



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

July 1, 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 Answer in Opposition to the Flynn Complainants'
Late-Filed Petition to Intervene**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Answer in Opposition to the Flynn Complainants' Late-Filed Petition to Intervene in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

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

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

Enclosure

cc: Honorable Elizabeth H. Barnes
David J. Brooman, Esquire (counsel for West Goshen & Upper Uwchlan Townships)
Richard C. Sokorai, Esquire (counsel for West Goshen & Upper Uwchlan Townships)
Mark R. Fischer, Jr., Esquire (counsel for West Goshen & Upper Uwchlan Townships)
Thomas Casey (*pro se* Petitioner)
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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

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO THE LATE-FILED PETITION TO INTERVENE OF
THE FLYNN COMPLAINANTS**

TO THE HONORABLE ELIZABETH H. BARNES:

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 § 5.66, files this Answer opposing the Flynn Complainants’¹ (“Flynn Complainants” or “Petitioners”) Petition to Intervene in this proceeding as it was untimely filed by several months without good cause. Furthermore, the individuals that represent the Flynn Complainants lack standing to represent all citizens of Chester and Delaware Counties, let alone any other geographic region within the Commonwealth, and have not averred how they were specifically and individually harmed by the allegations raised in this proceeding. Therefore, a denial of the Petition is warranted as the Flynn Complainants have not demonstrated that they maintain a unique interest that is not already sufficiently represented by I&E.

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 aver that they 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.

This matter was initiated over six (6) months ago by the filing of I&E's Complaint against Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners ("SPLP" or "Company") on December 13, 2018. However, Petitioners took no steps to participate in this proceeding until the Commission recently remanded the matter to the Office of Administrative Law Judge ("OALJ") for consideration of petitions to intervene that had already been filed by certain persons and entities. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners*, Docket No. C-2018-3006534 (Order entered June 10, 2019) at Ordering Paragraph No. 2. Now, at this advanced stage of the proceeding and long after the challenge of reaching a mutually acceptable settlement has been completed, Petitioners seek to intervene for the primary purposes of disrupting this Commission proceeding in order to deluge the Parties with unrelated discovery for the purpose of acquiring information from SPLP for their own purposes to enrich their data banks for use in their separate proceeding before the Commission. *See* Petition at ¶ 14. Indeed, Petitioners had attempted to incorporate the entirety of I&E's Complaint in their Amended Complaint² and only when that effort failed³ did the Flynn Complainants seek intervention here.

As explained in greater detail below, the Petitioners' request is untimely and should be denied because it would delay the orderly progress of this case and unreasonably waste time by interjecting issues that are completely outside the scope of this proceeding. Furthermore, the Flynn Complainants have not demonstrated that the granting of their Petition to Intervene would protect an interest that is not already sufficiently represented by I&E making their duplicative participation nothing but a burden on the orderly course of this proceeding. Moreover, the Flynn

² *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117 and C-2018-3006116 (Amended Complaint filed December 20, 2018) at ¶ 74.

³ *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117 and C-2018-3006116 (Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order issued June 6, 2019) at 6.

Complainants' introduction of extra record evidence should be disallowed and the expert report attached to their Petition should be stricken from their filing.

I. BACKGROUND

1. This proceeding was initiated by the filing of I&E's Complaint against Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners ("SPLP" or "Company") on December 13, 2018, alleging violations of the United States Code, Code of Federal Regulations and Pennsylvania Code that I&E avers were discovered during an investigation of I&E's Safety Division of an ethane and propane leak that occurred on SPLP's Mariner East 1 ("ME1") pipeline on April 1, 2017, in Morgantown, Berks County, Pennsylvania. Notably, the Petitioners do not claim that they reside or work in Berks County or anywhere near the site of the leak. The leak did not result in a fire, explosion or cause any personal injury.

