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January 29, 2020

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)
Laura Obenski, Docket No. C-2019-3006905 (consolidated)
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605 (consolidated)
v.
Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S OMNIBUS MOTION FOR ADHERENCE TO
REGULATIONS AND THE PROCEDURAL ORDER AND REQUEST FOR
EXPEDITED TEN DAY ANSWER PERIOD**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Omnibus Motion for Adherence to Regulations and the Procedural Order and Request for Expedited Ten Day Answer Period.

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 Barnes (by email and first class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.		Docket No.	C-2018-3003605 (consolidated)

v.

SUNOCO PIPELINE L.P.

NOTICE TO PLEAD

TO: All Parties of Record

PLEASE TAKE NOTICE that Sunoco Pipeline L.P. ("SPLP") has filed a Omnibus Motion for Adherence to Regulations and the Procedural Order and Request for Expedited Ten Day Answer Period. **You are hereby notified that that an answer or other responsive pleading shall be filed within ten (10) days of service of the Motion.** Your failure to file an answer or other responsive pleading will allow the presiding officer to rule on the Motion without a response from you. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: January 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos. C-2018-3006116 (consolidated)
	:	P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No. C-2018-3005025 (consolidated)
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LAURA OBENSKI	:	Docket No. C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No. C-2018-3003605 (consolidated)

v.

SUNOCO PIPELINE L.P.

**SUNOCO PIPELINE L.P.'S OMNIBUS MOTION FOR ADHERENCE TO
REGULATIONS AND THE PROCEDURAL ORDER AND REQUEST FOR
EXPEDITED TEN DAY ANSWER PERIOD**

Pursuant to 52 Pa. Code §§ 5.103 and 5.483, Sunoco Pipeline L.P. (SPLP) moves to compel the parties and intervenors, including Complainants,¹ to comply with the Commission's regulations and Your Honor's June 6, 2019 Procedural Order (Procedural Order), which was developed after three conferences among Your Honor, the parties, and intervenors. SPLP requests that Your Honor issue a ruling that answers to this motion be submitted 10 days from service in order to preserve the schedule set in this case. *Infra* Section II.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

1. Following the filing of motions and responses, prehearing memos, and two separate telephonic prehearing conferences, Your Honor issued the June 6, 2019 Procedural Order (copy

¹ Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Complainants).

attached as **Exhibit A**) that consolidated various proceedings, ruled on petitions to intervene, and established a procedural schedule to govern all proceedings in this matter, including a schedule for the presentation of live testimony from lay witnesses, a schedule for the presentation of written testimony, and dates for hearings in July 2020. On August 2, 2019, Your Honor issued a Prehearing Order (copy attached as **Exhibit B**) to address particulars concerning the schedule set forth in the June 6, 2019 Procedural Order, including that “Complainants’/Complainant-aligned Intervenors’ expert direct testimony must be served upon the parties and the presiding officer in writing by January 15, 2020 together with any exhibits.” (**Exhibit B** at ¶ 7.)

2. On January 20, 2020, counsel for the Flynn Complainants sent an email to Your Honor (January 20 Email) requesting relief in the form of an “additional procedural order” addressing a variety of matters related to “introduction of evidence at the July hearings,” including Complainants’ alleged intent to introduce discovery responses or productions, depositions, or adverse fact witnesses at the July Hearing. The January 20 Email is attached as **Exhibit C**.

3. The January 20 Email is necessarily referring to materials Complainants failed to include as part of their lay witness testimony or pre-served written testimony – at this point SPLP has not yet presented its case and there is nothing for Complainants to respond to with additional evidence. Thus, Complainants’ January 20 Email in fact requests that Your Honor waive the Commission’s regulations and amend the June 6, 2019 Procedural Order and August 2, 2019 Prehearing Order – after the deadline has already expired for Complainants to submit their direct written testimony and exhibits – to allow Complainants to present additional evidence as part of their Direct case,² at the July 2020 hearing.

² 52 Pa. Code § 5.243(e):

4. First, such request is wholly improper through email and was required to be presented and filed on the record as a pleading. It also improperly solicits advice from Your Honor as the Presiding Officer. Accordingly, by this Motion, SPLP requests that an order be issued that precludes future requests for relief through these types of emails and mandates Commission regulations be followed and requests for relief be made through appropriate pleadings.

5. Second, the January 20 Email seeks to ignore the June 6, 2019 Procedural Order and the August 2, 2019 Prehearing Order, and seeks another opportunity for Complainants to present their direct case orally at hearing, which flouts the pre-filed and lay testimony process and procedure *which Complainants through their counsel agreed to and accepted.*³ The apparent relief sought in the January 20 Email is not only contrary to regulation, orderly pre-filed process

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

...

(2) Should have been included in the party's case-in-chief.

(3) Substantially varies from the party's case-in-chief.

³ In fact, the schedule itself was developed working off Complainants' proposed schedule and Complainants proposed the deadline for their Direct testimony. Flynn Complainants April 19, 2019 Prehearing Memo at 3.

and related discovery, but also invites trial by ambush⁴ that violates SPLP's due process rights.⁵ Complainants should not be permitted to follow the Commission's regulations and the Procedural Order only when they want to do so. Complainants have had a massive and generous amount of time to prepare and present their direct case in the lay hearings in October and November of 2019 and in the direct pre-filed testimony they submitted. The Complaint was filed on November 19, 2018 so they have had almost 14 months to present their Direct case and they have done multiple rounds of discovery, although they delayed pursuing discovery until four months after the Complaint was filed. This Motion seeks a ruling that Complainants will not be allowed to introduce direct evidence under the guise of "as on cross" and must adhere to Commission regulations and the Procedural Order regarding presentation of evidence.

6. The January 20 Email also requests that a procedural order be issued that addresses the potential taking of future depositions or discovery requests. This issue is not ripe. There is no

⁴ 52 Pa. Code § 5.243(e); "The clear purpose of it [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case." *Pennsylvania Public Utility Commission v. UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 138, *85; *Pennsylvania Pub. Util. Comm'n v Total Environmental Solutions, Inc.*, 103 Pa. P.U.C. 110 (July 30, 2008) (Parties here were "ambushed" by the new information contained in rebuttal testimony that "corrected" information provided in direct testimony and discovery responses.); *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. -- Treasure Lake Water Division, et al.*, Docket No. R-00072493, 2008 Pa. PUC LEXIS 42 at *114-116 (Pa PUC May 23, 2008) ("...it is not equitable to permit TESI to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase of this case.") aff'd Opinion and Order at 89 (July 30, 2008).

⁵ Due process requires a meaningful opportunity to be heard prior to the deprivation of a property interest. This opportunity entails a full hearing, including the development of a record and a decision by the Commission based on that hearing with full findings. See *Popowsky v. P.U.C.*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002), *appeals denied*, 820 A.2d 163 (Pa. 2003) and 847 A.2d 60 (Pa. 2004). Having the meaningful opportunity to be heard entails the ability to present evidence on an issue. *Scott Paper Company v. Pa. P.U.C.*, 558 A.2d 914 (Pa. Cmwlth. 1989).

need for such an order. Discovery is ongoing. Future discovery issues can and must be addressed on an issue-by-issue basis, keeping in mind that Complainants were already required to submit their Direct case. The Commission's regulations are clear as to the manner of seeking depositions and discovery.

7. On January 21, 2020, counsel for SPLP responded to Complainants' January 20 Email, wherein it objected on a number of procedural and substantive bases, and requested that Your Honor not act upon Complainants' request pending SPLP's filing of this Motion. That same day, Complainants' counsel responded to SPLP's objections "accept[ing]" SPLP's representation regarding the filing of this motion and expressing concern that the motion "be filed with dispatch." SPLP's January 21st Email and Complainants' counsel's response are attached as **Exhibit D**.

