**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 23, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman, Statement, concur in result only

Norman J. Kennard

Andrew G. Place, Statement, concur in result only

John F. Coleman, Jr.

Pennsylvania Public Utility Commission,

Bureau of Investigation and Enforcement

C-2018-3006534

v.

Sunoco Pipeline, L.P.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) 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. (Sunoco) a/k/a Energy Transfer Partners (ETP) (collectively, Sunoco) (collectively, Joint Petitioners) on April 3, 2019. The Joint Petition seeks settlement of the Formal Complaint filed by I&E on December 13, 2018, alleging violations of federal and state gas pipeline safety regulations by Sunoco. Petitions to Intervene in the Formal Complaint proceeding either were filed by, or on behalf of, Thomas Casey, West Goshen Township, Josh Maxwell, West Whiteland Township, and Edgmont Township. Sunoco and I&E filed Answers in Opposition to Intervention.

For the reasons discussed more fully below, we shall direct that the Formal Complaint proceeding initiated by I&E at this docket, including the pending Petitions to Intervene and Answers in Opposition thereto, the Petition for Joint Settlement, and the Answer in Opposition to the Joint Petition, be referred to the Office of Administrative Law Judge (OALJ) to designate a presiding officer, for such further proceedings and hearings, as deemed necessary, consistent with this Opinion and Order.

**I. History of the Proceeding**

On April 1, 2017, at 3:57 pm, the Mariner East 1 pipeline (ME1), which transports hazardous liquids intrastate experienced a leak on the segment identified as Twin Oaks to Montello near Morgantown Road, Morgantown, Berks County.

On April 1, 2017, at approximately 6:30 p.m., Sunoco telephoned the manager of the I&E’s Safety Division to inform him of the leak. Sunoco filed an accident report with Pipeline Hazardous Materials Safety Administration (PHMSA) and reported a total product loss of twenty barrels.

On April 2, 2017, an I&E Safety Division safety inspector visited the leak site but was unable to inspect the facility because the pipeline was still being purged of the product. Subsequently, on April 3, 2017, I&E’s safety inspectors returned to the site to examine the affected pipeline. Sunoco crews excavated and exposed the pipeline. The inspectors’ visual examination of the pipe showed localized corrosion at the bottom of the pipe in the six o’clock position. Sunoco sent an eight-foot section from a larger portion of the pipe it had cut out for laboratory analysis. The analysis of that portion of the pipe attributed the leak and loss of product to corrosion. Sunoco repaired the pipe by first hydrostatically testing eighty-three feet of new pipe and welding that section into the existing pipe replacing the portion of ME1 that had been removed.

I&E conducted an in-depth investigation of the incident, including the leak site and Sunoco’s corrosion control practices and procedures, relative to applicable regulations.

On December 13, 2018, I&E filed its Formal Complaint pursuant to Section 701 of the Public Utility Code, 66 Pa. C. S. § 701, and 52 Pa. Code §§ 5.21-5.22 (pertaining to filing formal complaints in formal proceedings) in which it alleged pipeline safety violations of the United States Code, Code of Federal Regulations and the Pennsylvania Code, which were discovered in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County.

On December 17, 2018, Sunoco filed an unopposed request for an Extension of Time to file its answer to the Complaint. In order to allow the parties time to discuss settlement, Sunoco requested an extension of time, until January 16, 2019, to file its responsive pleading to the Complaint.

On December 21, 2018, Thomas Casey (Mr. Casey) filed a Petition to Intervene in the matter. Mr. Casey requests intervention on the grounds that he is a property owner in Chester County who has a right-of-way on his property from Sunoco’s predecessor. Currently, there are two pipelines in the right-of-way and Mr. Casey is concerned about additional pipelines within 100 feet of his home. Thus, Mr. Casey requested to be allowed to intervene with full active *pro se* party status.

By Secretarial Letter dated January 2, 2019, the Commission granted Sunoco’s request for an extension to file an answer to the Complaint until January 16, 2019.

