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REPLY TO:
Center City

April 12, 2019

Via Electronic Filing

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

Re: BI&E v. Sunoco Pipeline L.P., Docket No. C-2018-3006534
**COMPLAINANTS' RESPONSE IN OPPOSITION TO JOINT PETITION OF
BI&E AND SUNOCO FOR APPROVAL OF SETTLEMENT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Response in Opposition to the Join Petition of BI&E and Sunoco for Approval of Settlement in above-captioned proceeding.

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

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Judge Barnes (Via email and First Class Mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2018-3006534
v.	:	
	:	
Sunoco Pipeline L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

**RESPONSE OF FLYNN COMPLAINANTS
IN OPPOSITION TO JOINT PETITION OF SUNOCO
AND BI&E FOR APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, Flynn Complainants oppose the Joint Petition of Sunoco and BI&E for approval of their proposed settlement. For reasons set forth more in detail below, the Flynn Complainants believe that, contrary to the Petition, (a) the proposed settlement does not resolve all issues related to the BI&E Formal Complaint or protect the public; (b) the proposed settlement requires substantial modification; and (c) the Petition should initially be assigned to Judge Barnes, who already is presiding judge in this case.

Introduction

1. Admitted.
2. Admitted.
3. Denied as stated. Information regarding the destination of the HVLs is something that Sunoco has generally not disclosed publicly. Flynn Complainants believe that most if not all are shipped overseas for conversion to plastics.
4. Admitted.
5. Admitted.

17. Denied as stated. Admitted that the parties intend to conclude the litigation. Admitted that the terms stated are those upon which the parties have agreed. Denied that the terms are reasonable. By way of further answer, see below.

18. Denied as stated. Admitted only that the parties seek the relief stated.

19. Denied as stated. Flynn Complainants, for reasons set forth, deny that approval of the settlement without modification is in the public interest or fully consistent with the Commission's said Policy Statement. By way of further answer, see below.

Conditions of Settlement

20. Denied as stated. Admitted only that the parties have so agreed.

21. Denied as stated. Admitted only that the parties have so agreed.

22. Denied as stated. Admitted only that the parties have so agreed.

23. Denied as stated. Admitted only that the parties have so agreed.

24. Denied as stated. Admitted only that the parties have so agreed.

25. Denied. Flynn Complainants deny that the settlement as currently drafted is reasonable or in the public interest or consistent with Commission rules and practices.

26. Denied as stated. Flynn Complainants believe that the Petition should be assigned to the presiding judge, ALJ Barnes, as per § 5.232(d). Judge Barnes is very familiar with this proceeding and the related Mariner East proceedings, having read the initial filings; conducted a pre-hearing conference; sat through days of hearings; read and ruled upon preliminary objections; reviewed days' worth of testimony at multiple hearings; written an opinion in support of a ruling on Complainant' request for an injunction; read and ruled upon numerous other motions; read and ruled upon at least eight intervention motions and responses; and, presumably, read and not yet ruled on pending motions for reconsideration,

discovery, consolidation and additional motions for intervention. Complainants believe and aver that Judge Barnes is more familiar with the technically complex issues surrounding Mariner East than any other ALJ or person on the Commission. The suggestion that bypassing Judge Barnes will expedite a ruling is preposterous. No facts in support of this suggestion are offered. The suggestion that bypassing Judge Barnes will advance implementation of the proposed settlement is likewise without foundation. BI&E and Sunoco are not alleging that Judge Barnes is afflicted with bias or prejudice or incapacity. BI&E and Sunoco have given no reasons in fact or law for Judge Barnes to recuse herself from deciding the settlement motion.

Overview of Comments on Proposed Settlement

27. BI&E's Complaint raises a number of critical public safety concerns related to the Mariner East pipelines. The proposed settlement of the Complaint does not fully address those concerns and does not provide for the future safe, adequate and reasonable operation of the Mariner East pipelines.

28. In general, the proposed settlement leaves Sunoco with far too much discretion to proceed in whatever way best serves its own interests and provides too little oversight.

29. The terms of the proposed settlement provide largely illusory or non-existent relief to the public.

30. The relief that the proposed settlement might provide is inadequate to ensure that Sunoco's pipelines will be operated and maintained safely.

31. The proposed settlement relies on a number of Sunoco's unsupported claims. It is unreasonable to base a settlement on such assertions without transparency in regard to supporting documents and evidence.

32. Given Sunoco's repeated violation of recent settlement agreements, relying on Sunoco to fulfill its obligations under the proposed settlement is unreasonable.

33. The proposed settlement fares poorly under an analysis of the standards and mandatory factors listed under 52 Pa. Code § 69.1201.

**The Proposed Settlement Terms are Largely Illusory
and/or Contain No Additional Relief Beyond the Status Quo**

34. For the settlement to be in the public interest, it must provide significant relief that is beneficial to the public and commensurate with the alleged conduct.