II. REQUEST FOR EXPEDITED ANSWER AND RULING

8. Given the above, SPLP believes that it is in all parties' and Your Honor's interests to resolve this Motion expeditiously, especially in light of Complainants' counsel's timing concerns. *See Exhibit D*. Accordingly, SPLP requests an expedited time for response to this Motion of 10 days.

III. ARGUMENT

A. Requests for Relief Must Be Made Through Appropriate Pleadings

9. This proceeding has entailed various requests for relief made by email to Your Honor, as the Presiding Officer. Requests for relief, however, must be made by appropriate pleadings pursuant to 52 Pa. Code Chapters 1 and 5.⁶ The regulations set forth specific requirements for content of such requests and time frames for responses, protecting due process

⁶ The exception is for motions made orally at hearing, which does not apply here.

rights of notice and to be heard and creating a record at the Commission's docket for any decision made on the basis thereof. The regulations also require that requests for relief be filed on the docket, creating an appropriate record for disposition and subsequent review.

10. Email requests, such as the January 20 Email, which are not docketed, are improper, create confusion and unfairness, and should not be tolerated. For example, if SPLP's counsel had not responded to the January 20 Email, would its non-response have been considered a waiver of arguments? Would the Presiding Officer have granted relief based on that email had SPLP not responded? How long did SPLP have to respond? This is particularly troubling here, where the January 20 Email improperly characterizes a request for waiver of a Commission regulation protecting due process rights as a mere procedural question. Requests for waiver of Commission regulations are governed under 52 Pa. Code § 5.43. Had Complainants followed this regulation in the first instance, they would have been required to explain the regulation of which they were requesting waiver, instead of trying to obtain waiver without explaining that a regulation applies and that they are in fact seeking waiver of it.

11. This is a formal adjudication where Complainants and others are requesting relief, *inter alia*, in the form of shutting down a public utility. SPLP has substantial interests and rights that could be implicated as a result of this proceeding. SPLP understands that the Presiding Officer has authority to modify formal procedural regulations in certain instances. However, these procedural waivers have apparently been misinterpreted by some parties to suggest that procedural rules can simply be ignored and the fundamental due process that underlies the procedural rules be denied. Complainants are represented by counsel. There is no excuse for not at least attempting to follow procedural regulations.

12. Accordingly, SPLP respectfully requests an order be entered requiring any requests for relief in this proceeding prior to hearing be made through appropriate pleadings (or orally at hearing) consistent with 52 Pa. Code Chapters 1 and 5.

B. Flynn Complainants' Request For Waiver and/or to Amend the Procedural Schedule is Improper, Untimely, Without Cause, and Must Be Denied

13. Complainants have had more than ample time and opportunity to gather evidence through discovery and present their Direct case – approximately 14 months. That time has now passed. The January 20 Email seeks yet additional bites at the direct evidentiary apple that are precluded under Commission regulations, fundamental fairness, and due process. Such relief must be denied.

14. The January 20 Email seeks issuance of a procedural order for “introduction of evidence at the July hearings,” calling an “adverse fact witness” to testify at the July hearings, entering “upcoming requests for admissions” into the record, and entering documents SPLP “has furnished” and “may furnish” into the record. This procedure is already prescribed – Complainants had to submit their Direct case through the lay witness evidentiary hearing and/or pre-served direct written testimony and exhibits to be considered for entry into the record. While Complainants did submit testimony and exhibits, the July 20 Email is referring to materials that Complainants did not include as part of their case in chief, some of which does not yet exist.

15. Commission regulations preclude presentation of evidence in a rebuttal phase of the case that should have been included in a parties' case in chief.

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

...

(2) Should have been included in the party's case-in-chief.

(3) Substantially varies from the party's case-in-chief.

52 Pa. Code § 5.243(e).

16. “The clear purpose of it [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case.” *Pennsylvania Public Utility Commission v. UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 138, *85; *Pennsylvania Pub. Util. Comm’n v Total Environmental Solutions, Inc.*, 103 Pa. P.U.C. 110 (July 30, 2008) (Parties here were “ambushed” by the new information contained in rebuttal testimony that “corrected” information provided in direct testimony and discovery responses.); *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. -- Treasure Lake Water Division, et al.*, Docket No. R-00072493, 2008 Pa. PUC LEXIS 42 at *114-116 (Pa PUC May 23, 2008) (“...it is not equitable to permit TESI to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase of this case.”) *aff’d*, Opinion and Order at 89 (July 30, 2008). What Complainants seek in the January 20 Email is even worse than presenting new evidence and testimony in rebuttal – it essentially seeks an opportunity to present “direct” testimony for the first time orally at hearing, after the parties had submitted their direct, rebuttal, surrebuttal, and rejoinder testimony.

17. Pursuant to the Procedural Order, Complainants’ Direct Testimony was due by January 15, 2020. **Exhibit A** at 6-7. Complainants have had over a year to gather evidence and present their case in chief. Flynn Complainants’ original Complaint (now twice amended) was filed on or about November 19, 2018. Complainants proposed the deadline for the Direct testimony that the Procedural Order adopted. Flynn Complainants April 19, 2019 Prehearing Memo at 3.

18. Complainants also took advantage of the unique procedure that Your Honor afforded here of lay witness hearings in October and November of 2019. The Procedural Order

fully advised Parties that they could choose to present their case on a witness by witness basis by either (1) having the witness testify in person at the lay person hearing or (2) having the witness engage in the written testimony schedule. *Id.* at 9. The lay witness hearings did preclude experts from testifying there, but lay witnesses had the option of either in-person testimony in October/November 2019 or utilizing the written testimony process – but not both testifying in person and presenting written testimony. **Exhibit A** at 9; **Exhibit B** at ¶¶ 4-7. At this point in the proceeding, all complainants (including complainants to consolidated proceedings) and aligned intervenors must have submitted direct testimony and evidence sufficient to make a prima facie case to carry their burden of proof.

19. Moreover, Complainants have had abundant time to conduct discovery for presentation of their Direct case. That Complainants continue to take discovery after their Direct case has been filed is no excuse or reason to allow evidence into the record that should have been presented on direct.

20. The Commissions regulations provide that discovery should occur “as early in the proceedings as reasonably possible.” 52 Pa. Code § 5.331(b) “In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.” *Id.*

21. Complainants did not serve their first set of discovery requests until on or about February 28, 2019 – over **four months** after the original Complaint was filed. Commission regulations also place all litigants on notice that discovery procedures, including objections, motions, responsive pleadings, and rulings, take time. From the date discovery is served until a ruling can be made on any objections and a reasonable time frame for compelled responses takes

at least 50-60 days per the timelines set forth in the Commission's discovery regulations. 52 Pa. Code § 5.342.

22. Flynn Complainants lodged two sets of discovery. The second set of discovery was not effectively served until November 21, 2019. SPLP objected to a number of those requests, and Your Honor issued an Order granting in part and denying in part Complainants' motion to compel and ordering SPLP to provide responses within 10 days of that order (January 13, 2019). SPLP served its responses, including most its document productions,⁷ on that date. In fact, while Your Honor was deliberating on the motion to compel, Complainants sent another email request for an opportunity to supplement their testimony based on the outstanding decision on their motion to compel. SPLP objected via email. These emails are included as **Exhibit E**. The Order did not grant the requested relief of supplemental testimony, instead requiring responses be submitted prior to Complainants' testimony deadline and also ordering an additional review session of materials, which review session took place within three days of the issuance of the order on motion to compel. So, to the extent Complainants are attempting to argue that they should be allowed to supplement their testimony based on this most-recent set of discovery, Your Honor has already denied this relief. Moreover, Complainants had no good reason to wait to until November 2019 to serve this discovery, and SPLP should not be prejudiced by Complainants' delay.

