

April 1, 2018

By Email

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Re: Sunoco’s Response to DEP’s request for information on PA-CA-0023.0000-RD

Dear Ms. Drake:

On March 28, 2018, Sunoco submitted a letter to the Department in response to the Department’s February 27, 2018 request for additional information regarding horizontal directional drilling (“HDD”) Site PA-CA-0023.0000-RD (“Site”). Pursuant to the Corrected Stipulated Order entered on EHB Docket No. 2017-009-L on August 10, 2017 (“Order”), and on behalf of Clean Air Council, Mountain Watershed Association, Inc., and the Delaware Riverkeeper Network (“Appellants”), we respectfully submit these comments in reply. Our comments mirror point by point (for most points) the requests and responses from the Department and Sunoco.

Appellants also note that they continue to have serious concerns about the inadequacy of Sunoco’s geological analysis. Recently another site at which the Department had approved HDD operations after a re-evaluation—the Frankstown Branch Juniata River HDD—experienced a damaging flow of drilling fluids into the River. Appellants are concerned about an incident happening at this Site should operations go ahead as planned, given that the geological conditions are under-investigated.

Point 1 (justification for 150-foot statement)

Sunoco claims that its “previous statement concerning the potential effects within 150 ft is now moot” due to the Consent Order & Agreement. This is both incorrect and troubling because Sunoco is failing to provide documentation to confirm questionable statements it has made to the Department, and is failing to conduct an actual hydrogeological analysis of the Site, as required by the Order.

Sunoco’s statement is incorrect because the provision of a temporary water supply does nothing to protect the private water supplies. It may stave off harm to landowners’ health during the course of the drilling, but still leave them with damaged or destroyed water supplies. Further, as explained by residents who commented on this HDD Site, damage to a well affects the value and

livability of the home, no matter the temporary band-aid provided.

Appellants believe Sunoco made its statement about 150 feet as a matter of convenience and not because there is any truth to it. Energy Transfer Partners, of which Sunoco Pipeline is merely an alter ego, has an active history of lying to regulators when convenient. For example, the Federal Energy Regulatory Commission less than a year ago found that ETP (through its Rover Pipeline alter ego) “falsely promised it would avoid adverse effects to a historic resource that it was simultaneously working to purchase and destroy. Rover subsequently made several misstatements in its docketed response to the Commission’s questions about why it had purchased and demolished the resource.” See “Staff Notice of Alleged Violations,” July 13, 2017, appended.

The game here is transparently the same. There is no sound hydrogeological basis for claiming that water supplies are only at risk within 150 feet of the HDD alignment. But because it was convenient here, Sunoco made that representation to the Department. Having been called on its misrepresentation, Sunoco wants to brush it aside rather than own up to the fact that it made statements to the Department for which there is no justification.

Appellants believe it is important for the integrity of the administrative process that the Department not let Sunoco get away with submitting falsehoods to the Department as truths.

As importantly, Sunoco needs to have done a scientifically valid hydrogeological evaluation of the Site. Sunoco wrote that “individual well use during active drilling for wells located within 150 linear ft on either side of the profile may be affected.” If Sunoco is now withdrawing this statement upon probing, it raises serious questions about the validity of its other scientific and hydrogeologic conclusions.

The Order is not moot regardless of the Consent Order and Agreement. The Order requires scientific analysis including “analysis of well production zones.” These analyses need to be accurate and scientifically defensible. As it stands, neither the Department nor the public has any way of knowing how many wells may be impacted. Wells even outside of 450 feet from the alignment may be at risk and the Department was right to demand this analysis.

Please continue to insist that Sunoco provide any such justification for its statement as may exist. If Sunoco cannot, please do not reward its dissembling and/or lack of scientifically rigorous study by approving the plans for this Site.

Point 2 (documentation of temporary water agreements and measures to avoid impacts)

In point 2, the Department requested documentation of temporary water supply agreements and also “a discussion of actions to be taken by SPLP to prevent water supply impacts from occurring.”

