



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 12, 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 Additional Reply Comments

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and
Enforcement's Additional Reply Comments in Further Support of the Joint Petition for
Approval of Settlement in the above-referenced matter. Copies have been served on the
parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "SMW", is positioned above the typed name of Stephanie M. Wimer.

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.	:	Docket No. C-2018-3006534
	:	
Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners,	:	
Respondent	:	

**ADDITIONAL REPLY COMMENTS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN FURTHER SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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, submits these Additional Reply Comments in Further Support of the Joint Petition for Approval of Settlement (“Settlement”) filed on April 3, 2019 by I&E and Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners (“SPLP” or “Company”), pursuant to presiding Administrative Law Judge (“ALJ”) Elizabeth H. Barnes’ October 11, 2019 Interim Order Granting in Part and Denying in Part Motions to Strike. I&E’s Additional Reply Comments address the evidentiary exhibits submitted by West Goshen Township and the Flynn Intervenors¹ in their respective comments, which were not stricken.

¹ The “Flynn Intervenors” are a collective reference to Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines, who filed a Complaint against Sunoco Pipeline, L.P. (“SPLP,” “Respondent,” or “Company”) at Docket No. C-2018-3006116, and concurrently filed a Petition for Interim Emergency Relief against SPLP at Docket No. P-2018-3006117 on November 19, 2018. These dockets have been consolidated. The Flynn Intervenors petitioned to intervene in the instant matter averring that they are individuals from Delaware or Chester Counties residing and/or working in close proximity to SPLP’s Mariner East pipelines. The Flynn Intervenors are represented by counsel.

I. PROCEDURAL BACKGROUND

On December 13, 2018, I&E filed a Formal Complaint (“Complaint”) against SPLP alleging that SPLP failed to demonstrate that it achieved cathodic protection² at the site of an April 2017 leak on SPLP’s Mariner East 1 (“ME1”) pipeline in Morgantown, Berks County, Pennsylvania. I&E’s Complaint alleged several violations of federal and state pipeline safety laws and regulations. For relief, I&E requested that SPLP be ordered to pay a total civil penalty of Two Hundred Twenty-Five Thousand Dollars (\$225,000) and perform various corrective actions including conducting a remaining life study of ME1, increasing the frequency of in-line inspections (“ILI”), revising SPLP’s corrosion control procedures, developing procedures to determine the adequacy of cathodic protection through testing and performance methods, and implementing all new and revised cathodic protection procedures within one (1) year.

SPLP contested the allegations of I&E’s Complaint in its Answer dated January 31, 2019. SPLP also raised New Matter on that same day.

I&E and SPLP subsequently engaged in settlement negotiations that culminated in the filing of a Joint Petition for Approval of Settlement (“Settlement”) on April 3, 2019. Notably, the Settlement contains much of the relief that I&E sought in its Complaint and, thus, achieves a favorable outcome without first requiring I&E to fully litigate the matter and bear the burden of proving each violation. Further, I&E asserts that it was able to obtain relief by virtue of this Settlement that it would not have otherwise been successful in obtaining had this matter been fully litigated as SPLP has agreed to perform measures

² Cathodic protection is a method of controlling corrosion on the surface of a metal pipeline by supplying electrical current.

above and beyond what the applicable laws and regulations require and what the Commission has the authority to direct. If the instant Settlement is approved, the public would realize important safety benefits in a more expeditious manner than lengthy and protracted litigation ending in a less desirable and uncertain result. If the Settlement is not approved as filed, then SPLP has no obligation to fulfill any of the terms and conditions of the Settlement. *See* Paragraph 21 of Settlement.

During the pendency of the settlement negotiations, 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 Settlement to provide an opportunity for any interested entity or person to file comments to the Settlement followed by a reply comment period for I&E and SPLP. The Settlement was submitted to the Commission directly for its review and consideration of the outstanding Petitions to Intervene.

By Commission Order entered June 10, 2019, the Commission referred the matter to the Office of Administrative Law Judge (“OALJ”) for further proceedings.

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

The matter was assigned to presiding ALJ Barnes who issued an Order on July 15, 2019, which granted all of the Petitions to Intervene, provided the intervenors with the

opportunity to file Comments to the Settlement by August 16, 2019, and granted permission to all parties to file Reply Comments by September 16, 2019.³ (“July 15, 2019 Order”). Notably, Judge Barnes stated in the July 15, 2019 Order 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.**

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 17 (emphasis added).