⁷ SPLP served one document production on January 16, 2019 in response to Flynn Set II, Nos. 23-43, all of which related to well or water contamination issues and Complainant Rosemary Fuller. This is no opportunity for Complainants to supplement or present additional direct testimony on this issue. Complainants never raised these issues in their Complaint. Complainants never identified an expert witness on these issues and did not present an expert on these issues. Moreover, Complainants submitted the written testimony of Ms. Fuller at the lay witness hearings in October, before even seeking this discovery. Regardless, had Flynn Complainants served these requests in a timely manner, instead of waiting until November 21, 2019, they would have had the responses prior to their testimony deadline.

23. That discovery is ongoing throughout the phases of written testimony does not change the regulation and due process rule that direct that evidence cannot be submitted after a parties' direct testimony deadline has passed. Discovery is ongoing in every case with written testimony before the Commission so that parties can inquire into the testimony itself to use in responsive testimony or cross examination. Discovery after a direct case is submitted is not to discover new evidence that should have been included in direct, and cannot be given the rule that rebuttal phases of the case cannot include evidence that should have been in direct.

24. Depositions are likewise a form of discovery that Complainants have not timely pursued. If Complainants needed an SPLP employee to provide factual testimony to prove their case in chief (which they now refer to as calling an adverse witness at the July 2020 hearing), they needed to include that evidence in the presentation of their Direct case. To date, Complainants have not applied for or noticed a deposition.

25. Complainants failure to recognize these timelines and timely pursue discovery is no reason to allow Complainants yet another bite at the evidentiary apple. They have already had over a year to develop their direct case. Allowing presentation of direct evidence at hearing as the January 20 Email seeks defies all notions of fairness and due process.

26. Complainants' request for procedures to allow them to present evidence as part of their direct case at the July 2020 hearings must be denied. At this point, there is nothing for Complainants to rebut, as SPLP has not yet filed its testimony, so the January 20 Email is presumably referring to materials that Complainants have now realized that they failed to include with their direct case. Complainants cannot be allowed to ambush SPLP at hearing with additional

direct evidence and deprive SPLP of timely notice of the evidence against it and meaningful⁸ opportunity to respond.

27. Finally, to the extent that the January 20 Email is requesting an extension of the Direct testimony deadline, such request is untimely and must be denied.

28. The Procedural Order provides:

That, except for good cause, any requests for a change in the scheduled hearing dates, briefing deadlines, or other deadlines must be submitted to me in writing *no later than five (5) days prior to the scheduled date, if possible.* 52 Pa. Code §1.15(b). Requests for changes *must state the agreement or opposition of other parties.*

Procedural Order at 13 ¶ 3.

29. In contravention of the Procedural Order and Commission regulations, Flynn Complainants' January 20 Email, to the extent it is interpreted as a request for extension to submit direct testimony, was sent five days after the deadline for the submission of written direct testimony, without prior notice to opposing counsel, and without identifying the specific relief sought or the authority for such relief.

30. SPLP is prejudiced by Complainants' untimely and unnoticed extension request, which, if granted, will deprive SPLP of its due process rights by upending the procedural schedule and infringing SPLP's due process right to timely notice and a meaningful opportunity to be heard.⁹

⁸ Due process requires a meaningful opportunity to be heard prior to the deprivation of a property interest. This opportunity entails a full hearing, including the development of a record and a decision by the Commission based on that hearing with full findings. *See Popowsky v. P.U.C.*, 805 A.2d 637, 643 (Pa. Cmwlth. 2002), *appeals denied*, 820 A.2d 163 (Pa. 2003) and 847 A.2d 60 (Pa. 2004). Having the meaningful opportunity to be heard entails the ability to present evidence on an issue. *Scott Paper Company v. Pa. P.U.C.*, 558 A.2d 914 (Pa. Cmwlth. 1989).

⁹ "Due process in matters before the Commission requires that a party be afforded reasonable notice of the nature of the allegations against it so that the party can prepare a suitable defense."

To the extent that any modification is made to the procedural schedule to allow for additional direct testimony, the entire procedural schedule must be likewise modified to allow SPLP adequate time to prepare and present its case in rebuttal.

C. Discovery Issues Must Be Addressed on an Issue-by-Issue Basis

31. Complainants' alleged discovery issues should be addressed independently, on an issue-by-issue basis, not by wholesale amendment of the Procedural Order based on unripe allegations. Complainants allude to taking a deposition but have filed no application or notice as required under the Public Utility Code and the Commission's regulation. Complainants also allude to admissions, but no requests for admissions have been served. None of these issues are ripe. The rules are there to be followed, and Complainants should not be permitted to continue to evade the Commission's rules, which precludes the proper development of a record for Your Honor's decision and appropriate review.

32. Accordingly, Your Honor should refuse Complainants' request to address discovery matters alluded to in the January 20 Email and direct that any specific discovery disputes and requested amendments to the June 6, 2019 Procedural Order or the August 2, 2019 Prehearing Order must be addressed in a motion properly filed and docketed with the Commission, and in accordance with the Procedural Order and Commission regulations.

IV. CONCLUSION

WHEREFORE, SPLP respectfully requests:

- Answers to this Motion shall be filed within 10 days of service.

See Pocono Water Co. v. Pa. Pub. Util. Comm'n, 630 A.2d 971, 973 (Pa. Cmwlth. 1993) (citing *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 507 A.2d 433 (Pa. Cmwlth. 1986)).

- Issuance of an Order:
 - a) Mandating requests for relief in this proceeding be made through appropriate pleadings filed with the Commission;
 - b) Confirming that Complainants or aligned intervenors will not be allowed to submit evidence that should have been included with their Direct case in any rebuttal phase of the case or at hearing; and
 - c) Confirming future discovery disputes will be dealt with when ripe, and in accordance with the Commission's rules and regulations.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: January 29, 2019

Exhibit A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	
Rosemary Fuller	:	
Michael Walsh	:	P-2018-3006117
Nancy Harkins	:	
Gerald McMullen	:	C-2018-3006116
Caroline Hughes and	:	
Melissa Haines	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	
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Melissa DiBernardino	:	
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v.	:	C-2018-3005025
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Sunoco Pipeline, L.P.	:	
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Rebecca Britton	:	
	:	
v.	:	C-2019-3006898
	:	
Sunoco Pipeline, L.P.	:	
	:	
Laura Obenski	:	
	:	
v.	:	C-2019-3006905
	:	
Sunoco Pipeline, L.P.	:	

PROCEDURAL ORDER

Telephonic Prehearing Conferences were held in the above-captioned cases on April 24, 2019 and May 10, 201, respectively. Appearing at both conferences were: Michael Bomstein, Esquire on behalf of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (collectively Flynn Complainants); Rich Raiders,

Esquire, on behalf of Andover Homeowners' Association; Thomas J. Sniscak, Esquire, Bryce Beard, Esquire, Whitney Snyder, Esquire, Neil Witkes, Diana Silva, Esquire for Sunoco Pipeline, L.P. (Sunoco or Respondent); Melissa DiBernardino, *pro se*; Rebecca Britton, *pro se*; Laura Obenski, *pro se*; Garrett Lent, Esquire, for Range Resources – Appalachia; Guy Donatelli, Esquire, Vincent Pompo, Esquire and Alex Baumler, Esquire for Pennsylvania State Senator Thomas Killion; Margaret Morris, Esquire for East Goshen Township and the County of Chester; Leah Rotenberg, Esquire for the Twin Valley School District; Mark Freed, Esquire for Uwchlan Township; Michael Pierce, Esquire for Edgmont Township; Kelly Sullivan, Esquire for Thornbury Township; James Dalton, Esquire and Daniel LePera, Esquire for West Chester Area School District; and James Flandreau, Esquire for Middletown Township. On May 10, 2019, I noted the additional appearances of Patricia Biswanger, Esquire for County of Delaware, Virginia Marcille Kerslake, *pro se* Intervenor, and Robert Fox, Esquire for Sunoco Pipeline, L.P.

