



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

May 2, 2019

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners
Docket No. C-2018-3006534
I&E Motion to Strike as Premature

Dear Secretary Chiavetta:

On behalf of the Bureau of Investigation and Enforcement, enclosed for electronic filing please find the Motion to Strike as Premature the Flynn Complainants' Response in Opposition to the Joint Petition for Approval of Settlement in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "S M Wimer".

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

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

Enclosure

cc: Kathryn G. Sophy, Director, OSA
David J. Brooman, Esquire (counsel for West Goshen Township)
Richard C. Sokorai, Esquire (counsel for West Goshen Township)
Mark R. Fischer, Jr., Esquire (counsel for West Goshen Township)
Thomas Casey (*pro se* Petitioner)
Josh Maxwell (*pro se* Petitioner)
Vincent M. Pompo, Esquire (counsel for West Whiteland Township)
Alex J. Baumler, Esquire (counsel for West Whiteland Township)
Michael P. Pierce, Esquire (counsel for Edgmont Township)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant,

v.

Sunoco Pipeline, L.P. a/k/a
Energy Transfer Partners,
Respondent

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Docket No. C-2018-3006534

NOTICE TO PLEAD

TO THE FLYNN COMPLAINANTS:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion to Strike as Premature the Flynn Complainants’ Response in Opposition to the Joint Petition for Approval of Settlement in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified that a written response is due within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code §§ 5.61(a) and 5.103(c).



Stephanie M. Wimer
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Bureau of Investigation and Enforcement
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(717) 772-8839
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Dated: May 2, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO STRIKE AS PREMATURE THE FLYNN COMPLAINANTS' RESPONSE IN
OPPOSITION TO THE JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.103, files this Motion respectfully requesting that the Commission strike as premature the Flynn Complainants’¹ Response in Opposition to the Joint Petition for Approval of Settlement (“Settlement,” “Settlement Agreement” or “Agreement”) filed in the above referenced matter, which was presented before the Commission issued any order providing an opportunity for the public to submit comments to the Settlement. I&E requests that the Flynn Complainants’ Response in Opposition to the Settlement be stricken and that leave be granted for it to be re-filed at the appropriate time and with the ability for I&E to reply. If the Flynn Complainants’

¹ The “Flynn Complainants” are a collective reference to Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines, who filed a Complaint against Sunoco Pipeline, L.P. (“SPLP,” “Respondent,” or “Company”) at Docket No. C-2018-3006116, and concurrently filed a Petition for Interim Emergency Relief against SPLP at Docket No. P-2018-3006117 on November 19, 2018. These dockets have been consolidated. Complainants are individuals from Delaware or Chester Counties residing and/or working in close proximity to SPLP’s Mariner East pipelines. The Flynn Complainants are represented by counsel.

Response in Opposition to the Settlement is not stricken, alternatively, I&E requests leave to respond to the merits of the pleading.

I. BACKGROUND

1. I&E, as the Commission bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction, filed a Formal Complaint against SPLP on December 13, 2018, alleging violations of federal and state laws and regulations that were discovered in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County, Pennsylvania.

2. The I&E Safety Division concluded that the leak was attributed to corrosion and thereafter conducted an extensive investigation of SPLP's corrosion control procedures, which included cathodic protection practices and procedures. The I&E Safety Division's investigation formed the basis for the allegations in I&E's Complaint.

3. I&E's Complaint requested that SPLP pay a total civil penalty of Two Hundred Twenty-Five Thousand Dollars (\$225,000) and perform various corrective actions including conducting a remaining life study of ME1, increasing the frequency of in-line inspections ("ILI"), revising SPLP's corrosion control procedures, developing procedures to determine the adequacy of cathodic protection through testing and performance methods, and implementing all new and revised cathodic protection procedures within one (1) year.

4. On January 31, 2019, SPLP, upon receiving an extension of time to respond to I&E's Complaint, filed a timely Answer with New Matter.

5. I&E and SPLP (collectively referred to as the “Parties”) engaged in extensive settlement negotiations during the first quarter of 2019, and on March 1, 2019, the Parties announced by letter filed at the above-captioned docket that they had achieved a settlement-in-principle on that same day. The Parties requested that the matter be stayed or held in abeyance pending the submission of a Settlement Agreement.

6. On March 4, 2019, the Parties were advised by Secretarial Letter that the matter would be held in abeyance for thirty (30) days to permit time for the Parties to draft and file a Joint Settlement Petition.

7. On April 3, 2019, I&E and SPLP filed a Joint Petition for Approval of Settlement resolving all issues between I&E and SPLP in the instant matter.

8. Several persons and entities filed Petitions to Intervene in this matter.²

9. The Flynn Complainants did not file a Petition to Intervene pursuant to the Commission’s regulations governing intervention at 52 Pa. Code § 5.71 *et seq.* and were not otherwise made parties to this proceeding.