35. While there is some beneficial substance contained in the proposed settlement terms, much of it is illusory, and much of the rest does not impose relief beyond the status quo. As a whole, the proposed terms do not provide relief commensurate with the alleged conduct.

36. In all pertinent respects the proposed settlement leaves the perpetrator of alleged violations of statute and regulation in charge of all significant decisions relating to pipeline maintenance and remediation.

37. The terms of the proposed settlement are broken into lettered paragraphs as follows: (A) Civil Penalty; (B) Remaining Life Study; (C) In-Line Inspection ("ILI") and Close Interval Survey of ME1; (D) Revision of Procedures; (E) Implementation of Revised Procedures; and (F) Pipe Replacement as It Relates to Corrosion.

38. Of these, the latter three (D, E, and F) in fact lack any relief whatsoever.

39. Specifically, (D) merely claims that before BIE filed its Complaint, Sunoco had already taken action that purportedly "addressed" part of the Complaint's concerns. Because (D) reflects changes that Sunoco made before and independent of the Complaint--let alone the settlement--it provides no new relief.

40. (E) is precisely the same.

41. (F) is a mere clarification of the terms in favor of Sunoco, and agreement that Sunoco will do what it is already required to do, namely, comply with “applicable Federal regulations” and its own policy. Again, (F) provides no relief.

42. The civil penalty (A) provides relief, but it is not meaningful because it provides no deterrent to Sunoco. Sunoco is an arm of Energy Transfer, a company with \$54 billion in revenue in 2018. *See* https://en.wikipedia.org/wiki/Energy_Transfer_Partners. Sunoco had already been fined over \$12,000,000 by the Pennsylvania Department of Environmental Protection as of the fall of 2018, but that did not prove deterrent enough to make Energy Transfer comply with state law after issuance of a compliance order in response to an explosion on one of its pipelines in Pennsylvania. *See* Pennsylvania DEP, “Department of Environmental Protection Issues Hold on All Energy Transfer Clean Water Permit Approvals and Modifications Due to Non-Compliance,” February 8, 2019, available at <http://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=21634&typeid=1>.

43. The relief provided by the Remaining Life Study (B) is largely illusory.

44. Sunoco will choose three independent experts, one of whom BI&E will select to conduct the Study. This perfunctory process leaves most of the decision to Sunoco with no articulated standards for BI&E oversight. Foxes and henhouses come readily to mind. Transparently, Sunoco will choose friendly options. It is unclear how Sunoco managed to win this concession from BI&E, but it casts significant doubt over the entire Study.

45. When suggesting the pool of self-selected experts, the proposed settlement requires Sunoco to disclose whether the individual has worked on ME1, but not other Sunoco

or Energy Transfer pipelines, or even the various other Mariner East pipelines. Any such work presents a conflict of interest.

46. To ensure a meaningful and protective process, primary responsibility for selecting an independent expert must rest with BI&E. Criteria for selecting the expert should also be articulated in any settlement proposal.

47. Even if the “independent” expert were to conduct a legitimate study, the expert has no enforcement authority to ensure necessary action is taken to repair or retire unsafe sections of pipe, and the Joint Settlement Proposal creates no process for BI&E to verify, validate, or direct improvements based on study. That is all in Sunoco’s hands. Similarly, the proposed annual updates to the study do not set forth any requirements for ongoing evaluation, but merely require Sunoco to report the evaluation process it is using.

48. In addition to these flawed provisions, the Remaining Life Study is not additional relief above and beyond what Sunoco was already going to have to do independent of this proposed settlement.

49. Separately, Governor Wolf in coordination with the Pennsylvania Department of Environmental Protection has stopped issuing additional permit approvals to Energy Transfer entities such as Sunoco due to “a failure by Energy Transfer and its subsidiaries to respect our laws and our communities.” *See* press release, “Governor Wolf Issues Statement on DEP Pipeline Permit Bar, February 8, 2019, available at <https://www.governor.pa.gov/governor-wolf-issues-statement-dep-pipeline-permit-bar/>.

50. In that statement, and in connection with the permit bar which is still in effect, Governor Wolf said, “I am also calling upon the PUC to require that a remaining life study of Mariner East 1 be completed and reviewed by independent experts. Such a study should

thoroughly evaluate the safety of the existing pipeline and prepare a plan to implement the findings of that study as soon as possible.” (Italics added).

51. Governor Wolf, who of course directs the Commonwealth’s administrative agencies, made this direction to the Commission before and independent of the proposed settlement.

52. The Remaining Life Study therefore does not constitute additional relief in the public interest. Indeed, what Governor Wolf has directed the Commission to do surpasses the negotiated Remaining Life Study, which does not “thoroughly evaluate the safety of the existing pipeline.”