The following matters were addressed, although not necessarily in this order:

(1) consolidation of proceedings; (2) petitions to intervene; (3) site visits/evidentiary hearings; (4) Sunoco's Motion to Amend Protective Order; (5) procedural schedule; (6) service requirements and parties list; (7) transcript turnaround; and (8) discovery modifications.

Procedural consolidation

The Commission's regulations pertaining to consolidation appear at 52 Pa. Code § 5.81, and state in relevant part:

§ 5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

Whether to consolidate particular cases is left to the sound discretion of the Commission or the presiding officer. In deciding whether to consolidate certain cases, the Commission or presiding officer must first determine that the proceedings involve a common question of law or fact. In such cases as *Application of Philadelphia Electric Co.*, 43 Pa. PUC 781 (1968), *Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pennsylvania*, 46 Pa. PUC 568

(1973) and *Pa. Pub. Util. Comm'n v. Butler Twp. Water Co.*, 52 Pa. PUC 442 (1978), as well as those cited above, the Commission has established that the Commission or presiding officer should evaluate considerations in addition to the presence of common questions of law or fact in ruling on a motion to consolidate. These other considerations include:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
3. Do issues in one proceeding go to the heart of an issue in the other proceeding?
4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
5. Will different statutory and legal issues be involved?
6. Does the party with the burden of proof differ in the proceedings?
7. Will consolidation unduly delay the resolution of one the proceedings?
8. Will supporting data in both proceedings be repetitive?

No single consideration or group of considerations or the presence of a common question of law or fact is dispositive in determining whether to consolidate proceedings. Rather, the Commission or presiding officer must evaluate all of these considerations and balance those favoring versus those disfavoring consolidating the proceedings.

Ms. Obenski filed a motion to consolidate her complaint with the Flynn Complainants' Complaint at C-2018-3006116 and P-2018-3006117. Sunoco filed a Motion to Consolidate and Response to Obenski's Motion to Consolidate. Sunoco moves for the consolidation of the Flynn et al. complaint (Docket Nos. C-2018-3006116 and P-2018-3006117), with the DiBernardino complaint (Docket No. C-2018-3005025), the Britton complaint (Docket No. C-2019-3006898), and the Obenski complaint (Docket No. C-2019-3006905). At the prehearing conference on April 24, 2019, no one objected to Sunoco's Motion to Consolidate and a procedural order was discussed. However, after the notice of hearing was issued,

Complainant DiBernardino requested a further prehearing conference as she wished for a more expedited procedural schedule. The further prehearing conference was held on May 10, 2019. Complainants DiBernardino, Britton and Obenski expressed concerns that a July 2020 hearing date was too long to wait for a proper emergency plan. Tr. 691-693, 708-709, 714. Conversely, Sunoco argued to keep the agreed upon procedural schedule and to consolidate the cases as the cases involve technical issues, best addressed through written pre-served expert testimony, and the issues are substantially overlapping in nature involving the same Respondent and witnesses. The Complainants can call witnesses in October in Delaware or Chester Counties at an initial hearing, which would alleviate some of the burden in prosecuting their respective complaints. Tr. 698-702. Additionally, Ms. Obenski never formally withdrew her motion for consolidation. Ms. Britton has witnesses in common that intervened in the Flynn et al. complaint proceeding. Ms. DiBernardino has three witnesses in common, one of which is Ms. Hughes, a complainant in the Flynn et al. complaint proceeding. Tr. 705-706.

After reviewing these considerations, the four cases shall be consolidated for purposes of discovery, evidentiary hearings, and decision writing. Consolidation is appropriate because the Flynn, DiBernardino, Britton, and Obenski complaints involve common questions of law and fact, and each of the eight factors established by the Commission in *City of Lancaster Sewer Fund* is met. All four complaints assert six central issues: (1) the safety and integrity of ME1, ME2, ME2X, and the 12-inch pipeline; (2) the safety of the locations of the pipelines and related equipment (i.e. valve stations); (3) the adequacy of SPLP's public awareness program; (4) the adequacy of SPLP's emergency response procedures and training; (5) SPLP's integrity management protocols; and (6) the safety of the construction of ME2 and ME2X. All four complaints seek similar relief to address the complainants' concerns with the Mariner East pipelines in Chester and Delaware Counties. These six issues are at the heart of all four cases and addressing them jointly will allow the Commission to determine the issues once, rather than in a serial and repetitive manner for each individual complaint. Separate adjudications in each of the four proceedings is inefficient both for the Commission and the parties, particularly since each party's advocacy and witnesses will be largely duplicative in all four proceedings. Consolidation of these four proceedings is in the public interest, because it will conserve the Commission's and the parties' respective resources, eliminate the risk of any inconsistent rulings, and avoid unnecessary additional costs and delays if each matter proceeded individually.

While each of the four complaints may raise certain additional individual issues, those issues are subordinate to the six common issues shared by all four complaints, such that any individual issues will not “cloud” the determination of the primary issues in all the cases. Ms. Obenski initially agreed that consolidation of these matters is appropriate, and filed a motion to consolidate her complaint with the Flynn matter on February 26, 2019, asserting that there are “interrelated issues in both proceedings.” See Motion to Consolidate, C-2019-3006905 (Feb. 26, 2019). She has not formally withdrawn her motion. The Flynn Complainants did not object to consolidation of the Obenski complaint. Moreover, in the context of granting certain petitions to intervene in the Flynn matter, the Commission has already recognized that judicial efficiency can be gained by joining matters that “raise issues essentially overlapping issues previously raised by [the Flynn] Complainants concerning safety and emergency preparedness in Chester and Delaware County areas.” See Second Interim Order, C-2018-3006116 at 17 (Mar. 12, 2019). Finally, consolidation will not prejudice any party, as prehearing schedules have not yet been established in any of the four cases, and a joint prehearing schedule will allow for an efficient, consistent, and streamlined adjudication of the overlapping issues presented in all four matters. Complainants will be permitted to participate at hearings via telephone and an initial hearing for layperson testimony will be scheduled to be held in October in Delaware or Chester Counties for the convenience of the pro se Complainants.

Petitions to intervene

The Commission’s Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76. The provision at 52 Pa. Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

§ 5.72. Eligibility to intervene.

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

Senator Thomas Killion petitioned to intervene on March 20, 2019, in his capacity as a legislator for Senate District No. 9 and in his individual capacity as a resident of Middletown Township, Delaware County. Sunoco argues Senator Killion has no standing to represent his constituency and requests his standing be limited to his individual capacity. In the case of *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.* at Docket No. C-2018-3001451 *et al.* the Commission held Senator Dinniman had individual standing, but agreed to certify this issue for interlocutory review at the Commonwealth Court. Pending a disposition by the Commonwealth Court, I am granting Senator Killion intervention to proceed in his individual capacity. I am reserving judgment on legislative standing pending disposition in the case of *Sunoco Pipeline, L.P. v. Pennsylvania Public Utility Commission* at 1169 C.D.

