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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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A LIMITED LIABILITY PARTNERSHIP  
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September 16, 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. v. Sunoco Pipeline L.P.,*  
Consolidated Docket Nos. C-2018-3006116

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (PUC) is Sunoco Pipeline, L.P.'s Answer Opposing Motion and Amended Motion of Flynn Complainants for Partial Summary Judgment, with reference Exhibits 1-10, and Certificate of Service. Thank you.

Very truly yours,

Diana A. Silva  
For MANKO, GOLD, KATCHER & FOX, LLP

DAS/bad/11842.019

Enclosure

cc: All Counsel and Pro Se Parties on attached Service List



**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)
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	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

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**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING  
MOTION AND AMENDED MOTION OF FLYNN COMPLAINANTS  
FOR PARTIAL SUMMARY JUDGMENT**

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**I. Summary of Argument**

**A. Background**

Sunoco Pipeline, L.P. (“Sunoco”) answers and opposes the Flynn Complainants’ motion for partial summary judgment,<sup>1</sup> which falsely claims that Sunoco did not produce copies of its risk analyses for the Mariner East pipelines required to be performed and maintained under PHMSA regulations. Motion at pg. 1. The Flynn Complainants assert that, in response to discovery and a corresponding motion to compel, “Sunoco produced only hazard/ spill/ consequence assessments,” and that while written testimony is now closed “still no risk assessments have been identified or produced.” Motion at pg. 2. The Flynn Complainants then

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<sup>1</sup> Flynn Complainants filed the motion on August 27, 2020. On September 1, 2020, Flynn Complainants filed what they referred to as an amended motion, but did not withdraw the motion originally filed. The amended motion deleted Chester and Delaware counties as movants but is otherwise identical to the motion filed on August 27. Therefore, to the extent necessary, this answer and opposition responds to the motion and amended motion.

seek to draw the inference that because Sunoco did not produce any risk assessments for its pipelines, the risk assessments do not exist and Sunoco is in violation of state and federal law regarding integrity management practices. Motion at pg. 2. Because the Flynn Complainants' motion rests on the false statement that Sunoco did not produce risk assessments in discovery – when, in fact, Sunoco produced them on four separate occasions – the motion must be denied.

**B. Sunoco produced its risk assessment documents for review by counsel and an expert for the Flynn Complainants on four separate occasions, and counsel stipulated that they were produced.**

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Contrary to what the Flynn Complainants assert, Sunoco produced copies of its Integrity Management Plans for review by counsel for the Flynn Complainants and their retained expert on four separate occasions. The Integrity Management Plans include specific risk assessment methodology and risk assessment results for the operational Mariner East pipelines. *See e.g.*, Ex. 5, Dalasio Affidavit ¶ 2 (listing risk assessment documents, including relevant portions of integrity management plans). The Flynn Complainants *actually stipulated that these documents were produced* when they were classified as “Extremely Sensitive Materials” and subject to a Joint Stipulation of Record to Amended Protective Order and Procedural Schedule (the “Joint Stipulation”), a copy of which is attached as Exhibit “1.” This Stipulation was then entered into the record as an Order from Judge Barnes on January 2, 2020 (the “Order”), a copy of which is attached as Exhibit “2.” Thus, the Flynn Complainants’ assertion that Sunoco failed to produce its risk assessment documents is simply false, as counsel for the Flynn Complainants previously stipulated.

Sunoco provided the Flynn Complainants with an opportunity to withdraw this motion because it is based on the false premise that Sunoco’s risk assessments had not been produced. By email dated September 4, 2020 (copy attached as Exhibit “3”), Sunoco presented counsel for

the Flynn Complainants with direct evidence that the risk assessment documents had been produced and requested that the Flynn Complainants withdraw their Motion. Counsel for the Flynn Complainants responded by email twelve minutes later stating that he would not withdraw the motion and would let Your Honor decide (a copy of the email response is attached as Exhibit “4”). Therefore, there can be no doubt that this was not a mistake, an oversight, an inadvertence or an improvidence. Counsel for the Flynn Complainants had full knowledge that Sunoco has produced the requested risk assessment documents, but nevertheless has continued to falsely claim that Sunoco did not produce them.

## **II. Argument**

### **A. The Flynn Complainants know that Sunoco produced its risk assessment documents but falsely claims that Sunoco did not.**

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As the Joint Stipulation and Order reflects, among the documents designated as Extremely Sensitive Materials,<sup>2</sup> Sunoco produced two versions of its Integrity Management Plan – one that was applicable for the time period before the Sunoco - Energy Transfer merger, and one that is applicable thereafter. *See* Exs. 1 and 2, ¶ 2.b., Bates Nos. SPLP00007094-SPLP00007161 (Sunoco Logistics Pipeline Integrity Management Plan); Exs. 1 and 2, ¶ 2.c., Bates Nos. SPLP00007034-SPLP00007093 (Energy Transfer Pipeline Integrity Management Plan). The Integrity Management Plans both describe Sunoco’s risk assessment process, risk assessment models and related methodology, and also include related documents and appendices that provide the detailed risk assessments themselves – all which Sunoco produced during discovery in these proceedings. *See* Exs. 1 and 2, ¶ 2.i. (Sunoco Logistics Risk Model

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<sup>2</sup> Each of these documents is designated as Extremely Sensitive Materials, and in accordance with the Amended Protective Order, Joint Stipulation and Order, the parties must “use best efforts to limit inclusion of ESM in testimony, exhibits, briefs, exceptions, and reply exceptions and to limit on the record discussion of ESM.” *See* Exs. 1 and 2, ¶ 13. As such, copies of the Extremely Sensitive Materials have not been appended to this response, but can and will be produced to Your Honor if and as necessary for Your Honor’s determination of this motion.