53. Sunoco’s only post-Study obligation is to (a) prepare an annual report setting out its plans for the next year, (b) conduct a Close Interval Survey of ME1, and (c) seek to collaborate with BI&E to agree upon a mutually acceptable ILI interval period. *See* (C).

54. No provision is made for resolution of disagreements with BI&E on these limited obligations.

55. If Sunoco and BI&E do not reach “a mutually acceptable ILI interval period” pursuant to Section C.a. of the proposed settlement, there is nothing barring Sunoco from simply choosing to never do an ILI run again. In other words, the second paragraph of Section C.a. of the proposed settlement provides only illusory relief.

56. In fact, given that Sunoco argues on page 7 of SPLP’s Statement that In-Line “inspections on an annual basis would not provide meaningful information in terms of corrosion control,” it is foreseeable at the outset that Sunoco and BI&E will not agree on an ILI interval period, and Sunoco will simply do what it would have in the absence of this settlement.

57. The substance of Section C is therefore largely illusory as well.

58. Remarkably, Sunoco itself disparages the terms of the settlement in its Statement.

59. At pages 6 and 7 of the Statement, Sunoco writes, “Regarding the remaining life study, ... the concept is wholly inconsistent with the federal safety regulations ...”

60. At page 7 of its Statement, Sunoco writes that annual ILI “would not provide meaningful information in terms of corrosion control.” The proposed settlement terms call for two ILI runs at an 18-month interval, scarcely different than the annual inspections Sunoco disparaged.

61. Looking at the terms of the proposed settlement, there is very little meaningful content for the benefit of the public. The substance consists mostly of a small fine, a *pro forma* study, and a few more inspections. The settlement has no “teeth” through which to require fixes to identified problems in order to make the public safer.

**Any Relief Provided is too Narrow to Ensure
Sunoco’s Pipelines Will Be Operated and Maintained Safely.**

62. To the extent any relief provided in the complaint is not wholly illusory, it is clearly inadequate. The BI&E Complaint seeks a remaining life study on ME1 due to a leak and corrosion on an 8-foot segment of the 87-year-old pipeline. It also requests annual ILI runs for all “SPLP bare steel and poorly coated pipelines in Pennsylvania.” While the proposed settlement touches on each of these requests, it does not satisfy them.

63. BI&E’s Complaint at ¶ 39 alleged:

While the data reviewed was largely specific to the site of the leak, SPLP’s procedures and overall application of corrosion control and cathodic protection practices are relevant to all of ME1 and, thus, I&E alleges that **there is a statewide concern** with SPLP’s corrosion control program and the soundness of SPLP’s engineering practices with respect to cathode protection. (Emphasis added).

A far cry from the request sought in the Complaint, the focus of the proposed ILI runs seems to be limited to two small portions of the ME1 pipeline: Middletown-Montello & Montello-Beckersville and Beckersville-Twin Oaks. Nothing in the Joint Petition suggests that the remainder of the ME1 pipeline is going to be examined or replaced if necessary as part of the ILI process.

64. The ILI program in the proposed settlement appears to be carefully designed to keep Sunoco from being responsible for detecting corrosion. It provides no assurance that the entire pipeline will be examined to develop a baseline corrosion measurement. Moreover, the decision as to whether to replace pipe or not is left in Sunoco's hands, much as it always has been, and the settlement changes nothing in that regard.

65. The proposed settlement also ignores the fact that Sunoco has failed to detect anomalies in previous ILI runs. As BI&E reported in ¶36 of its Complaint, in 2016 Sunoco conducted an ILI but "the tool failed and no data was available from the 2016 inspection." Further, an inspection was done in 2017 – just prior to the leak – in which metal loss was found but "corrosion is not noted or mentioned anywhere in SPLP's reports regard the 2017 ILI inspection."

66. Thus, in one instance the tool failed completely and in the next the tool worked but Sunoco did not pay attention to what it found. More important for present purposes is the fact that Sunoco's answer to BI&E's plain allegation that loss of metal demonstrates corrosion is what politicians nowadays call a "pivot." The company pretends that BI&E has averred that the loss of metal shows there had been inadequate cathodic protection and the company responds that the metal loss shows only that there was inadequate protection on the

line at one point. *The fact that BI&E asserted (a) there obviously was corrosion and (b) Sunoco never mentioned it in its report, is never addressed.*

67. It is this kind of evasive parsing of language that underscores why Sunoco cannot be trusted.

68. Moreover, if the 2016 ILI failed completely and the 2017 produced results Sunoco chose to ignore, there is every reason to believe that ILI inspection cannot be relied upon to resolve BI&E's very real complaints. For any ILI program to be successful going forward, the proposed settlement must address why it was not successful in the past. In its current form, the settlement fails to address this critical issue.

