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REPLY TO:

Center City

September 23, 2019

*Via Electronic Filing*

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

Re: Bureau of Investigation & Enforcements v.. Sunoco Pipeline L.P.,  
Docket No. C-2018-3006534

**FLYNN INTERVENORS' ANSWER TO SUNOCO'S MOTION TO  
STRIKE PORTIONS OF FLYNN INTERVENORS' COMMENT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Intervenors' Answer to Sunoco's Motion to Strike Portions of Flynn Intervenors' Comment in the above-referenced matter.

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

Very truly yours,

  
MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Hon. Elizabeth H. Barnes  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

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C-2018-3006534

v.

Sunoco Pipeline L.P.

**FLYNN INTERVENORS' ANSWER TO  
SUNOCO'S MOTION TO STRIKE COMMENT**

TO THE HONORABLE ELIZABETH H. BARNES:

Flynn Intervenors, by and through their attorney, Michael S. Bomstein, and pursuant to 52 Pa. Code § 5.103, hereby oppose Sunoco's Motion to Strike Portions of Comment and in support hereof answer as follows:

**Introductory**

***Sunoco's Motion violates 52 Pa. Code § 1.31***

Sunoco has now moved to strike portions of the Flynn Intervenors' Comment, partly for failure to comply with applicable Commission procedures. In filing the instant motion, however, Sunoco has violated very basic Commission procedures.

Sunoco has filed what it styles a "Motion." Motion practice is governed by 52 Pa. Code. § 5.1 expressly states that motions are considered pleadings. § 1.31 states that pleadings must be divided into numbered paragraphs; motions, then, must be divided into numbered paragraphs.

Sunoco's Motion to Strike plainly is not divided into numbered paragraphs. Sunoco, therefore, has violated Commission procedures. Flynn Intervenors, however, do not move to strike. Below they simply respond as closely as possible to Sunoco's organizational scheme.

*Sunoco's argument clearly ignores the three issues Judge Barnes raised in her Order.*

In her July 15<sup>th</sup> Order (“the Order”), the ALJ wrote: “I am persuaded to permit Intervenors not agreeing to the settlement to state the reasons why, to delineate the issues they would raise if the settlement were rejected and to outline how their interest would be affected if the settlement were accepted.” (Order at 17).

Flynn Intervenors submitted a comment that addressed all three issues raised by the judge. This necessarily involved adducing facts not mentioned in the parties’ filings.

### **I. Portions of Comments to be Stricken**

Sunoco has created a table identifying the portions of Flynn Intervenors’ Comment that it claims are objectionable. Flynn Intervenors accept that the table accurately summarizes Sunoco’s objections and identifies them as A – J. Also, insofar as the Flynn exhibits have led to any confusion, of course intervenors regret same.

### **II. Argument**

In order to expedite the ALJ’s consideration of the objections raised by Sunoco in their motion, Flynn Intervenors agree that Objections A – J are generally accurate in characterizing many of intervenors’ factual assertions as being outside the parties’ respective filings. Thus, to the extent that each of Sunoco’s arguments in A – J below elaborates on its claim that Flynn Intervenors have introduced new facts, intervenors do not quarrel with the claim and, therefore, below they do not address that claim.

#### **A. Dr. Zee’s Report**

Sunoco asserts that Flynn Intervenors are claiming rules do not apply to them because they do not regularly practice before the Commission. (Motion at 5). Nowhere in intervenors’ Comment have they made any request that they be excused from following rules.

If anything, as noted above in intervenors' Introduction, Sunoco has blatantly violated pleading rules but intervenors ask that the ALJ excuse respondent and ignore the breach. There are, however, ethical constraints that Sunoco's counsel have ignored that are more serious than a trivial violation of pleading rules.

Judge Barnes's Order laid out three areas to be addressed by intervenors desiring to submit a Comment: "I am persuaded to permit Intervenor not agreeing to the settlement to state the reasons why, to delineate the issues they would raise if the settlement were rejected and to outline how their interest would be affected if the settlement were accepted." (Order at 17).

It is astonishing that the instant Motion does not even address what the judge told the parties to do. Judge Barnes wrote that "[w]hat is in the public interest is decided by examining the effect of the proposed Settlement on entities and individuals such as those attempting to intervene in the instant case." (Order at 14).

Sunoco is asking the ALJ to base her decision on her statement concerning the state of the record. By ignoring the three issues Judge Barnes identified as needing to be addressed, Sunoco either believes the judge is stupid or that the judge might not realize that what she wrote in her Order is relevant to an evaluation of Flynn Intervenor's Comment. In either case, failure even to mention the three points is misleading, improper and a serious matter.