Workbook, Bates Nos. SPLP00031450-SPLP00031498), and ¶ 2.d (Appendix F.1 - PRS-195 Risk Model, Bates Nos. SPLP00032035-SPLP00032057 and Appendix F.2 – Sunoco Logistics Risk Model Workbook, SPLP00032058-SPLP00032106 (additional copy of same document identified in ¶ 2.i)).

Further, in response to Flynn Complainants’ Interrogatories No. 173 and 174, which requested that Sunoco identify all risk assessments for the Mariner East 1 pipeline and the 12-inch pipeline that is currently being used as part of the Mariner East pipeline system in Chester and Delaware Counties, as modified by ALJ Barnes’s June 7, 2019 Order to limit the request to Chester and Delaware Counties (*see* June 7, 2019 Order on Motion to Compel at p. 37, Ordering Paragraph 22) – Sunoco produced the results of its risk model analysis and assessment for the Mariner East 1 pipeline and 12-inch pipeline for Chester and Delaware Counties. *See* Exs. 1 and 2, ¶ 2.d., Bates Nos. SPLP00031499-SPLP00031521 (risk assessment results); *see also* Affidavit of Richard M. Dalasio, P.E., attached as Exhibit “5,” ¶ 2 (describing documents comprising risk assessment under PHMSA regulations).

In accordance with the terms of the Amended Protective Order, Sunoco made hard copies of these documents available upon request to the Flynn Complainants’ counsel and designated expert witnesses at any mutually-convenient time and place. Sunoco made these documents available at not just one, but at four in-person review sessions held on the following dates and in the following locations:

- (1) August 9, 2019 in Pittsburgh at the office of Flynn Complainants’ designated expert witness, Dr. Zamanzadeh (“Dr. Z”) of Matergenics;
- (2) August 21, 2019 at Sunoco’s counsel’s office in Bala Cynwyd;
- (3) January 6, 2020 in Pittsburgh at Matergenics; and,

(4) August 9, 2020 at Flynn Complainants' counsel's own office.

See Affidavit of Diana A. Silva, Esquire attached as Exhibit "6," ¶¶ 6-10 and Affidavit of Whitney E. Snyder, Esquire attached as Exhibit "7," ¶¶ 4-6, 9-11.

Further, on the morning of the January 6, 2020 review session in Pittsburgh, Flynn Complainants' counsel asked for a list of Extremely Sensitive Materials that would be provided at that in-person review session, and counsel for Sunoco sent a list by email and referenced the Stipulation and corresponding Order. See Ex. 6, Affidavit of Silva ¶ 10 and Exhibit A thereto. Importantly, three of these review sessions occurred *before* the Complainants' and aligned-intervenor's direct testimony was due on January 15, 2020 or surrebuttal testimony was due on June 15, 2020. Ex. 6, Affidavit of Silva ¶ 11. Notably, the most recent in-person review session was just three weeks before the Flynn Complainants filed their motion. Ex. 6, Affidavit of Silva ¶ 8. At each of the four review sessions, Sunoco produced the Extremely Sensitive Materials for counsel to review for as long as necessary and at any time that counsel or a designated expert witnesses requested.

In sum, the Flynn Complainants' assertion that Sunoco failed to produce risk assessment documents associated with the Mariner East pipelines in Chester and Delaware Counties is demonstrably false. The Flynn Complainants *stipulated* to the existence of these documents, as confirmed by the Order, had an opportunity to review the risk assessment documents on four separate occasions, and were advised of these facts by Sunoco both before and after the Flynn Complainants filed this motion. Therefore, the motion should be denied because it is based on misstatement that the risk assessment documents were not produced in discovery.

- B. The Flynn Complainants rely on an affidavit from co-counsel Rich Raiders, Esquire, which (i) misrepresents that Sunoco did not produce the risk assessment documents, (ii) conflicts with Pennsylvania Rule of Professional Conduct 3.7, which prohibits a lawyer from acting as counsel and witness in a matter, and (iii) violates Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. § 150, which makes it unlawful for any person to hold themselves out as an engineer unless they are so licensed and registered in Pennsylvania.**
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Attorney Raiders is counsel of record for Complainant Andover Homeowners' Association, Inc. The Flynn Complainants attached Mr. Raiders' affidavit to their motion. In his affidavit, Mr. Raiders averred that when Sunoco produced Confidential Security Information for him to review, he was "not shown any documents that could be characterized as risk analysis or risk assessment, whether qualitative or quantitative." Raiders' Verified Statement, Exhibit "A" to Flynn Complainants' Motion, ¶ 9. Mr. Raiders further averred that to the best of his knowledge, Sunoco to date has not identified any such documents. *Id.* ¶ 10.

