



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 16, 2019

VIA ELECTRONIC FILING

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

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 Motion to Strike Exhibits "A" and "B" of West Goshen
Township's Public Comments in Opposition to the Joint Petition
for Approval of Settlement Dated April 3, 2019**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Motion to Strike Exhibits "A" and "B" of West Goshen Township's Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019 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 I.D. No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney I.D. No. 43319

SMW/ac
Enclosure

cc: Honorable Elizabeth H. Barnes
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

Docket No. C-2018-3006534

NOTICE TO PLEAD

TO WEST GOSHEN TOWNSHIP:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion to Strike Exhibits “A” and “B” of West Goshen Township’s Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019 in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified that a written response is due within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code §§ 5.61(a) and 5.103(c).



Stephanie M. Wimer
Senior Prosecutor
PA Attorney I.D. No. 207522

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

Dated: September 16, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3006534
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

**MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO STRIKE EXHIBITS “A” AND “B” OF WEST GOSHEN TOWNSHIP’S
PUBLIC COMMENTS IN OPPOSITION TO THE JOINT PETITION FOR
APPROVAL OF SETTLEMENT DATED APRIL 3, 2019**

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 § 5.103, files this Motion to Strike Exhibits “A” and “B” of West Goshen Township’s Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019 as the exhibits impermissibly consist of extra-record evidence in direct violation of presiding Administrative Law Judge (“ALJ”) Elizabeth H. Barnes’ July 15, 2019 Order (“July 15, 2019 Order”), and deprive I&E of due process, such as the ability to cross-examine the expert who authored the report set forth in Exhibit “A”, or otherwise challenge the statements of hearsay contained in both Exhibits.

In support of its Motion, I&E avers as follows:

I. BACKGROUND

1. The instant 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. 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.¹ 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 upon the acquisition of control of SPLP by Energy Transfer Company ("ETC") and the implementation of ETC's protocols.

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 that day a settlement-in-principle and requested to hold

¹ Cathodic protection is a method of controlling corrosion on the surface of a metal pipeline by supplying electrical current.

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; Edgmont Township on March 19, 2019; and the Flynn Intervenors on June 11, 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. By Commission Order entered June 10, 2019, the matter was referred to the Office of Administrative Law Judge (“OALJ”) for further proceedings.

6. On June 28, 2019, I&E and SPLP filed an Addendum to April 3, 2019 Joint Petition for Approval of Settlement to expand the time in which a party may elect to withdraw from the Settlement Agreement should the Settlement Agreement be modified in any way.

7. The matter was assigned to presiding ALJ Elizabeth H. Barnes who issued the July 15, 2019 Order that granted the Petitions to Intervene. While granting the

Petitions to Intervene, including permitting the intervention of West Goshen Township, ALJ Barnes provided the opportunity for all Intervenors to file Comments regarding the Joint Petition for Approval of Settlement filed by I&E and SPLP.

8. ALJ Barnes further held as follows:

I&E and [SPLP] have entered into a Settlement in full resolving the Complaint in this proceeding and although intervention is granted, intervenors have no rights that survive discontinuance of this proceeding. Petitioners must take the case as it stands at the time of intervention and cannot raise issues substantially beyond the scope of the Complaint, particularly where, as here, this matter is settled.

Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Sunoco Pipeline, L.P., Docket No. C-2018-3006534 (July 15, 2019 Order) at 14-15.

9. Judge Barnes also stated that:

In granting intervention, the Intervenors will be required to take the case as it currently stands seven months after the filing of the Complaint commencing this proceeding and following the submission of a settlement petition. The orderly progress of the case will be maintained, the issues will not be significantly broadened, and the burden of proof will not be shifted. **Intervenors will be precluded from introducing evidence into the record.**

Id. at 17 (emphasis added).

10. On August 15, 2019, West Goshen Township filed its Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019.

11. The Comment impermissibly appends Exhibit "A," the report of Richard B. Kuprewicz, President of Accufacts Inc. ("Accufacts"), and Exhibit "B," the Consent Order and Agreement between the Pennsylvania Department of Environmental Protection ("DEP") and SPLP dated February 8, 2018 and associated documents.

12. The Accufacts report and DEP Consent Order and Agreement consist of extra-record material that not only run afoul of the July 15, 2019 Order, but also deprive I&E of due process, including the ability to cross-examine West Goshen Township's expert and otherwise challenge the hearsay statements made in both Exhibits. Therefore, I&E moves to strike Exhibits "A" and "B" of West Goshen Township's Comment.