69. Regarding the remaining life study, the obvious rationale for this request in the Complaint is that problems related to age could well pervade the entire 300 miles length of the pipeline.

70. The 12 inch Mariner pipeline that now has become part of the ME2 and ME2X workarround pipeline also went into service in the 1930s.

71. The 12 inch line also has experienced leaks over its lifetime.

72. There is no good reason to believe that the 12 inch line is in any better condition than the 8 inch ME1 line.

73. The Commission is not required to wait for BI&E to file a new petition for the 12-inch line; it has plenary authority to initiate its own investigation and take such other action as may be needed to assure safe, adequate and reasonable service. *See*, 66 Pa.C.S. §§ 501 and 1501. Nothing prohibits the Commission from imposing operating requirements above and beyond minimum state and federal regulatory standards.

74. The fact, therefore, that no regulation requires remaining life studies on ancient pipelines should not prevent the Commission from taking whatever steps are reasonably required to protect the public against HVL pipeline failures. This proposed settlement falls short of taking those necessary steps.

The Proposed Settlement Lacks Transparency Regarding Key Public Safety Issues

75. BI&E in Appendix A states that Sunoco sent an 8-foot length of pipe associated with the Morgantown leak to an independent laboratory for examination. The lab found corrosion and a new 83-foot piece of pipe was installed. The condition of the remaining 1,500,000 feet plus of ME1 has not been examined and it is presently a mystery that both BI&E and Sunoco seem anxious not to address.

76. Sometime between the date of the Morgantown leak on April 1, 2017 and December 13, 2018 when the BI&E Complaint was filed, the company allegedly revised certain unspecified practices which, presumably, were associated with development of the leak and/or the corrosion that was examined in the lab.

77. The Joint Petition makes a point of not being more specific as to what Sunoco practices were problematic; why it was necessary to revamp those practices; and whether the practices also involved the remaining 1,500,000 feet of ME1.

78. The 8-foot piece of corroded pipe was replaced with new hydrostatically tested steel pipe. The Joint Petition does not state at what pressures the pipe was tested, nor whether it was tested at the new higher pressures that Sunoco recently began to use without informing the public.

79. The Joint Petition fails to disclose how much of the 300 miles of line previously was replaced. Even if it was as much as half, which is certainly not the case, that implies that

over 750,000 feet of pipeline could still experience corrosion due to age, poor cathodic protection or contact with soil.

80. PHMSA's website identifies HVL leaks on Sunoco pipelines. For the period from February 24, 2005 through March 18, 2019 there were 43 such leaks. 13 of the leaks involved corrosion problems. Sunoco was assessed fines on 15 occasions for those leaks. (Exhibit "A.")

81. PHMSA's website also identifies all petroleum pipeline leaks on Sunoco pipelines. 182 leak incidents overall were reported in the period from February 1, 2011 through April 1, 2019. Of the 182 incidents, corrosion was involved in 67 and more than \$20 million in damage was reported.

<https://portal.phmsa.dot.gov/analyticsSOAP/saw.dll?Portalpages>.

82. Whether or not any or all of those leaks have been caused by corrosion is unknown and, of course, Sunoco has not disclosed this obviously relevant information.

83. In Appendix B of the Joint Petition, Sunoco claims that PHMSA in 2010 and 2013 found that ME1 passed muster and that PHMSA endorsed Sunoco practices that the BI&E Complaint unreasonably called into question.

84. Sunoco once again has distorted official findings, much as it did in Commission proceedings when it asserted that the PUC had approved Sunoco's public awareness program. Sunoco is careful not to be too specific, however, and it has not actually identified which practices PHMSA approved ME1 in 2010 and 2013. It should be noted, however, that HVLs were not flowing through ME1 until 2014.

85. Sunoco has consistently lacked transparency with the public, local governments, and agencies overseeing the Mariner East project. The large information gaps in the proposed settlement pave the way for that dangerous practice to continue.

**Based on its Recent History of Violating Settlement Agreements,
Sunoco Cannot be Trusted to Abide by the Settlement in Good Faith**

86. The proposed settlement entrusts Sunoco to abide by law and contract when it has a demonstrated history of flouting the law, making settlement agreements, and then violating the agreements.

87. Two instances in particular bear on the proposed settlement here.

88. First, Sunoco deliberately and deceitfully violated a previous settlement agreement made with West Goshen Township resulting from a proceeding before the Commission at Docket No. P-2014-2411966.

89. As the Commission concluded in its Opinion and Order dated October 26, 2017 in Docket No. C-2017-2589346 upholding the emergency relief ordered by Judge Barnes, on page 20, “We find compelling the legal issues developed by the Township on the record pertaining to whether, at the time of the execution of the Settlement Agreement, Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract and whether Sunoco withheld material information about its plans for Mariner East 2.”