In fact, Sunoco produced the following documents: two versions of the Integrity Management Plan (Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries, Bates Nos. SPLP00007034-SPLP00007093; Sunoco Logistics Pipeline Integrity Management Plan, Bates Nos. SPLP00007094-SPLP00007161); the Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498); and the risk assessment results for the Mariner East 1 pipeline and the 12-inch pipeline that is currently being used as part of the Mariner East 2 system in Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521). All of these documents were produced and made available at the August 9, 2019 in-person review session that Attorneys Raiders attended. *See* Ex. 7, Snyder Affidavit ¶ 5. In fact, during that review session, Attorney Raiders noted that certain appendices to the Energy Transfer version of the Integrity Management Plan were not included in the binder of hard copy documents designated as Extremely Sensitive Materials, and Sunoco provided a supplemental

production of those appendices, which Sunoco then made available at the January 6, 2020 review session and the August 6, 2020 review session, which Mr. Raiders chose not to attend. *See* Ex. 7, Snyder Affidavit ¶¶ 6, 9, and Ex. 6, Silva Affidavit ¶ 8. Attorney Raiders did not attend any of the subsequent in-person review sessions or otherwise request any additional opportunity to review the documents designated as Extremely Sensitive Materials. *See* Ex. 7, Affidavit of Snyder ¶¶ 9, 11, and Ex. 6, Affidavit of Silva ¶¶ 7-8, 12. As with counsel for the Flynn Complainants, Sunoco informed Mr. Raiders that his affidavit was inaccurate and gave him an opportunity to correct it. By email dated September 4, 2020, Sunoco informed Mr. Raiders that the risk assessments were identified in the Joint Stipulation produced during his review of the Confidential Security Information and that they were produced three additional times for review (a copy of this email is attached hereto as Exhibit “8”). Mr. Raiders did not respond and has not, as Sunoco requested, withdrawn his affidavit despite irrefutable evidence that the documents were, in fact, produced.

In addition, Pennsylvania Rule of Professional Conduct 3.7 prohibits a lawyer from acting both as counsel and as a witness in the same case:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - (1) the testimony relates to an uncontested issue;
  - (2) the testimony relates to the nature and value of legal services rendered in the case; or
  - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Pa. R.P.C. 3.7.

Attorney Raiders’ affidavit in support of the motion does just that – he provides testimony by way of affidavit that relates to a contested issue in this case, namely, whether or not



Sunoco has performed risk assessments on the Mariner East pipelines in Chester and Delaware Counties and whether those risk assessments were appropriate or adequate under applicable state and federal regulations. But Attorney Raiders' affidavit goes even further by attempting to provide purported expert testimony regarding his alleged understanding of risk analyses performed in the pipeline industry, and provides his supposed expert opinion that Sunoco has not performed a risk analysis or assessment that was either qualitative or quantitative. *See* Ex. A to Flynn Complainants' Motion, Verified Statement of Rich Raiders. This affidavit falls squarely within Pennsylvania Rule of Professional Conduct 3.7, which prohibits counsel of record from also serving as a witness in the same proceeding. Under that rule, the only thing that Attorney Raiders would be competent to provide an affidavit about is what documents were produced or shown to him during the initial August 9, 2019 in-person review session.

Furthermore, in his affidavit, Attorney Raiders holds himself out to be an engineer to qualify himself as an expert to provide new engineering opinions in the affidavit. In the very first line of his affidavit, Mr. Raiders states: "I am an attorney *and an engineer*." (Emphasis added.) Attorney Raiders is not a licensed professional engineer in the state of Pennsylvania.<sup>3</sup> His affidavit, and Attorney Raiders claim that he is an "engineer," is a violation of Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. § 150, which makes it

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<sup>3</sup> In fact, in another proceeding, on cross examination Attorney Raiders admitted he is not a licensed professional engineer in Pennsylvania. *See* Transcript from West Cornwall Township Zoning Hearing Board, Case No. 2-15, (June 8, 2017) at pg. 141:13-19 ("Q. Okay. And you're not a licensed professional engineer are you? A. No, I am not. Q. When you say you're testifying here as an engineer tonight, you don't have a license from the Commonwealth of Pennsylvania as an engineer.? A. I do not hold a license."), transcript excerpt attached as Exhibit "9." The fact that Attorney Raiders is not a licensed professional engineer in Pennsylvania can also be easily confirmed by utilizing the Pennsylvania Department of State's online license validation website available at <https://www.pals.pa.gov/#/page/search>, which allows the public to confirm whether an individual holds a license as a professional engineer issued by the Board for Professional Engineers, Land Surveyors and Geologists. This website reflects Attorney Raiders does not hold a professional engineering license. Sunoco also confirmed the results of this online database directly with the Board for Professional Engineers, Land Surveyors and Geologist, by email dated September 11, 2020, a copy of which is attached as Exhibit "10."

