

LAW OFFICES  
**PINNOLA & BOMSTEIN**

MICHAEL S. BOMSTEIN  
PETER J. PINNOLA

ELKINS PARK OFFICE  
8039 OLD YORK ROAD  
ELKINS PARK, PA 19027  
(215) 635-3070  
FAX (215) 635-3944

100 SOUTH BROAD STREET, SUITE 2126  
PHILADELPHIA, PA 19110  
(215) 592-8383  
FAX (215) 574-0699  
EMAIL [mbomstein@gmail.com](mailto:mbomstein@gmail.com)

MT. AIRY OFFICE  
7727 GERMANTOWN AVENUE, SUITE 100  
PHILADELPHIA, PA 19119  
(215) 248-5800

REPLY TO:  
Center City

April 17, 2019

*Via 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

**COMPLAINANTS' REPLY MEMO IN FURTHER SUPPORT  
OF MOTION FOR RECONSIDERATION OF ORDER OF MARCH 12, 2009**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Reply Memo in Further Support of Motion for Reconsideration of Order of March 12, 2009.

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**

Meghan Flynn, et al.	:	
	:	C-2018-3006116
v.	:	P-2018-3006117
	:	
Sunoco Pipeline, L.P.	:	

**COMPLAINANTS' REPLY MEMO IN FURTHER  
SUPPORT OF ITS MOTION FOR RECONSIDERATION**

**I. Background**

The ALJ by her Second Interim Order made five distinct rulings that covered Preliminary Objections to the First Amended Complaint, an Application for Issuance of a Subpoena, and the matter of Complainants' standing to challenge Sunoco's practices outside Delaware and Chester Counties. Following the ALJ's practice, Complainants then filed one motion that addresses the same points.

Complainants' motion did not challenge the ALJ's rulings on standing. It accepted those rulings and did not ask the ALJ to reconsider her decision on standing. The proposed Second Amended Complaint is consistent with that ruling and restricts its allegations to matters in the two local counties.

Complainants' motion did not challenge the ALJ's ruling on ¶ 74 of the First Amended Complaint either. It accepted the decision that ¶ 74 impermissibly sought to incorporate an entire BI&E complaint and did not ask the ALJ to reconsider that decision. Instead, Complainants sought leave to plead fully each and allegation of the BI&E Complaint that is

material to Complainants' claims, thereby meeting Sunoco's objection. Complainants' specific request was that the ALJ modify her Second Interim Order to permit amendment.

Regarding the issuance of a subpoena upon BI&E, the ALJ denied the request for a number of stated reasons. Complainants' motion sought to revise the application to meet the lack of specificity finding by the ALJ. To that extent, Complainants accepted the ALJ's decision and were not asking reconsideration.

The ALJ stated, however, that the information sought from BI&E could be gotten from Sunoco. (Second Interim Order at 21). The ALJ also seemed to take at face value Sunoco's assertion that the requested documents were all either confidential or CSI. To that extent, the motion did ask the ALJ to reconsider her ruling.

The Second Interim Order did not touch on the question of the new high pressures that Sunoco will be using in the Mariner pipes. That matter did not arise until after the Order was issued.

In short, Complainants' Motion for Reconsideration only asked the ALJ to reverse herself with respect to one prong of her ruling on the subpoena application.

## **II. Sunoco's Response to the Motion**

The ALJ wrote that, "I am not prepared to strike references to the outstanding I&E complaint as I am not prepared to rule that alleged past occurrences of leaks on the ME1 line or 12-inch workaround pipeline have no relationship or relevance to whether it is safe to operate these pipelines in Delaware and Chester Counties." (Second Interim Order at 11 – 12).

Complainants understood the ALJ's holding to mean that an amended pleading that struck ¶ 74 and still made reference to the Morgantown issues and the condition of the ME1 line

would be acceptable. The Second Interim Order, however, did not expressly state words to that effect.

Sunoco's Answer contends that Complainants have not met the minimum procedural standards for reconsideration and on that basis alone the motion should be denied. Complainants disagree.