Thornbury Township, Chester County, Edgmont Township, and West Chester Area School District will all be granted Intervenor status as they have interests which may be directly affected and which are not adequately represented by existing participants, and as to which these petitioners may be bound by the action of the Commission in the proceeding.

Procedural Schedule

The following procedural schedule will be adopted.

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October 2019
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	June 15, 2020 (30 days from Surrebuttal)
Hearings	July 15, 2020-July 29, 2020 (30 days from Rejoinder outlines)
Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

Coordination of witnesses

Counsel for Sunoco Pipeline, L.P. is directed to coordinate an agreement as to the order of witnesses and hearing time needed for each witness and will present that agreement to me and the parties in writing no later than two business days before a hearing date.

Service of documents/parties' list

The parties are in agreement that they will accept electronic delivery of documents by 4:30 p.m. on the due date as satisfying the in-hand requirement, if followed by hard copy sent via first class mail or interoffice mail. I will also accept service of documents in this manner, but request that I be provided one (1) hard copy and an electronic version of all filed documents in an electronic copy in Word format or Excel as appropriate. In addition, I also request one (1) hard copy and an electronic version of all served testimony.

For purposes of this proceeding, the parties of record are those entities which appeared at the Prehearing Conference. A service list is attached for the convenience of the parties.

The parties can request that electronic service be provided to multiple persons, and these requests, as stated at the Prehearing Conference, will be honored.

E-mail distribution list

The following is the e-mail distribution list and is subject to change.

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Transcript turnaround

There will be a fifteen-day hearing transcript turnaround so that the briefs can be prepared in accordance with the procedural schedule.

Initial hearing(s) in Delaware/Chester Counties

All parties agree to an initial hearing for layperson testimony from *pro se* complainants and lay-witnesses in Delaware and/or Chester Counties. Tr. 635-638. The hearing will be held in October at a time and place to be announced at a later date. A *pro se* complainant can either testify at this hearing or submit written testimony according to the procedural schedule. Possible venues include the Delaware County Courthouse and Chester County Courthouse during the day and a school auditorium in the West Chester Area School District in the evening. Tr. 667. The parties will coordinate with each other and the presiding officer to select a time and place for initial hearings in Delaware and/or Chester Counties.

Site view

The Flynn Complainants, Melissa DiBernardino, Downingtown School District, Rose Tree Media, Uwchlan Twp., Rebecca Britton, East Goshen Twp., Andover Homeowner's Assn., Laura Obenski, Twin Valley School District, Middletown Twp., and Chester Area School District have requested site views in the Delaware/Chester Counties (primarily to see the Chester County Library, Sts. Peter and Paul School, Duffer's Tavern, Glenwood Elementary School, Tunbridge Apt. Complex, and the Granite Farms Estates retirement community). Complainants

contend the site visit would highlight an inadequate emergency plan that is not site specific. Tr. 643-645. A main complaint is that Sunoco's emergency preparedness plans are inadequate and non-specific to the high consequence area surrounding the pipeline and its appurtenances. Complainants request mass warning systems and better emergency plans. Viewing these sites would enable the fact finder to better understand evidence regarding the complaints.

Sunoco generally opposes a site visit by the ALJ, but in the alternative advocates for a visit whereby where there is no taking of evidence in the form of testimony or exhibits involved. Tr. 647-654.

Although I am willing to conduct a site view, I have not been able to secure permission for one as this is not a high voltage transmission line siting case. Therefore, the requests for a site view will be denied.

Discovery modifications

Sunoco requested a modification to the discovery rules effective after the service of Complainants' and any Aligned Intervenor's Surrebuttal testimony. SPLP proposes to have objections to discovery requests due five (5) days after receipt of requests, that a Motion to Compel be due within five (5) days of service of any objections, and that an answer to a Motion to Compel be due within three (3) days of service of a Motion to Compel. SPLP requests that the presiding officer rule on the motion in an expedited fashion, ideally within three (3) days of receipt of the answer to the Motion to Compel. As Flynn Complainants objected wanting more than 5 days, the discovery rules will be modified to 7 days instead of the proposed 5, accordingly. Tr. 670-674.

Protective Order

Sunoco Pipeline, L.P. filed a Motion for Amended Protective Order on April 17, 2019 and a Motion to Strike Untimely Intervenor's Answer to Motion for Amended Protective Order filed on May 17, 2019, Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines Response to Sunoco's Motion for Amended Protective Order was filed on April 24, 2019. Intervenor Andover

Homeowners' Association's Answer to Sunoco Pipeline L.P.'s Motion for Amended Protective Order was filed on May 8, 2019. Intervenor Chester County, Delaware County, East Goshen Township, Downingtown School District, and Rose Tree Media School District filed a joint Opposition on May 19, 2019. The main objections to the proposed Amended Protective Order are that it would be burdensome to Complainants and Intervenor to have their representatives travel to Bala Cynwyd, Pennsylvania to inspect documents marked "EXTREMELY SENSITIVE MATERIALS" when their experts are located in Pittsburgh and Ontario, Canada. Some Intervenor propose the use of cloud-based software applications providing restrictive private portals by which all three categories of documents can be accessed. Additionally, an objection was raised regarding the lack of provision for the resolution of disputes regarding the designation of materials as "EXTREMELY SENSITIVE MATERIALS" and whether Sunoco reasonably provides copies of these materials upon request.

Although the Commission's regulations do not specifically provide for a third-tiered category of "EXTREMELY SENSITIVE MATERIALS," I acknowledge the company's efforts to keep Confidential Security Information secure and free from dissemination on the internet or to hackers and potential terrorists. However, the limitation of one location near Philadelphia seems unduly burdensome on the Representatives of Complainants and Intervenor, who have named experts located in Pittsburgh and Ontario, Canada. Accordingly, Sunoco's motion will be granted in part and denied in part. Sunoco's proposed Amended Protective Order, will be adopted as modified giving the parties' Representatives the ability to inspect documents in two additional locations in Pennsylvania, Harrisburg or Pittsburgh, upon request. Additionally, a clause providing for a dispute resolution process will be added to an Amended Protective Order that will be issued separately. It appears Sunoco does not object to the parties being able to challenge the third designation. Tr. 674-675. I encourage Sunoco to share as many discovery responses as practicable through password-restricted access portals such as Case Anywhere, Q Discovery or DropBox to reduce the cost and burden of prosecution to *pro se* and governmental complainants and intervenors.

Electronic filing of admitted testimony

In the event there is no settlement, and an evidentiary hearing is held, admitted written testimony shall be electronically filed with the Commission within 30 days after the hearing date. If there is a settlement, and there is no cross-examination regarding pre-served and admitted testimony, then there is no need to file an electronic copy of the testimony.

Settlement

The parties are reminded that if a settlement is reached, they should file a petition for settlement as well as individual party's statements in support of the settlement petition. Additionally, it may be necessary to enter written testimony and other evidence into the record with a settlement petition, in order to provide the presiding officer with enough evidence to support findings that the proposed settlement is in the public interest and in accordance with the Public Utility Code. Evidence may be moved into the record with a written verification, or with the testimony of a live witness attesting to the truthfulness of the testimony offered. Any settlement petitions are to be filed in hard copy as well as in a CD in searchable PDF format. In addition, any settlement petitions are to be delivered to me in hard copy as well as electronically in Word format.

THEREFORE,

IT IS ORDERED:

1. That Docket Nos. C-2018-3006117, P-2018-3006117, C-2018-3005025, C-2018-3006905 and C-2019-3006898 are consolidated for purposes of discovery, hearings, briefs and decisions in these cases.