On January 9, 2019, Sunoco filed a second unopposed request for an Extension of Time requesting that the deadline for its responsive pleadings be extended an additional ten days from January 16, 2019 until January 26, 2019. Given that January 25, 2019 was a Saturday, the deadline would be the following Monday, January 28, 2019. On that same day, Sunoco’s second request for an extension of time was granted by Secretarial Letter.

On January 10, 2019, Sunoco filed its Answer Opposing Mr. Casey’s Petition to Intervene. Sunoco argues that Mr. Casey does not have standing to intervene since he fails to allege concerns regarding the section of pipeline involved in the Complaint.

On January 18, 2019, West Goshen Township filed a Petition to Intervene on the basis that ME1 runs through the township and any revisions to Sunoco’s protocols and/or additional testing data ordered by the Commission directly impact the findings of the prior safety review by its consultant that the township hired to review Sunoco’s plans and safety protocols.

On January 25, 2019, Mr. Casey filed a response to Sunoco’s Opposition of his intervention in which he refutes Sunoco’s opposition in that he has concerns for the health, safety and welfare of his family and their ability to live in and feel safe in their home.

On January 28, 2019, Sunoco filed a Third Petition for an Extension of Time. On that same day, the Commission granted the extension for Sunoco to file its responsive pleading until January 31, 2019 via Secretarial Letter.

On January 31, 2019, Sunoco filed its Answer and New Matter to the Complaint, pursuant to 52 Pa. Code § 5.61-5.62 (regarding Answers and New Matter in formal proceedings). In its Answer, Sunoco generally denies any violations of pipeline safety regulations or applicable codes.

On February 7, 2019, Sunoco file its Answer opposing West Goshen’s Petition to Intervene. Sunoco contends the petition should be denied because: (1) the Petitioner does not have any interest sufficient to grant standing; (2) the Petitioner will not be bound by the outcome of this proceeding; and (3) allowing the Petitioner to intervene is not in the public interest.

On February 8, 2019, Josh Maxwell (Mr. Maxwell)[[1]](#footnote-1) filed his Petition to Intervene. In his Petition, he alleges grave concerns regarding the allegations raised by I&E. Specifically, the pipeline’s proximity to the Downingtown Water Supply and a potential risk to a nearby dam. Mr. Maxwell requests that the Commission grant his petition and allow him to participate in the proceeding as a full and active *pro se* party.

On February 11, 2019, West Whiteland Township filed its Petition to Intervene on the grounds that as a municipal township, it is obligated to protect the health, safety and welfare of its residents and the members of the public that work and traverse the township and as a trustee of the natural resources in the township.

On February 19, 2019, I&E filed a Petition for an Extension of Time until March 2, 2019 to file its Response to Sunoco’s New Matter. I&E’s request was granted by Secretarial Letter dated February 22, 2019.

On March 1, 2019, I&E and Sunoco filed a Joint Letter seeking abeyance of the proceedings pending submission of a settlement. On March 4, 2019, the request was granted *via* Secretarial Letter.

On March 4, 2019, Sunoco filed its Answers in opposition to Mr. Maxwell’s and West Whiteland Township’s Petitions to Intervene. Regarding Mr. Maxwell’s Petition, Sunoco contends that it should be denied because: (1) the proceeding resulted in an settlement in principle in full, so there is no proceeding in which to intervene and the Petitioner can instead file comments to the settlement concerning its alleged interests in this matter; (2) the Petitioner has not served the Petition on Sunoco; (3) the Petitioner does not have any interests sufficient to grant standing, has no right of private attorney general; and cannot represent his constituents, and (4) allowing intervention is not in the public interest. Sunoco raises similar arguments to deny West Whiteland Township’s Petition. Those arguments include: (1) the proceeding resulted in a settlement in principle in full, so there is no proceeding in which to intervene, and the Petitioner can instead file comments to the settlement concerning its alleged interests in this matter; (2) the Petitioner does not have any interests sufficient to grant standing, has no right of private attorney; and (3) allowing intervention is not in the public interest. Edgmont Township filed its Petition to Intervene

On March 19, 2019, Edgmont Township filed its Petition to Intervene.