90. Second, Sunoco deliberately and deceitfully violated a previous settlement agreement and judicial order through a side agreement made in contravention of the settlement and judicial order.

91. As Judge Brobson of the Commonwealth Court remarked in argument on the matter on March 19, 2018, “I’m struggling to understand how you can be in litigation in front of the Environmental Hearing Board dealing with the HDD plan and having separate side

agreements to modify it. I don't understand. Maybe it's something unique to the Environmental Hearing Board, [Sunoco attorney] Mr. Byer; but I've been around long enough to know that you try not to d[o] that kind of stuff." (See excerpt of transcript attached as Exhibit B, pages 34-35.)

92. Given that history, any proposed settlement needs to be focused on actions that are not left in Sunoco's hands. Unfortunately, besides the civil penalty, this proposed settlement is largely based on trust in Sunoco's actions. That trust is unwarranted, so this proposed settlement is not in the public interest.

**Under the Factors and Standards for Evaluating Litigated
and Settled Proceedings, the Settlement should not be Approved.**

93. Section 69.1201 of the Public Utility Code sets forth factors and standards that must be considered by the Commission in evaluating a proposed settlement.

94. Though the application of these standards and factors is not as strict in a settlement as in a litigated proceeding, 52 Pa. Code § 69.1201(b), in both types of proceedings, the Commission still *must* consider the listed factors, 52 Pa. Code § 69.1201(a), (c).

95. Sunoco and BI&E have not provided enough information for the Commission to apply these mandatory factors, and for that reason alone, the Commission may not approve this settlement.

96. Specifically, the fifth factor is "[t]he number of customers affected and the duration of the violation." BI&E's Statement at page 13 remarks that "The April 1, 2017 leak led to a brief shut-down of ME1, which impaired the ability of SPLP's customers to ship product using the pipeline."

97. Nowhere does either party state the “number of customers affected,” however. Without this information, the Commission cannot evaluate the proposed settlement under the mandatory fifth factor.

98. Furthermore, even where there is enough information, a fair evaluation of the factors and standards cautions against approval of the proposed settlement.

99. At page 12 of SPLP’s Statement, it writes that “SPLP voluntarily revised these procedures [complained of in the Complaint] prior to the Complaint being filed in this matter, demonstrating good faith and cooperation with BI&E concerning pipeline safety.”

100. According to BI&E itself, this statement is untrue. On page 10 of BI&E’s Statement in Support of the Joint Petition for Approval of Settlement (“BI&E’s Statement”), it explains that SPLP adopted the unidentified “improved” procedures due to its purchase by Energy Transfer—not due to a change of heart or effort to mend its ways.

101. Nonetheless, both BI&E (at pages 11-12 of BI&E’s Statement) and Sunoco (at page 12 of SPLP’s Statement) assert this change in an attempt to show, pursuant to the fourth factor, Sunoco “made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.” 52 Pa. Code § 69.1201(c)(4).

102. Because this change in practice was not undertaken “to address the conduct at issue and prevent similar conduct in the future,” it cannot weigh in favor of approval of the settlement.

103. The sixth factor is the compliance history. At page 14 of its Statement, BI&E writes that, to its knowledge, “the Commission has not expressly found SPLP in violation of any law or regulation, or directed SPLP to pay a civil penalty in connection with a violation.” This may be true, but there is nothing in the sixth factor that so limits the compliance review.

The big picture is of a scofflaw company which considers fines and regulatory enforcement merely a cost of doing business.

104. As Judge Barnes noted on page 21 of her Interim Emergency Order and Certification of Material Question of May 21, 2018 in Docket Nos. P-2018-3001453 and C-2018-3001451, “Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety.”

105. Judge Barnes was not alone in her pronouncement. In taking enforcement action against Sunoco in January of 2018, the Department of Environmental Protection wrote that “Sunoco’s unlawful conduct ... demonstrates a lack of ability or intention on the part of Sunoco to comply... . Suspension of the permits ... is necessary to correct the egregious and willful violations described herein.” January 3, 2018 Administrative Order at page 16, available at

<http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf>.

106. Again in February of this year, the Governor himself wrote that “There has been a failure by Energy Transfer and its subsidiaries to respect our laws and our communities. This is not how we strive to do business in Pennsylvania, and it will not be tolerated.” See press release, “Governor Wolf Issues Statement on DEP Pipeline Permit Bar, February 8, 2019, available at <https://www.governor.pa.gov/governor-wolf-issues-statement-dep-pipeline-permit-bar/>.