2. That the procedural schedule is as follows.

In-person lay, pro se litigant hearing(s) in Delaware/Chester Counties	TBD October, 2019 (same day following a TBD site visit by ALJ Barnes)
Complainants and Complainant-Aligned Intervenor Direct Written Testimony	January 15, 2020
Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony	April 14, 2020 (90 days from Direct)
Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony	May 14, 2020 (30 days from Rebuttal)
Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines	June 15, 2020 (30 days from Surrebuttal)
Hearings	July 15, 2020-July 29, 2020 (30 days from Rejoinder outlines)
Transcripts	August 12, 2020 (15 days from end of hearing)
Main Briefs	September 28, 2020 (45 days after receipt of transcript)
Reply Briefs	October 13, 2020 (15 days after Main Briefs)

3. That, except for good cause, any requests for a change in the scheduled hearing dates, briefing deadlines, or other deadlines must be submitted to me in writing no later than five (5) days prior to the scheduled date, if possible. 52 Pa. Code §1.15(b). Requests for changes must state the agreement or opposition of other parties, and must be sent to the presiding officer and all parties of record.

4. That the discovery rules are modified such that effective after the service of Complainants' and any Aligned Intervenor's Surrebuttal testimony, discovery requests shall be due seven (7) days after receipt of requests, that a Motion to Compel be due within seven (7) days of service of any objections, and that an answer to a Motion to Compel be due within three (3) days of service of a Motion to Compel.

5. That Thornbury Township is granted Intervenor status.

6. That the County of Chester is granted Intervenor status.

7. That Edgmont Township is granted Intervenor status.

8. That West Chester Area School District is granted Intervenor status.
9. That Senator Killion is granted Intervenor status in his individual capacity.
10. That in the event an evidentiary hearing is held, admitted written testimony shall be electronically filed with the Commission within 30 days after the hearing date(s).
11. That Sunoco Pipeline, L.P.'s Petition for an Amended Protective Order is granted in part and denied in part and an Amended Protective Order shall be issued under separate order.
12. That there will be a fifteen-day hearing transcript turnaround so that the briefs can be prepared in accordance with the procedural schedule.
13. That Complainants' and Intervenor's requests for a site view are denied.

Date: June 6, 2019

/s/
Elizabeth H. Barnes
Administrative Law Judge

C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP

(Revised 6.6.19)

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Exhibit B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	
Rosemary Fuller	:	
Michael Walsh	:	
Nancy Harkins	:	C-2018-3006116
Gerald McMullen	:	P-2018-3006117
Caroline Hughes and	:	
Melissa Haines	:	
	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	
	:	
Melissa DiBernardino	:	
	:	
v.	:	C-2018-3005025
	:	
Sunoco Pipeline, L.P.	:	
	:	
Rebecca Britton	:	
	:	
v.	:	C-2019-3006898
	:	
Sunoco Pipeline, L.P.	:	
	:	
Laura Obenski	:	
	:	
v.	:	C-2019-3006905
	:	
Sunoco Pipeline, L.P.	:	

PREHEARING ORDER

Pursuant to the Procedural Order issued on June 6, 2019, an initial in-person hearing for lay witnesses in the above-captioned consolidated proceeding is

scheduled for 9:00 a.m. on Wednesday, October 23, 2019 and 9:00 a.m. on Thursday, October 24, 2019 in Courtroom No. 1 at the West Chester Historic Court House, 21 West Market Street, West Chester, Pennsylvania. All attendees should enter the Historic Courthouse through doors on Market Street. The GPS address for the Court House may be listed as 2 North High Street, West Chester. Parking is available at the Bicentennial Parking Facility, 20 South High Street, West Chester; Chester County Justice Center Parking Garage, 220 Market Street, West Chester, or Chestnut Street Garage, 14 East Chestnut Street, West Chester. All attendees should allow sufficient additional time for parking and security checks. Bottled water is permitted in the Courtroom, but no food or other beverages. Seating is limited to approximately 260.

The parties are directed to comply with the following requirements:

1. Complainants and Complainant-Aligned Intervenors are directed to serve the presiding officer, Respondent, and Respondent-Aligned Intervenor with a list of lay witness names, addresses, and brief summaries of the subject matter to which they are expected to testify at the October hearing on or before **August 20, 2019**.

2. Respondent and Respondent-Aligned Intervenor are directed to serve the presiding officer, Complainants, and Complainant-Aligned Intervenors with a list of lay witness names, addresses and brief summaries of the subject matter to which they are expected to testify at the October hearing on or before **September 2, 2019**,

3. All witnesses will be subject to cross-examination by all parties at the hearing.

4. Complainants' and Complainant-Aligned Intervenors' lay witnesses may either testify at the hearing in October, or through direct written testimony submitted to the presiding officer and other parties by January 15, 2020 as set forth in the Procedural Order.

5. Respondent's and Respondent-Aligned Intervenor's lay witnesses may either testify at the hearing in October, or through written rebuttal testimony due April 14, 2020.

6. Lay witnesses are permitted to testify in person at the October hearing or through written direct or rebuttal testimony, but not both. Testimony should not be overly repetitive or cumulative. 52 Pa. Code 5.401. (b)(1). Witnesses may state that they agree with other witnesses in the interest of efficiency.

7. Complainants'/Complainant-aligned Intervenor's expert direct testimony must be served upon the parties and the presiding officer in writing by January 15, 2020 together with any exhibits. The testimony should not be filed with the Secretary, just served upon the parties and presiding officer.

8. Respondent's/Respondent-aligned Intervenor rebuttal written testimony should be served to all parties and the presiding officer on or before April 14, 2020 together with exhibits.

9. At the October 23-24, 2019 hearing, if you intend to present any documents for my consideration, you must bring one copy for the other parties, one copy for me and two copies for the court reporter to the hearing. Note that attachments to your Complaint are not admitted into the record unless submitted separately in accordance with this paragraph.

10. If you are an individual, you may either represent yourself or have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent you. However, if you are a partnership, corporation, trust, association, joint venture, other business organization, trust, trustee, legal representative, receiver, agency, governmental entity, municipality or other political subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent you in this proceeding.

Unless you are an attorney, you may not represent someone else. Attorneys shall comply with the Commission's appearance requirements. 52 Pa. Code § 1.24(b).

11. A request for a change of the scheduled hearing date must be submitted in writing no later than five (5) days prior to the hearing. 52 Pa. Code § 1.15(b). The requesting party must contact the other parties to determine whether there is agreement to the change prior to contacting the presiding officer. Requests for changes of initial hearings must be sent to me with copies to all parties of record. *Changes are granted only in rare situations where sufficient cause exists.*

12. A copy of anything filed with the Secretary or submitted shall be sent directly to the presiding officer. The correct address is: Administrative Law Judge Elizabeth H. Barnes, Office of Administrative Law Judge, 400 North Street, Harrisburg PA 17120, ebarnes@pa.gov. Pro-se Complainants/Intervenors may just e-mail the presiding officer, without a hard copy.

13. This hearing is a formal proceeding and will be conducted in accordance with the Commission's rules of practice and procedure. 52 Pa. Code Chapters 1, 3 and 5.

14. Commission policy is to encourage settlements. 52 Pa. Code § 5.231(a). Sunoco Pipeline, L.P. is required to contact Complainants to discuss informally the possible settlement of this consolidated case as soon as possible but **no** later than at least one week before the hearing. If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

15. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa. Code § 5.421. You must submit your written application to me sufficiently in advance of the hearing date so that the other parties will

have the required ten (10) days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.