On April 3, 2019, the instant Joint Petition for Approval of Settlement was filed by I&E and Sunoco. The Joint Petition consists of the proposed Settlement Agreement (Petition at 1-10) and attached: Appendix “A” (Statement of I&E at 1-19); Appendix “B” (Statement of Sunoco, 1-13); and, Appendix “C” (Formal Complaint at 1‑19).

On April 12, 2019, the Flynn Complainants[[2]](#footnote-2) filed an Answer in Opposition to the Joint Petition.

On May 2, 2019, I&E filed a Motion to Strike the Answer in Opposition of Settlement filed by the Flynn Complainants. On the same date, Sunoco filed a similar Motion to Strike the Answer in Opposition filed by the Flynn Complainants.

On May 7, 2019, Sunoco filed a corrected Motion to Strike which corrected language on page 4 of the Motion. The correction added the following phrase in subsection (b): “cause withdrawal from the settlement or delay time-sensitive” and deleted “agree to.”

**II. Discussion**

Before us is the Joint Petition for Approval of Settlement filed by I&E and Sunoco, pursuant to 52 Pa. Code § 5.232. The Joint Petitioners propose a stipulation to resolve all issues related to the underlying Formal Complaint proceeding initiated by I&E charging Sunoco with alleged gas pipeline safety violations related to Sunoco’s ME1 pipeline.

As a procedural matter, the Joint Petitioners request that the Commission render a decision on the Joint Petition, rather than refer the matter to the Commission’s OALJ for assignment of a presiding Administrative Law Judge (ALJ). Joint Petition at 10.

Therefore, the question before us is whether we should exercise our discretion to conclude that no hearing is required in this Formal Complaint proceeding and render a determination on whether to approve or reject the Settlement.

For the reasons discussed, *infra*, we shall refer the proceeding to the OALJ for assignment of a presiding officer, for consideration of the pleadings, the pending Petitions to Intervene and Answers thereto, the Joint Petition for Approval of Settlement, the Response in Opposition to the Joint Petition for Approval of Settlement, and the Motions to Strike the Response in Opposition, to determine whether any hearing is required, and to conduct such further proceedings as deemed necessary.

1. **Legal Standards**

It is well settled that any issue, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Sections 701-703(c) of the Public Utility Code, establish the Commission’s powers and duties regarding the adjudication of formal complaints. 66 Pa. C.S. § 701 (complaints generally), § 702 (service of complaints), and, § 703 (fixing of hearings).

With regard to the fixing of hearing, the Public Utility Code provides that if, based upon the Commission’s consideration of the complaint and answer, or otherwise, it appears that reasonable grounds exist to investigate the complaint, “it shall be the duty of the Commission to fix and time and place for hearing.” 66 Pa. C. S. §  703(a) (pertaining to satisfaction of the complaint or hearing).

Generally, the Commission has discretion to determine whether a hearing is necessary. *SME Bessemer Cement, Inc. v. Pennsylvania Public Utility Commission*, 540 A.2d 1006 (Pa. Cmwlth. 1988). Only “formal complaints” regarding public utilities, on reasonable grounds, require the use of the Commission’s hearing procedures provided by law. *Schellhammer v. Pennsylvania Public Utility Commission*, 629 A.2d 189 (Pa. Cmwlth. 1993). Therefore, the filing of a formal complaint entitles a party to a hearing. However, the Commission may dismiss a complaint without hearing if the Commission determines that a hearing is not necessary in the public interest. 52 Pa. Code § 5.21(d).

The Commission has a duty to hold fair and open hearings, and to give notice so that interested parties may be heard, and fundamental fairness is observed. *McCormick v. Pennsylvania Public Utility Commission,* 30 A.2d 327 (Pa. Super. 1943). Where a hearing is required based upon factual matters in dispute, the deprivation of a hearing may constitute a violation of the due process rights of a party to be heard. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 548 (Pa. Cmwlth. 1989).