On August 12, 2019, the Flynn Intervenors filed their Comment in Opposition to the Proposed Settlement and appended evidentiary exhibits. (“Flynn Comment”). 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 and also appended evidentiary exhibits. (“West Goshen Township Comment”). On August 15, 2019, West Whiteland Township filed its Comments in Response to the Joint Petition for Approval of Settlement. (“West Whiteland Township Comment”).

On September 16, 2019, I&E and SPLP separately filed Reply Comments. Also on September 16, 2019, I&E filed a Motion to Strike Portions of the Flynn Comment and a Motion to Strike Exhibits “A” and “B” of the West Goshen Township Comment, asserting that the Comments contained extra-record evidence in violation of ALJ Barnes’

³ The specific deadlines of August 16, 2019 and September 16, 2019 for the filing of Comments and Reply Comments, respectively, were set forth in ALJ Barnes’ July 15, 2019 e-mail to the parties.

July 15, 2019 Order. Additionally, on September 16, 2019, SPLP filed a Motion to Strike the West Goshen Township Comment and a Motion to Strike the Flynn Comment.

On September 23, 2019, the Flynn Intervenors filed an Answer to I&E's Motion to Strike and an Answer to SPLP's Motion to Strike. On October 4, 2019, West Goshen Township filed an Answer to I&E's Motion to Strike and an Answer to SPLP's Motion to Strike.

By Order entered October 11, 2019, ALJ Barnes granted, in part, and denied, in part, I&E's and SPLP's respective Motions to Strike. Specifically, the evidentiary expert reports of the consultant engineers retained by West Goshen Township and the Flynn Intervenors were permitted to remain in the record. The evidence that purportedly contained public documents alleging regulatory misconduct by SPLP in jurisdictions outside of the Commission's purview was also permitted to remain in the record. However, any comment related to SPLP's 12-inch pipeline, which is a different pipeline than ME1, was deemed to be irrelevant, substantially broadened the issues, and was stricken.

Without waiving its objection to the hearsay evidence presented in the Flynn Comment and the West Goshen Township Comment and as identified in I&E's Motion to Strike, I&E hereby submits its Additional Reply Comments in Further Support of the

Settlement.⁴

I&E's Additional Reply Comments are made in the context of defending the Settlement in this proceeding. Should this matter proceed to litigation, the Additional Reply Comments made herein shall not prejudice any position that I&E may take with respect to enforcing its Complaint.

II. THE SETTLEMENT IS UNQUESTIONABLY IN THE PUBLIC INTEREST

It is the Commission's policy to encourage settlement agreements. 52 Pa. Code § 5.231. The Commission's Policy Statement related to evaluating proceedings involving alleged violations of the Public Utility Code and Commission regulations provides that with settled outcomes, the parties 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). The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for non-settled, contested matters. *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Id.*; citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. Pub. Util.*

⁴ Properly objected-to hearsay evidence is not competent evidence to support a finding of the Board. Hearsay evidence admitted without objection, will be given its natural probative effect and may support a finding of the Board if it is corroborated by any competent evidence in the record. *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366 (Pa. Cmwlth 1976). The Commission follows the Walker rule. *Moore v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-2014-2458555 (Initial Decision issued July 14, 2015; Final Order entered August 25, 2015) (providing that a finding of fact based solely on hearsay will not stand).

Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991). I&E hereby incorporates its Statement in Support of the Settlement dated April 3, 2019 and its Reply Comments in Support of the Settlement dated September 16, 2019, which illustrate in great detail how the Settlement is in the Public Interest. The instant Additional Reply Comments further demonstrate that the Settlement, as filed, is comprehensive, sound and should be undisturbed.

At the outset, I&E deems it appropriate to provide supplementary details of the I&E Safety Division's investigation of the ME1 leak in order to clarify and/or possibly quell certain concerns raised by West Goshen Township and the Flynn Intervenors. First, as noted in Paragraph 13 of I&E's Complaint, the material of ME1 is bare, *i.e.* uncoated, steel. The I&E Safety Division's investigation of the pipeline, as well as the laboratory report, revealed external corrosion at the pinhole leak on ME1. The pinhole leak that occurred on April 1, 2017 on ME1 happened at a weld. While an eight (8) foot section of the portion of the pipe that leaked was sent to a laboratory for analysis, it is SPLP's procedure to fully replace sections of pipe between joints. Therefore, as noted in Paragraph 27 of I&E's Complaint, eighty-three (83) feet of new pipe were first hydrostatically tested and then installed to replace the portion that had leaked. The I&E Safety Division's investigation uncovered no corrosion on ME1 aside from the pinhole leak in Morgantown. The April 1, 2017 pinhole leak in Morgantown is the first leak to occur on ME1 in approximately twenty (20) years.