16. The utility is put on notice that a finding of a violation of a Commission Order, regulation or statute may result in the imposition of a civil penalty consistent with 66 Pa. C.S. § 3301 or other provision of the Public Utility Code.

17. An informal phone conference will be held at 2:00 p.m. on September 5, 2019 to discuss any prehearing procedural matters. The call in conference number is 877-931-1680, Passcode Participant Number 55872942.

Date: August 2, 2019

_____/s/
Elizabeth Barnes
Administrative Law Judge

C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP

(Revised 6.6.19)

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Accepts E-Service

Representing Edgmont Twp.

Exhibit C

From: Michael Bomstein <mbomstein@gmail.com>

Sent: Monday, January 20, 2020 10:47 AM

To: ebarnes@pa.gov; rich@raiderslaw.com; akanagy@postschell.com; glent@postschell.com; gdonatelli@lambmcerlane.com; rotenberg@mcr-attorneys.com; mmorris@regerlaw.com; vpompo@lambmcerlane.com; mlf@curtinheefner.com; jflandreau@pfblaw.com; MaddrenM@co.delaware.pa.us; patbiswanger@gmail.com; jdaltan@utbf.com; jjbyrne@mbmlawoffice.com; ksullivan@mbmlawoffice.com; mppierce@piercelandhughes.com; jfrank@lambmcerlane.com; lissdibernardino@gmail.com; tcaseylegal@gmail.com; vkerslake@gmail.com; rbrittonlegal@gmail.com; jmaxwell@downingtown.org; ljobenski@gmail.com; Kevin McKeon <KJMcKeon@hmslegal.com>; Whitney Snyder <WESnyder@hmslegal.com>; Diana Silva <DSilva@mankogold.com>; Robert D. Fox (rfox@mankogold.com) <RFox@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Neil Witkes <NWitkes@mankogold.com>

Subject: Flynn Pretrial Procedure

Dear Judge Barnes:

I write you on behalf of the Flynn Complainants concerning the matter of ongoing discovery and introduction of evidence at the July hearings. Upon review of your pre-hearing orders, I am not aware of any particular constraints on ordinary discovery.

As regards the introduction of evidence, other than the bifurcation of witness testimony into lay witnesses and expert witnesses, I am unaware of any limitations on ordinary trial procedure.

The intersection of these two matters may become an issue between the parties in the coming months. Flynn Complainants intend to move for leave to take depositions. For example, Matthew Gordon, Sunoco engineer, has signed off on numerous answers to interrogatories, including those received just this past week. Depending on his testimony, we may wish to call him as an adverse fact witness.

Written discovery answers and responses to upcoming requests for admissions are matters that we may wish to read into the record as admissions. Documents that Sunoco has furnished and documents that it may in the future furnish also are materials we may wish to introduce into evidence. In addition, records of Sunoco pipeline events that have not yet occurred may also be documents we would like to introduce into evidence.

In light of these concerns, on behalf of the Flynn Complainants I request Your Honor address these matters, perhaps in a phone conference or in an additional procedural order. Please be advised that we also are prepared to draft an amended pretrial order if Your Honor so directs.

Thank you for your consideration.

MSB

Exhibit D

From: Michael Bomstein <mbomstein@gmail.com>
Sent: Tuesday, January 21, 2020 9:26 AM
To: Whitney Snyder <WESnyder@hmslegal.com>
Cc: ebarnes@pa.gov; rich@raiderslaw.com; akanagy@postschell.com; glent@postschell.com; gdonatelli@lambmcerlane.com; rotenberg@mcr-attorneys.com; mmorris@regerlaw.com; vpompo@lambmcerlane.com; mlf@curtinheefner.com; jflandreau@pfblaw.com; MaddrenM@co.delaware.pa.us; patbiswanger@gmail.com; jdalton@utbf.com; jjbyrne@mbmlawoffice.com; ksullivan@mbmlawoffice.com; mppierce@piercelandhughes.com; jfrank@lambmcerlane.com; lissdibernardino@gmail.com; tcaseylegal@gmail.com; vkerslake@gmail.com; rbrittonlegal@gmail.com; jmaxwell@downingtown.org; ljobenski@gmail.com; Kevin McKeon <KJMckeon@hmslegal.com>; Diana Silva <DSilva@mankogold.com>; Robert D. Fox (rfox@mankogold.com) <RFox@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Neil Witkes <NWitkes@mankogold.com>
Subject: Re: Flynn Pretrial Procedure

Your Honor,

I accept Sunoco's representation that it intends to file a motion that covers all points raised in my email. I am concerned, however, that the motion be filed with dispatch. I trust that it will be and, for that reason, ask that you take no action on my request at this time. MSB

On Tue, Jan 21, 2020 at 8:59 AM Whitney Snyder <WESnyder@hmslegal.com> wrote:

Your Honor,

Sunoco Pipeline L.P. objects to Mr. Bomstein's improper email on a number of procedural and substantive bases, and requests that Your Honor not take any action in response to the email so that the parties may create a proper record for review in accordance with the Commission's rules. SPLP will be filing its own motion relative to Mr. Bomstein's email and asks that no action be taken on Mr. Bomstein's email requests at this time pending review of SPLP's formal motion and his response thereto.

Respectfully,

Whitney E. Snyder | Partner

Hawke McKeon & Sniscak LLP

100 North 10th Street | Harrisburg, PA 17101

Phone: 717.703.0807 | Fax: 717.236.4841 | Email: wesnyder@hmslegal.com

<http://www.hmslegal.com/> |

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From: Michael Bomstein <mbomstein@gmail.com>

Sent: Monday, January 20, 2020 10:47 AM

To: ebarnes@pa.gov; rich@raiderslaw.com; akanagy@postschell.com; glent@postschell.com; gdonatelli@lambmcerlane.com; rotenberg@mcr-attorneys.com; mmorris@regerlaw.com; vpompo@lambmcerlane.com; mlf@curtinheefner.com; jflandreau@ofblaw.com; MaddrenM@co.delaware.pa.us; patbiswanger@gmail.com; jdalton@utbf.com; jjbyrne@mbmlawoffice.com; ksullivan@mbmlawoffice.com; mppierce@piercelandhughes.com; jfrank@lambmcerlane.com; lissdibernardino@gmail.com; tcaseylegal@gmail.com; vkerslake@gmail.com; rbrittonlegal@gmail.com; jmaxwell@downingtowntown.org; liobenski@gmail.com; Kevin McKeon <KJMcKeon@hmslegal.com>; Whitney Snyder <WESnyder@hmslegal.com>; Diana Silva <DSilva@mankogold.com>; Robert D. Fox <rfox@mankogold.com> <RFox@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Neil Witkes <NWitkes@mankogold.com>

Subject: Flynn Pretrial Procedure

Dear Judge Barnes:

I write you on behalf of the Flynn Complainants concerning the matter of ongoing discovery and introduction of evidence at the July hearings. Upon review of your pre-hearing orders, I am not aware of any particular constraints on ordinary discovery.

As regards the introduction of evidence, other than the bifurcation of witness testimony into lay witnesses and expert witnesses, I am unaware of any limitations on ordinary trial procedure.

The intersection of these two matters may become an issue between the parties in the coming months. Flynn Complainants intend to move for leave to take depositions. For example, Matthew Gordon, Sunoco engineer, has signed off on numerous answers to interrogatories, including those received just this past week. Depending on his testimony, we may wish to call him as an adverse fact witness.

