Appeal Board (Shinsky)*, 492 Pa. 1, 5, 421 A.2d 1060, 1062–63 (1980).

D. Conclusion

46. The present motion is based upon the pleadings, the discovery, the testimony of Sunoco's witnesses, and the verified statements of two experienced engineers.

47. The findings of fact set forth above are based upon indisputable evidence.

48. The applicable statutes and regulations provide that a risk analysis for the high consequence areas of Chester and Delaware Counties must be performed as the foundation of integrity planning and management.

49. There is no evidence in this case that Sunoco ever performed such a risk analysis.

50. Accordingly, Sunoco has failed to comply with the minimum safety standards set by the Pennsylvania Legislature.

51. The Commission has the power and the duty to suspend Sunoco's operation of HVL pipeline service in Chester and Delaware Counties until such time as Sunoco complies with the law.

IV. RELIEF

In light of the foregoing, Flynn Complainants respectfully request Your Honor enter an Order (a) granting partial summary judgment in their favor and against Sunoco on Count IV of their Complaint and (b) directing Sunoco to cease all HVL pipeline service in Chester and Delaware Counties pending submission and approval of a risk analysis that complies with federal law.

Respectfully submitted,

/s/ Michael S. Bomstein

Michael S. Bomstein, Esq.

Pinnola & Bomstein

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Tel.: (215) 592-8383

Dated: September 1, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Flynn Complainants' foregoing Motion upon the persons listed below as per the requirements of § 1.54 (relating to service by a party).

See attached service list.

/s/ Michael S. Bomstein
Michael S. Bomstein, Esq.

Dated: September 1, 2020

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EX. "A"

VERIFIED STATEMENT OF RICH RAIDERS

1. My name is Rich Raiders. I am an attorney and an engineer.
2. I previously managed the Occupational Health and Safety Administration (“OSHA”) Process Safety Management (“PSM”) regulations at 49 CFR 119 and the Environmental Protection (“EPA”) Risk Management Plan (“RMP”) regulations at 40 CFR 68 for Buckeye Pipeline Company and related entities.
3. I have twenty (20) years experience in process safety management, having prior to my work in the pipeline industry, coordinated RMP efforts and significantly contributed to PSM initiatives at Elf Atochem North America, affiliates and successors.
4. The Pennsylvania Commonwealth Court, the Lebanon County Court of Common Pleas, the West Cornwall Township, Lebanon County, Pennsylvania Zoning Hearing Board and the Perth Amboy City, New Jersey Zoning Hearing Board have all accepted me as a process safety expert for petroleum pipeline and terminal operations.
5. I served as an engineering expert on the Pennsylvania Department of Environmental Protection (“DEP”) Horizontal Directional Drilling (“HDD”)/Trenchless Technology (“TT”) task force formed in 2018.
6. 49 U.S.C. §60109 and 49 CFR 195.452(i) discuss risk and risk analysis as the basis for proper integrity management. Neither the statute nor the regs define risk or risk analysis. 49 CFR § 303 provides for a ranking of risk factors to take the place of pressure testing. § 303 is not very clear and, at best, it can be described as “qualitative.”
7. In my engineering work, specifically but not exclusively within the pipeline industry, risk was usually evaluated in a qualitative manner, where the risk protocols evaluated relative weaknesses using a variety of protocols, such as the Hazard and Operability Study (“HAZOP”) method, a Taproot® review protocol, or a “what-if” scenario analysis.
8. Rarely, if ever, was statistical quantitative risk used to evaluate industrial operational risks for a fixed facility or a linear project.
9. In my role as counsel in this matter, I was present in Pittsburgh in August, 2019, when Michael Bomstein and I reviewed hundreds of pages of Sunoco documents deemed to contain confidential security information. While we were shown four different consequence assessments from the period 2013 to 2018, we were not shown any documents that could be characterized as risk analysis or risk assessment, whether qualitative or quantitative.
10. I am familiar with the discovery that has taken place in this case. Judge Barnes directed Sunoco to serve Complainants with documents responsive to Nos. 173 and 173 of Complainant’s First Interrogatories. To the best of my knowledge, Sunoco to date has not identified any such documents.
11. I have reviewed the testimony of John Zurcher both in 2018 and in his recent rebuttal testimony. The notion that Sunoco has performed a quantitative risk analysis for the Mariner

East HVL service, either in Pennsylvania or in Chester and Delaware Counties, has no basis in any of the documents that I have seen to date.