Sunoco explains that “[o]ne of the 8 landowners has accepted temporary water replacement.” Yet Sunoco fails to include documentation of that agreement as requested. This omission is suspicious. In Sunoco’s correspondence with the Department for the Hildenbrand Road HDD, Sunoco has also failed to include any documentation of this acceptance as the Department requested. The Department should require this documentation. It is important to know not just

that it has happened, but also what the landowners and Sunoco have agreed to. Appellants have concerns about the substance of such agreements. They should be fair to landowners, require no waiver of rights, and not rely on stagnating, infrequently changed “water buffalo” water. Such temporary water supplies may be acceptable for household use but not necessarily as drinking water.

Sunoco simply ignores the second part of the Department’s request, unless Sunoco’s comments about the DrilPlex additive are meant to be responsive. To the extent the use of DrilPlex is meant as the discussion requested by the Department, it is insufficient. Sunoco has always had the ability to add any of various additives to its drilling fluid during HDD, and it has done so. This has not prevented water supply impacts. The first and critical step in preventing water supply impacts is understanding the geology and the hydrogeology of the site. As Appellants have already commented previously (and further explain above), Sunoco’s investigation of the Site is not yet sufficient. Even setting aside this lack of investigation, the mere use of DrilPlex is a scant and insufficient mitigation plan.

Point 3 (protection of water supply yield)

All Sunoco offers for protection against loss of water quantity is the same mention of the use of DrilPlex. As explained above, this is woefully inadequate as it offers nothing beyond what Sunoco did before, which has not adequately protected water supplies.

Point 4.a (well production zone analysis)

Sunoco again fails to answer the question posed. Sunoco claims that it cannot produce a “technically defensible analysis of this subject” because certain scientific tools are insufficient to gather “information on the orientation of the fissures and bedding plane partings; their width; do they dip or incline; and to what extent hydrostatic forces or the effects of gravity influence the movement of water in these bedrock features.” It does not consider the use of geophysical investigation tools with which it *can* produce a technically defensible analysis. This conclusion directly contradicts a statement Sunoco made in its Re-evaluation Report: “Although limestone was observed in geotechnical boring B2-3E east of the eastern entry/exit point along the revised profile, karst conditions are not anticipated because the limestone within the Glenshaw Formation is thinly interbedded and karst terrain is not characteristic for these limestones; therefore, *the use of geophysics assessments was considered but not performed because this type of assessment would not provide additional data for use in the analysis of this HDD*” (emphasis added). Geophysics assessments are of use not just for karst investigation but also for the investigation of fissures and partings which Sunoco now claims it cannot investigate.¹

Over the course of several paragraphs, Sunoco recites generic hydrogeologic information that is not the site-specific analysis the Order requires and the Department has requested. Providing such analysis is eminently within the expertise of the many scientists and engineers Sunoco has contracted to defend its plans, but it has deliberately chosen to forego it.

¹ See, e.g., Snelson et al., “Mapping Fissures in Pahrump, Nevada Using Geophysical Methods” (abstract), available at https://gsa.confex.com/gsa/2005CD/finalprogram/abstract_85459.htm.

Moreover, Sunoco’s claim of inability here in its response to point 4.a contradicts a claim it make later in the same letter response. Here, it says “[t]his information, however, cannot be determined for a given well location in this geology even with extensive geologic coring and water investigation because *the bedrock characteristics for these features and behavior can vary significantly in each core*” (emphasis added). In response to point 6, in contrast, Sunoco writes:

In western Pennsylvania and in this area of interest, the published geologic data indicates that the cyclic sequences of mudstones (shales, siltstones and claystones), sandstones, limestones and coal are *persistent over considerable distances* because the dips on bedding are slight. For example, the dip on bedrock estimated for the area of HDD S2-0070 is approximately 2.8 degrees southeast, meaning that *some surety exists to extrapolate the data obtained from these cores across the geologic profile crossed through by the HDD profile*.

(emphasis added). Either these bedrock characteristics “are persistent over considerable distances” or they “can vary significantly in each core,” but both cannot be true.

Appellants request that the Department press Sunoco to provide or conduct this analysis, which is within its capability.