2. The I&E Safety Division determined that the leak was attributed to corrosion and this determination led the I&E Safety Division to examine SPLP's corrosion control program, including its cathodic protection practices.⁴ In short, I&E alleged that SPLP's corrosion control program was deficient as it relates to ME1 under practices and procedures that were in effect during the time of the April 1, 2017 leak in Morgantown. Those practices and procedures have since been revised and the revised procedures have been implemented.

3. After receiving an extension of time, SPLP filed a timely Answer and raised New Matter to I&E's Complaint on January 31, 2019. By Secretarial Letter dated February 22, 2019, I&E was granted an extension of time until March 4, 2019 to file a Reply to SPLP's New Matter. I&E and SPLP actively engaged in extensive settlement negotiations during the first quarter of 2019 and on March 1, 2019, the Parties announced by letter that they had achieved a settlement-

⁴ Cathodic protection is a method of controlling corrosion on the surface of a metal pipeline by supplying electrical current.

in-principle on that same day and requested to hold the matter in abeyance pending the filing of a settlement agreement. 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.

4. During the pendency of the settlement negotiations that ultimately culminated in the Joint Petition for Approval of Settlement, several persons and entities sought to intervene in this matter: 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 Township⁵ on March 19, 2019. I&E and SPLP recognized these interests by expressly including language in the Joint Petition for Settlement which provided an opportunity for any interested entity or person to file comments to the Settlement Agreement followed by a reply comment period for I&E and SPLP. The Joint Petition for Approval of Settlement was submitted to the Commission directly for its review and consideration of the outstanding Petitions to Intervene.

5. On April 12, 2019, the Flynn Complainants filed a Response to the Joint Petition for Approval of Settlement. I&E and SPLP filed separate Answers in Opposition on May 2, 2019.

6. By Commission Order entered June 10, 2019, this settled matter was referred to OALJ for, *inter alia*, further proceedings and the scheduling of hearings as may be deemed necessary on an expedited basis.

7. The agreed-upon terms that are set forth in the Settlement that was filed with the Commission and has now been referred to presiding Administrative Law Judge (“ALJ”) Elizabeth H. Barnes are unquestionably in the public interest as close scrutiny of the settlement

⁵ Edgmont Township’s Petition to Intervene was filed after I&E and SPLP reached a settlement-in-principle.

terms and conditions reveals SPLP has agreed to undertake measures that greatly surpass Federal pipeline safety requirements and perform those measures in an expedited time frame. Notably, SPLP agreed in this Settlement to retain an independent expert to conduct a Remaining Life Study of ME1. In a Statement that was released on February 8, 2019, Governor Wolf called upon the Commission to require “that a remaining life study of Mariner East 1 be completed and reviewed by independent experts. Such a study should thoroughly evaluate the safety of the existing pipeline and prepare a plan to implement the findings of that study as soon as possible.” A copy of Governor Wolf’s Statement is appended as I&E Exhibit 1. The instant Settlement favorably answers the Governor’s call.

8. Additionally, SPLP has agreed to perform in-line inspections (“ILI”) of ME1 at eighteen (18) month intervals for the next three (3) calendar years. Such inspections use tools to detect and record irregularities in pipelines, such as corrosion. Similarly, SPLP has agreed to perform Close Interval Surveys (“CIS”) of ME1 at the same intervals and frequency as the ILI runs to evaluate the effectiveness of SPLP’s corrosion control program.

9. Simply stated, if the instant matter results in a proceeding that is litigated, the carefully negotiated terms of the Settlement Agreement will be disturbed and a strict reading of the applicable regulations may render it difficult for the Commission to direct SPLP to perform the very relief that is agreed to in the Settlement.

10. Indeed, it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills, MHC, LLC*, Docket No. C-2015-2468131 (Initial Decision issued June 7, 2017 at 8; Final Order adopting

Initial Decision entered August 11, 2016). *See also* 52 Pa. Code § 69.401 (providing that negotiated settlements or stipulations are often preferable to those achieved at the conclusion of a fully litigated rate proceeding). It is difficult for I&E to contemplate a better example than the instant Settlement to demonstrate an occasion where a settled outcome would result in more preferable terms than a litigated proceeding. Therefore, the Settlement Agreement should be expeditiously approved without modification.