A. I&E's Reply to the Accufacts Comment

With this background, I&E first addresses Exhibit A of the West Goshen Township Comment, the Public Comments on the Proposed Joint Settlement of Accufacts Inc. ("Accufacts"). The Accufacts Comment largely focuses on microbiologic induced corrosion ("MIC") and suggests that the core elements of relief obtained through the Settlement, *i.e.* the Remaining Life Study, In-Line Inspection ("ILI") runs and Close Interval Surveys ("CIS"), are insufficient to address specialized corrosion such as MIC. Accufacts Comment at 2-3. The Accufacts Comment suggests that the parties develop a pipeline map to identify "hot zones" along ME1 where additional corrosion assessment may be warranted. Accufacts Comment at 4-5. Accufacts argues that this map is necessary to address disbonded vintage coating, which can render cathodic protection to be ineffective at preventing external corrosion, and areas where soil conditions are conducive to specialized forms of external corrosion such as MIC. *Id.*

The remarks in the Accufacts Comment are predicated upon the assertion of the laboratory analysis that MIC *may have* contributed to the corrosion that was observed. *See* I&E Complaint at Paragraph 31. Accufacts requests that the laboratory report be disclosed to the public. Accufacts Comment at 2.

I&E is unable to publicly disclose the laboratory report as SPLP labeled it as containing confidential security information ("CSI"), as defined in 35 P.S. § 2141.2.⁵ Nevertheless, I&E interprets the laboratory analysis' finding that MIC *may have* contributed

⁵ The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, prohibits disclosure of material that could compromise security or endanger life, safety, or public utility facilities. Government agencies are prohibited from releasing, publishing or disclosing a public utility record that contains CSI, pursuant to 35 P.S. § 2141.5(a), and any public official or employee who knowingly or recklessly releases such information faces stiff penalties. 35 P.S. § 2141.6.

to the external corrosion that was observed as being inconclusive. I&E's investigation did not find that MIC was the primary factor in causing the pinhole leak. I&E avers that MIC is less likely to occur on bare steel unless the environmental conditions are conducive to bacteria induced corrosion. However, when MIC is present, the standard National Association of Corrosion Engineers ("NACE") criteria of -850 millivolts ("mV") found in SP0169-2007 may not be effective at preventing external corrosion.⁶ I&E determined that such was not the case here. Cathodic protection, if properly implemented, is effective in preventing external corrosion on bare steel. Indeed, the crux of I&E's Complaint alleges that SPLP failed to demonstrate the adequacy of cathodic protection of ME1 in the area of the leak as required by 49 CFR § 195.571. *See* Paragraphs 30 and 40 of I&E's Complaint. I&E avers that if SPLP had at least met adequate cathodic protection, the pinhole leak may not have occurred. All of the relief obtained by virtue of the Settlement is designed to enhance SPLP's cathodic protection and corrosion control program to prevent another instance such as the April 1, 2017 pinhole leak from occurring again.

As an added measure of protection to ensure the integrity of ME1 as well as any other pipeline, the I&E Safety Division requests and receives from SPLP alignment sheets in the ordinary course of its investigations. Alignment sheets dissect pipelines on a segment-by-segment basis and reveal information such as the material of the pipe, the age of the pipe, global positioning system ("GPS") coordinates, the type of coating on the pipe if there is coating, casing on the pipe, repairs that have been performed and whether

⁶ NACE SP 0169 is incorporated by reference in the federal pipeline safety regulations at 49 CFR § 195.3. *See also* 49 CFR § 195.571.

the segment of pipe has been replaced. In essence, these alignment sheets serve the same function as the pipeline map that the Accufacts Comment suggests creating and this pipeline map would be duplicative. Accufacts Comment at 4-5. Thus, the alignment sheets, when used in combination with the Remaining Life Study, ILI runs, CIS and SPLP's integrity management program ("IMP"), provide a comprehensive method to identify any anomalies on or potential threats to ME1 so that they can be addressed by SPLP under the close supervision of the I&E Safety Division.

I&E firmly rejects the suggestion in the Accufacts Comment that a comparison of SPLP's old and new procedures be made so that an independent technical evaluation be performed. This suggestion is premised on a notion that the I&E Safety Division either lacks the technical ability to evaluate a pipeline operator's corrosion control procedures or is somehow biased in its evaluation. The I&E Safety Division performs hundreds of inspections on an annual basis to evaluate the procedures of numerous pipeline operators and natural gas distribution companies ("NGDC") in an effort ensure compliance with the federal pipeline safety regulations. The Commission has delegated this function to I&E. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5. This process is not disclosed to the public as pipeline procedures, such as SPLP's procedures, are commonly labeled as CSI.

