

LAW OFFICES
PINNOLA & BOMSTEIN

MICHAEL S. BOMSTEIN
PETER J. PINNOLA

ELKINS PARK OFFICE
8039 OLD YORK ROAD
ELKINS PARK, PA 19027
(215) 635-3070
FAX (215) 635-3944

100 SOUTH BROAD STREET, SUITE 2126
PHILADELPHIA, PA 19110
(215) 592-8383
FAX (215) 574-0699
EMAIL mbomstein@gmail.com

MT. AIRY OFFICE
7727 GERMANTOWN AVENUE, SUITE 100
PHILADELPHIA, PA 19119
(215) 248-5800

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 I&E MOTION TO
STRIKE PORTIONS OF FLYNN INTERVENORS' COMMENT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Intervenors' Answer to I&E 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

:
:
:
:
:
:

C-2018-3006534

v.

Sunoco Pipeline L.P.

**FLYNN INTERVENORS' ANSWER TO
I&E 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 the Motion to Strike Portions of Comment of the Bureau of Investigation & Enforcement (“I&E”) and in support hereof answer as follows:

1. Denied as stated. Admitted that the I&E Complaint so alleged. Whether or not the leak caused a fire, explosion or any personal injuries is unknown to intervenors because discovery of same has been denied.

2. Denied as stated. Admitted that the I&E Complaint so alleged. Whether or not the deficient practices have been revised or implemented is unknown to intervenors because discovery of same has been denied.

3. Admitted.

4. Admitted.

5. Denied as stated. I&E and Sunoco sought to avoid assignment of the matter to an administrative law judge. The Commission, however, elected to assign the case to the OALJ.

6. Admitted.

7. Admitted.

8. Denied as stated. I&E has notably failed to quote from the portion of the Order that set out the parameters of potential Comments. The judge 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).

9. Denied as stated. I&E has notably failed to quote from the portion of the Order that set out the parameters of potential Comments. The judge 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).

10. Admitted.

11. Denied as stated. Admitted only that an expert report was appended and that references were made to articles and information from websites. Flynn Intervenors deny this was impermissible.

12. Denied as stated. Admitted only that the two cases are connected and rulings in one may affect outcomes in the other.

13. Denied. Intervenors deny that their Comment runs afoul of the July 15, 2019 Order. They deny also that the Comment deprives I&E of due process.

II. Motion to Strike

14. Denied as stated. It is admitted that all of the statements quoted from the Comment are accurately repeated. It is admitted that none of the said statements may be found in the parties’ pleading or other filings. The parties obviously did not wish the ALJ to become aware of information that would jeopardize their settlement proposal. ¶ 14(o) of the Motion e.g.,

contains information that, if true, would directly undermine some of the claims made in the Joint Petition for Approval. Similarly, the fact that there may be some obvious deficiencies in the methodology proposed to be used is something the parties would not want the ALJ to know.

15. Admitted.

16. Denied as stated. I&E and Sunoco ignore the fact the ALJ has the discretion to reject the settlement for the good of the public. The parties ignore as well the fact that the ALJ invited intervenors to answer three specific questions in their Comment and that answers to those questions require a factual predicate of matters either ignore or not addressed in the prior pleadings and other filing. It is astonishing that the instant Motion does not even address what the judge told the parties to do.

17. Denied as stated. Admitted that the judge did say that intervenors would not be permitted to introduce evidence into the record. She also said, however, 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). Further, she said “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).

18. Denied as stated. Intervenor’s attempt to stop the settlement is not “thinly veiled;” It is not veiled at all. The settlement is significantly flawed and the parties have presented it to the ALJ on a “take-it-or-leave-it” basis. I&E asserts that important information should be withheld from the public. Flynn Intervenor respectfully disagree 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.

19. Denied. I&E's notion of the application of due process to the present matter is flawed. Certainly, the cited cases stand for general principles to which no one takes exception. In the context of cases decided on papers, without evidentiary hearings of any sort, I&E obviously would have both the right and the ability to file affidavits directly rebutting Dr. Zee's verified statement. It is odd, however, that I&E claims the right to be heard but contends that a hearing would be inappropriate.