II. ANSWER IN OPPOSITION TO THE LATE-FILED PETITION TO INTERVENE

11. The Flynn Complainants' Petition was untimely filed and should be denied.

Section 5.74(b)(1) of the Commission's regulations provides that petitions to intervene should be filed as follows:

no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53 (relating to applications requiring notice; and time of filing) absent good cause shown.

52 Pa. Code § 5.74(b)(1). Section 5.53 of the Commission's regulations provides that "a protest shall be filed within the time specified in the published notice of the application. If no protest time is specified, the protest shall be filed within 60 days of publication of the notice."

12. I&E's Complaint was filed on December 13, 2018, and the Flynn Complainants' Petition was filed on June 11, 2019, 180 days after the filing of the pleading that initiated this matter. It is undeniable that the Flynn Complainants' Petition was not filed within the requisite sixty (60) day timeframe. Thus, it is necessary to examine whether the Flynn Complainants presented good cause for the late filing.

13. In the *Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH*, Docket Nos. A-212285F0096 and A-230073F0004 (Opinion and

Order entered May 9, 2002), at 6, the Commission established four (4) standards to determine whether good cause has been established to accept a late-filed protest. Those standards are as follows: (a) Whether the petitioner has a reasonable excuse for missing the due date; (b) whether the proceeding was contested at the time of the filing of the protest; (c) whether the receipt of the late filed protest would delay the orderly progress of the case; and (d) whether the late filed protest significantly broadens the issues or shifts the burden of proof. The same criteria have been analyzed concerning late-filed interventions in I&E enforcement proceedings. *See Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Penn Power Co.*, Docket No. C-2012-2307244 (Order entered August 29, 2013) (*West Penn Power Order*). Consideration of these criteria demonstrates, as set forth *infra.*, that granting the Flynn Complainants' request to intervene would be highly prejudicial to I&E and SPLP and contrary to the public interest.

a. The Flynn Complainants' Petition Failed to Offer Any Reasonable Excuse.

14. With respect to the first standard, the Petitioners did not present a reasonable excuse for missing the intervention due date by approximately four (4) months. The Flynn Complainants were well aware of this proceeding at a much earlier stage as evidenced by the filing of their Amended Complaint on December 20, 2018 in *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117 and C-2018-3006116, which sought to incorporate all of the allegations of I&E's Complaint in the instant matter. Despite being aware of I&E's Complaint when it was filed, the Flynn Complainants elected not to intervene in this matter until their attempts of incorporating I&E's allegations into their own proceeding failed. Such error in judgment does not demonstrate good cause for the untimeliness of the Petitioners' filing, which surpasses the already generous sixty (60) day deadline by more than three times. Granting the Flynn Complainants' intervention would result in an unreasonable and inappropriate precedent

that rewards petitioners who were well aware of the initiation of a complaint proceeding but wait until a settlement is reached to obtain party status. Furthermore, granting the Flynn Complainants' intervention would open the floodgates and permit any person or entity who may be upset with SPLP's pipelines to intervene in this already settled matter. Such approach is completely inconsistent with the spirit and purpose of the rules permitting intervention and must be denied.

b. The Flynn Complainants' Petition is Rendered Moot by the Filed Settlement.

15. Regarding the second standard, as the result of the filing of the Settlement Agreement, this matter is no longer contested. Accordingly, the Flynn Complainants' have failed to satisfy the second criteria justifying late-filed interventions.

c. The Flynn Complainants' Petition Unnecessarily Delays the Implementation of the Settlement Terms.