The settlement is significantly flawed and the parties have presented it to the ALJ on a "take-it-or-leave-it" basis. Sunoco asserts that important information should be withheld from the public. Flynn Intervenor respectfully disagrees with that position. Seventy-five (75) feet of an ancient corroded pipeline are unaccounted for in the aftermath of the Morgantown accident. Somewhere in the course of the two proceedings one would think that information should come out. Additional factual matters noted in the Comment also are relevant.

**B. EHB Matters**

Not addressed because the only objection is based on use of evidence outside the record.

**C. PHMSA Notices of Multiple PEPCO violations.**

Besides arguing Flynn is introducing evidence improperly, Sunoco claims the ALJ should only consider Sunoco's compliance history within Pennsylvania. No authority is offered in support of this contention other than Sunoco's footnotes, which do not support its assertion.

Sunoco also states that "The Commission has never found that SPLP has violated a law or regulation over which it has jurisdiction." (Motion at 7). The fact is that Sunoco on many well-known occasions has agreed to stipulated orders admitting violations and accepting fines. That does not count?

Sunoco is a notorious violator of the Commonwealth's environmental laws. Sunoco is operated by an out-of-state energy company that violates laws in multiple jurisdictions. If the company wants the benefit of interstate operations it must also accept the responsibility for interstate operations.

**D. The 12-inch Pipeline**

I&E alleged in its Complaint that the condition of the Morgantown pipeline segment raises concern over the condition of the rest of the ME1 pipeline. The 12-inch pipeline is roughly the same vintage and it must be considered that it could also suffer badly from corrosion.

If the ALJ believes that raising this issue impermissibly broadens the Comment inquiry, it certainly is within her discretion to so rule.

**E. Characterizations of Complaint and Answer and Factual Background**

Flynn Intervenors believe that all of the factual assertions in its Comment are supportable. Again, the ALJ can decide this for herself.

**F. The Missing Pipe Sections**

Sunoco blithely refers to 83 feet of pipe filling in an 8 foot gap as though that was a normal occurrence and that no explanation is required. Flynn Intervenors disagree.

Intervenors believe that failure even to offer an explanation casts a pall over the entire Morgantown investigation. There may very well be an innocuous explanation. Let them furnish it.

**G. The Interests of SPLP Customers**

Flynn Intervenors are not suggesting in their Comment that they were personally affected by the Morgantown leak. They were merely addressing the very specific factors that the Commission has said must be considered in evaluating a proposed settlement.

**H. The Marx Testimony**

The consequences of a worst-case rupture scenario are serious and very real. Sunoco has its own hazard assessment covering this topic but to date it has successfully hidden it from the public by not letting the public know it even exists.

Most recently, Sunoco has impermissibly marked the hazard assessment as “CSI,” thereby continuing to hide its knowledge. Flynn Intervenors will shortly be filing a motion to re-classify Sunoco’s assessment.

Delaware County has its own risk assessment and Flynn Intervenors and other commissioned one from Quest Consultants. The risk of catastrophe from an explosion on the same pipeline that leaked in Morgantown is real and it is raised here in response to the judge asking intervenors to outline how their interest would be affected if the settlement were accepted. *See Order at 17.*

**I. Other Improper Efforts to Broaden the Proceeding**

Sunoco raises ten examples of supposedly improper reference to matters that should not be considered by the judge. Flynn Intervenors believe that their Comment properly covers all these points and a response here would only be a repetition of what intervenors laid out in detail in their Comment. Accordingly, Flynn Intervenors adopt by reference what they stated in their Comment as to all points raised in the instant ten examples identified by Sunoco.

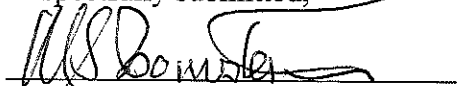
**J. Relief**

Sunoco argues that the ALJ should not consider the effect the proposed settlement may have on the proceedings in the Flynn case docketed at C-2018-3006116. Actually, Sunoco elsewhere has said or implied that approval of the proposed settlement could well have a *collateral estoppel* or *res judicata* effect on the matters raised in the Flynn formal complaint proceeding. Intervenors adopt by reference what they stated in their Comment.

**III. Conclusion**

For the reasons set forth above, Flynn Intervenors urge Your Honor to deny Sunoco's Motion to Strike.

Respectfully submitted,



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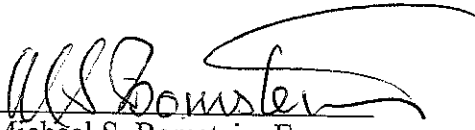
Attorney for *Flynn* Intervenors

Dated: September 23, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below as per the requirements of § 1.54 (relating to service by a party). The document also has been filed electronically on the Commission's electronic filing system.

*See attached service list.*

  
Michael S. Bomstein, Esq.

Dated: September 23, 2019



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