Intervention in a formal proceeding is governed by 52 Pa. Code §§ 5.71‑5.76, and the general rules governing petitions at 52 Pa. Code § 5.41.

Petitions for Settlement are governed by 52 Pa. Code § 5.231 (offers of settlement, policy to encourage settlements) and § 5.5.232 (settlement petitions and stipulations of fact) setting forth the contents of the settlement. Approval of a stipulation of settlement requires a finding that the terms of the agreement are reasonable and in the public interest. *Pa. Pub. Util. Comm ‘n v. Philadelphia Gas Works*, Docket No. M‑00031768 (Order entered January 7, 2004).

1. **Positions of the Joint Petitioners and Interested Parties**
2. **I&E and Sunoco’s Joint Petition**

The Joint Petitioners propose a settlement of all present and future issues arising from the allegations in the underlying Formal Complaint filed by I&E regarding gas safety violations in connection with the Sunoco’s operation of ME1. Petition at 1-10. Regarding the terms of settlement (Petition at 4-8), the parties propose that Sunoco will voluntarily pay a civil penalty of $200,000 and agree to take appropriate corrective action set forth in the Joint Petition. Petition at 5-8. In exchange for Sunoco’s voluntary actions, I&E shall be deemed to have released Sunoco from all past claims that were made or could have been made for monetary and/or other relief based on allegations that Sunoco failed to comply with the obligations claimed, and for time periods covered in I&E’s Formal Complaint. Petition at 8. The Joint Petitioners submit that the Settlement Agreement is in the public interest because it effectively addresses I&E’s allegations that are the subject of this Formal Complaint proceeding, promotes public and facility safety, and avoids the time and expense of litigation. *Id*.

Regarding conditions of settlement (Petition at 8-10), the Joint Petitioners agree that the settlement is conditioned upon the Commission’s approval of the settlement without modification to any term or condition. The parties further stipulate that the underlying allegations of the Complaint “*were not the subject of any hearing* and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding.” Joint Petition at 9 (emphasis added).

As a further condition of settlement, the Joint Petitioners *request*[[3]](#footnote-3) that the Commission decide this matter directly, rather than refer the proceeding to the OALJ for assignment of a presiding officer. The Joint Petitioners further *request* that upon the date of entry of any Commission order approving and publishing the proposed settlement agreement, that the Commission establish a thirty-day comment period to permit any interested entity or person to submit comments in opposition to the settlement, and a thirty-day reply comment period in which the Joint Petitioners are permitted to file Reply Comments. Joint Petition at 10 (emphasis added).

I&E’s statement in support of the Joint Petition asserts that the proposed settlement is in the public interest and requests that the Commission approve the Joint Petition, including all the terms and conditions set forth therein, without modification, and thereafter allow consideration of Comments submitted by interested persons and Reply Comments filed by the Parties. Joint Petition, Appendix A (Statement of I&E).

In its statement in support of the proposed settlement, Sunoco asserts that “I&E and Sunoco are the only parties to this proceeding.” Joint Petition, Appendix B (Statement of Sunoco). Sunoco notes that the multiple Petitions to Intervene have not been granted and asserts that the Joint Petitioners request that the matter be addressed by the Commission. *Id.* at n.1.

Sunoco asserts that because the proposed settlement is in the public interest, and “because the Commission has the clear ability to do so under its statute and its regulation at 66 Pa. C.S. 331 (b)(2); 52 Pa. Code 5.232(g), the Commission should decide this matter directly without assigning this matter to an Administrative Law Judge (ALJ).” Statement of Sunoco at 2.

Sunoco argues, that under Section 331(b)(2) of the Public Utility Code, 66 Pa. C. S. § 331(b)(2)(pertaining to the power of the Commission to grant the Chairman power to assign matters to a Commissioner or Commissioners for disposition), the Commission has discretion to authorize the Chairman to assign certain matters, including safety matters, to the Commissioners for disposition.

Sunoco further asserts that the Commission’s regulations expressly allow this procedure, citing 52 Pa. Code § 5.232(g), which provides:

Review of a settlement petition by the Commission. When no presiding officer has been assigned, the Commission will review the settlement.