Point 4.d

Sunoco has failed to answer whether a plunger effect occurring could “affect private water supplies.” Appellants urge the Department to require Sunoco to actually answer its question, so as to not leave the Department with too little information about protection of private water supplies.

Point 4.e.

Appellants are concerned about the nature of the “baseline” water quality testing Sunoco conducted, as revealed by the test result reports. While some of the reports show results for testing for E. coli, total coliform, and fecal coliform, as required by Appendix B (Well Test Plan) of the Water Supply Assessment PPC Plan, others do not. All testing needs to be done per the Well Test Plan. The Department should require supplemental testing to establish a baseline before the Department approves the Re-evaluation Report.

The second concern Appellants have with the “baseline” testing is that wells are being tested now that may have already been affected by Sunoco’s construction activities, making it too late to actually establish a true baseline. As one family near the Site commented, their water has *already* been contaminated by Sunoco’s activities, before drilling has begun. While this testing still has its utility, Sunoco cannot rely on late “baseline” sampling at locations like this to absolve itself of responsibility after drilling.

Point 6

As noted above in reply to Sunoco’s response to point 4.a, its response here that bedrock characteristics “are persistent over considerable distances” contradicts its claim there that they

“can vary significantly in each core.” The Department should get clarity from Sunoco on what the bedrock characteristics at the Site actually are before putting credence in Sunoco’s description in response to point 6.

Additionally, doing coring between the ends of the HDD does not require the coring to be “inside the HDD profile” in the sense of dangerously close to the HDD borehole. Sunoco is correct in that coring creates a risk of creating a pathway for an IR. This risk of a test core leading to an IR must be weighed against the beneficial information a test core might provide that could be used to prevent IRs and other problems. But Sunoco has not explained why this Site is different from the many other sites (for example, Hildenbrand Road) where Sunoco has done coring between the two HDD ends rather than outside them. This appears to be a convenient excuse rather than a heartfelt concern on the part of Sunoco, or its coring practices would be consistent across HDD sites.

Of course doing corings where most convenient is a reasonable consideration, but it is not the only consideration, and it certainly does not justify the failure to obtain more relevant data that Sunoco elsewhere says is needed due to “significant” variation from one core to another.

As expressed above and earlier, Appellants still have significant concerns about Sunoco’s lack of adequate geologic investigation at the Site despite such investigation being perfectly doable.

Thank you for considering these comments. Please keep us apprised of your next steps on this HDD Site.

Sincerely,

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

STAFF NOTICE OF ALLEGED VIOLATIONS

(July 13, 2017)

Take notice¹ that in a nonpublic investigation pursuant to 18 C.F.R. Part 1b (2016), the staff of the Office of Enforcement of the Federal Energy Regulatory Commission has preliminarily determined that Rover Pipeline, LLC (Rover) and Energy Transfer Partners, L.P. (ETP) (collectively, Rover) violated section 7 of the Natural Gas Act, 15 U.S.C. § 717, *et seq.*, and section 157.5 of the Commission's Regulations, 18 C.F.R. § 157.5 (2016), which impose a "forthright obligation" that "[a]pplications under section 7 of the Natural Gas Act shall set forth all information necessary to advise the Commission fully concerning the operation, sales, service, construction, extension or acquisition for which a certificate is requested" 18 C.F.R. § 157.5. Staff has preliminarily determined that, between February 2015 and September 2016, Rover did not fully and forthrightly disclose all relevant information to the Commission in its Application for a Certificate of Public Convenience and Necessity and attendant filings in Docket No. CP15-93. Specifically, in the Application and other docketed filings, Rover falsely promised it would avoid adverse effects to a historic resource that it was simultaneously working to purchase and destroy. Rover subsequently made several misstatements in its docketed response to the Commission's questions about why it had purchased and demolished the resource.

This Notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.

Kimberly D. Bose,
Secretary.

¹ *Enforcement of Statutes, Regulations, and Order*, 129 FERC ¶ 61,247 (2009), *order on reh'g*, 134 FERC ¶ 61,054 (2011).