If West Goshen Township asserts that SPLP is violating a pipeline safety regulation that directly affects its interest, it is free to file a complaint against SPLP at the Commission. However, West Goshen Township should not be permitted to disrupt the

amicable resolution of I&E's Complaint proceeding, which concerns a pinhole leak that occurred approximately twenty (20) miles away from the Township.

B. I&E's Reply to the Matergenics Comment

I&E next addresses Exhibit A of the Flynn Comment, the Preliminary Comments on the Proposed I&E and SPLP Morgantown Settlement of Matergenics LLC ("Matergenics"). To the extent that the Matergenics Comment and Accufacts Comment raise the same issues, I&E will not repeat its responses here.

The Matergenics Comment presumes that coating disbondment occurred and triggered a series of events that ultimately lead to corrosion, resulting in the April 1, 2017 leak. Matergenics Comment at 6. This presumption is false for the reasons described *supra*, and therefore the recommendations in the Matergenics Comment are irrelevant.

The Matergenics Comment also presumes that the I&E Safety Division did not carefully review baseline data of ME1 merely because it was not publicly disclosed. Matergenics Comment at 5, 11. Many of the items mentioned on pages 5 and 11 of the Matergenics Comment were reviewed and considered by the I&E Safety Division, and provided the basis for the allegations in I&E's Complaint as well as the foundation for the relief obtained in the Settlement. Indeed, I&E is prohibited from disclosing the items listed on pages 5 and 11 of the Matergenics Comment that the I&E Safety Division reviewed in the course of its investigation as SPLP designated those records as containing CSI. Furthermore, the Matergenics Comment amounts to nothing more than another attempt of the Flynn Intervenors to gain access to information investigated by the I&E

Safety Division in this proceeding for use in the Flynn Intervenors' pending complaint matter against SPLP.⁷

C. Reply to Records of Proceedings Outside of the Commission's Jurisdiction

Finally, I&E will address the evidentiary exhibits that were appended to the West Goshen Township Comment and the Flynn Comment purporting to show regulatory violations committed by SPLP in jurisdictions beyond the Commission's authority. The Flynn Comment encloses the following documents:

- Exhibit B- *Clean Air Council v. Commonwealth of Pa., Dep't of Env'tl. Prot.*, EHB Docket No. 2017-009-L (Stipulated Order dated August 9, 2017);
- Exhibit C- *Clean Air Council v. Commonwealth of Pa., Dep't of Env'tl. Prot.*, EHB Docket No. 2016-073-L (Adjudication issued January 9, 2019);
- Exhibits D and E- *In the Matter of Energy Transfer Partners., L.P., Panhandle Eastern Pipe Line Company*, CPF No. 3-2014-1008S (PHMSA Notice of Proposed Safety Order issued December 24, 2014 concerning a pipeline safety matter that occurred in Missouri).

The West Goshen Township Comment appends the following document:

- Exhibit B- *In the matter of Sunoco Pipeline, L.P. re: Violations of The Clean Streams Law and DEP Chapter 93 and 102 of Title 25 of the Pennsylvania Code, and the Dam Safety and Encroachments Act and DEP Chapter 105 of Title 25 of the Pennsylvania Code*, PA Pipeline Project – Mariner East II E&S Permit Nos. ESCG0300015002, *et al.*, (Consent Order and Agreement entered February 8, 2018).

I&E incorporates the argument that it advanced on pages 7 through 9 of the I&E Reply Comments filed on September 16, 2019 in this proceeding. Simply stated, actions taken by other governmental agencies and jurisdictions are not relevant for the purposes

⁷ The Flynn Intervenors' prior efforts to incorporate the entirety of the instant I&E Complaint into their own proceeding and subpoena I&E records failed. See *Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-3006117 and C-2018-3006116 (Second Interim Order issued March 12, 2019).

of determining a company's compliance history before the Commission pursuant to 52 Pa. Code § 69.1201(c)(6).

Therefore, the Flynn Intervenors and West Goshen Township have provided no valid justification to alter the relief achieved by the Settlement and the Settlement should be expeditiously approved so that the public may quickly realize the significant safety benefits it provides.

III. CONCLUSION

For the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the presiding Administrative Law Judge consider the Additional Reply Comments of the Bureau of Investigation and Enforcement and approve the Joint Petition for Approval of Settlement as filed.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
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Michael L. Swindler
Deputy Chief Prosecutor
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Dated: November 12, 2019

**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

VERIFICATION

I, Robert Biggard, Pipeline Safety Supervisor, Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 12, 2019



Robert Biggard
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Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
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Harrisburg, PA 17120

**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

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).

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