“unlawful for any person to practice or offer to practice engineering in this Commonwealth, *unless he is licensed and registered under the laws of this Commonwealth as a professional engineer,*” and specifically states that “[a] person shall be construed to practice or offer to practice engineering. . . who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer.” (emphasis added). The affidavit Attorney Raiders submitted in support of the motion violates this statute. Not only does Mr. Raiders describes himself as “an attorney and an engineer,” he then attempts to provide details on his qualifications and experience as an engineer to support his alleged understanding and opinions regarding pipeline risk assessments. *See* Ex. A to Motion, Verified Statement of Rich Raiders. In fact, Attorney Raiders purports to offer the statements in his affidavit “to a reasonable level of scientific and technical certainty.” *See* Ex. A to Motion, Verified Statement of Rich Raiders ¶ 14.

In sum, the affidavit submitted by Attorney Raiders in support of the Flynn Complainants’ motion is not only factually inaccurate, it violates Pennsylvania Rule of Professional Conduct 3.7 and Section 3 of the Engineer, Land Surveyor and Geologist Registration Law. The affidavit should therefore be stricken in its entirety, and any references in the motion to the affidavit as supporting or otherwise providing “undisputed facts” should likewise be stricken.

**C.     The Flynn Complainants’ Motion violates the Omnibus Order and 52 P.S. Code § 5.423(e) because it raises issues not raised in Complainants’ direct or surrebuttal testimony.**

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Finally, the Flynn Complainants’ did not raise in their direct written testimony or surrebuttal testimony any issue with respect to the existence or adequacy of Sunoco’s risk assessments. While the Flynn Complainants may have included an *allegation* in their Complaint

alleging that Sunoco had not performed risk assessments as required by the regulations, they never offered any evidence to support those allegations.<sup>4</sup> Thus, to support their motion, rather than citing to their own written direct or surrebuttal testimony, the Flynn Complainants had to provide two entirely new affidavits to support their motion – one from Attorney Raiders, which is improper for the reasons above, and a second from Flynn Complainants’ witness Jeffrey Marx, who provided both written direct and surrebuttal testimony in this case.

This is yet another improper attempt by the Flynn Complainants to supplement their expert testimony in violation of 52 Pa Code § 5.243(e). Under 52 Pa Code § 5.243(e), the two affidavits represent additional expert testimony, one from an entirely new purported “expert” who was not previously disclosed or identified as required by procedures established by case management orders. The Flynn Complainants yet again try to introduce evidence *after* the conclusion of written testimony submissions to inject new issues that should have been included in their case-in-chief. See 52 Pa. Code § 5.243(e) (“A party will not be permitted to introduce evidence during a rebuttal phase which: (1) Is repetitive. (2) ***Should have been included in the party’s case-in-chief.*** (3) ***Substantially varies from the party’s case-in-chief.***”) (emphasis added). Here the Flynn Complainants’ attempt violates both of these prohibitions.

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<sup>4</sup> Sunoco filed a Motion for Partial Summary Judgment on Consequence Without Probability that outlines in detail how the Flynn Complainants have admitted that they offer no evidence of the likelihood that a release will actually occur from the Mariner East pipelines, and that without that evidence, they cannot meet their burden of proving that the pipelines are unsafe within the meaning of Section 1501 of the Pennsylvania Public Utility Code, 66 P.S. § 1501. The Flynn Complainants’ motion has no bearing on Sunoco’s pending motion. Sunoco’s motion focuses on the fact that the Flynn Complainants have failed to meet their burden of proof because they have not presented any evidence of the probability or likelihood that a catastrophic release from the Mariner East pipelines could occur, and that the Commission has already ruled that consequence alone is insufficient as a matter of law. In contrast, the Flynn Complainants’ motion involves the wholly unrelated issue whether Sunoco has prepared a risk assessment of its pipelines as required by state and federal PHMSA regulations, which is wholly separate and apart from the Flynn Complainants’ claim that evidence of consequences without corresponding evidence of probability or likelihood, is sufficient to meet its burden of proof that the pipelines are unsafe.

This additional testimony in the form of affidavits should be disregarded, and otherwise cannot be used as a basis for a summary judgment motion. Indeed, Your Honor has already invoked 52 Pa. Code § 5.243(e) and restricted the Flynn Complainants' prior attempt to introduce new testimony or documents that are outside the scope of direct testimony. *See e.g.*, Order Granting Sunoco Pipeline L.P.'s Omnibus Motion, ¶ 4 (Feb. 11, 2020) (granting motion and directing "all parties shall comply with the provisions of 52 Pa. Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party's case-in-chief or which substantially varies from the party's case-in-chief, unless the party is introducing evidence in support of a proposed settlement." ).<sup>5</sup>

Remarkably, despite Jeffrey Marx stating in his affidavit that he is "unaware of any documentation produced in this case that would substantiate the assertion that Sunoco performed a risk analysis with subsequent risk assessment relative to the Mariner East HVL pipelines in Chester and Delaware Counties" (*see* Exhibit D to Motion, Verified Statement of Jeffery Marx ¶ 15)<sup>6</sup> – Marx never even reviewed Sunoco's risk assessment documents. He never even attempted to review any of the documents designated as Extremely Sensitive Materials – he