12. None of the documents I have reviewed in preparation for my role as the attorney of record for complainant and intervenor, Andover Homeowners' Association, Inc. ("Association"), documented any probability (qualitative or quantitative) risk studies for any part of the Mariner East project.

13. In no way does my preparation of this affidavit serve as any waiver of my role as attorney of record for the Association through the final disposition of this matter.

14. I make these statements to the best of my knowledge, information and belief, and to a reasonable level of scientific and technical certainty.

15. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Rich Raiders, Esq.

Dated: August 21, 2020

EX. "B"

COMMONWEALTH OF PENNSYLVANIA

358

PUBLIC UTILITY COMMISSION

----- x
 :
Meghan Flynn, Rosemary Fuller, Michael :
Walsh, Nancy Harkins, Gerald McMullen, :
Caroline Hughes, and Melissa Haines v. :
Sunoco Pipeline, L.P. :
 Petition for Interim Emergency Relief : Docket No.
 : C-2018-3006116
 Further Hearing : P-2018-3006117
 :
 :
 ----- x

Pages 358 through 613 Hearing Room 2
 Commonwealth Keystone Building
 Harrisburg, Pennsylvania
 Friday, November 30, 2018

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

ELIZABETH H. BARNES, Administrative Law Judge

APPEARANCES:

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 (For Meghan Flynn, et al.)

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 (For Sunoco Pipeline L.P.)

Commonwealth Reporting Company, Inc.
 700 Lisburn Road
 Camp Hill, Pennsylvania 17011

1 MR. WITKES: Your Honor, I proffer John
2 Zurcher as an expert in the adequacy of public awareness,
3 hazard warnings, and pipeline safety regulation.

4 JUDGE BARNES: Any objection?

5 MR. BOMSTEIN: No objections.

6 JUDGE BARNES: John Zurcher is accepted as an
7 expert in public awareness, hazard warnings, and pipeline
8 safety.

9 You may proceed with your questions.

10 BY MR. WITKES:

11 Q. Mr. Zurcher, there's been discussion in this
12 hearing room about pipelines, and I think in the community
13 there may not be a complete understanding of the different
14 kinds of pipelines that there are, so I would just like you
15 to explain to Judge Barnes what different types of pipelines
16 there are.

17 A. I'll start out in the production field. There are
18 production lines and they take the gas or liquid from the
19 individual wells to kind of a central location where that
20 gas or liquid is then gathered, and then we have gathering
21 lines that move that to processing or to transmission.

22 Transmission is typically large diameter high pressure
23 pipelines that move the product long distances. After it's
24 moved for long distances, on the gas side, the natural gas
25 side, it then enters the distribution realm and that gas is

EX. "C"

**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)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No. C-2018-3003605 (consolidated)

v.

SUNOCO PIPELINE L.P.

**REBUTTAL TESTIMONY
OF JOHN S. ZURCHER
ON BEHALF OF SUNOCO PIPELINE, L.P.**

Dated: June 15, 2020

1 Q. Have you done any teaching, and if you have, please describe it briefly?

2 A. I teach a two-and-one-half day course on pipeline safety for both natural gas and hazardous
3 liquid pipeline operators and others, a two-day course on natural gas and hazardous liquid integrity
4 management, which I have taught on about one hundred separate occasions. I teach engineering
5 companies that design pipelines, construction companies that construct pipelines, and operating
6 companies that operate pipelines.

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8 Q. Sunoco Pipeline proffers Mr. Zurcher as an expert in public awareness, integrity
9 management, and regulatory compliance for pipelines, including HVL transmission
10 pipelines.