Written discovery answers and responses to upcoming requests for admissions are matters that we may wish to read into the record as admissions. Documents that Sunoco has furnished and documents that it may in the future furnish also are materials we may wish to introduce into evidence. In addition, records of Sunoco pipeline events that have not yet occurred may also be documents we would like to introduce into evidence.

In light of these concerns, on behalf of the Flynn Complainants I request Your Honor address these matters, perhaps in a phone conference or in an additional procedural

order. Please be advised that we also are prepared to draft an amended pretrial order if Your Honor so directs.

Thank you for your consideration.

MSB

Exhibit E

Whitney Snyder

From: Whitney Snyder
Sent: Monday, December 30, 2019 4:07 PM
To: Barnes, Elizabeth
Cc: Guy Donatelli; Joel Frank; Kevin McKeon; Leah Rotenberg; Michael Maddren; Neil Witkes; Robert D. Fox (rfox@mankogold.com); Thomas Sniscak; Vince Pompo; Kanagy, Anthony; Lent, Garrett; Jdalton@Utb.com; James Flandreau; Jjbyrne@Mbmlawoffice.com; Josh Maxwell; Kelly Sullivan; Melissa DiBernardino; Laura Obenski; Mike Pierce; Patricia Biswanger; Rich Raiders; tcaseylegal@gmail.com; Ginny (Virginia) Kerslake; rebecca britton; Mark L.; Diana Silva; Michael Bomstein
Subject: RE: [External] Flynn Discovery Motion

Judge Barnes,

Sunoco Pipeline L.P. objects to Flynn Complainants' procedurally improper request below for the ability to supplement testimony based on a future discovery ruling. First, such request must be made by motion with the opportunity for SPLP to respond. Complainants were well-aware of the timing of discovery and their motion to compel and could have requested this relief in their original motion, instead of a last-minute, surprise email request over the holiday season. Second, there is no basis to grant the requested relief. It is wholly improper to now burden SPLP with a shortened response period for any supplemental testimony Mr. Bomstein is requesting the ability to submit, where, as here, there is no excuse for Complainants' delay in discovery. Complainants have had over TWELVE months to conduct discovery in this proceeding; the Commission's regulations very clearly state: "a party shall initiate discovery as early in the proceedings as reasonably possible." 52 Pa. Code § 5.331(b). Now, approximately 2.5 weeks before their testimony is due, Complainants request the ability to supplement testimony because they did not serve their second set of discovery until November 21, 2019 (a full year after their Complaint was served) with knowledge that the objection and motion to compel process takes at least 40 days to ruling, *see* 52 Pa. Code § 5.342, let alone time for responses based on such ruling. It is unfair and prejudicial to allow Complainants to supplement their testimony based on their own delay in discovery, resulting in a shortened answering period for SPLP for any such supplemental testimony.

Respectfully,

Whitney E. Snyder | Partner
Hawke McKeon & Sniscak LLP
100 North 10th Street | Harrisburg, PA 17101
Phone: 717.703.0807 | Fax: 717.236.4841 | Email: wesnyder@hmslegal.com
<http://www.hmslegal.com/> |

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From: Michael Bomstein <mbomstein@gmail.com>
Sent: Monday, December 30, 2019 11:27 AM
To: Barnes, Elizabeth <EBARNES@pa.gov>
Cc: Guy Donatelli <gdonatelli@lambmcerlane.com>; Joel Frank <jfrank@lambmcerlane.com>; Kevin McKeon <KJMcKeon@hmslegal.com>; Leah Rotenberg <rotenberg@mcr-attorneys.com>; Michael Maddren

<MaddrenM@co.delaware.pa.us>; Neil Witkes <NWilkes@mankogold.com>; Robert D. Fox (rfox@mankogold.com) <RFox@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Vince Pompo <vpompo@lambmcerlane.com>; Whitney Snyder <WESnyder@hmslegal.com>; Kanagy, Anthony <akanagy@postschell.com>; Lent, Garrett <glent@postschell.com>; Jdalton@Utbf.com; James Flandreau <jflandreau@pfblaw.com>; Jjbyrne@Mbmlawoffice.com; Josh Maxwell <jmaxwell@downingtown.org>; Kelly Sullivan <ksullivan@mbmlawoffice.com>; Melissa DiBernardino <lissdibernardino@gmail.com>; Laura Obenski <ljobenski@gmail.com>; Mike Pierce <mpierce@pierceandhughes.com>; Patricia Biswanger <patbiswanger@gmail.com>; Rich Raiders <rich@raiderslaw.com>; tcaseylegal@gmail.com; Ginny (Virginia) Kerslake <vkerslake@gmail.com>; rebecca britton <rbrittonlegal@gmail.com>; Mark L. <MLF@curtinheefner.com>; Diana Silva <DSilva@mankogold.com>
Subject: Re: [External] Flynn Discovery Motion

Thank you. MSB

On Mon, Dec 30, 2019 at 11:17 AM Barnes, Elizabeth <EBARNES@pa.gov> wrote:

Thank you for your e-mail, Mr. Bomstein. I am reviewing the pleadings today and will have an Order issued by the end of the week.

Regards,

Elizabeth Barnes

From: Michael Bomstein <mbomstein@gmail.com>
Sent: Monday, December 30, 2019 11:06 AM
To: Barnes, Elizabeth <EBARNES@pa.gov>
Cc: Guy Donatelli <gdonatelli@lambmcerlane.com>; Joel Frank <jfrank@lambmcerlane.com>; Kevin McKeon <KJMckeon@hmslegal.com>; Leah Rotenberg <rotenberg@mcr-attorneys.com>; Michael Maddren <MaddrenM@co.delaware.pa.us>; Neil Witkes <NWilkes@mankogold.com>; Robert D. Fox (rfox@mankogold.com) <RFox@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Vince Pompo <vpompo@lambmcerlane.com>; Whitney Snyder <WESnyder@hmslegal.com>; Kanagy, Anthony <akanagy@postschell.com>; Lent, Garrett <glent@postschell.com>; Jdalton@Utbf.com; James Flandreau <jflandreau@pfblaw.com>; Jjbyrne@Mbmlawoffice.com; Josh Maxwell <jmaxwell@downingtown.org>; Kelly Sullivan <ksullivan@mbmlawoffice.com>; Melissa DiBernardino <lissdibernardino@gmail.com>; Laura Obenski <ljobenski@gmail.com>; Mike Pierce <mpierce@pierceandhughes.com>; Patricia Biswanger <patbiswanger@gmail.com>; Rich Raiders <rich@raiderslaw.com>; tcaseylegal@gmail.com; Ginny (Virginia) Kerslake <vkerslake@gmail.com>; rebecca britton <rbrittonlegal@gmail.com>; Mark L. <MLF@curtinheefner.com>; Diana Silva <DSilva@mankogold.com>
Subject: [External] Flynn Discovery Motion

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Your Honor,

Currently pending before Your Honor is Flynn's motion to compel answers to our second interrogatories and document request. Ms. Snyder served Sunoco's response on December 16th.

Your Honor's disposition of this motion – whether favorable or not – may have a bearing on the testimony of two of our experts. As you know, our initial testimony is due January 15th and we are in the middle of holidays.

If our motion is to be granted, and responses are ordered, my clients will need a reasonable amount of time following responses/production in order to supplement our testimony. We do not believe this should otherwise affect the schedule. If our motion is not to be granted, we would appreciate your decision being made in time for the experts to note your decision in their testimony.

Thank you for your consideration.

MSB

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).

VIA ELECTRONIC MAIL

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Pro se Complainant

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Alexander G. Bomstein, Esquire
Ernest Logan Welde, Esquire
Kathryn L. Urbanowicz, Esquire
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Dated: January 29, 2020