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<sup>5</sup> *See also* Interim Order (entered Feb. 13, 2020) (sustaining objections to Flynn Complainants' Notice of Deposition of Matthew Gordon that sought discovery outside scope of complaint); *see also* Sunoco Pipeline L.P. Objection to Flynn Complainants' Notice of Deposition and Production of Documents for Matthew Gordon (filed Feb. 12, 2020), at 3 (same); *see also* SPLP's Answer Opposing Flynn Complainants' Motion for Leave to Submit Additional Evidence, at Attachment A (Excerpt of Gordon Deposition Transcript, N.T. 120:3-8 (upholding SPLP's objection to introduction of documents), N.T. 121:24-25 (declining to reconsider ruling)). *See also* May 28, 2020 Order, at 2-3 (noting that Flynn Complainants' request for admissions "are an attempt to introduce evidence after Complainants' direct case and they expand the scope of the proceeding. The scope of discovery is limited to relevant issues in the case as narrowed by the scope of Complainants' direct testimony. . . . SPLP will not be compelled to answer these Admissions pertaining to DEP's COA's because they are not relevant to the issues in the instant case and exceed the scope of the Complainants' direct case before the Commission. . . . Additionally, Flynn Complainants' Motion for Leave to File Supplemental Testimony and Exhibits will be denied." ).

<sup>6</sup> The Marx affidavit is also improper for additional reasons, including that Mr. Marx purports to provide an expert opinion regarding the meaning of PHMSA regulations, and that it focuses on the incorrect regulatory provision, 49 C.F.R. § 195.303, which is titled "Risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines." The applicable risk assessment requirements are part of the pipeline integrity management regulations for high consequence areas are found at 49 C.F.R. § 195.452 and the related Appendix C to Part 195 – Guidance for Implementation of an Integrity Management Program.

never requested any in-person review session and did not attend any of the four in-person review sessions during which Sunoco made its risk assessment documentation available. *See* Ex. 6, Silva Affidavit ¶ 5 and Ex. 7, Snyder Affidavit ¶ 3. That Marx did not appear at any of the document review sessions and is thus “unaware” of the existence of Sunoco’s risk assessments, is not “evidence” that the risk assessments do not exist.

Because there is simply no support for the motion, which is built on material misstatements and improper affidavits, the motion should be denied.

#### **IV. Response to Numbered Paragraphs in Motion**

While Sunoco is not required to admit or deny allegations of the motion,<sup>7</sup> given the misstatements contained in the motion, Sunoco responds to each of the numbered paragraphs in the motion as follows:

1. Denied as stated. This paragraph purports to summarize the allegations in paragraphs 139-142 of the Flynn Complainants’ Second Amended Complaint, which is a written document that speaks for itself, and Flynn Complainants’ characterization of such, including the legal conclusions contained therein, are denied.

2. Denied as stated. This paragraph purports to summarize a pipeline operator’s obligations under 49 U.S.C. § 60109, which is a section of a United States Department of Transportation statute related to pipelines titled “High-density population areas and environmentally sensitive areas.” This is not a “regulation” as described in this paragraph, but rather the statutory basis from which regulations are directed to be created, and which in fact were created. By way of further response, under applicable PHMSA regulations, as a pipeline

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<sup>7</sup> Compare 52 Pa. Code § 5.61(b)-(c) (allegations in complaint may be deemed admitted if not specifically denied) with 52 Pa. Code § 5.103 (regarding response to motions and containing no similar provision).

operator, Sunoco is required to, and in fact did, perform an analysis of the risks to each pipeline and related facility that it operates, and Sunoco developed and implements an integrity management program in accordance with PHMSA regulations. *See* Ex. 5, Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). *See also*, 49 C.F.R. § 195.452 (Pipeline integrity management in high consequence areas); 49 C.F.R. § 195.452(i)(1) (requirements for operator “to prevent and mitigate the consequences of a pipeline failure that could effect a high consequence area.”)

3. Denied as stated. This paragraph attempts to characterize the regulatory obligations related to risk analysis and integrity management listed in PHMSA regulations at 49 C.F.R. § 195.452 and Appendix C to Part 195, which are written documents that speak for themselves, and the Flynn Complainants’ characterization thereof is therefore denied. It is admitted that the written testimony of John Zurcher at page 18 line 6 states “risk, which is the mathematical product of the consequence of a pipeline failure times the likelihood of a pipeline failure,” but Flynn Complainants’ characterization of this testimony is denied.

4. Admitted, upon information and belief.

5. Denied. This paragraph asserts that it is “undisputed” that the Flynn Complainants made certain allegations in paragraph 142 of the Flynn Complainants’ Second Amended Complaint, which is a written document that speaks for itself. Sunoco denies that such allegations are accurate or that the Flynn Complainants have established such allegations with substantial evidence in this case, and therefore such allegations are not “undisputed” for the purpose of supporting a summary judgment motion. By way of further response, Sunoco responded and answered the allegations in paragraph 142 of the Flynn Complainants’ Second Amended Complaint on July 9, 2019, as follows:

142. Admitted in part, denied as stated in part. Denied that SPLP merely claims to have an integrity management plan and risk assessment. In fact, SPLP maintains a robust integrity management plan program that it has implemented on these pipelines where they are in or near high consequence areas. It has been reviewed by PHMSA and the PA PUC. The program is annually reviewed and updated as appropriate. SPLP's integrity management plan does include a risk analysis for the pipeline segments at issue, which is likewise annually reviewed and updated. Admitted that SPLP does not share all portions of its integrity management plan with the entire public. By way of further response, SPLP cannot provide such materials to the public due to federal and state security laws, including [] "The Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and the PUC's regulations implementing such Act at 52 Pa. Code §§ 102.1-102.4 and the Freedom of Information Act for reasons that include security issues. By way of further response, SPLP does provide pertinent information with emergency responders as appropriate.