Statement of Sunoco at 2.

Sunoco submits that the Commission recently directly reviewed and issued for comment a settlement of a an I&E formal complaint without assignment to an ALJ. citing, *Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission v. Burgly Gas and Oil*, Docket No. C-20142411284. Sunoco argues that the present case should be treated the same as *Burgly Gas and Oil*. *Id.*

Finally, Sunoco contends that if the Commission forgoes assignment of the Petitions to Intervene for consideration by an ALJ, there would be no concern for deprivation of due process, because the parties will have an opportunity to be heard pursuant to the proposed thirty-day comment period, following adoption of the Joint Settlement. *Id*. at 3.

1. **Interested Parties to the Formal Complaint Proceeding**

As noted above, there are presently five pending Petitions to Intervene filed by, or on behalf of (1) Thomas Casey on December 21, 2018; (2) West Goshen Township on January 18, 2019; (3) Josh Maxwell on February 8, 2019; (4) West Whiteland Township on February 11, 2019; and (5) Edgmont Township on March 19, 2019.

We note that all the Petitions to Intervene were filed prior to the April 3, 2019 filing date of the Joint Petition for Settlement. The potential Intervenors assert that their respective factual and legal assertions entitle them to intervene in the Formal Complaint proceeding. Specifically, the interested parties raise claims related to the safety of Sunoco’s operation of the ME1 pipeline which they assert satisfy the necessary interest for eligibility to intervene pursuant to 52 Pa. Code § 5.72.

The material allegation of the Petitions to Intervene are disputed by Sunoco’s Answers in Opposition to the Petitions, filed on January 10, 2019, February 7, 2019, March 4, 2019, and March 4, 2019, respectively.[[4]](#footnote-4)

The substance of the Petitions to Intervene have not been reviewed and decided because the proceeding has not yet been transferred to the OALJ for the assignment of a presiding officer.

**III. Disposition**

In the present case, the Joint Petitioners assert that no hearing is required or necessary because the proposed joint stipulation resolves, without admission, all factual and legal issues averred in I&E’s Complaint. Therefore, the Joint Petitioners propose that the Commission review and approve the Joint Settlement of the Formal Complaint as reasonable and in the public interest, consistent with 52 Pa. Code § 69.1201 (regarding standards for evaluating litigated and settled proceedings), based on the Joint Petition and attached individual supporting statements of I&E and Sunoco, without modification and without hearing. Joint Petition at 1-10.

We agree with the Joint Petitioners that we may, as a matter within our discretion, determine that no hearing is required where the circumstances warrant that conclusion. *See*, 52 Pa. Code § 5.21(d) (providing that no hearing is required where the Commission determines that a hearing is not necessary in the public interest). However, while the decision whether to hold a hearing is discretionary, per *Chester Water Authority v. Pennsylvania Public Utility Commission*,822 A2d 146, (Pa. Cmwlth. 20030; appeal granted 854 A.2d 968 (Pa. 2004); order reversed 868 A.2d 384 (Pa. 2005), where issues of material facts are raised, a hearing is required to protect due process concerns. *Id*. at 152.

In the present circumstances and procedural posture of this case, we conclude that the matter is more appropriately referred to OALJ for assignment of a presiding officer, for a determination of whether a hearing is required, and such further proceedings as is deemed necessary.

The record of the filings in this case reflect that by filing a Formal Complaint, I&E initiated a formal proceeding, which 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).[[5]](#footnote-5) 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)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989180459&pubNum=162&originatingDoc=I0a8f3933352911d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.CustomDigest)).

Further, on January 31, 2019, Sunoco filed an Answer and New Matter, contesting the material factual and legal allegations of the Formal Complaint. At this point, the procedural posture of the case was now a contested “adversarial proceeding,” as defined by 52 Pa Code § 1.8, which is matter “to be decided on the basis of a formal record.” *Id*.

