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November 12, 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 ADDITIONAL REPLY COMMENTS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Additional Reply Comments to West Goshen Township's and Flynn et al's Public Comments in Opposition to the Joint Petition for Approval of Settlement filed on April 15, 2019.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC
UTILITY COMMISSION,
BUREAU OF INVESTIGATION
AND ENFORCEMENT

Complainant,

v.

SUNOCO PIPELINE L.P.,

Respondent.

Docket No. C-2018-3006534

ADDITIONAL REPLY COMMENTS OF SUNOCO PIPELINE L.P.

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Dated November 12, 2019

I. INTRODUCTION

Pursuant to the October 11, 2019 Interim Order Granting In Part And Denying In Part Motions To Strike, Sunoco Pipeline L.P. (SPLP) submits these Additional Reply Comments in response to the comments of West Goshen Township (WGT) and Megan Flynn *et al.*'s (Flynn), (collectively, Intervenor¹) to the Joint Petition for Settlement and Addendum² (Settlement) that SPLP and the Commission's Bureau of Investigation and Enforcement (BI&E) entered into that fully resolves this proceeding.

WGT and Flynn's expert reports and associated materials do not merit rejection or modification of the Settlement because the Settlement meets the public interest standard and those reports, even if they could be considered as evidence (which they are not), do not show otherwise. Instead the expert reports amount to a request for additional information and investigation akin to discovery, adjudication of what amounts to their own complaint, and request for relief ordering a wish list of relief that Intervenor's experts would prefer. This has no bearing on whether the Settlement SPLP and BI&E reached to resolve BI&E's Complaint is in the public interest. It is.

It is the express policy of the Commission as well as Your Honor "to encourage settlements."³ The Settlement meets the public interest standard and should be approved without modification for a myriad of compelling reasons. Most importantly, the Settlement

¹ Other persons were granted intervention in this proceeding. As used herein, Intervenor only refers to WGT and Flynn.

² On June 28, 2019, SPLP and BI&E filed an Addendum to the Settlement. The Addendum modifies the Settlement Agreement Condition of Settlement at Paragraph 21 in exchange for SPLP not exercising its withdrawal from the Settlement at this time due to the Commission's not considering the Settlement directly and instead referring the matter to an Administrative Law Judge for determinations of what, if any, further process is due or appropriate.

³ 52 Pa. Code § 5.231. ("It is the policy of the Commission to encourage settlements.")

unquestionably promotes public safety and achieves results that could not be achieved via litigation as the Settlement will have SPLP voluntarily go above and beyond applicable law and regulation.⁴ Specifically, the Settlement will have SPLP undertake a Remaining Life Study (which Governor Wolf requested in his February 19 press release⁵) and accelerate In-Line Inspections (ILI) and Close Interval Potential Surveys (among other terms that provide affirmative benefits). That Intervenor request more to suit their experts' fancy is of no moment, particularly where their requests are not required by any law or regulation.

The Commission could not order SPLP to perform these "above and beyond" provisions involuntarily as a result of this litigation because these measures are not required under current pipeline safety regulations. The Commission implicitly acknowledges this regarding inspection and survey frequency of testing in its June 13, 2019 Advanced Notice of Proposed Rulemaking at Docket No. L-2019-3010267 ("ANOPR") when it seeks to potentially implement more stringent regulations regarding frequency of these tests. *See* ANOPR at 16-19. State Senator Andrew Dinniman also essentially concedes that a remaining life study is not currently a regulatory requirement when he proposed a bill that would require such study and require the Commission to implement regulations regarding such study. SB 677 of 2019.⁶ To order SPLP to comply with regulations or law that have not even been drafted yet is *de facto* and illegal

⁴ *See* I&E Statement in Support of Joint Petition for Settlement at p. 5 ("I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation").

⁵ Press Release, Governor Wolf Issues Statement on DEP Pipeline Permit Bar (Feb. 8, 2019) (available at <https://www.governor.pa.gov/newsroom/governor-wolf-issues-statement-dep-pipeline-permit-bar/>)

⁶ (available at <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=S&billTyp=B&billNbr=0677&pn=0871>)

retroactive regulation that does not comport with longstanding Pennsylvania law, including its Constitution, The Commonwealth Documents Law, and the Regulatory Review Act.