The suggestion that replacing ¶ 74 of the present complaint with averments that meet Sunoco's own objection is problematic is preposterous. The claim was that incorporation of an entire complaint could not be done in one sentence. It does not follow from that that the complaint may not be amended to set out the actual averments to replace the objectionable incorporation.

The ALJ ruled that records subject to the deliberative process should not be produced. The new subpoena proposed by Complainants conspicuously excludes such records from the request.

The last basis for denial of the subpoena application—and the only one that Complainants are asking the ALJ to reconsider—is the ruling that “[t]he Application will also be denied pertaining to documentation marked as CSI, because each must be reviewed for redaction of confidential and privileged information, which is unduly burdensome. 52 Pa. Code. § 5.361(a)(2). Complainants may seek CSI information through discovery requests directed to Sunoco pursuant to a protective order in this case.”

Complainants' motion set out in great detail why they believe the ALJ's ruling should be reversed on this one point. Complainants will not repeat that argument here.

What remains, then, is Sunoco's assertion that Complainants are not entitled to raise this challenge because they have failed to meet the standards applicable to motions for

reconsideration. They claim that Complainants have presented no new argument or evidence in support of reconsideration of this one ruling. Complainants respectfully disagree.

The ALJ's decision did *not* expressly weigh and reject the arguments Complainants have raised in their motion with respect to the burden of redaction being more appropriate for Sunoco than for BI&E. It is noteworthy that Sunoco's response actually ignores in their entirety the specific arguments that it claims were considered by the judge.

Complainants in their motion in ¶ 37 wrote, "In the instant proceeding, if the parties are unable to agree on confidentiality issues, Complainants submit that either an in camera review by the ALJ or a closed fact-finding hearing could resolve the parties' competing claims"

As regards the question whether a BI&E/Sunoco settlement would moot Complainants' allegations, the ALJ did not make a ruling on the point. At an appropriate time, Complainants are prepared to brief and argue this issue.

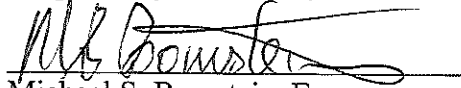
Finally, with respect to the additional averments in the Second Amended Complaint concerning new pipeline pressures, the ALJ did not rule on those and, therefore, they are not a matter of reconsideration. Sunoco says the averments are "pointless" and cannot result in a violation of law (Response at 12).

Complainants respectfully disagree. The new allegations are based on recently filed public records. Complainants believe the change in pressures is significant both as a matter of fact and as a matter of law. Whether such pressures are permitted and whether they are safe are important issues directly related to the issues already raised in both of the previous complaints.

### **III. Conclusion**

For all of the reasons set forth both above and in their Motion for Reconsideration, Complainants urge the ALJ to modify her Second Interim Order and allow them the opportunity to file their Second Amended Complaint and serve their Amended Subpoena.

Respectfully Submitted,



Michael S. Bomstein, Esq.

Pinnola & Bomstein

PA ID No. 21328

Email: [mbomstein@gmail.com](mailto:mbomstein@gmail.com)

Suite 2126 Land Title Building

100 South Broad Street

Philadelphia, PA 19110

Tel.: (215) 592-8383

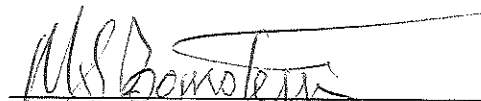
Attorney for Flynn Complainants

Dated: April 17, 2019

**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 17, 2019

*(PARTIES LIST UPDATED MARCH 28, 2019)*

NEIL S WITKES ESQUIRE  
ROBERT D FOX ESQUIRE  
DIANA A SILVA ESQUIRE  
MANKO, GOLD, KATCHER & FOX LLP  
401 CITY AVENUE  
VALA CYNWYD PA 19004  
[NWITKES@MANKOGOLD.COM](mailto:NWITKES@MANKOGOLD.COM)  
*REPRESENTING SUNOCO PIPELINE  
LP*