16. With respect to the third standard, consideration of the late-filed intervention will certainly delay the orderly progress of this case. As explained in more detail above, I&E argues that the Joint Petition for Settlement should be approved without modification in an expeditious fashion so that the public may quickly realize the benefits of the significant measures achieved by the terms of the Settlement. Permitting the Flynn Complainants to initiate discovery and litigate the allegations in I&E's Complaint at this juncture would create a chaotic proceeding that would waste time and resources that the Parties sought to avoid expending by entering into Settlement. All allegations in I&E's Complaint have been amicably resolved. Furthermore, any litigation of the I&E Complaint proceeding would most certainly cause the carefully crafted Settlement terms to fail⁶ potentially without the ability to achieve similar relief in a litigated

⁶ See Paragraph 21 of the Settlement Agreement wherein a Party may elect to withdraw from the Settlement if any terms of the Settlement are modified.

outcome as SPLP has agreed to perform measures that exceed the requirements set forth in the Federal pipeline safety regulations.

d. The Flynn Complainants' Petition Introduces Unnecessary Issues.

17. Regarding the fourth standard, the Flynn Complainants' late-filed intervention unreasonably broadens the issues raised in I&E's Complaint and the agreed-upon terms of the Settlement. SPLP's corrosion control program as it relates to the integrity of ME1 is the narrow focus of this proceeding. The Flynn Complainants do not allege any specific issue with corrosion or cathodic protection on ME1 that adversely impacts them. Rather, the Flynn Complainants wish to open this proceeding to examine the condition of pipelines other than ME1 and all of SPLP's integrity management procedures in Chester and Delaware Counties. Petition at ¶¶ 5, 22, 23 and 26.

18. The Flynn Complainants' Petition to Intervene is a thinly veiled attempt to gain party status in this proceeding in order to conduct discovery of I&E and SPLP given that the Petitioners' efforts to incorporate I&E's Complaint in its own proceeding and attempt to subpoena I&E records failed.⁷ The Flynn Complainants' efforts to sabotage the terms of the instant Settlement, which undoubtedly benefit the greater public, should be rejected.

19. Alternatively, if the Flynn Complainants' late-filed Petition is granted, it is well accepted that the late intervenor must accept the status of the proceeding as it exists. *Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission*, Docket No. L-00020156 (Order entered January 4, 2006) at 55. *See also West Penn Power Order* at 7 (granting a late-filed Petition to Intervene submitted by the administrators of the estate of a woman who was fatally

⁷ *See Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117 and C-2018-3006116 (Second Interim Order issued March 12, 2019).

injured when an electric distribution line fell onto her property. Although determining that the estate had standing to intervene, the Commission found that the estate had to take the record as it existed and provided the opportunity for the estate to comment on the settlement). Here, this matter settled well before the Flynn Complainants filed their untimely Petition to Intervene, the Flynn Complainants should not be granted the right to discovery, an evidentiary hearing or the opportunity to introduce new evidence. Should the Flynn Complainants' late-filed Petition be granted, which it should not, the appropriate avenue for the Flynn Complainants to participate in this matter would be through the filing of comments regarding the Settlement, with the opportunity for I&E and SPLP to reply.

20. Apart from the lateness of the Petition, the Flynn Complainants have failed to demonstrate that the granting of the Petition would protect an interest that is not sufficiently represented by an existing party in this case - I&E. Pursuant to Section 5.72 of the Commission's regulations, a petition to intervene may be filed by a person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. 52 Pa. Code § 5.72. Section 5.72 further provides that the interest may be one in which the person is directly affected by the proceeding and **“which is not adequately represented by the existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”** 52 Pa. Code § 5.72(a)(2)(emphasis added).

21. In order to confer standing in a proceeding, the interest must be substantial, immediate and direct. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (1975). A “substantial” interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. *George v. Pa.*

Pub. Util. Comm'n, 735 A.2d 1282, 1286 (Pa. Cmwlth. Ct. 1999), citing *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267, 1270 (1996). A “direct” interest requires a showing that the matter complained of caused harm to the party's interest. *Id.* An “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question. *Id.*

