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September 16, 2019

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Sunoco Pipeline L.P. Docket Number C-2018-3006534; **SUNOCO PIPELINE
L.P.'S MOTION TO STRIKE PORTIONS OF WEST GOSHEN
TOWNSHIP'S COMMENTS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline
L.P.'s Motion to Strike Portions of West Goshen Township's Comments.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth H. Barnes
Per Certificate of Service

Respectfully submitted,



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Dated: September 16, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

**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.,	:	
	:	
Respondent.	:	
	:	

**SUNOCO PIPELINE L.P. MOTION TO STRIKE PORTIONS OF WEST GOSHEN
TOWNSHIP'S COMMENTS**

Pursuant to 52 Pa. Code § 5.103 and Your Honor's July 15, 2019 Order,¹ Sunoco Pipeline L.P. (SPLP) moves to strike portions of West Goshen Township's (WGT) August 15, 2019 Comments that ignore Your Honor's Order on the procedure and legal standards applicable to Comments in this proceeding in an attempt to introduce evidence, broaden issues, and make impertinent and scandalous allegations and collateral attacks on a final Commission order. Your Honor ruled:

In granting intervention, the Intervenor 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. **Intervenor will be precluded from introducing evidence into the record.**

¹ *Bureau of Investigation and Enforcement v. SPLP*, Docket No. C-2018-3006534, Order Granting Petitions to Intervene at 17 (Order entered July 15, 2019) (ALJ Barnes).

July 15 Order at 17 (emphasis added). WGT ignored this ruling by attempting to introduce evidence and broaden issues as well as including impertinent and scandalous allegations and a collateral attack on a prior Commission Order in its Comments.

Accordingly, SPLP moves to strike the following portions of WGT's Comments:

1. **Exhibit A to the Comments** (an expert report with accompanying CV and PowerPoint attachments) along with all statements within the Comments relying on these materials because this an attempt to introduce evidence in violation of the July 15 Order. An expert report, his CV, and a PowerPoint accompanying such report is clearly the type of materials that would be considered "evidence." The July 15 Order precluded Intervenors from submitting evidence, so these materials should be stricken, and appropriate sanctions imposed. Parties should not be able to treat this Commission's long history of adherence to the rules with a view that the rules do not apply to them because they do not regularly practice before it. The following portions of the Comments that rely on and discuss these materials should also be stricken:

- Page 10, third paragraph "The remainder ..." through fourth paragraph "as if set forth in full."
- Page 11, entire first paragraph.

2. **Exhibit B to the Comments** (a Department of Environmental Protection (DEP) Consent Order and Agreement with accompanying exhibits and appendices) along with all statements in the Comments relying on these materials because this is an attempt to introduce evidence and substantially broaden issues in this proceeding in violation of the July 15 Order. The DEP Consent Order and Agreement are clearly an attempt to introduce documentary evidence. Also, that order is irrelevant here and thus an attempt to broaden issues because it is irrelevant to approval of the Settlement. The Commission has never found that SPLP has violated a law or regulation over which it has jurisdiction, which is the applicable consideration regarding

“compliance history” for consideration of settlements under the policy statement. The DEP Consent Order and Agreement have nothing to do with SPLP’s relevant compliance history or any other factor relevant to the Commission’s consideration of the Settlement at issue here. Moreover, that order dealt with construction of the ME2/2X pipelines while this proceeding deals with the Mariner East 1 pipeline. The July 15 Order precluded Intervenors from submitting evidence or substantially broadening issues, so these materials should be stricken. The portions of the Comments that rely on these materials (Page 8, third paragraph “On top of . . .” through page 9 end of first paragraph and FN2) should also be stricken.

3. **Statement regarding the 12-inch pipeline.** The only pipeline at issue in this proceeding is the Mariner East 1 pipeline. The July 15 Order precluded Intervenors from substantially broadening the issues, so inclusion of statements regarding the 12-inch pipeline are irrelevant to approval of the Settlement. Thus page 2, second paragraph “Moreover, it is clear that the settlement does not include the equally ancient 12" "Point Breeze to Montello" work around pipeline now being used by SPLP to transport HVLs” should be stricken.