11

12 Q. Please explain what the different types of pipelines are?

13 A. Starting in the production field, there are production lines that take gas or liquid from the
14 individual wells to a centralized location where the gas or liquid is gathered. From there are what
15 we called gathering lines that move that gas or liquid for processing or transmission. Transmission
16 lines are typically large-diameter, high-pressure pipelines that move the gas or liquid over long
17 distances. Thereafter, to move natural gas, the transmission lines are connected to distribution
18 lines, which distribute the natural gas to homes and businesses for consumption.

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20 Q. Approximately how many miles of the different types of pipelines are there in the
21 United States?

1 **compliance with the applicable regulations, Sunoco Pipeline's public awareness plan, and**
2 **the appropriate standard for public awareness?**

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4 A. Yes. That testimony describes a very robust public awareness program that complies with
5 Sunoco Pipeline's public awareness plan, the applicable regulations, industry standards, and any
6 other applicable standards for a public awareness program for a hazardous liquids pipeline. Indeed,
7 Sunoco Pipeline has gone beyond the applicable standards and requirements for public awareness
8 and has demonstrated by its actions a willingness and ability to engage with members of the public,
9 emergency responders, the community, local governments and school districts.

10
11 **Q. Can you explain what is meant by integrity management as it relates to pipelines?**

12 A. Integrity management is a performance-based, process-oriented program to manage the
13 safety and environmental risks associated with hazardous liquids and natural gas pipelines. The
14 simplest way to look at integrity management is to identify the threats that may cause a pipeline to
15 fail. There are nine separate threats to a pipeline's integrity, one example being corrosion. Once
16 the threats to a pipeline are identified, the pipeline company focuses on the likelihood of each
17 threat occurring for a given pipeline. Once we understand the likelihood of each threat to a pipeline
18 occurring, the pipeline is assessed for those threats. This allows a company to better understand
19 its system and to prioritize and manage risk in a systematic way. There is then a focus on high
20 consequence areas, because this is where the potential consequences of a pipeline failure are
21 greatest. The company then performs a risk assessment of its pipelines and develops assessment
22 methods to detect defects or anomalies and repair them as appropriate. Examples of the assessment
23 techniques include hydrostatic testing, in-line inspection of the pipeline with tools that detect

1 anomalies and defects, and direct assessment through survey inspection for anomalies. Sunoco
2 Pipeline has SOPs for these various things; I have reviewed them and they are consistent with the
3 regulations and industry practice for the proper maintenance of the pipelines and to implement the
4 integrity management program.

5 The regulations and standards recognize that with the transportation of hazardous liquids,
6 there is a risk, which is the mathematical product of the consequence of a pipeline failure times
7 the likelihood of a pipeline failure. The risk is very small, and it remains steady irrespective of the
8 population near a pipeline.

9 Risk under the regulations is an important concept to understand and it underlies the
10 management of all pipeline assets. In my view, the Complainants misperceive this, by focusing
11 solely on the consequence of a pipeline failure without considering the likelihood of a pipeline
12 failure. Discussing consequence without also discussing likelihood is meaningless when
13 addressing risk. As the consequence of a pipeline failure increases – as it would here in a high
14 consequence area – the likelihood of that pipeline failing must be reduced to maintain the same
15 risk across the entire pipeline. Therefore, to maintain the same risk across the entire pipeline, the
16 regulations and integrity management program require that additional measures be taken to reduce
17 the likelihood of a pipeline failure in areas of high population.

18 Consequence for pipelines is mainly a function of population. By definition, the larger the
19 population near a pipeline, the greater the consequence of a pipeline failure, and the regulations
20 and integrity management plan expressly recognize and address this. To begin the consequence
21 analysis, the regulations start with four categories called Class Location. A greater safety factor
22 is used in the design of a pipeline as the population near a pipeline increases. In addition, a greater
23 safety factor for the testing of the pipeline is required. And stricter operations requirements and

1 stricter and more frequent maintenance requirements are also required as the population near a
2 pipeline increases.