20. For purposes of determining whether or not the proposed settlement should be approved, Flynn Intervenors have no objection to I&E's request for a right to file a written response.

21. Denied. For all the reasons set forth above, Flynn Intervenors believe the Motion to Strike should be denied.

III. Additional Responses to Motion

22. I&E's position appears to be that only persons with no knowledge of engineering should be permitted to comment in an engineering matter. Meghan Flynn has no knowledge of engineering but her expert, Dr. Zee, does. She has adopted his report as her comment.

23. Essentially, I&E's position is that facts do not matter. Flynn Intervenors respectfully submit that facts do matter.

24. In assigning this matter to an ALJ, the Commission in its Order of June 10, 2019, wrote in pertinent part that "...For the reasons discussed, *infra*, we shall refer the proceeding to the OALJ for assignment of a presiding officer...to determine whether any hearing is required, and to conduct such further proceedings as deemed necessary." (Order at 2).

25. This Order clearly left it in the ALJ's discretion to determine whether a hearing was required.

26. The Commission further wrote that "while the decision whether to hold a hearing is discretionary...where issues of material facts are raised, a hearing is required to protect due process concerns." (Opinion at 14).

27. Moreover, in accordance with the dictates of 66 Pa. C.S. § 1501, the well-being of the public is paramount and must override all other considerations.

28. Flynn Intervenors urge the ALJ to hold an evidentiary hearing in order to enable the judge to decide whether or not the settlement is in the public interest.

IV. Conclusion

The Joint Petition seeks approval without modification. For the reasons set forth above, substantial modification would be needed for the proposed settlement to be safe, reasonable, and adequate. The request for approval without modification, therefore, must be denied.

Respectfully submitted,



Michael S. Bomstein, Esq.

Pinnola & Bomstein

PA ID No. 21328

Email: mbomstein@gmail.com

Suite 2126 Land Title Building

100 South Broad Street

Philadelphia, PA 19110

Tel.: (215) 592-8383

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

C-2018-3006534-PENNSYLVANIA PUBLIC UTILITY COMMISSION BUREAU OF
INVESTIGATION AND ENFORCEMENT v. SUNOCO PIPELINE, LP a/k/a ENERGY
TRANSFER PARTNERS

THOMAS J SNISCAK ESQUIRE
KEVIN J. MCKEON ESQUIRE
WHITNEY E. SNYDER ESQUIRE
HAWKE MCKEON AND SNISCAK LLP
100 N TENTH STREET
HARRISBURG PA 17101
717.236.1300
Accepts E-Service
Representing Sunoco Pipeline, L.P.

MICHAEL P. PIERCE ESQUIRE
PIERCE & HUGHES PC
17 VETERANS SQUARE
PO BOX 604
MEDIA PA 19335
610.566.0911
Accepts E-Service
Representing Edgmont Township

CURTIS STAMBAUGH ASSISTANT
GENERAL COUNSEL
SUNOCO PIPELINE LP
212 N Third Street Suite 201
HARRISBURG PA 17101
717-236-1731
Accepts E-Service
Representing Sunoco Pipeline L.P.

DAVID BROOMAN ESQUIRE
RICHARD C SOKORAI ESQUIRE
MARK R FISCHER JR ESQUIRE
40 E AIRY STREET
NORRISTOWN PA 19404
610.275.0700
Accepts E-Service
*Representing Upper Uwchlan Township
& West Goshen Township*

VINCENT MATTHEW POMPO ESQUIRE
LAMB MCERLANE PC
24 EAST MARKET ST BOX 565
WEST CHESTER PA 19382-0565
610.430.8000
Accepts E-Service
Solicitor for West Whiteland Township

MICHAEL L. SWINDLER ESQUIRE
STEPHANIE M. WIMER ESQUIRE
400 NORTH STREET
PO BOX 3265
HARRISBURG PA 17120
717.783.6369
717.772.8839
Accepts E-Service

THOMAS CASEY
1113 WINDOSR DRIVE
WEST CHESTER PA 19380
484.678.4901
Accepts E-Service

JOSH MAXWELL
4 WEST LANCASTER AVENUE
DOWNINGTON PA 19335