10. In the Parties’ letter dated March 1, 2019 announcing the settlement-in-principle, I&E and SPLP requested that any interested entity or person, *i.e.* any member of the public, be permitted to file Comments to the Settlement Agreement within thirty (30) days of entry of any Commission Order publishing the Agreement, and that the Parties be permitted to file Reply Comments within thirty (30) days of the due date for Comments.

11. On April 3, 2019, I&E and SPLP reiterated their request that the Commission provide an opportunity for the public to comment on the Settlement.

² Petitions to Intervene were filed by West Goshen Township, West Whiteland Township, Edgmont Township, Thomas Casey and Josh Maxewell, Mayor of Downingtown.

12. Commission review and a Commission order that would potentially publish the Settlement and seek comments is pending.

13. On April 12, 2019, the Flynn Complainants, who have not been made parties to this proceeding, filed a Response in Opposition to the Settlement.

II. MOTION TO STRIKE THE FLYNN COMPLAINANTS' RESPONSE AS PREMATURE

14. The Flynn Complainants did not seek to become a party to the instant proceeding and have not been granted status as an intervenor. Thus, the Flynn Complainants lack standing to file their Response in Opposition to the Settlement and it should be stricken and re-filed at the appropriate time and in the proper manner.

15. The Commonwealth Court has stated that the purpose of the requirement of standing is to protect against improper plaintiffs. *Application of Biester v. Thornburgh*, 409 A.2d 848, 851 (Pa. Cmwlth. 1979). To meet the standing requirement, a plaintiff must allege and prove an interest in the outcome of the suit which surpasses the common interest of all citizens in procuring obedience to the law. *Id.* (citing *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 281 (Pa. 1975)).

16. Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-210870F2001 (Order entered July 9, 1998); *See also William Penn Parking Garage*, 346 A.2d at 280.

17. To become a party, the Flynn Complainants were required to file a petition to intervene and have their petition be granted either by a presiding administrative law judge (“ALJ”) or the Commission. 52 Pa. Code § 5.71(a)(2).

18. Petitions to intervene must set forth clearly and concisely the facts from which the alleged intervention right or interest of the petitioner can be determined, the grounds of the proposed intervention and the petitioner’s position regarding the issues in the proceeding. 52 Pa. Code § 5.73(a)(1)-(3).

19. I&E takes no position on whether the Flynn Complainants have a direct, immediate and substantial interest in the instant I&E enforcement proceeding. However, such a determination must first be made by either a presiding ALJ or the Commission before the Flynn Complainants are able to file their Response in Opposition to the Settlement. *See* Section 5.232(g) of the Commission’s regulations, 52 Pa. Code § 5.232(g), which only permits *parties* not joining a settlement to file objections within twenty (20) days of the filing of a settlement petition unless another time period is set by the Commission.

20. As the Flynn Complainants did not seek to become parties to the instant I&E enforcement proceeding and have not been granted status as an intervenor, the appropriate time and manner in which to voice their opposition to the Settlement is through Comments.

21. I&E and SPLP have requested that any interested entity or person be permitted to file Comments in response to the Settlement Agreement. I&E and SPLP suggested that such Comments be due within thirty (30) days of entry of any Commission Order publishing the Settlement. I&E and SPLP further sought the ability to file Reply Comments within thirty (30) days of the due date for Comments.

22. Comments provide the requisite outlet to interested persons such as the Flynn Complainants to offer feedback on the Settlement.

23. Thus, the Flynn Complainants' Response in Opposition to the Settlement is premature and should be stricken and re-filed at the appropriate time and in the appropriate manner.

24. In the alternative, should the Flynn Complainants' Response in Opposition to the Settlement be granted, I&E requests leave to reply to the pleading.

25. The Commission's procedural regulations do not contemplate a reply to a non-party's response in opposition to a settlement agreement, presumably because the Flynn Complainants' pleading runs afoul of the Commission's procedural regulations.

26. As it currently stands, I&E is deprived of the opportunity to reply to the Flynn Complainants' pleading. I&E deems that such a reply is necessary to assert legitimate defenses to the Settlement and correct untruths espoused by the Flynn Complainants as to the significant remedial measures, which surpass the requirements of Federal pipeline safety regulations, that SPLP agreed to perform in the Settlement.

III. CONCLUSION

For the reasons set forth above, I&E respectfully requests that the Commission grant this Motion and issue an Order striking the Flynn Complainants' Response in Opposition to the Settlement as being premature and provide the Flynn Complainants with the opportunity to respond to the Settlement through the filing of Comments. I&E further requests the ability to file Reply Comments within thirty (30) days of the due date for Comments.

Respectfully submitted,



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Docket No. C-2018-3006534

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).

Notification by First Class Mail and Electronic Mail:

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