II. MOTION TO STRIKE

13. West Goshen Township's attempt to introduce and rely on the aforementioned extra-record evidentiary expert report and DEP Consent Order and Agreement should be rejected. It is well settled that intervenors take the record as they find it at the time of intervention. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Penn Power Co.*, Docket No. C-2012-2307244, Opinion and Order (entered Aug. 29, 2013) at 11, *citing, 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 Jan. 4, 2006). When West Goshen Township's intervention was granted on July 15, 2019, the I&E Complaint proceeding was fully resolved and the Joint Settlement Petition had been filed for approximately three-and-a-half months. Accordingly, West Goshen Township should not be permitted to present extra-record evidence at the eleventh hour and especially since I&E and SPLP fully resolved all issues raised by I&E in its investigation.

14. ALJ Barnes indeed recognized the settled procedural posture of the instant proceeding and instructed West Goshen Township that it has no rights that survive the discontinuance of the case and is prohibited from introducing evidence into the

proceeding. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006534 (July 15, 2019 Order) at 14-15 and 17.

15. West Goshen Township ignored this clear directive by appending Exhibits “A” and “B” to its Comment.

16. Furthermore, any consideration of West Goshen Township’s extra-record evidence would violate I&E’s due process. “The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness.” *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014); *Bridgewater Borough v. Pa. Pub. Util. Commission*, 124 A.2d 165 (Pa. Super. 1956); *McCormick v. Pa. Pub. Util. Commission*, 30 A.2d 327 (Pa. Super. 1943). “Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.” *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014); *Davidson v. Unemployment Compensation Bd. of Review*, 151 A.2d 870 (Pa. Super. 1959); *In re. Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946). Absent an evidentiary hearing, I&E is simply deprived of any attempt to question Mr. Kuprewicz of Accufacts or otherwise challenge the statements of hearsay made in his report and in the DEP Consent Order and Agreement and numerous associated documents. However, no evidentiary hearing can or should be held at this juncture since the matter has been fully resolved.

17. In the event that I&E’s Motion to Strike is denied, I&E requests an opportunity to file a written response to Exhibit “A” of West Goshen Township’s

Comment, the Accufacts report, and Exhibit "B," the Consent Order and Agreement between DEP and SPLP dated February 8, 2018 as well as all associated documents.

18. Based on the foregoing, the extra-record evidence set forth in Exhibits "A" and "B" of West Goshen Township's Comment should be stricken and disregarded by the presiding ALJ.

III. CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judge Elizabeth H. Barnes grant its Motion to Strike Exhibits "A" and "B" of West Goshen Township's Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019, and disregard said Exhibits in the disposition of the above-captioned matter.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney I.D. No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney I.D. No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
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Dated: September 16, 2019

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Respondent

Docket No. C-2018-3006534

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:

Thomas J. Sniskcak, Esquire
Kevin J. McKeon, Esquire
Whitney E. Snyder, Esquire
Hawke, McKeon & Sniskcak LLP
100 North Tenth Street
Harrisburg, PA 17101
kjmckeon@hmslegal.com
tjsniskcak@hmslegal.com
wesnyder@hmslegal.com

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

Michael S. Bomstein, Esquire
Pinnola & Bomstein
Suite 2126 Land Title Building
100 South Broad Street
Philadelphia, PA 19110
mbomstein@gmail.com

Counsel for Flynn Intervenors

David J. Brooman, Esquire
Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
rsokorai@highswartz.com
mfischer@highswartz.com

*Counsel for Upper Uwchlan Township &
West Goshen Township*

Thomas Casey
1113 Windsor Drive
West Chester, PA 19380
tcaseylegal@gmail.com

Pro se Intervenor

Vincent M. Pompo, Esq.
Alex Baumler, Esq.
Lamb McErlane, PC
24 East Market Street, Box 565
West Chester, PA 19381-0565
vpompo@lambmcerlane.com
abaumler@lambmcerlane.com

Counsel for West Whiteland Township

Josh Maxwell
219 William Street
Downingtown, PA 19335
jmaxwell@downingtown.org

Pro se Intervenor

Michael P. Pierce, Esq.
Pierce & Hughes
17 Veterans Square
P.O. Box 604
Media, PA 19063
mppierce@piercelandhughes.com

Counsel for Edgmont Township



Stephanie M. Wimer
Senior Prosecutor
PA Attorney I.D. No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

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