Many of the features of the Settlement, *including the Governor's request for a Remaining Life Study, would be well underway but instead have been delayed (at great expense that could have been applied to undertaking the many safety features of the Settlement) numerous months and perhaps more until the Commission finally rules on the Settlement as a consequence of allowing these entities to intervene and delay the Settlement.*

That delay discourages settlement by allowing Intervenors who are prevented from injecting new issues and new relief by Your Honor's Order⁷ regarding their late intervention. In addition, it fails to promote public safety because the delay has prolonged implementation (not to mention causing scheduling and delay costs) of the mutually agreed public safety features of the settlement.

II. INTERVENORS' EXPERT REPORTS AND ASSOCIATED MATERIALS FAIL TO SHOW THE SETTLEMENT IS NOT IN THE PUBLIC INTEREST

A. The Public Interest Standard For Approval Of The Settlement

WGT and Flynn's expert reports (that essentially seek additional information, adjudication of allegations of the Complaint and their own allegations, adjudication of these claims, and injunctive relief) and other materials attached to their respective Comments do not merit rejection or modification of the Settlement. "It is the policy of the Commission to encourage settlements." 52 Pa. Code § 5.231(a). The standard for approval of the Settlement is not whether Intervenors or experts that they hired oppose it, allege it does not provide all of the relief requested in the Complaint or allegedly necessary to resolve the contested allegations of

⁷ July 15, 2019 Order Granting Petitions to Intervene at 14-15, 17-18, Docket No. C-2018-3006534 (Order entered Jul. 15, 2019) (Barnes, J.).

the Complaint (which by the nature of a settlement is a preposterous assertion), and/or want different or additional terms that fit their philosophy or opinions. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions **are in the public interest**. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

The Commission “evaluate[s] whether a proposed settlement satisfies the ‘public interest’ standard by a preponderance of the evidence of benefits, and **such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed**.” *Tanya J. McCloskey, Acting Consumer Advocate v. IDT Energy, Inc.*, Docket No. C-2014-2427657, Final Opinion and Order at 36 (Order entered June 30, 2016). The public interest includes more than just the interest of the parties and intervenors in litigation:

This Commission has historically **defined the public interest** as including ratepayers, shareholders, and the regulated community. *See Pa. PUC v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed Settlement on these “stakeholder” entities. *Id.*

Id. at 36. Notably, Intervenor are not private attorneys general as such status does not exist under Pennsylvania law⁸ and thus cannot purport to represent general interests of ratepayers, shareholders, other individuals, or the regulated community. Intervenor, particularly one like

⁸ *Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants’ Motion for Reconsideration of Second Interim Order at 5-6 (Order entered June 6, 2019) (Barnes, J.) (“The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa. Code § 1.8 as I&E to bring such a complaint against Respondent.”). Instead, that is the statutory duty of BI&E. Pursuant to 66 Pa. C.S. §§ 308, 701, and 52 Pa. Code § 1.8, BI&E is vested with the statutory enforcement and prosecutorial authority to bring Complaints to protect the public interest for violations of the Public Utility Code and the Commission’s regulations. “***BI&E will serve as the prosecutory bureau for purposes of representing the public interest . . . and enforcing compliance with the state and federal . . . gas safety laws and regulations.***” *Implementation of Act 129 of 2008 - Organization of Bureaus and Offices*, Docket No. M-2008-2071852, Final Procedural Order at 5 (Order entered Aug. 11, 2011) (emphasis added).

Flynn *et al.* who are openly against the pipelines ever operating, cannot hijack BI&E's Complaint and dictate what result BI&E, who by statute represents the interest of the entire public, finds acceptable and benefits the public. Allowing these opportunistic and repeated anti-pipeline Intervenor to do so will cause utilities or pipelines subject to the Commission's jurisdiction to be unwilling to negotiate resolution of BI&E complaints with BI&E if the settlement then becomes a blank check for intervenors to pen upon extra terms or conditions reflecting their individual interests or opinions of experts that they hired. Such result is far from a policy of encouraging settlements. In actuality, many of the features of the Settlement, *including the Governor's request for a Remaining Life Study, would be well underway but instead have been delayed numerous months and perhaps more until the Commission finally rules on the Settlement as a consequence of allowing these entities to intervene and delay the Settlement.* That delay neither encourages settlement, and to the extent it has delayed implementation (not to mention causing scheduling and delay costs) of the mutually agreed public safety features of the Settlement, fails to promote public safety.