THOMAS J SNISCAK, ESQUIRE  
HAWKE MCKEON AND SNISCAK LLP  
100 N TENTH STREET  
HARRISBURG PA 17101  
[TJSNISCAK@HMSLEGAL.COM](mailto:TJSNISCAK@HMSLEGAL.COM)  
*REPRESENTING SUNOCO PIPELINE  
LP*

RICH RAIDERS ESQUIRE  
606 NORTH 5<sup>TH</sup> STREET  
READING PA 19601  
484.509.2715  
[RICH@RAIDERSLAW.COM](mailto:RICH@RAIDERSLAW.COM)  
*REPRESENTING INTERVENOR  
ANDOVER HOMEOWNERS'  
ASSOCIATION INC.*

ANTHONY D KANAGY ESQUIRE  
POST & SCHELL PC  
17 N SECOND ST 12<sup>TH</sup> FL  
HARRISBURG PA 17101-1601  
717.612.6034  
[AKANAGY@POSTSCHELL.COM](mailto:AKANAGY@POSTSCHELL.COM)  
*REPRESENTING INTERVENOR  
RANGE RESOURCES APPALACHIA*

ERIN MCDOWELL ESQUIRE  
3000 TOWN CENTER BLVD  
CANONSBURG PA 15317  
[EMCDOWELL@RANGERESOURCES.COM](mailto:EMCDOWELL@RANGERESOURCES.COM)  
*REPRESENTING INTERVENOR  
RANGE RESOURCES APPALACHIA*

STEPHANIE M WIMER ESQUIRE  
PUC BUREAU OF INVESTIGATION  
AND ENFORCEMENT  
400 NORTH STREET, PO BOX 3265  
HARRISBURG PA 17105-3265  
[STWIMER@PA.GOV](mailto:STWIMER@PA.GOV)  
*REPRESENTING PUC BUREAU OF  
INVESTIGATION AND  
ENFORCEMENT*

BOHDAN PANKIW, ESQ.  
CHIEF COUNSEL OF LAW BUREAU  
PUBLIC UTILITY COMMISSION  
400 NORTH STREET  
PO BOX 3265  
HARRISBURG PA 17105-3265  
717.787.5000

DIRECTOR RICHARD KANASKIE  
BUREAU OF INVESTIGATION AND  
ENFORCEMENT  
400 NORTH STREET, PO BOX 3265  
HARRISBURG PA 17105-3265  
717.783.6184

LEAH ROTENBERG ESQUIRE  
MAYS CONNARD & ROTENBERG LLP  
1235 PENN AVE  
SUITE 202  
WYOMISSING PA 19610  
610.400.0481  
[ROTENBERG@MCR-  
ATTORNEYS.COM](mailto:ROTENBERG@MCR-ATTORNEYS.COM)  
*REPRESENTING INTERVENOR  
TWINS VALLEY SCHOOL DISTRICT*

MARGARET A MORRIS ESQUIRE  
REGER RIZZO & DARNALL  
2929 ARCH STREET 13TH FLOOR  
PHILADELPHIA PA 19104  
215.495.6524  
[MMORRIS@REGERLAW.COM](mailto:MMORRIS@REGERLAW.COM)  
*REPRESENTING INTERVENOR EAST  
GOSHEN TOWNSHIP AND  
INTERVENOR CHESTER COUNTY*



VINCENT MATTHEW POMPO  
ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
PO BOX 565  
WEST CHESTER PA 19381  
[VPOMPO@LAMBMCERLANE.COM](mailto:VPOMPO@LAMBMCERLANE.COM)  
REPRESENTING INTERVENOR WEST  
WHITELAND TOWNSHIP

MARK L FREED ESQUIRE  
CURTIN & HEEFNER LLP  
DOYLESTOWN COMMERCE CENTER  
2005 S EASTON ROAD SUITE 100  
DOYLESTOWN PA 18901  
[MLF@CURTINHEEFNER.COM](mailto:MLF@CURTINHEEFNER.COM)  
REPRESENTING INTERVENOR  
UWCHLAN TOWNSHIP

JAMES R FLANDREAU  
PAUL FLANDREAU & BERGER LLP  
320 WEST FRONT ST  
MEDIA PA 19063  
[JFLANDREAU@PFBLAW.COM](mailto:JFLANDREAU@PFBLAW.COM)  
REPRESENTING INTERVENOR  
MIDDLETOWN TOWNSHIP