4. **Scandalous and Impertinent Matter.** Intervenors were allowed to submit comments regarding their position as to why the Settlement should not be approved. There are legal standards that dictate settlement approval (whether the Settlement is in the public interest including application of the Commission’s Policy Statement at 52 Pa. Code § 69.1201), and these legal standards do not include consideration of mudslinging, incendiary, unsupported, and/or incorrect accusations against SPLP. Accordingly, the following portions of the Comments should be stricken.

5. The below statements alleging breach of the WGT settlement agreement should be stricken as impertinent and scandalous because they are untrue, misleading, and irrelevant to

consideration of the Settlement at issue here. These statements misrepresent the Commission's prior findings and collaterally attack a Commission Order.

- Page 7, first paragraph "and SPLP's wanton disregard for binding agreements."
- Page 8, second paragraph "In addition to . . ." through first line of third paragraph "On top of this intentional disregard to honor its agreement with West Goshen Township."
- Page 10, first paragraph "Given the lack of candor by SPLP in West Goshen Township matters, this is unacceptable."

It is astonishing that WGT continues to claim SPLP breached the agreement between the parties or demonstrated a lack of candor when both Your Honor and the Commission expressly found that SPLP did not breach the agreement and that SPLP had notified and shared information with WGT as required under that settlement. *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 (Order entered Oct 1, 2018) at 15 (ALJ finding that SPLP did not breach duty of good faith and fair dealing), 16 (ALJ finding that SPLP satisfied notice provisions of agreement), 18 ("**The ALJ found that Sunoco did not breach the Agreement**"), 22 (adopting ALJ Barnes' Recommended Decision in full).

That Order is final and WGT cannot collaterally attack it. That Order is *prima facie* evidence that SPLP did not breach the agreement between the parties, and the Commission's findings are binding and case dispositive.² Moreover, these allegations are irrelevant to the consideration of the Settlement at issue here. Accordingly, these statements should be stricken as scandalous and impertinent.

² See 66 Pa. C.S. § 316 ("Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.").

6. The below statements are generally inflammatory, unsupported, and/or irrelevant to consideration of the Settlement at issue here and thus should be stricken as scandalous and impertinent.

- Page 7, first paragraph “none of the civil penalty assessments involved an operator as irresponsible and cavalier as SPLP, which has shown a wanton disregard for public safety and protection of the environment.”
- Page 8, third paragraph “On top of . . .” through page 9 end of first paragraph and FN2 (various allegations concerning construction of ME2/2X and DEP).
- Page 9, entire second paragraph referencing Governor’s press release.
- Page, 9 third paragraph “that it cannot continue to disregard public health, safety and welfare, and the environment.”

The Commission has never found that SPLP has violated a law or regulation over which it has jurisdiction, which is the applicable consideration regarding “compliance history” for consideration of settlements under the policy statement. The statements above have nothing to do with SPLP’s relevant compliance history or any other factor relevant to the Commission’s consideration of the Settlement at issue here. To consider statements in a press release as somehow evidence of non-compliance violates SPLP’s due process rights to a full and fair hearing prior to adjudication. Moreover, the terms “irresponsible,” “cavalier,” and “wanton disregard” are unsupported, untrue, and border on defamatory. These statements are clearly impertinent and scandalous and should be stricken.

WHEREFORE, SPLP respectfully requests that Your Honor strike³ the portions of West Goshen Township's Comments (including attachments) listed above, and to send the appropriate message to confirm that Your Honor and the Commissions rulings and rules are to be followed.

Respectfully submitted,



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Dated: September 16, 2019

³ If any of these portions of West Goshen Township's Comments listed above are not stricken, SPLP requests that it be provided 30 days to file additional Reply Comments addressing non-stricken materials. Additionally, SPLP reserves the right to seek interim relief directly to the Commission for this blatant disregard of Your Honor's Order and the Commission's rules and applicable law.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system.

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