3 For a high consequence area, as is present here, pipeline operators are required to determine
4 any threats to the integrity of the pipeline and assess the pipeline by one or more means to
5 determine its integrity. Any length of the pipeline that does not meet the acceptance criteria must
6 be repaired or replaced. After repair or replacement and determination that the integrity of the
7 pipeline is acceptable, the operator employs additional measures for prevention and mitigation to
8 manage the integrity into the future.

9 So in sum, the regulations and integrity management require the risk in a high consequence
10 area to be the same as in every other area, so that the risk is uniform across the pipeline. That
11 means that the likelihood of a pipeline failure, by definition, is much, much lower in a high
12 consequence area than in areas where there is low or no population, precisely because the
13 regulations recognize that the potential consequence of a pipeline failure in a high consequence
14 area is much greater. This is why Complainants experts do not focus on the likelihood of a pipeline
15 failure and focus solely on its consequence. They can't focus on likelihood. Necessarily, the
16 likelihood is much, much lower in a high consequence area in order to achieve a uniform risk
17 precisely because the consequence of a pipeline failure is much greater. That is also why it is
18 inappropriate to consider pipeline failures from the PHMSA data base that occurred in areas that
19 were not high consequence areas.

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21 **Q. Does the PHMSA database contain any record of a rupture of an HVL pipeline in a**
22 **high consequence area?**

23 **A. No.**

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Q. How does the transportation of HVLs by transmission pipeline compare to other modes of transportation in terms of safety?

A. Transmission of HVLs by pipeline is much safer. Transportation by rail is twenty-five times less safe than transportation by pipeline. Transportation by tanker on the highways is seventy-three times less safe than transportation by pipeline.

Q. Based upon available data, how does the risk of death from an HVL pipeline compare to other every-day occurrences?

A. Again, there is much less risk associated with the transportation of HVLs by pipeline. According to the PHMSA database, since 2010 there has been one fatality to the member of the general public associated with a release from an HVL pipeline and that was an individual who walked into a cloud of vapor and was overcome and passed away. In comparison, there have been 45,000 deaths on the highway, 25,000 deaths from a slip and fall, of which 1,200 happened on stairs. You are 900 times more likely to die from a bee sting and 450 times more likely to die from a lightning strike. Those are just examples. You are far more likely to die from drowning, a fall from a ladder or scaffolding, a flood, or from an earthquake. You are far, far more likely to be struck by a car or truck as a pedestrian.

Q. In his prepared testimony, Mr. Marx discusses the projected consequences of a complete rupture of one of the Mariner East pipelines in Chester or Delaware County. In your professional opinion, is that an appropriate evaluation without also considering the risk of such a catastrophic event occurring?

1 A. No it is not.

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3 Q. Please explain why not.

4 A. It is inappropriate to consider the consequence of an event without also considering the
5 likelihood of an event occurring. The whole concept underlying PHMSA's integrity management
6 regulations is that risk is the mathematical product of (1) the consequence of a pipeline failure
7 multiplied by (2) the likelihood of a pipeline failure. Although the risk is very small, PHMSA's
8 regulations require risk to remain constant across the entire pipeline. As the population near a
9 pipeline increases, as it may -- and often does -- in a high consequence area, the consequences of
10 a pipeline failure necessarily increase. The consequences of a pipeline rupture in an unpopulated
11 area is very different than the consequences of a pipeline rupture in a highly-populated area.
12 Therefore, to maintain constant risk in both of those areas, as well as across the entire Mariner East
13 pipelines, the likelihood of a pipeline rupture must be greatly reduced in a high consequence area
14 to make the risk the same as a pipeline rupture with no population present, which is essentially
15 zero. Greater levels of protection in terms of construction, testing, inspection, operation and
16 maintenance are required in a high consequence area to make the risk the same as in a non-high
17 consequence area. Therefore, it is my opinion to a reasonable degree of professional certainty that
18 it is contrary to PHMSA's regulations to consider the consequence of an event only, without also
19 considering the likelihood of that event occurring.

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21 Q. Mr. Marx's prepared testimony read from Complainants' Complaint the description
22 of three incidents -- one that occurred in November 2007 near Carmichael, Mississippi, one

1 Q. Do you have an opinion within a reasonable degree of professional certainty whether
2 the Integrity Management Plan complies with PHMSA's regulations and is consistent with
3 applicable standards for the management of the integrity of pipelines.