PATRICIA BISWANGER ESQUIRE  
217 NORTH MONROE STREET  
MEDIA PA 19063  
[PATBINSWANGER@GMAIL.COM](mailto:PATBINSWANGER@GMAIL.COM)  
REPRESENTING INTERVENOR  
COUNTY OF DELAWARE

MICHAEL MADDREN, ESQUIRE  
OFFICE OF THE SOLICITOR  
COUNTY OF DELAWARE  
GOVERNMENT CENTER BUILDING  
201 WEST FRONT STREET  
MEDIA, PA 19063  
[MADDREN@CO.DELAWARE.PA.US](mailto:MADDREN@CO.DELAWARE.PA.US)  
REPRESENTING INTERVENOR  
COUNTY OF DELAWARE

ALEX JOHN BAUMLER ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
BOX 565  
WEST CHESTER PA 19381  
[ABAUMLER@LAMBMCERLANE.COM](mailto:ABAUMLER@LAMBMCERLANE.COM)  
REPRESENTING INTERVENOR  
DOWNINGTOWN AREA SCHOOL  
DISTRICT, ET AL.

GUY DONATELLI ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
BOX 565  
WEST CHESTER PA 19381  
[GDONATELLI@LAMBMCERLANE.COM](mailto:GDONATELLI@LAMBMCERLANE.COM)  
REPRESENTING INTERVENORS

ROSE TREE MEDIA SCHOOL  
DISTRICT, DELAWARE COUNTY  
& SEN. THOMAS H. KILLION

JAMES DALTON  
UNRUH TURNER BURKE & FREES  
PO BOX 515  
WEST CHESTER PA 19381  
610.692.1371  
[JDALTON@UTBF.COM](mailto:JDALTON@UTBF.COM)  
REPRESENTING INTERVENOR WEST  
CHESTER AREA SCHOOL DISTRICT

JAMES BYRNE ESQUIRE  
MCNICHOL BYRNE & MATLAWSKI PC  
1223 N PROVIDENCE RD  
MEDIA PA 19063  
[JBYRNE@MBMLAWOFFICE.COM](mailto:JBYRNE@MBMLAWOFFICE.COM)  
REPRESENTING INTERVENOR  
THORNBURY TOWNSHIP

DAVID J. BROOMAN  
RICHARD SOKORAI  
MARK R. FISCHER  
HIGH SWARTZ  
40 EAST AIRY STREET  
NORRISTOWN, PA 19404  
[DBROOMAN@HIGHSWARTZ.COM](mailto:DBROOMAN@HIGHSWARTZ.COM)  
REPRESENTING INTERVENOR WEST  
GOSHEN TOWNSHIP

JOSH MAXWELL  
MAYOR OF DOWNINGTOWN  
4 W. LANCASTER AVENUE  
DOWNINGTOWN, PA 19335  
JMAXWELL@DOWNINGTOWN.ORG  
*PRO SE INTERVENOR*

THOMAS CASEY  
1113 WINDSOR DR.  
WEST CHESTER, PA 19380  
TCASEYLEGAL@GMAIL.COM  
*PRO SE INTERVENOR*

VIRGINIA MARCILLE-KERSLAKE  
103 SHOEN ROAD  
EXTON, PA 19341  
VKERSLAKE@GMAIL.COM  
*PRO SE INTERVENOR*

LAURA OBENSKI  
14 SOUTH VILLAGE AVENUE  
EXTON, PA 19341  
LIOBENSKI@GMAIL.COM  
*PRO SE COMPLAINANT*

MELISSA DIBERNARDINO  
1602 OLD ORCHARD LANE  
WEST CHESTER, PA 19380  
LISSDIBERNARDION@GMAIL.COM  
*PRO SE COMPLAINANT*

REBECCA BRITTON  
211 ANDOVER DRIVE  
EXTON, PA 19341  
RBKITTONLEGAL@GMAIL.COM  
*PRO SE COMPLAINANT*