22. The Flynn Complainants are unable to demonstrate that they have a substantial interest in the outcome of this matter that surpasses the common interest of all citizens in having safe utility service. *Contra. West Penn Power Order* (a late-filed intervenor was permitted party status because the utility’s alleged failure to comply with the Public Utility Code and resulting death and injuries that occurred on the intervenor’s property constituted a substantial interest that could not be represented by another party). *See also Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, Docket No. C-2012-2308997 (Order entered February 19, 2013 at 23-24) (Finding that the administrator of an estate had a substantial, direct and immediate interest in the outcome of the I&E enforcement proceeding before the Commission, which focused on a utility’s compliance with the Public Utility Code and Commission regulations, as such outcome may affect a pending wrongful death action in the Court of Common Pleas). Here, by contrast, the Flynn Complainants have no greater interest than any other Pennsylvania citizen in the safe operation of SPLP’s pipelines, which traverse the Commonwealth, and that overall interest is charged to I&E and already adequately represented as witnessed by the favorable terms achieved in the Settlement.

23. The Flynn Complainants also have failed to demonstrate a direct interest in this proceeding by showing how SPLP’s corrosion control program and cathodic protection practices

specifically harmed their interests when the leak and subsequent corrosion investigated by I&E was located in a different county from where the Flynn Complainants reside.

24. Additionally, the Flynn Complainants have not demonstrated an immediate interest as they cannot show a causal connection between the allegations raised by I&E and injury that the Petitioners would experience that would not otherwise be protected by I&E. *See* the discussion in Paragraph No. 22, *supra*.

25. Furthermore, it is well established that the Flynn Complainants may only intervene on behalf of their individual interests and not to protect the greater public, including all residents of Chester and Delaware Counties, as they seek to accomplish. Petition at ¶ 20. The Commission has held that persons seeking intervention may not claim standing to vindicate the rights of third parties who also have the opportunity to be heard. *See PECO Energy Company Universal Services Three-Year Plan 2007-2009 Submitted in Compliance with 52 Pa. Code § 54.47*, Docket No. M-00061945 (Order entered April 9, 2008) at 6; *See also Mid-Atlantic Power Supply Association v. Pennsylvania Public Utility Commission*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000). Neither the Public Utility Code nor the Commission's regulations provide for a class action process at the Commission and the Flynn Complainants have not demonstrated that they sustained direct, immediate and substantial harm by the allegations at issue here to qualify as an interested party who is aggrieved sufficiently to have standing in this matter.

26. I&E, on the other hand, is the entity tasked with protecting the interests of the public by taking appropriate enforcement actions to ensure compliance with the Public Utility Code, Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, M-2008-2071852 (Order entered August 11, 2011). I&E, which includes the I&E Safety Division that is staffed with engineers

who possess an expertise in pipeline safety, is the entity with the technical knowledge to interpret and evaluate alleged pipeline safety violations. The public interest is not protected or better served in any way by allowing the Flynn Complainants to intervene in this matter and espouse unspecified, unnecessary or unrelated concerns that will only detract from the efforts made by I&E to reach a resolution of its Complaint that is by all measures a solid victory for this Commonwealth and its citizens.

27. Finally, the Flynn Complainants' attempt to introduce extra-record evidence should be rejected and the Preliminary Comments of Matergenics Materials and Energy Solutions, which was attached to the Flynn Complainants' Petition as Exhibit "A," should be stricken from the pleading. Extra-record evidence is commonly stricken as it introduces issues with hearsay and problems associated with the right to respond to evidence. *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Initial Decision issued August 16, 2018). The Commission has found that consideration of extra-record testimony violates the principal of fundamental fairness and violates the due process rights of other parties who are deprived of an opportunity to respond with cross-examination. *Paul v. PECO Energy Company*, Docket No. C-2015-2475355 (Order entered March 14, 2019).

28. Furthermore, the Flynn Complainants' Exhibit "A" is yet another thinly veiled attempt to acquire confidential information from I&E's investigation by a non-party who lacks standing to participate in the matter. The Flynn Complainants' arguments should not be indulged and the instant Settlement Agreement should be approved without modification and further delay.

III. CONCLUSION

For all of the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the late-filed Petition to Intervene of the Flynn Complainants be denied, that the extra-record evidence appended to the late-filed Petition be stricken, and that the Settlement Agreement be ruled upon and approved as being in the public interest without further delay.

