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REPLY TO:  
Center City

May 17, 2019

*Via Electronic Filing*

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

Re: PUC, Bur. of Investigation & Enforcement v. Sunoco Pipeline L.P.,  
Docket No. C-2018-3006534

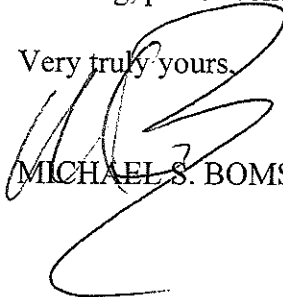
**FLYNN COMPLAINANTS' RESPONSE IN OPPOSITION TO  
SUNOCO'S MOTION TO STRIKE RESPONSE IN OPPOSITION  
TO JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Response in Opposition to Sunoco's Motion to Strike Response in Opposition to Joint Petition for Approval of Settlement.

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  
SUNOCO’S MOTION TO STRIKE RESPONSE OF FLYNN COMPLAINANTS  
IN OPPOSITION TO JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (“Flynn Complainants”), through counsel, file the following response to Sunoco’s Motion to Strike Response of Flynn Complainants in Opposition to Joint Petition for Approval of Settlement.

**I. Background**

Sunoco and BI&E have filed a petition in this proceeding for approval of a settlement of serious claims made by BI&E against Sunoco that involve the potential for catastrophe and mass casualties in connection with the operation of the 300 mile long Mariner East 1 (“ME1”) pipeline. Sunoco and BI&E state at the outset of their May 2, 2019 joint petition that their proposed settlement is intended to:

resolve all issues related to the above-docketed I&E Formal Complaint (“Complaint”) proceeding alleging violations of the United States Code, Code of Federal Regulations and Pennsylvania Public Utility Code, which were raised in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County, Pennsylvania.

(Joint Petition at 1).

A brief chronology of Commission filings is relevant here. The Morgantown incident of April 1, 2017 involved a leak on Mariner East 1 which was identified by Sunoco only after being reported by a resident. After an investigation of more than a year and a half, the matter obviously was not resolved amicably. BI&E filed its Complaint against Sunoco on December 13, 2018.

Flynn Complainants' First Amended Complaint was filed December 20, 2018. (PUC Docket Nos. C-2018-2006116/P-2018-3006117). The First Amended Complaint sought to incorporate by reference the BI&E's allegations against Sunoco, as the circumstances surrounding the Morgantown incident implicate safety concerns relevant to Flynn Complainants.

Sunoco objected to the incorporation of the BI&E's allegations into the Flynn Complaint. Flynn Complainants have since submitted a Second Amended Complaint further clarifying the significant connection between the Morgantown incident and Flynn Complainants' claims. Now Sunoco, in its Motion to Strike, objects to Flynn Complainants raising their concerns regarding the proposed settlement of the BI&E allegations on the docket of the BI&E Complaint itself. Sunoco also protests Flynn Complainants weighing in on the BI&E matter early enough in the settlement review process to potentially influence whether the matter is ultimately subject to the scrutiny of an administrative law judge, and the Honorable Elizabeth Barnes in particular.

In the event the Joint Petition is approved by the Commission, it is likely Sunoco will then claim in the pending Flynn case that the matters raised in the Flynn Complaint have been adjudicated in the BI&E matter and Sunoco's practices have been approved. Having been so approved, Sunoco will contend that the Flynn claims contesting Sunoco's practices have been resolved and have become moot. Sunoco's attempt to shut Flynn Complainants out of the

present BI&E matter is a thinly veiled attempt to avoid scrutiny in this matter while setting itself up to evade allegations in the Flynn case all together.

Since the filing of the Joint Petition, a new sinkhole developed in Middletown, Delaware County on April 24, 2019. Two Mariner pipelines were operating at the sinkhole site and continue to operate. Also since the date of the filing of the petition, the Commission submitted its response to the Right-to-Know request of Delaware County resident Eric Friedman in OOR Appeal Docket #AP 2019-0502. In its response, the Commission and its affiant, Paul Metro, identify three separate hazard assessments prepared by Sunoco and the response also refers in seven separate instances to the potential for “mass destruction” to the public living near the pipelines in the event of a terrorist attack. Sunoco’s recognition of the pipelines’ potential for mass destruction is significant. Plainly, this is not a time to limit scrutiny of Sunoco or its proposed settlement.

## **II. Argument**

### **A. The Flynn Complainants’ lack of intervenor status is a red herring.**

Flynn Complainants acknowledge they are not parties to the instant BI&E proceeding. Ordinarily, therefore, it would follow that they may not be bound by an agreement or an adjudication in this proceeding. Flynn Complainants expect, however, that the settlement approval will be used to preclude them in their own case from prosecuting claims regarding repairs, maintenance and pipeline integrity on ME1 and the ME2 workaroud pipeline. There is in fact partial but not complete overlap between the claims and the relief requested in the two cases.

The BI&E Complaint includes fines for what happened in Morgantown. The Flynn First Amended Complaint does not seek fines for what happened in Morgantown.

BI&E's Complaint raises significant issues regarding more than just what occurred in Morgantown. The condition of a particular segment of ME1 is the basis for the Complaint, but the Complaint also suggests that Sunoco's practices on the entire pipeline are questionable and that an independent study be conducted relative to ME1's remaining lifespan.