Additionally, "the parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). *So, the question is simple: does the Settlement promote the public interest greater than the status quo? The question is not: does the Settlement promote additional relief and expanded issues that Intervenor, not statutorily empowered to represent the general public, want to pursue as part of their agenda in opposition to pipelines.*

B. WGT Accufacts Report

Intervenor WGT's purported expert, Mr. Kuprewicz, first alleges that there is insufficient information about certain allegations of the Complaint, including the specific type of corrosion and why SPLP replaced more pipe than the section that was sent for laboratory analysis.

Accufacts Report at 1-2. He is neither a lawyer nor a BI&E employee and is in no position to dictate what is or is not sufficient information regarding BI&E's allegations. Neither he nor WGT can adopt complainant status for BI&E's Complaint. Their rights under longstanding Pennsylvania law are entirely dependent upon BI&E continuing its complaint, which it will not do given the Settlement. Mr. Kuprewicz's testimony impermissibly injects under the Intervention Order a new issue arguing that the laboratory analysis should be made publicly available and that the Settlement should not be approved until the laboratory results are independently verified. *Id.* This has no bearing on whether the Settlement is in the public interest – whether it provides public benefits. Instead, Mr. Kuprewicz is essentially seeking information that he is not entitled to by law or by the Complaint itself and is seeking collaterally to litigate and adjudicate BI&E's Complaint with his attempt to engage in discovery into allegations, testing the credibility and accuracy of laboratory testing, and seeking injunctive relief. His allegations rely upon weighing evidence to adjudicate allegations in the Complaint and the proper remedy. That is not the standard here and Mr. Kuprewicz's allegations and attempt to use this proceeding to gather data are irrelevant.

Mr. Kuprewicz goes on to essentially argue that SPLP cannot be trusted to properly implement and examine the corrosion detection tests the Settlement requires, ILI tools and Close Intervals Surveys (CIS), and that BI&E will not have or be able to obtain information necessary to confirm SPLP's implementation of these terms. Accufacts Report at 2-5. There is no basis for this allegation, and he is not positioned to second guess Complainant BI&E here. He argues that more specific parameters for these tests should be imposed and that SPLP should have to create a map documenting various pipeline information. Mr. Kuprewicz's relief wish list ignores the Settlement's required reporting and communication to BI&E regarding corrosion testing and measurement and BI&E's ongoing enforcement authority through which BI&E can investigate

and request additional data concerning these issues if necessary. Mr. Kuprewicz's attempt to stand in the shoes of BI&E and modify relief provided in the Settlement has no bearing on whether the Settlement is in the public interest.

Mr. Kuprewicz next impermissibly adds and takes issue with SPLP's revision and implementation of revised procedures, arguing that the Settlement should not be approved unless there is evidence to his satisfaction that SPLP has adequately revised its procedures, based on BI&E's allegation in the Complaint that such procedures were inadequate. Accufacts Report at 5. Again, Mr. Kuprewicz has no right by regulation or law to be the arbiter of this and what is or is not sufficient generally or specifically given that BI&E has that legal authority and not him or WGT. He seeks impermissibly to litigate and adjudicate the settled Complaint and his allegations have no bearing on whether the Settlement is in the public interest. In its Answer, SPLP denied that its prior procedures were inadequate. Thus, Mr. Kuprewicz is again seeking discovery and determination of factual and legal issues raised in the Complaint – whether the prior procedures were inadequate and whether the new procedures are revised to address those alleged inadequacies. SPLP revised its procedures to BI&E's satisfaction. BI&E Statement in Support at 11-12. Whether such procedures have been revised to Intervenors' satisfaction is irrelevant to whether the Settlement is in the public interest.

Finally, Mr. Kuprewicz recommends additional reporting to BI&E regarding corrosion that he admits is not required by regulation. Accufacts Report at 6. Again, he is trying to step into BI&E's shoes and tell them what information he thinks they should require, and he is attempting to establish regulations outside of the rulemaking process. This ignores BI&E's ongoing investigative and enforcement oversight and has no bearing on whether the Settlement is in the public interest.