Respectfully submitted,



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Senior Prosecutor
PA Attorney ID No. 207522

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Dated: July 1, 2019

I&E Exhibit 1

Governor Wolf Issues Statement on DEP Pipeline Permit Bar

February 08, 2019

Energy, Environment, Press Release, Statement

Harrisburg, PA – Governor Tom Wolf today released the following statement in response to the Department of Environmental Protection's suspension of review of all clean water permit applications and other pending approvals associated with the Energy Transfer, L.P. (ET) and subsidiaries until further notice due to non-compliance:

"The Department of Environmental Protection has acted swiftly and decisively to hold this operator accountable to the conditions of its permits. The permit bar by the Department of Environmental Protection is the latest step my Administration has taken to ensure pipeline operators and builders are accountable for the work they do in Pennsylvania. There has been a failure by Energy Transfer and its subsidiaries to respect our laws and our communities. This is not how we strive to do business in Pennsylvania, and it will not be tolerated."

The permit bar will affect the in-service date for the Revolution pipeline, which is currently not in service, and the Mariner East 2 pipeline. There are 27 approvals currently under review by DEP for Mariner East 2. The Revolution pipeline will remain closed until full compliance has been achieved.

In addition to the permit bar, the governor called on the Pennsylvania Public Utility Commission (PUC) to continue to hold Energy Transfer (ET) and its subsidiaries accountable to stringent safety requirements which the PUC is charged with enforcing. The governor noted that the budget he proposed earlier this week funds four new gas safety inspectors at the Public Utility Commission's Pipeline Safety Division to increase the PUC's capacity to hold pipeline operators accountable and ensure all safety requirements are strictly enforced."

"Today, I am calling upon the Public Utility Commission to compel ET to address lapses in communication by immediately providing county and municipal agencies responsible for public safety along the Mariner East Project route any and all information required under state and federal law to enable the preparation of robust emergency preparedness and communication plans. I have directed the Pennsylvania's Emergency Management Agency (PEMA) to coordinate with county and local leadership to assist with review of emergency management plans, and this engagement has already begun."

"I am also calling upon the PUC to require that a remaining life study of Mariner East 1 be completed and reviewed by independent experts. Such a study should thoroughly evaluate the safety of the existing pipeline and prepare a plan to implement the findings of that study as soon as possible.

State agencies have provided unprecedented oversight over the Mariner East Project, issuing more than 80 violations and levying nearly \$13 million in penalties. The Department of Environmental Protection has also implemented significant new processes as a result of the experience gained on a project of unprecedented scope and impact including:

- Improved coordination with the PUC and Federal Energy Regulatory Commission (FERC);
- Improved internal coordination and implementation through the establishment of a Regional Pipeline Permitting Coordination Office;
- And the development of new permit conditions and policy guidelines for future pipeline development projects including more than 100 special permit conditions.

Finally, the governor has called on the General Assembly to address gaps in existing law which have tied the hands of the Executive and independent agencies charged with protecting public health, safety and the environment, calling for the speedy passage of the following legislation to protect the public:

- No state agency currently has authority to review intrastate pipeline routes, which can result in pipeline companies deciding to site through densely populated high-consequence areas. Many states have passed legislation providing an enhanced role in

siting decisions to their utility or public service commission. Legislation should provide the Public Utility Commission with authority to regulate siting and routing of intrastate pipelines in Pennsylvania.

- Currently, pipeline operators are not required to provide information to schools which are in close proximity to a pipeline, including how to respond to a leak. Legislation should require this information for schools within 1,000 feet of a pipeline.
- Related legislation should require public utility facilities transporting natural gas or natural gas liquids to meet with the county emergency coordinator entrusted to respond in the event of natural gas release and provide vital emergency response and evacuation information.
- In order to respond to a potential leak, automatic or remote shutoff valves are critical. Legislation should require the installation of such valves in high consequence areas in compliance with federal requirements for transmission line valves.

**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
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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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Dated: July 1, 2019