By way of yet further response, Sunoco produced copies of its Integrity Management Plans and also the specific risk assessments performed for the operating Mariner East pipelines, which are all designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by ALJ Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP00007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Ex. 5, Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

6. It is admitted that Sunoco does have an integrity management program and has performed risk assessments on its operating Mariner East pipelines, and that such documentation has been produced in this action and designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by ALJ Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP00007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

7. Denied as stated. It is admitted that Sunoco does not share all portions of its integrity management plan with the public. By way of further response, Sunoco cannot provide

such materials to the public due to federal and state security laws, including [] “The Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and the PUC’s regulations implementing such Act at 52 Pa. Code §§ 102.1-102.4 and the Freedom of Information Act for reasons that include security issues. By way of further response, Sunoco does provide pertinent information to emergency responders as appropriate. By way of yet further response, Sunoco produced copies of its Integrity Management Plans and also the specific risk assessments performed for the operating Mariner East pipelines, which are all designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by Judge Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP00007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

8. Admitted only that the original version of Flynn Complainants’ Interrogatories Set No. 1, Interrogatory No. 173 is quoted in this paragraph, but denied to the extent that this paragraph does not also reflect that in accordance with a June 7, 2019 Order, Judge Barnes subsequently modified and limited the interrogatory to Chester and Delaware Counties. *See* June 7, 2019 Order on Motion to Compel at p. 37, Ordering Paragraph 22.

9. Admitted only that the original version of Flynn Complainants’ Interrogatories Set No. 1, Interrogatory No. 174 is quoted in this paragraph, but denied to the extent that this paragraph does not also reflect that in accordance with a June 7, 2019 Order, Judge Barnes subsequently modified and limited the interrogatory to Chester and Delaware Counties. *See* June 7, 2019 Order on Motion to Compel at p. 37, Ordering Paragraph 22.

10. Denied as stated. It is admitted that Sunoco filed Objections to Flynn Complainants’ Interrogatories and Requests for Production of Documents on March 11, 2019,



which included objections to Interrogatories Nos. 173 and 174. Following the June 7, 2019 Order, whereby Judge Barnes subsequently modified and limited the interrogatory to Chester and Delaware Counties, Sunoco responded to Interrogatories Nos. 173 and 174 and also produced corresponding documents, which are all designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by Judge Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

11. Denied as stated. It is admitted that Judge Barnes issued the June 7, 2019 Order, which required Sunoco to respond to Flynn Complainants' Interrogatories Set No. 1, Interrogatory Nos. 173 and 174, but denied to the extent that this paragraph does not also reflect that Judge Barnes limited the interrogatories to Chester and Delaware Counties. *See* June 7, 2019 Order on Motion to Compel at p. 37, Ordering Paragraph 22.

12. Admitted, and admitted that Sunoco did in fact produce such documents. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

13. Denied as stated. It is admitted that Sunoco complied with the requirements of the June 7, 2019 Order on Motion to Compel by responding to Flynn Complainants' Interrogatories Set No. 1, Interrogatory Nos. 173 and 174 and producing the requested documents, which are all designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by Judge Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-

SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). By way of further response, pursuant to the Joint Stipulation and corresponding Order, Sunoco made the Extremely Sensitive Materials available for in-person review upon request, and held four in-person review sessions on: (1) August 9, 2019 in Pittsburgh at the office of Flynn Complainants' designated expert witness, Dr. Z of Matergenics; (2) August 21, 2019 at Sunoco's counsel's office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at Flynn Complainants' counsel's own office. *See* Ex. 6, Affidavit of Silva ¶¶ 6-10 and Ex. 7 Affidavit of Snyder ¶¶ 4-6, 9-11.

14. Admitted that an in-person review session was held on the mutually-convenient date of August 9, 2019 in Pittsburgh at the office of Flynn Complainants' designated expert witness, Dr. Z of Matergenics, and that Flynn Complainants' counsel Michael Bomstein and Andover Homeowners' Association, Inc.'s counsel Richard Raiders attended that review session, which was proctored by Sunoco's counsel Whitney Snyder. *See* Ex. 7, Snyder Affidavit ¶ 5.

15. Denied. At the August 9, 2019 in-person review session, certain documents responsive to Flynn Complainants' Interrogatories Set No. 1, Interrogatory Nos. 173 and 174 were provided for in-person review, a more fully described and listed in Exhibit 7, Affidavit of Snyder ¶ 5. During that review session, Attorney Raiders noted that certain appendices (not the risk assessments) to the Energy Transfer version of the Integrity Management Plan were not attached. *See* Ex. 7, Snyder Affidavit ¶ 6. Ms. Snyder confirmed that those appendices were inadvertently not available at the review session, and informed counsel for the Flynn Complainants and Andover Homeowners' Association, Inc. that Sunoco would supplement the production of documents to include the appendices, which were provided in supplemental production sets, Bates Nos. SPLP00031808-SPLP00032109, and were available at subsequent

review sessions, none of which Attorney Raiders attended. *See* Ex. 6, Silva Affidavit ¶ 8 and Ex. 7, Snyder Affidavit ¶ 9.