107. The seventh factor also militates in favor of a stronger settlement than that proposed by the parties.

108. The seventh factor is “[w]hether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(7).

109. The settlement, by Sunoco’s own analysis, was achieved in bad faith. Sunoco writes on page 11 of SPLP’s Statement: “. . .SPLP has agreed to take steps above and beyond statutory and regulatory requirements that SPLP believes *the Commission could not unilaterally order SPLP to undertake involuntarily if this Complaint had been fully litigated.*” (Emphasis added). But Sunoco elsewhere has claimed that settlements which achieve results that could not be reached through adjudication of a lawsuit are by definition pursued and made in bad faith.

110. In the appeal of environmental permits docketed as No. 2017-009-L before the Pennsylvania Environmental Hearing Board, Sunoco sought attorneys’ fees and costs from the appellants on the grounds that the appeal was purportedly pursued in bad faith.

111. There, Sunoco justified its outrageous inclusion of these confidential settlement materials by stating that Sunoco “is using these settlement communications to demonstrate Appellants’ *bad faith and abuse of process* by continuing to pursue their appeal to seek relief that Appellants did not seek and *could not obtain in the appeal.*” *Memorandum* at 1-2 (emphasis added).¹

¹ The Environmental Hearing Board restricted the fee application from public viewing because Sunoco included in its public filing confidential settlement communications without the consent of the other parties to the settlement negotiations. *See*, Order dated August 31, 2018, available at <http://ehb.courtapps.com/efile/documentViewer.php?documentID=43347>. Therefore, the fee application is not attached here. However, Sunoco repeats the theme of its argument in its memorandum in opposition to a motion to strike publicly available here: <http://ehb.courtapps.com/efile/documentViewer.php?documentID=43490>.

112. Sunoco goes on to refer to the settlement approach in that case, which resulted in relief that could not have been granted through a hearing in front of the Environmental Hearing Board, as an “**ulterior purpose**” and “**improper goal**, from the outset of the appeal.” *Id.* at 7.

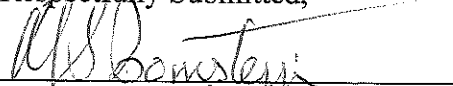
113. Since the proposed settlement is based on what Sunoco describes in its own words as “bad faith,” an “abuse of process,” an “ulterior purpose,” and an “improper goal,” a “higher penalty” is required under the seventh factor than what the proposed settlement offers.

Conclusion

114. The Joint Petition seeks approval with no modification. As argued above, substantial modification would be needed for the proposed settlement to be safe, reasonable, and adequate. The request for approval without modification, therefore, must be denied.

WHEREFORE, Flynn Complainants respectfully request that the Commission not approve the terms of the Joint Petition because the terms, without modification, are not in the public interest.

Respectfully Submitted,



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Attorney for Flynn Complainants

Dated: April 12, 2019

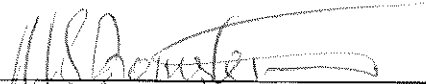
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2018-3006534
v.	:	
	:	
Sunoco Pipeline L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons 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 on the following via electronic and first-class mail:

SEE ATTACHED LIST



Michael S. Bomstein

Dated: April 12, 2019

(PARTIES LIST UPDATED MARCH 28, 2019)

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EX. "A"

Operator Information

Federal Enforcement Data

SUNOCO PIPELINE L.P.

(Operator ID:18718 - CURRENTLY ACTIVE OPID)

The reports below provide federal enforcement data since 2006. This information includes both a summary of and specific details pertaining to enforcement cases against this operator. Enforcement in these reports. Non-Enforcement Data for SUNOCO PIPELINE L.P..

Enforcement Actions

Summary | Detail

For more information on each enforcement type see the Enforcement Type Glossary.

SUNOCO PIPELINE L.P. Federal Enforcement Cases All Pipeline Systems⁽¹⁾; 2006-2019