4 A. Yes it is. It is very much in conformance with the standards that I've described and the
5 pipeline safety and integrity management regulations. It properly describes and establishes
6 processes for the management of the integrity of both gas and liquid pipelines.

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8 Q. Are pipeline exposures common, and what I mean by that is portions of pipelines
9 where the cover may have eroded and the pipeline is exposed or partially exposed?

10 A. Yes. There are hundreds of thousands of locations across the United States where a
11 pipeline is exposed. In the vast majority of circumstances, an exposed pipeline is not an issue.
12 But a pipeline company is nevertheless required to evaluate an exposure and address it as
13 necessary.

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15 Q. Does PHMSA have requirements for a pipeline exposure?

16 A. No. PHMSA's regulations do not require that pipeline burial be maintained. But if a new
17 pipeline is to be buried, the regulations specify the depth of burial, which is typically thirty to
18 forty-eight inches. There is no requirement in the regulations, however, to maintain a minimum
19 depth of cover or to replace cover where it has eroded or when a section of pipeline is otherwise
20 exposed over the operating life of a pipeline's service.

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22 Q. What is the rationale for not requiring a minimum depth of cover over the life of a
23 pipeline's service?

EX. "D"

VERIFIED STATEMENT OF JEFFREY MARX

1. My name is Jeff Marx. I am an engineer and I have previously given testimony in this proceeding relative to consequence analysis, probability analysis and risk assessment in connection with Sunoco's current and proposed Mariner East pipeline project.

2. At the request of Complainants' counsel I have recently reviewed the United States Code (USC) and the Code of Federal Regulations (CFR) regarding their use of the terms "risk," "risk assessment," or "risk analysis" in connection with integrity management for hazardous, highly volatile liquids (HVL) pipelines.

3. I have found no specific definitions of the terms "risk," "risk assessment," or "risk analysis" in those sources. In my practice, we distinguish between quantitative and qualitative analysis. I do not see that either USC or CFR specifies that an operator's pipeline risk analysis must be quantitative.

4. 49 CFR § 195.303 does provide a risk ranking system as an alternative to pressure testing of older pipelines, which I would describe as qualitative. I've attached a copy of the relevant portions of § 303 to this affidavit.

5. I am familiar with the Mariner East (ME) pipeline service in Chester and Delaware Counties and am able to apply the § 195.303 criteria with reasonable confidence.

6. The overall objective under § 195.303 is to assign a risk classification of high, medium or low. Risk Classification C is high, Risk Classification A is low, and B is medium. Risk is classified using four indicators: (1) location, (2) product, (3) volume, and (4) probability of failure.

7. Within this framework the location indicator is high if the area is non-rural. The ME pipelines within Chester and Delaware Counties would be considered high risk by this criterion.

8. The product indicator is high if the material to be transported is highly toxic or is both highly volatile and flammable. The ME pipelines transporting HVLs would be considered high risk by this criterion.

9. For the volume indicator the answer is mixed because ME1 is 8-inches (low); the old part of the workaround segment is 12-inches (low) but parts of the workaround segment are 16-inches (medium) and possibly 20-inches (high). For the probability of failure indicator, the pipeline segment in question is classified as high risk if in the last ten years it has experienced three or more failures.

10. It is clear that the ME pipeline segments near the Complainants' locations would classify as high risk, primarily because Risk Classification C is based solely on location risk.

11. Applying this qualitative risk classification within §195.303 only serves to prioritize when (or if) pressure testing is required. Clearly, the ME1 pipeline in Chester and Delaware counties would have needed to be pressure tested sooner than most other parts of the ME1 pipeline, had it been in service when § 195.303 was promulgated.

12. The qualitative methodology in § 195.303 is indicative of the technical detail associated with risk analysis under the pipeline integrity management. While this does not preclude more detailed analyses, or even quantitative analyses, it is clear that some risk-based analysis is necessary to support an operator's risk assessment.