The proposed settlement touches on all of those issues but the relief requested appears limited geographically to portions of ME1 only Berks, Chester and Delaware Counties. The Flynn Complainants' First Amended and proposed Second Amended Complaint are founded on their concerns as residents of Chester and Delaware Counties but they request an evaluation of all of ME1 and the 12 inch portion of ME2.

Sunoco makes a point that Flynn Complainants are not parties and they elected not to intervene in the present matter. That assumes that intervention would have made any difference in that resolution of the instant proceeding.

Indeed, on the first page of the instant petition, Sunoco says the very opposite. Sunoco writes in footnote 1, "An intervenor's role in proceedings before this Commission is on a non-party basis, meaning that the initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors."

Thus, Flynn Complainants as intervenors would still not have been parties and would not have been able to participate in negotiations. They could have objected to the settlement but it would have made no difference. Further, the procedural effect of that settlement on the Flynn case would have been the same.

**B. Flynn Complainants do not lack standing.**

It is clear that the Flynn complainants are not parties to this proceeding. It does not follow from that circumstance that they should not be heard. If their rights ultimately will be

adversely affected by the proposed crony settlement then they must be heard or due process will be offended.

Counsel's review of applicable regulations supports Sunoco's contention that there is no explicit provision for input for persons in the position of the Flynn Complainants. The Flynn Complainants have raised serious allegations of Sunoco's willful failure to maintain ME1 and the ME2 workaround pipelines. They are entitled to discovery and their "day in court." If the approval of the settlement is used to keep Flynn Complainants from their day in court in that case, the question then is in what proceeding if any they will have their day in court.

This is all the more significant in view of the statements made by the parties in their joint petition. Both sides make it abundantly clear that they do not agree on any of the factual averments or the answers thereto. That being the case, if the settlement is approved and it then is used to obtain a preclusion order in the Flynn case, there will never have been an opportunity for the Commission to take evidence as to matters that involve the possibility of mass destruction.

This concern could be minimized if Sunoco were prepared at this time to stipulate that it will not seek a preclusion ruling in the Flynn case. Alternatively, the disposition of the instant proceeding could be postponed until such time as the Flynn case is decided in 2020. Until that date, nothing prevents Sunoco from becoming a good citizen and implementing pipeline practices that will mitigate the risk to the public.

**C. In the alternative, the PUC should provide for public comment and hearings prior to making any decision with regard to accepting the proposed settlement.**

The parties have presented their proposed settlement to the Commission on a "take-it-or-leave it" basis. In ¶ 26 of the Joint Petition, they request that the Commission "permit comment

by any interested entity or persons within thirty (30) days of entry of any Commission Order that publishes this Settlement Agreement.” BI&E in its letter in support of the petition makes this request as well. Hence, if a thirty (30) day public comment period is not permitted, that would constitute a modification of the settlement’s terms such that the settlement becomes null and void.

The Commission has the discretion to interpret the regulations so as to promote fairness and justice. 52 Pa. Code § 1.2. If the Flynn Complainants’ filed objections are considered improper based on lack of standing, they ask the Commission in the alternative simply to deem the filing as an early comment.

Flynn Complainants further aver that there are matters of public significance implicated by the proposed settlement. Public hearings on the Joint Petition would be reasonable under all the circumstances.

Importantly, all public input should be accepted and considered prior to any decision being made with regard to the approval of the proposed settlement. Presently, the Joint Petition calls for a thirty day comment period, but the timing of these comments in relation to the approval of the proposed settlement is unclear. Paragraph 26 of the Joint Petition suggests that comments be submitted within “thirty (30) days of entry of any Commission Order that publishes this Settlement Agreement.” That language does not preclude the possibility that the order triggering comments would also approve the proposed settlement in whole or in part. That would, of course, render the comment period meaningless and must be avoided.

It is also unclear whether the timing of a comment period would come before or after a decision is made about whether to assign this matter to an ALJ. Flynn Complainants urge the Commission to consider their objection regarding that issue, regardless of ultimate timing of a

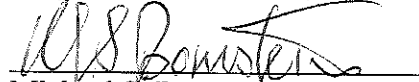
comment period. It would be unusual for a proposed settlement not to be assigned to an ALJ and it is unclear why Sunoco would seek to change that process here but to avoid scrutiny.

### **III. Conclusion**

In light of the foregoing, Flynn Complainants request that the Commission delay acting on the Joint Petition until such time as the Flynn case has been decided. In the event the Commission should nonetheless decide to approve the settlement prior to that time, then Flynn Complainants ask that its Order make clear it does not have a preclusive effect on the claims in the Flynn proceedings.

In the alternative, Flynn Complainants ask the Commission not to strike their response and instead deem the filing as an early comment. In any event Flynn Complainants request, consistent with the Joint Petition, that there be (a) a thirty (30) day public comment period as well as (b) public hearings prior to a final decision on the Petition.

Respectfully submitted,



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Attorney for Flynn Complainants

Dated: May 17, 2019



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing 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.

**VIA ELECTRONIC AND FIRST CLASS**

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*Pro Se Intervenor*

Dated: May 17, 2019

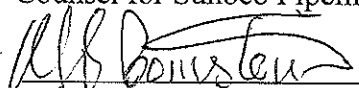
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