Case Number	Date Opened	Date Closed	Type	Subject	PHMSA Region	Status	Proposed Penalty	Assessed Penalty	Collected Penalty	Final Compliance Order
420195010	03/18/19	//	Proposed Civil Penalty Proposed Compliance Order Warning Item	Operations and Maintenance - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines	SOUTHWEST	OPEN	\$69,800			Yes
120185002	02/04/19	//	Proposed Compliance Order	Operations and Maintenance - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines	EASTERN	OPEN	\$0			Yes
120185031M	11/06/18	//	Proposed Compliance Order	Construction - Hazardous Liquid Pipelines	EASTERN	OPEN	\$0			No
120185030W	11/06/18	11/06/18	Notice of Amendment Warning Letter	Construction - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
120185027M	08/22/18	10/05/18	Notice of Amendment	Procedure Manuals - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
120185026W	08/22/18	08/22/18	Warning Letter	Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
120185009	01/18/18	07/24/18	Proposed Civil Penalty	Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$163,700	\$163,700	\$163,700	No
120185010	01/18/18	10/04/18	Proposed Civil Penalty	Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$127,000	\$121,200	\$121,200	No
120185002	01/11/18	03/21/19	Proposed Compliance Order	Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			Yes
120175025W	09/01/17	09/01/17	Warning Letter	Construction - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
120175024M	09/01/17	11/20/17	Notice of Amendment	Procedure Manuals - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
420175021	08/14/17	//	Proposed Civil Penalty Proposed Compliance Order Warning Item	Corrosion Control - Hazardous Liquid Pipelines Integrity Management - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Qualification of Pipeline Personnel - Hazardous Liquid Pipelines Safety Condition Reports - Hazardous Liquid Pipelines	SOUTHWEST	OPEN	\$129,800	\$90,000	\$90,000	Yes
120175016	05/04/17	09/15/17	Proposed Civil Penalty	Procedure Manuals - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$25,900	\$25,900	\$25,900	No
420175011	04/06/17	12/17/18	Proposed Compliance Order Warning Letter	Incident Reports - Hazardous Liquid Pipelines	SOUTHWEST	CLOSED	\$0			Yes
420165030H	09/14/16	//	Corrective Action Order	Procedure Manuals - Hazardous Liquid Pipelines	SOUTHWEST	OPEN	\$0			No
420165021M	06/02/16	02/27/17	Notice of Amendment	Alcohol Misuse Prevention Program	SOUTHWEST	CLOSED	\$0			No
420165020	06/02/16	01/08/18	Proposed Civil Penalty Proposed Compliance Order Warning Item	Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Safety Condition Reports - Hazardous Liquid Pipelines	SOUTHWEST	CLOSED	\$169,200	\$141,700	\$141,700	Yes
420165011	04/28/16	//	Proposed Civil Penalty	Construction - Hazardous Liquid Pipelines	SOUTHWEST	OPEN	\$1,278,100			Yes
120145005	10/02/14	01/27/16	Proposed Compliance Order	Corrosion Control - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$29,500	\$22,300	\$22,300	No
120145004M	10/02/14	04/27/15	Notice of Amendment	Public Awareness - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No
120135021	09/30/13	12/09/16	Proposed Civil Penalty Proposed Compliance Order	Control Room Management - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$30,200	\$25,900	\$25,900	Yes

Case Number	Date Opened	Date Closed	Type	Subject	PHMSA Region	Status	Proposed Penalty	Assessed Penalty	Collected Penalty	Final Compliance Order	
120135020M	09/30/13	08/28/14	Proposed Civil Penalty	Control Room Management - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines Emergency Response - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Public Awareness - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines Incident Reports - Hazardous Liquid Pipelines Construction - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Qualification of Pipeline Personnel - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Violation of a Final Order Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Pressure Testing - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Security - Hazardous Liquid Pipelines Safety Condition Reports - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Integrity Management - Hazardous Liquid Pipelines Integrity Management - Hazardous Liquid Pipelines Construction - Hazardous Liquid Pipelines Corrosion Control - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Procedure Manuals - Hazardous Liquid Pipelines Design - Hazardous Liquid Pipelines Operations and Maintenance - Hazardous Liquid Pipelines Integrity Management - Hazardous Liquid Pipelines Integrity Management - Hazardous Liquid Pipelines (withdrawn) Corrosion Control - Hazardous Liquid Pipelines	EASTERN	CLOSED	\$0			No	
120135015W	07/29/13	07/29/13	Notice of Amendment		EASTERN	CLOSED	\$0			No	
120135016M	07/29/13	02/18/14	Warning Letter		EASTERN	CLOSED	\$0			No	
120135012M	07/16/13	04/24/14	Notice of Amendment		EASTERN	CLOSED	\$0			No	
120125021	12/03/12	03/07/14	Notice of Amendment		EASTERN	CLOSED	\$0			No	
120125020W	11/26/12	11/26/12	Warning Letter		EASTERN	CLOSED	\$0			Yes	
120125019	11/06/12	06/24/13	Proposed Civil Penalty		EASTERN	CLOSED	\$0			No	
420125012M	04/02/12	01/29/13	Notice of Amendment		EASTERN	CLOSED	\$22,500	\$22,500	\$22,500	\$22,500	No
320125002H	01/18/12	11/04/16	Corrective Action Order		SOUTHWEST	CLOSED	\$0			\$0	No
120095003	08/14/09	06/07/12	Proposed Civil Penalty		CENTRAL	CLOSED	\$0			\$0	No
320085002	03/11/08	01/07/11	Proposed Compliance Order		EASTERN	CLOSED	\$232,900	\$232,900	\$232,900	\$232,900	Yes
420075041	11/19/07	09/13/10	Warning Letter		CENTRAL	CLOSED	\$44,000	\$44,000	\$34,000	\$34,000	No
420075040	11/13/07	04/16/12	Proposed Civil Penalty		SOUTHWEST	CLOSED	\$200,000	\$200,000	\$200,000	\$200,000	No
420075033W	08/21/07	08/21/07	Proposed Compliance Order		SOUTHWEST	CLOSED	\$119,000	\$119,000	\$119,000	\$119,000	Yes
420075017W	05/21/07	05/21/07	Warning Letter		SOUTHWEST	CLOSED	\$0			\$0	No
120075001	05/15/07	12/16/09	Warning Letter		SOUTHWEST	CLOSED	\$0			\$0	No
420075007M	03/07/07	01/11/10	Proposed Civil Penalty	EASTERN	CLOSED	\$150,000	\$150,000	\$150,000	\$150,000	No	
420075002	02/12/07	06/17/09	Notice of Amendment	SOUTHWEST	CLOSED	\$0			\$0	No	
420065045M	10/22/06	03/07/07	Proposed Compliance Order	SOUTHWEST	CLOSED	\$0			\$0	Yes	
420065005	02/09/06	06/05/08	Notice of Amendment	SOUTHWEST	CLOSED	\$0			\$0	No	
120055005	03/30/05	12/03/09	Proposed Compliance Order	EASTERN	CLOSED	\$70,000	\$40,000	\$40,000	\$40,000	Yes	
420055011	02/24/05	11/02/06	Warning Letter	SOUTHWEST	CLOSED	\$11,000	\$11,000	\$11,000	\$11,344	No	
Totals			Letter of Concern			\$2,872,600	\$1,400,100	\$1,400,100	\$1,400,444		
			Proposed Civil Penalty								

