

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Bureau of Investigation and
Enforcement**

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

v.

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

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Approval of Settlement in this proceeding of the Bureau of Investigation and Enforcement (I&E) and Sunoco Pipeline, L.P. (Sunoco) a/k/a Energy Transfer Partners (collectively Joint Petitioners). This proceeding was initiated with the filing of a Formal Complaint by I&E against Sunoco on December 13, 2018. I&E alleged pipeline safety violations of federal and state law in connection with an investigation of an ethane and propane leak that occurred on April 1, 2017 in Berks County.

After requesting and receiving approval for a series of extensions of time, Sunoco filed an Answer and New Matter on February 1, 2019, in which it denied any violations of federal or state law. Also pending are five Petitions to Intervene that have been filed during the course of the proceeding, and Answers in Opposition to the Petitions filed in response by Sunoco. Separately, an Answer in Opposition to the Joint Petition has been filed by parties who have not sought to intervene in this case, which I&E and Sunoco have responded to with Motions to Strike.

The Joint Petitioners have asked the Commission to issue the settlement for public comment and reply comment, and after review of the comments to find that approval of the Joint Petition of Settlement is reasonable and in the public interest. They assert that an assignment to a presiding officer and the holding of evidentiary hearings are not necessary given that the settlement resolves all issues raised in the Formal Complaint.

The Commission has a long-standing policy to encourage settlements of proceedings.¹ The settlement of a case can reduce the expense of litigation, resolve regulatory uncertainty, and facilitate the prompt implementation of remedial measures intended to improve the safety, quality, or reliability of public utility service. The Commission has entrusted I&E, its independent prosecutory arm, with a degree of discretion in how it litigates and negotiates resolution of pending matters. It is common for I&E to agree to extensions of time to the filing of Answers to permit early resolution of cases. It is not uncommon for I&E to engage in lengthy settlement negotiations even after Answers in opposition to its Formal Complaint are filed, which convert the matter to an adversarial proceeding.² Many settlements negotiated by I&E with regulated entities are in fact issued for public comment and later

¹ 52 Pa. Code § 5.231(a)

² *I&E v. PECO*, C-2015-2479970 (Order entered October 27, 2016)

approved by the Commission, without evidentiary hearings, where the Commission concurs that an evidentiary hearing is unnecessary.³

By way of example, I&E initiated a Formal Complaint against West Penn Power Company in an electric safety matter involving a fatality in 2012.⁴ Several extensions of time were granted by the Secretary's Bureau, with I&E's concurrence, for the filing of an Answer by West Penn. The case did not immediately settle, and West Penn filed an Answer denying the material allegations. Nevertheless, settlement negotiations continued, and I&E and West Penn later negotiated a settlement resolving all issues. Subsequent to the filing of the settlement, a Petition to Intervene was filed by a third party. The Commission concluded that an assignment to a presiding officer for an evidentiary hearing was not necessary, and granted the Petition to Intervene and addressed the settlement after permitting public comments and reply comments.

Despite this and other examples of direct review of settlements, I conclude that a referral of this matter to the Office of Administrative Law Judge is appropriate. It is unusual to have a significant number of Petitions to Intervene pending during this type of proceeding, as well as a Response in Opposition to approval. I also observe, that unlike the case cited to above, the Petitions to Intervene were filed prior to the filing of the proposed settlement. In the interests of ensuring that due process is afforded to all interested parties, I conclude that it is appropriate to refer this matter to the Office of Administrative Law Judge for determinations on the Petitions to Intervene and the Response in Opposition to Approval, and a determination as to whether an evidentiary hearing on the specific allegations raised in I&E's Complaint is necessary.⁵ Given the importance of promptly resolving the alleged safety violations, we direct the Office of Administrative Law Judge to assign a presiding officer and schedule any further proceedings that may be necessary on an expedited basis.

THEREFORE, I MOVE:

1. That the above captioned Formal Complaint proceeding shall be referred to the Commission's Office of Administrative Law Judge, which shall assign this matter to an administrative law judge for such further proceedings as may be deemed necessary.
2. That the Petitions to Intervene filed at this docket, and the Answers filed in response thereto by Sunoco, shall be referred to the Office of Administrative Law Judge for such further proceedings as deemed necessary.
3. That the Joint Petition for Settlement filed by the Joint Petitioners shall be referred to the Commission's Office of Administrative Law Judge for such further proceedings as deemed necessary. If the Office of Administrative Law Judge grants intervention, the intervenors shall have the opportunity for their Petitions to be heard and decided based upon the procedural posture of the case as it existed at the time the Petitions to Intervene were filed.

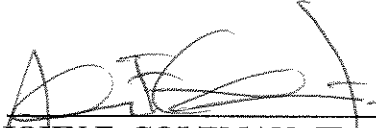
³ 66 Pa.C.S. §703(b).

⁴ *I&E v. West Penn Power Company*, Docket No. C-2012 (Final Order entered January 9, 2014).

⁵ This Motion addresses neither the merits of the Petitions to Intervene, nor whether a right to hearing exists regarding the Petition. The presiding officer will retain such direction to determine this consistent with 52 Pa. Code §5.485.

4. That the Response in Opposition to the Joint Petition for Approval of Settlement filed at this Docket on April 12, 2019, shall be referred to the Commission's Office of Administrative Law Judge for such further proceedings as deemed necessary.
5. That the Motions of I&E and Sunoco to Strike as Premature the Response in Opposition to the Joint Petition for Approval of Settlement filed at this docket shall be referred to the Commission's Office of Administrative Law Judge for such further proceedings as deemed necessary.
6. That the Office of Administrative Law Judge assign a presiding officer and schedule such further proceedings on an expedited basis.
7. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: May 23, 2019



JOHN F. COLEMAN, JR.
COMMISSIONER