It is true, as Sunoco asserts, that our regulations at 52 Pa. Code §5.232(d), contemplate a scenario 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). Therefore, typically, if no ALJ has been assigned, it is because no formal complaint initiating an “on-the-record proceeding” was filed.

In the present case, I&E initiated the matter under Section 701 as a Formal Complaint. Sunoco’s Answer to the Complaint was filed after having sought several extensions of time, which were unopposed by I&E, to allow the parties time to reach voluntary settlement. Upon Sunoco’s Answer disputing the material factual and legal allegations of the Complaint, the matter became a contested proceeding. At that point, the Formal Complaint would typically be referred to the OALJ for assignment of a presiding officer for hearing. *See*, Section 703 of the Public Utility Code, 66 Pa. C.S. § 703(a)(pertaining to the Commission’s duty to fix a hearing). However, where there are no other interested parties, I&E may raise no opposition to extensions of time sought by the Respondent utility, where the two parties may continue to pursue a mutual settlement of the matters alleged in the Complaint.

The Commission has a long-standing policy to encourage settlements of proceedings.[[6]](#footnote-6) The settlement of a case may 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.[[7]](#footnote-7)

Further, settlements negotiated by I&E with regulated entities may be issued for public comment and later approved by the Commission, without evidentiary hearings, where the Commission finds that an evidentiary hearing is not necessary.[[8]](#footnote-8) For example, in *I&E v. West Penn Power Company*, Docket No. C-2012-2307244 (Final Order entered January 9, 2014), I&E initiated a Formal Complaint against West Penn Power Company in an electric safety matter involving a fatality in 2012. West Penn sought several extensions of time for filing an Answer, which I&E did not oppose, which were subsequently granted by the Secretary’s Bureau. 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 and filed a joint settlement resolving all issues. Subsequent to the filing of the joint settlement, a Petition to Intervene was filed by a third party. The Commission concluded that, because the petition to intervene was filed subsequent to the joint petition for settlement, assignment to a presiding officer for an evidentiary hearing was not necessary as a matter of due process. Therefore, the Commission granted the Petition to Intervene and addressed the joint settlement after establishing a period for public comments and reply comments.

In contrast to *I&E v. West Penn*, however, the petitions to intervene in the present matter were filed *prior* to the Joint Petition for Settlement. The fact that five petitions to intervene remain pending in this formal complaint proceeding is relevant to our determination as to whether the matter should be referred to the OALJ for assignment of a presiding officer.

We agree with Sunoco that the filing of petitions to intervene is not determinative of the need for assignment of a presiding officer. Statement of Sunoco at 2-5, citing, 52 Pa. Code § 5.75(c) (intervenor status not recognition of a direct interest in the proceeding). However, while intervenors do not have the same rights of the parties, as a matter of fairness, a timely petition for intervention typically warrants consideration on the record as it exists when the petition is filed.[[9]](#footnote-9) Therefore, we conclude that the filing of the petitions to intervene in a contested proceeding prior to the filing of a Joint Petition for Settlement, while not determinative, weighs in favor of transferring the matter to the OALJ for assignment of a presiding officer, to consider the petitions on the record which existed at the time intervention was sought.

Sunoco argues that the Commission should apply the holding in *Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission v. Burgly Gas and Oil*, Docket No. C-2014-2411284 (Opinion and Order entered March 14, 2019), as authority for the Commission to directly consider and approve the joint petition for settlement filed by the parties without transferring the matter to the OALJ for assignment of a presiding officer. However, in contrast with the present case, in *Burgly Gas and Oil* there were no other interested parties to the dispute. Specifically, there were no pending petitions to intervene to consider relevant to the joint petition for settlement at issue in that case. *Burgly Gas and Oil* at 3-5. Further, in *Burgly* the respondent utility had not actively disputed the factual allegations of the Complaint. In *Burgly*, the utility filed Preliminary Objections challenging the legal sufficiency of the underlying Complaint. In the present Case, Sunoco filed an Answer and New Matter directly disputing the material factual allegations of the Complaint, and thereby establishing a contested adversarial proceeding. *Id*.

