



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 18, 2018

Via electronic filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Meghan Flynn, *et al.*, v. Sunoco Pipeline, L.P.
Docket Nos. C-2018-3006116 and P-2018-3006117
(I&E Brief on Certification of Material Question)

Dear Secretary Chiavetta:

Enclosed for electronic filing pursuant to 52 Pa. Code § 5.305(c), please find the Brief of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Enclosure

cc: Honorable Elizabeth H. Barnes
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn, <i>et al.</i> ,	:	
	:	
v.	:	Docket No. C-2018-3006116
	:	Docket No. P-2018-3006117
Sunoco Pipeline, L.P.	:	
	:	

**BRIEF OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
ON CERTIFICATION OF MATERIAL QUESTION**

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Dated: December 18, 2018

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I. STATEMENT OF THE CASE

On November 19, 2018, Complainants/Petitioners, Meghan Flynn, *et al.*, (“Petitioners”) concurrently filed a complaint against Sunoco Pipeline, L.P. (“Sunoco” or “Respondent”) and a Petition for Emergency Relief seeking to enjoin Respondent from commencing operation of its Mariner East 2 and 2X pipelines, (“ME2” and “ME2X”) including the incorporation of the 12-inch bypass line and to cease operation of its Mariner East 1 pipeline (“ME1”) until such time as the Pennsylvania Public Utility Commission (“Commission”) held a final hearing on above-docketed complaint and entered an appropriate order. Sunoco filed an Answer to the Petition on November 27, 2018, responding to Petitioners’ allegations and requesting that the emergency relief sought by Petitioners be denied. An evidentiary hearing was held November 29-30, 2018 before Administrative Law Judge Elizabeth Barnes (“ALJ Barnes”). Briefs were subsequently filed by the parties.

On December 11, 2018, ALJ Barnes issued an Order Denying Petition for Emergency Interim Relief and Certifying Material Question, at Docket Nos. C-2018-3006116 and P-2018-3006117 (“December 11 Order”). The denial of relief by interim emergency order in the consolidated proceedings at the above dockets has been certified to the Commission as a material question requiring interlocutory review. Pursuant to 52 Pa. Code § 5.305(c), briefs may be submitted by each party directed to the Commission addressing the merits of the question for which an answer is requested. Such briefs are due within seven (7) days of the ALJ’s issuance of an order that certifies a material

question to the Commission. As such, briefs are due to be file in this matter on or before December 18, 2018.

On December 18, 2018, I&E filed a Notice of Intervention in this matter. I&E, as a statutory party, may intervene in Commission proceedings as of right and at any time, pursuant to 52 Pa. Code §§ 5.72(b) and 5.74(b)(4). The limited purpose of I&E's intervention at this stage of the proceeding is to enable I&E to file a brief to clarify what I&E deems to be a "mischaracterization" of I&E's position regarding the status of Sunoco's Mariner East pipelines.

Accordingly, I&E submits this Brief pursuant to Section 5.305(c) of the Commission's regulations, 52 Pa. Code § 5.305(c).

II. SUMMARY OF ARGUMENT

Sunoco mischaracterized I&E's position in this matter in its Answer to Petitioners' Petition for Interim Emergency Relief, claiming that I&E acknowledged that Respondent's 12-inch pipeline is "safe." I&E made no such assertion. Instead, I&E merely acknowledged certain actions taken by Sunoco that were consistent with Sunoco's responsibility to operate and maintain its pipeline facilities in a safe manner, as it is I&E's duty to ensure compliance with all applicable state and federal regulations.

III. ARGUMENT

a. Sunoco's Answer to Petitioners' Petition for Interim Emergency Relief mischaracterized I&E's position by alleging that I&E had acknowledged that the Respondent's 12-inch pipeline is safe.

The limited purpose of I&E's intervention at this stage of the proceeding is to enable I&E to file a brief pursuant to Section 5.305 of the Commission's regulations, 52

Pa. Code § 5.305, so as to clarify what I&E deems to be a “mischaracterization” by Sunoco of I&E’s position regarding the status of Sunoco’s Mariner East pipelines and, more specifically, the 12-inch bypass line that is to be temporarily utilized by Sunoco in order to commence operation of ME2. This mischaracterization was set forth in Sunoco’s Answer to Petitioners’ Petition and then subsequently referenced in the December 11 Order, page 2. To the extent, if any, that ALJ Barnes relied upon the characterization of I&E’s position as presented by Sunoco, I&E wishes to clarify its position.

Sunoco’s Answer to the Petition includes subsection E titled, “The 12-inch pipeline is safe, as the Commission’s Bureau of Investigation and Enforcement has acknowledged.” Answer at page 8. In this section of its Answer, Respondent summarized the numerous inspections conducted by I&E’s engineers “to ensure compliance with the federal and state codes.” *Id.* The bulk of the information relied upon by Sunoco is set forth in a letter from Mr. Paul Metro, Chief of I&E’s Safety Division, dated November 1, 2018 (“Metro letter”), which was prepared in response to a joint letter from the Superintendents of three school districts in Chester and Delaware Counties dated October 23, 2018 concerning questions regarding the ME2 Pipeline project. The Metro letter was attached to Sunoco’s Answer as Attachment A. In the December 11 Order, ALJ Barnes summarized the Answer filed by Sunoco and stated, “[F]urther, Sunoco argues that the Commission’s Bureau of Investigation and Enforcement has acknowledged that the 12-inch pipeline is safe to operate.” Order at 2.

To the extent that this portion of Sunoco's argument was given any weight by ALJ Barnes in reaching her conclusion, or to the extent that the Commission may rely upon this portion of the December 11 Order in its review of the material question, I&E provides the within clarification.

Sunoco's Answer to Petitioners' Petition suggested that I&E acknowledged that the 12-inch pipeline is safe. However, in reality, I&E only acknowledged the actions taken by Sunoco as the responsible caretaker of the line. A careful review of the Metro letter clearly refutes Respondent's allegation regarding the extent of I&E's acknowledgement. Therefore, I&E wishes to take this opportunity to clarify I&E's position as stated in the Metro letter and referenced by Sunoco. The purpose of this clarification should also not be construed as a testament that the 12-inch line is unsafe. I&E clarifies only the context within which the Metro letter was written, which was to explain I&E's oversight of the line.

"Safe" is defined as "not exposed to danger; not causing danger." Black's Law Dictionary 1362 (8th ed. 2004). I&E would never be able to acknowledge with certainty that any pipeline facility is absolutely free from danger. The duty and responsibility of I&E's Safety Division is to make a concerted effort to ensure that the pipeline operator upholds its responsibility to comply with all applicable state and federal regulations. Here, the summary of actions taken and the conclusion reached by Mr. Metro were intended to highlight the efforts undertaken by Sunoco. The Metro letter expressly states that I&E's inspections of the efforts undertaken by Sunoco are "to ensure compliance

with the federal and state codes.” Nowhere in the Metro letter, relied upon by Sunoco, did I&E declare the pipeline “safe.” Rather, Mr. Metro stated that it was the responsibility of the I&E Safety Division to monitor and enforce compliance with state and federal regulations while it “is Sunoco’s responsibility to operate and maintain their pipeline facilities in a safe manner....”

In summary, I&E’s clarification is warranted as a result of Respondent’s mischaracterization of I&E’s position regarding the 12-inch pipeline.

IV. CONCLUSION

For the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Commission consider I&E’s Brief for the limited purpose of clarifying what I&E deems to be a mischaracterization by Sunoco, as set forth above.

Respectfully submitted,



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: Docket No. C-2018-3006116
: Docket No. P-2018-3006117
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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