

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

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

**Public Meeting: May 23, 2019
3006534-OSA
Docket No. C-2018-3006534**

v.

Sunoco Pipeline, L.P.

**JOINT STATEMENT OF COMMISSIONER ANDREW G. PLACE
and VICE CHAIRMAN DAVID W. SWEET**

Before the Commission today for consideration and disposition is the Joint Petition for Approval of Settlement (Joint Petition) filed by the Commission's Bureau of Investigation and Enforcement (I&E) and Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners (Sunoco) on April 3, 2019. The Joint Petition for Approval of Settlement seeks to settle the Formal Complaint filed by I&E on December 13, 2018, alleging violations of federal and state gas pipeline safety regulations by Sunoco in connection with an investigation of an incident on the Mariner East 1 pipeline regarding a leak on the segment identified as Twin Oaks to Montello near Morgantown Road, Morgantown, Berks County. Both parties to the Settlement have requested that the Commission approve the Petition without modification.

We firmly believe that the Joint Petition for Approval of Settlement and the numerous other pleadings filed in this case should be referred to the Office of Administrative Law Judge for such further proceedings and the scheduling of hearings as may be deemed necessary. Our reasoning for this referral, at this time, is well founded in the Commission's statutory and regulatory procedural requirements. A Formal Complaint was filed in this case which commenced a formal proceeding, that typically constitutes a request for assignment of a presiding officer and triggers the right to hearing. *See* 51 Pa. Code § 1.8 ("formal complaint" defined as a matter initiated under Section 701, intended to produce a formal record).¹ Formal Complaints filed pursuant to Section 701 of the Code are entitled to notice and hearing. *Barasch v. Pennsylvania Public Utility Commission*, 568 A.2d 276 (1989).

In addition, on January 31, 2019, Sunoco filed an Answer and New Matter, contesting the material factual and legal allegations of I&E's Formal Complaint.

¹ However, while a Formal Complaint remains uncontested, a hearing may not be necessary, since the matter may yet be resolved by the defendants' satisfaction of the Formal Complaint, consistent with Section 703 of the Public Utility Code, 66 Pa. C.S. § 703(a)(pertaining to satisfaction of formal complaint) and 52 Pa. Code § 5.21(d).

The complaint proceeding became a contested “adversarial proceeding,” as defined by 52 Pa Code § 1.8, which requires assignment of a presiding officer for hearing in the matter to resolve the factual issues in dispute. *Id.* See Section 703 of the Public Utility Code, 66 Pa. C.S. § 703(a)(pertaining to the Commission’s duty to fix a hearing). During the time before Sunoco filed its Answer and New Matter to the Formal Complaint, two interested parties filed Petitions to Intervene and Sunoco timely filed its Answer opposing one Petition to Intervene filed on December 21, 2018. Additional Petitions to Intervene were subsequently filed in this proceeding which Sunoco has opposed through individual answers.²

We recognize that there are instances provided for in our regulations, specifically at 52 Pa. Code §5.232(d), and asserted by Sunoco in its Statement in Support of the Settlement, in which a settlement may be reviewed directly by the Commission, where “no ALJ has been assigned.” Statement of Sunoco at 2. However, that procedure is relevant typically where the matter was initiated, not as a formal complaint under Section 701 of the Public Utility Code, but as an informal complaint, which is resolved by voluntary cooperation of the parties. See 52 Pa. Code § 1.8 (an “informal complaint” is defined as a matter which lacks the legal requisites of a formal complaint under § 701 and which does not involve a legal proceeding or require a presiding officer). The Commission also has exercised its discretion to review a settlement where no ALJ has been assigned in cases where a Formal Complaint and Answer in Opposition have been filed and where no other parties have expressed an interest in participating in the proceeding.³

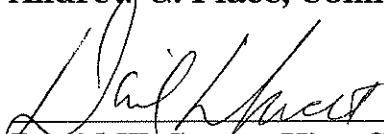
Based on the statutory and regulatory requirements mentioned above, we believe that the Joint Petition for Approval of Settlement filed by the Commission’s Bureau of Investigation and Enforcement and Sunoco Pipeline, L.P. on April 3, 2019 should be referred to the Office of Administrative Law Judge for such further proceedings and the scheduling of hearings as may be deemed necessary.

Therefore, we concur in result only.

DATE: May 23, 2019



Andrew G. Place, Commissioner



David W. Sweet, Vice Chairman

² Sunoco has not filed an Answer in Opposition to the Petition of Edgemont Township.

³ *I&E v. PECO Energy Company*, Docket No. C-2015-2479970 (Order entered October 27, 2016). See also *I&E v. West Penn Power Company*, Docket No. C-2012-2307244 (Final Order entered January 9, 2014).