16. Admitted in part, denied in part. It is admitted only that the August 9, 2019 in-person review session included copies of two versions of Sunoco’s Integrity Management Plans ((Exs. 1 and 2, ¶ 2.b., Bates Nos. SPLP00007094-SPLP00007161 (Sunoco Logistics Pipeline Integrity Management Plan) and Exs. 1 and 2, ¶ 2.c., Bates Nos. SPLP00007034-SPLP00007093 (Energy Transfer Pipeline Integrity Management Plan)) and four hazardous assessments for the Mariner East pipelines, (Exs. 1 and 2, ¶ 2.e.-h., Bates Nos. SPLP00031198-SPLP0031449), but denied that those were the only documents at the in-person review session. *See* Ex. 7, Affidavit of Snyder ¶ 5 (listing documents at August 9, 2019 review session). The Integrity Management Plans and hazard assessments are written documents that speak for themselves, and any characterization thereof is denied. It is further denied that the executive summaries for each hazard assessment identifies each document as a “consequence assessment” as is alleged in this paragraph. By way of further response, the Integrity Management Plans that were produced and provided during the August 9, 2019 review that Attorney Raiders attended, specifically describe Sunoco’s risk models and related methodology, and also include as related appendices the risk models themselves, which Sunoco subsequently produced. *See* Exs. 1 and 2, ¶ 2.d (Appendix F.1 - PRS-195 Risk Model, Bates Nos. SPLP00032035-SPLP00032057) and ¶ 2.i. (Risk Model Workbook, Bates Nos. SPLP00031450-SPLP00031498); *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). Sunoco also produced the results of the risk model assessment for the Mariner East 1 and 12” pipelines in Chester and Delaware Counties, and these results were available at the August 9, 2019 review session. *See* Exs. 1 and 2, ¶ 2.d, Bates No.

SPLP SPLP00031499-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). *See also* Ex. 7, Snyder Affidavit ¶ 5.

17. Admitted in part, denied in part. It is admitted only that Sunoco submitted its rejoinder outlines on August 14, 2020. It is specifically denied that Sunoco's document production did not include risk assessments for the operating Mariner East pipelines in Chester and Delaware County, as such risk assessments and information was in fact produced, was designated as Extremely Sensitive Materials, and that are subject to a Joint Stipulation and entered as Order by Judge Barnes. *See* Exs. 1 and 2, ¶¶ 2.d, Bates Nos. SPLP00031499-SPLP00031521 (results of risk assessment); *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

18. Denied as stated. It is admitted that John Zucher has served, and will serve, as an expert witness for Sunoco in this proceeding. Mr. Zucher's prior oral testimony and written testimony, and rejoinder outline, are documents in writing that speak for themselves and the Flynn Complainants' characterization of such is denied. By way of further response, this paragraph purports to reference and summarize the entirety of the oral testimony of Mr. Zucher from the November 2018 hearing of the Flynn Complainants' Petition for Interim Emergency Relief, and the entirety of Mr. Zucher's written rebuttal testimony, but only provides and attaches excerpts of that testimony.

19. This paragraph is a conclusion of law to which no response is required.

20. This paragraph is a conclusion of law to which no response is required, and also quotes a regulation, which is a written document that speaks for itself and any characterization thereof is denied.

21. This paragraph is a conclusion of law to which no response is required, and also quotes a statute, which is a written document that speaks for itself and any characterization thereof is denied.

22. This paragraph is a conclusion of law to which no response is required, and also quotes a regulation, which is a written document that speaks for itself and any characterization thereof is denied.

23. This paragraph is a conclusion of law to which no response is required, and also quotes a statute, which is a written document that speaks for itself and any characterization thereof is denied.

24. This paragraph is a conclusion of law to which no response is required, and also quotes a statute, which is a written document that speaks for itself and any characterization thereof is denied.

25. This paragraph is a conclusion of law to which no response is required, and also quotes a regulation, which is a written document that speaks for itself and any characterization thereof is denied.

26. Denied. This paragraph is a conclusion of law to which no response is required. To the extent a response is otherwise required, it is denied that the PHMSA regulations do not define risk or the process that a pipeline operator must follow to perform a risk assessment on its operating pipelines; the PHMSA regulations do define that process. *See* 49 C.F.R. § 195.452(i)(2) (risk analysis criteria) and Appendix C to Part 195 – Guidance for Implementation of an Integrity Management Program. It is further denied that the affidavits cited in this paragraph are accurate, appropriate, or allowable in this proceeding for the following reasons: both the affidavit of Attorney Raiders and the affidavit of Jeffery Marx attempt to introduce new