13. Whether Sunoco uses qualitative or quantitative assessment to assess risk, it is required to use *some* system for this determination. 49 U.S.C. §60109, 49 CFR 195.452(i) make it clear that risk analysis is the foundation of integrity management.

14. It is my understanding, through the review of testimony by John Zurcher, that Sunoco employs some sort of quantitative risk assessment for its HVL pipelines. This understanding comes from Mr. Zurcher's framing of the pipeline release frequency as being quantitatively and proportionally lower in high consequence areas such as Chester and Delaware counties, due to certain undisclosed aspects of Sunoco's integrity management systems.

15. I am unaware of any documentation produced in this case that would substantiate the assertion that Sunoco performed a risk analysis with subsequent risk assessment relative to the Mariner East HVL pipelines in Chester and Delaware Counties.

16. 9. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Jeff Mark, P.E.

Dated: August 20, 2020

§ 195.303 Risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines.

- (a) An operator may elect to follow a program for testing a pipeline on risk-based criteria as an alternative to the pressure testing in § 195.302(b)(1)(i)-(iii) and § 195.302(b)(2)(i) of this subpart. Appendix B provides guidance on how this program will work. An operator electing such a program shall assign a risk classification to each pipeline segment according to the indicators described in paragraph (b) of this section as follows:
- (1) Risk Classification A if the location indicator is ranked as low or medium risk, the product and volume indicators are ranked as low risk, and the probability of failure indicator is ranked as low risk;
 - (2) Risk Classification C if the location indicator is ranked as high risk; or
 - (3) Risk Classification B.
- (b) An operator shall evaluate each pipeline segment in the program according to the following indicators of risk:
- (1) The location indicator is -
 - (i) High risk if an area is non-rural or environmentally sensitive; or
 - (ii) Medium risk; or
 - (iii) Low risk if an area is not high or medium risk.
 - (2) The product indicator is
 - (i) High risk if the product transported is highly toxic or is both highly volatile and flammable;
 - (ii) Medium risk if the product transported is flammable with a flashpoint of less than 100 °F, but not highly volatile; or
 - (iii) Low risk if the product transported is not high or medium risk.
 - (3) The volume indicator is -
 - (i) High risk if the line is at least 18 inches in nominal diameter;
 - (ii) Medium risk if the line is at least 10 inches, but less than 18 inches, in nominal diameter; or
 - (iii) Low risk if the line is not high or medium risk.
 - (4) The probability of failure indicator is -
 - (i) High risk if the segment has experienced more than three failures in the last 10 years due to time-dependent defects (e.g., corrosion, gouges, or problems developed during manufacture, construction or operation, etc.); or
 - (ii) Low risk if the segment has experienced three failures or less in the last 10 years due to time-dependent defects.

EX. "E"

21. That Sunoco is compelled to provide responses to Questions Nos. 173 and 174 confined to Delaware and Chester Counties within ten (10) days of the date of issuance of this Order.

22. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 175-177 by providing maps showing the location and depth of Mariner East 1, Mariner East 2, Mariner East 2X and the 12-inch workaround pipelines within ten (10) days of the date of issuance of this Order.

23. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 178-183 within ten (10) days of the date of issuance of this Order.

24. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, No. 184 by providing the One Call report it submitted to the Commission within ten (10) days of the date of issuance of this Order.

25. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 195-196 within ten (10) days of the date of issuance of this Order.

26. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 207 - 211 within ten (10) days of the date of issuance of this Order.

27. That Sunoco Pipeline LP's objections to Interrogatories Set 1, Nos. 206, 212 and 213 are sustained.

28. That Sunoco Pipeline LP is compelled to respond to Interrogatories Set 1, Nos. 214 as pertains to data on or after January 1, 2014 and to Nos. 215-216 pertaining to only ME1, ME2, ME2X and the 12-inch workaround pipelines within ten (10) days of the date of issuance of this Order.

29. That Sunoco Pipeline LP is compelled to respond to Interrogatories Set 1, Nos. 219-221, limited to information pertaining to leaks since January 1, 2014 and within the confined regions of Delaware and Chester Counties, and No. 228 by