Based upon the material factual and procedural distinctions, we decline to apply *Burgly Oil and Gas*, as Sunoco suggests, beyond the facts presented in *Burgly* as precedent for Commission review of Joint Settlements. Where, as here, the utility has filed an Answer disputing the material factual allegations of the Complaint, and where there are multiple interested parties seeking to intervene in the formal proceeding, *Burgly* is not relevant in determining whether a matter should be referred to the OALJ for assignment of a presiding officer.

In arguing for application of *Burgly*, Sunoco correctly asserts that, to date, Sunoco and I&E are the only parties to the dispute, and no hearing has been held. Statement of Sunoco at 2. However, there are multiple interested parties to this proceeding with outstanding petitions to intervene which have not yet been addressed.[[10]](#footnote-10) Interested parties are entitled to a timely consideration of the merits of their Petitions to Intervene, consistent with 52 Pa. Code § 5.75(b).

As a matter of fairness, the interested parties which filed requests to intervene should 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 were filed. Otherwise, party litigants could delay a hearing until a joint settlement is filed for the purpose of preventing intervention by interested parties.[[11]](#footnote-11)

Under the circumstances of this case, where there are multiple outstanding petitions to intervene which, notably, were filed *prior* to the Joint Petition for Settlement, and where a Response in Opposition to approval of the settlement has been filed, it is appropriate to refer the matter to the OALJ for determinations on the Petitions to Intervene and the Response in Opposition to Approval and also, for determination as to whether an evidentiary hearing on the specific allegations raised in I&E’s Complaint is necessary. In the circumstances, the presiding officer should render the discretionary determination, in the first instance, whether a hearing is necessary in the public interest, as to the Complaint and Answer, the Petitions to Intervene and Answers in Opposition thereto, the Joint Petition for Settlement, and any responsive filings.[[12]](#footnote-12)

Therefore, under the circumstances of this proceeding, we find unpersuasive, the Joint Petitioners’ supporting arguments that we directly consider the Joint Petition. Accordingly, we shall deny the Joint Petitioners’ request that we directly consider and approve the Joint Petition.

**III. Conclusion**

Based upon our consideration of the allegations of I&E’s Formal Complaint and Sunoco’s Answer and New Matter, and the procedural posture of the case, we conclude that, in the interests of assuring due process for all interested parties, this proceeding, including the Joint Petition for Settlement, the pending Petitions to Intervene and Answers in Opposition thereto, the Response in Opposition to the Joint Petition, and the Motions to Strike the Response, shall be referred to the OALJ who shall assign this matter to a presiding administrative law judge for further proceedings and the scheduling of hearings as may be deemed necessary, consistent with the due process requirements of Section 703 of the Public Utility Code. 66 Pa. C.S § 703 (pertaining to procedures on formal complaints); **THEREFORE,**

**IT IS ORDERED:**

1. That the Formal Complaint proceeding initiated at this docket by the Bureau of Investigation and Enforcement on December 13, 2018, alleging violations of state and federal gas safety regulations by Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners, discovered in connection with the investigation of an ethane and propane leak that occurred on April 1, 2017, in Morgantown, Berks County, shall be referred to the Commission’s Office of Administrative Law Judge who shall assign this matter to a presiding administrative law judge for such further proceedings and the scheduling of hearings as may be deemed necessary on an expedited basis.

2. That the Petitions to Intervene, filed by, or on behalf of, Thomas Casey on December 21, 2018, West Goshen Township on January 18, 2019, Josh Maxwell on February 8, 2019, West Whiteland Township on February 11, 2019, and Edgmont Township on March 19, 2019, and the Answers filed in response thereto by Sunoco Pipeline L.P. on January 10, 2019, February 7, 2019, March 4, 2019, and March 4, 2019, respectively, at this docket, 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 on April 3, 2019, by the Commission’s Bureau of Investigation and Enforcement and Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners, shall be referred to the Commission’s Office of Administrative Law Judge for such further proceedings as deemed necessary.