C. Flynn Matergenics Reports

Flynn's expert Dr. Zamanzadeh's Report goes even further in an attempt to litigate this matter, by impermissibly offering evidence and expanding issues in violation of the Intervention Order. He is essentially seeking a continuation of the allegations of the settled Complaint despite that anti-pipeline *Flynn et al.* have no right to prosecute further a complaint under longstanding Pennsylvania law when the complainant settles or discontinues its complaint. He opportunistically expands issues impermissibly under the Intervention Order and seeks an even greater wish list of relief.

His report relies on first assuming without any basis that SPLP's practices were in fact inadequate and then argues that the Settlement should not be approved unless the Settlement addresses all alleged inadequacies. Matergenics Report at 4. An intervenor's allegations are just that, contentions not fact that can be relied upon. First, it has not been established that SPLP's practices or procedures were non-compliant or inadequate – SPLP denied that its practices and procedures were non-compliant with applicable law and regulations. The Settlement is without admission of any wrongdoing. Dr. Zamanzadeh also seeks to use improperly this proceeding to obtain various technical information to first show that the procedures were inadequate and then to resolve those alleged inadequacies. That is litigation – discovering and adjudicating whether law or regulation was violated and then ordering necessary relief to address violations. Notably, openly anti-pipeline *Flynn et al.* have their own complaint (which includes allegations against ME1's operation) to present its case for that. They should not use this complaint to further their agenda to prohibit ME1 and ME2 from operation. Dr. Zamanzadeh's want to get information to back up his erroneous narrative is not the standard for approval of the settlement, which is a public interest standard that determines whether the settlement provides public benefits.

Dr. Zamanzadeh adds yet other issues impermissibly in violation of the Intervention Order and questions various allegations of the Complainant, such as the procedures for the excavation and testing of the pipe segment at issue, questioning condition of other pipe segments, and questioning why SPLP replaced a larger length of pipe than it tested, etc. Matergenics Report at 4-6. These questions are not relevant to whether the Settlement is in the public interest, but instead essentially seek discovery into the underlying factual allegations of the Complaint or to amend the Complaint which an Intervenor may not do under Pennsylvania law. Dr. Zamanzadeh also offers evidence or expands issues and allegations in violation of the Intervention Order by making unfounded assertions that SPLP was attempting to “clear the evidences,” Matergenics Report at 5, contrary to BI&E’s representation that “SPLP has been forthcoming with information and has cooperated with the I&E safety Division and prosecutory staff.” Joint Petition for Settlement, Appendix A BI&E Statement in Support at 14. His impertinent allegation shows his bias and prejudgment regarding these pipelines in support of the *Flynn* complainants’ agenda and his conjecture should be rejected. Dr. Zamanzadeh goes on to offer evidence in contravention of the Intervention Order’s admonitions and offers various musings or speculations about aging pipelines and types of corrosion and issues with coating. He then repeats his attempt to use this matter to obtain information and to essentially continue litigation, contrary to established law where the complainant has settled, by seeking discovery of reports discussing condition of pipeline coating, various survey information, and soil analysis. Matergenics Report at 6-7, 11. Again, none of this information is necessary to determine whether the Settlement is in the public interest. Instead, Dr. Zamanzadeh is seeking to step into BI&E’s shoes and litigate the Complaint.

On pages 8-11, Dr. Zamanzadeh argues allegations of the Complaint regarding cathodic protection criterion, and then simply recommends a CIS. Those surveys are already required by

the Settlement, so it is unclear why Dr. Zamanzadeh raises these issues, and if anything, his comments imply that he agrees with the CIS term of the Settlement or was unaware it was in the Settlement.

Dr. Zamanzadeh then makes a plethora of recommendations regarding testing he believes should be done. Matergenics Report at 13-20. Again, these recommendations have no bearing on whether the Settlement is in the public interest. The standard is not whether the Settlement includes Intervenor's wish list of information and new relief, but instead whether the Settlement as drafted **provides public benefits**.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests Your Honor approve the Settlement without modification as expeditiously as possible.

Respectfully submitted,



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Dated: November 12, 2019

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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