Sources

1. PHMSA Safety Monitoring and Reporting Tool (SMART) for the Pipeline Safety Enforcement Tracking System as of April 1, 2019.

For comments and questions on the information presented on this site, please send us feedback.

EX. "B"

COMMONWEALTH COURT OF PENNSYLVANIA

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CLEAN AIR COUNCIL, DELAWARE :
RIVERKEEPER NETWORK, and :
MOUNTAIN WATERSHED :
ASSOCIATION, INC., :
Petitioners, :
- - - - - :
-vs- : NO. 101 MDA 2018
- - - - - :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT OF :
ENVIRONMENTAL PROTECTION, :
and SUNOCO PIPELINE, L.P., :
Respondents. :

TRANSCRIPT OF PROCEEDINGS

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BEFORE : HON. KEVIN BROBSON
DATE : Monday, March 19, 2018
10:06 a.m.

PLACE : Commonwealth Court of Harrisburg
601 Commonwealth Avenue
Courtroom 3002
Harrisburg, Pennsylvania

Reporter : Denise L. Travis, RPR
Notary Public

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VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, PA 19103

1 and if it deems appropriate, grant it?

2 MR. TABOR: Yes.

3 JUDGE BROBSON: Thank you.

4 Mr. Fox. Uh-oh, Mr. Byer.

5 MR. BYER: Yes, Your Honor.

6 We believe that in the first
7 instance, it should be brought before the
8 Environmental Hearing Board. There's an appeal
9 pending from the February order. The Environmental
10 Hearing Board can on a petition for supersedeas
11 determine the effect of the prior order that the --
12 the prior HDD plan. There was a modification -- a
13 purported modification of that in December which
14 incidentally was a two-party modification. That was
15 just these petitioners and the Department of
16 Environmental Protection without Sunoco Pipeline. So
17 the Environmental Hearing Board would have to
18 determine the effect of all of these things.

19 JUDGE BROBSON: I'm struggling to
20 understand how you can be in litigation in front of
21 the Environmental Hearing Board dealing with the HDD
22 plan and having separate side agreements to modify it.
23 I don't understand. Maybe it's something unique to
24 the Environmental Hearing Board, Mr. Byer; but I've
25 been around long enough to know that you try not to

1 did that kind of stuff.

2 MR. BYER: Well, there are
3 circumstances -- and again, it's up to the
4 Environmental Hearing Board to sort all of that out in
5 the first instance. That's not this --

6 JUDGE BROBSON: With appeals to
7 here.

8 MR. BYER: Yes, with appeals to
9 here. And there is an appeal pending that would
10 provide a vehicle for a supersedeas proceeding. And
11 that's our position, that that's where this case
12 belongs. It's either without jurisdiction -- and I
13 know the Court doesn't want to decide that yet. But
14 it's certainly premature for purposes of a preliminary
15 injunction proceeding.

16 JUDGE BROBSON: So you -- your
17 answer to my question would be, yes, we would not have
18 an objection with the Environmental Hearing Board
19 taking essentially what is the preliminary injunction
20 request here and deciding that?

21 MR. BYER: That they would decide
22 the effect of their orders and what the Environmental
23 Hearing Board believes the obligations of the
24 respective parties are and the duties of the
25 respective parties and the rights of the respective