4. That the Response in Opposition to the Joint Petition for Settlement, filed on behalf of the Flynn Complainants on April 12, 2019, at this docket, shall be referred to the Commission’s Office of Administrative Law Judge for such further proceeding as deemed necessary.

5. That the 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 filed at this docket shall be referred to the Commission’s Office of Administrative Law Judge for such further proceeding as deemed necessary.

6. That the Motion of Sunoco Pipeline L.P to Strike as Premature the Flynn Complainants’ 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 proceeding as deemed necessary.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 23, 2019

ORDER ENTERED: June 10, 2019

1. Mr. Maxwell signs the cover letter to the filing with his title as Mayor of Downingtown under his name. However, he does not sign any other document in the filing with that title; nor does he represent in this filing that he is filing as the Mayor. [↑](#footnote-ref-1)
2. The Flynn Complainants are participants in a separate proceeding involving Sunoco (*See*, *Flynn v. Sunoco Pipeline*, L.P., Docket No. C-2018-3006116) and have not filed a Petition to Intervene in the present proceeding. [↑](#footnote-ref-2)
3. The “request” of the parties is set forth in the Joint Petition under the heading of “Conditions of Settlement.” It is unclear whether the condition of settlement is that the procedural request be granted or was that each party agree to assert the procedural request. This is a material term if the agreement is voided by our assignment of the matter to OALJ. [↑](#footnote-ref-3)
4. Sunoco has not filed an Answer in Opposition to the Petition of Edgmont Township. [↑](#footnote-ref-4)
5. 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). [↑](#footnote-ref-5)
6. 52 Pa. Code 5.231(a) [↑](#footnote-ref-6)
7. See, *i.e*., *I&E* *v. PECO*, C-2015-2479970 (Order entered October 27, 2016). [↑](#footnote-ref-7)
8. 66 Pa. C.S. § 703(b)(providing for notice of hearing to all parties in interest *if any is required*, and that the Commission may dismiss a complaint without hearing if none is required in the public interest) (emphasis added). [↑](#footnote-ref-8)
9. *See*, 52 Pa. Code § 5.75 (b)(providing for action taken by the Commission or presiding officer on petitions to intervene as soon as practicable after the time for filing an answer to the petition). [↑](#footnote-ref-9)
10. Consideration of the petitions to intervene was delayed by the grant of the Joint Petitioners’ procedural extensions sought for purposes of settlement, including: on December 17, 2018, Sunoco filed an unopposed request for an Extension of Time until January 16, 2019, to file its answer to the Complaint; on January 9, 2019, Sunoco filed a second unopposed request for an Extension of Time requesting that the deadline for its responsive pleadings be extended an additional ten days until January 26, 2019, making the new deadline January 28, 2019; on January 28, 2019, Sunoco filed a Third Petition for an Extension of Time until January 31, 2019, to file its responsive pleading; on February 19, 2019, I&E filed a Petition for an Extension of Time until March 2, 2019 to file its Response to Sunoco’s New Matter; on March 1, 2019, I&E and Sunoco filed a Joint Letter seeking abeyance of the proceedings pending submission of a settlement; and finally, on April 3, 2019, the instant Joint Petition for Approval of Settlement was filed by I&E and Sunoco. [↑](#footnote-ref-10)
11. This Opinion and Order addresses neither the merits of the Petitions to Intervene, nor whether a right to hearing exists regarding the Petitions. The presiding officer retains discretion to determine whether a hearing is necessary in the public interest to render a decision on the merits of each Petition to Intervene, pursuant to Section 703(b) of the Public Utility Code, 66 Pa. C. S. § 703(b) and 52 Pa. Code § 5.485 (presiding officer’s conduct of hearings). [↑](#footnote-ref-11)
12. We note that, because the Joint Petitioners assumed the matter would not be transferred to OALJ, the terms of the Joint Petition for Settlement do not to comply with provision of 52 Pa. Code § 5.232(b)(c) and (d), regarding the assertion of the positions of the parties, or allowance for comment by the parties before the ALJ renders an initial decision. [↑](#footnote-ref-12)