expert testimony and purported evidence that was not part of the direct testimony presented by the Flynn Complainants in this case and therefore violates the Order Granting Sunoco Pipeline L.P.'s Omnibus Motion (Feb. 11, 2020) as well as 52 Pa. Code §5.243(e); both the affidavit of Attorney Raiders and the affidavit of Jeffery Marx attempt to present expert testimony that is outside of the scope of the individual's expertise; both the affidavit of Attorney Raiders and the affidavit of Jeffery Marx attempt to present testimony in the form legal conclusions and the interpretations of statutes and regulatory provisions, which are not proper grounds for expert opinion but rather are within the sole province of a court or administrative tribunal (*see e.g., Waters v. State Employees' Retirement Bd.*, 955 A.2d 466, 471 n.7 (Pa. Commw. Ct. 2008) (citing *United States v. Leo*, 941 F.2d 181, 196-97 (3d. Cir. 1991) ("an expert witness may not be offered to testify 'as to the governing law' or 'what the law required. . . . The law is evidence of itself, and it is up to the courts, not a witness, to draw conclusions as to its meaning.'")); and, the affidavit of Attorney Raiders is not permissible or appropriate, and otherwise violates the Pennsylvania Rules of Professional Conduct 3.7, which prohibits counsel from serving dual roles as counsel and witness in the same proceeding, and Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, 63 P.S. § 150, which prohibits an individual from holding himself out as an engineer when he is not a licensed Professional Engineer in the Commonwealth of Pennsylvania.

27. Denied as a conclusion of law to which no response is required, and further denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein.

28. Denied. It is specifically denied that SPLP did not produce copies of its Integrity Management Plans that describe Sunoco's risk models, and related appendices that included the

risk models themselves as well as the results of the risk assessment for the operating Mariner East pipelines in Chester and Delaware Counties. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). The allegations in this paragraph are further denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein.

29. Denied. By way of further response, Sunoco complied with the requirements of the June 7, 2019 Order on Motion to Compel by responding to Flynn Complainants' Interrogatories Set No. 1, Interrogatory Nos. 173 and 174 and producing the requested documents, which are all designated as Extremely Sensitive Materials that are subject to a Joint Stipulation and entered as Order by ALJ Barnes. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). By way of further response, pursuant to the Joint Stipulation and corresponding Order, Sunoco made the Extremely Sensitive Materials available for in-person review upon request, and held four in-person review sessions on: (1) August 9, 2019 in Pittsburgh at the office of Flynn Complainants' designated expert witness, Dr. Z of Matergenics; (2) August 21, 2019 at Sunoco's counsel's office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at Flynn Complainants' counsel's own office. *See* Ex. 6, Affidavit of Silva ¶¶ 6-10 and Ex. 7, Affidavit of Snyder ¶¶ 4-6, 9-11. The allegations and citation to the affidavit of Attorney Raiders in this paragraph are also denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein.

30. Denied. Flynn Complainants' characterization of Mr. Zurcher's testimony is denied and has no relevance to this motion. It is further denied that Sunoco did not perform risk assessments for its operating pipelines in Chester and Delaware Counties, or that Sunoco did not produce those documents in this litigation – it in fact did produce such documents. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

31. This paragraph is a conclusion of law to which no response is required, and quotes a statute, which is a written document that speaks for itself and any characterization thereof is denied.

32. Admitted in part, denied in part. It is admitted only that in accordance with PHMSA integrity management regulations and requirements, Sunoco is required to, and does in fact, perform a risk assessment of its pipelines as part of its integrity management program. *See* Ex. 5, Affidavit of Dalasio. Flynn Complainants' characterization of the PHMSA regulations and requirements contained in this paragraph are denied. The allegations and citation to the affidavit of Jeffrey Marx in this paragraph are also denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein.

33. Denied. The rebuttal testimony of John Zurcher is a written document that speaks for itself, and Flynn Complainants' characterization and summary of same is denied. It is denied that Sunoco did not produce its risk assessment or the results for the operating Mariner East pipelines in Chester and Delaware Counties – in fact, Sunoco did produce such documents. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing



risk assessment documents). By way of yet further response, the allegations and citation to the affidavit of Jeffrey Marx in this paragraph are also denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein. Further, the allegations in this paragraph are denied because Jeffrey Marx has never even attempted to review any of the Extremely Sensitive Materials produced by Sunoco in this case – he never attended any of the four in-person review sessions held upon request of Flynn Complainants’ counsel, or otherwise sought to arrange such a review. *See* Ex. 6, Affidavit of Silva ¶ 5 and Ex. 7, Affidavit of Snyder ¶ 3.

34. Denied. It is denied that Sunoco did not produce its risk assessment or the results for the operating Mariner East pipelines in Chester and Delaware Counties – in fact, Sunoco did produce such documents. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). By way of yet further response, the allegations and citation to the affidavit of Jeffrey Marx in this paragraph are also denied for the reasons set forth at length in response to paragraph 26 above, which are incorporated by reference as if set forth fully herein. Further, the allegations in this paragraph are denied because Jeffrey Marx has never even attempted to review any of the Extremely Sensitive Materials produced by Sunoco in this case – he never attended any of the four in-person review sessions held upon request of Flynn Complainants’ counsel, or otherwise sought to arrange such a review *See* Ex. 6, Affidavit of Silva ¶ 5 and Ex. 7, Affidavit of Snyder ¶ 3.

35. Denied as a conclusion of law to which no response is required.

36. Denied that SPLP has not conducted a risk assessment of its pipelines in Chester and Delaware Counties – it in fact did and produced its risk assessment and the results for the

operating Mariner East pipelines in Chester and Delaware Counties. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). The allegations of this paragraph are further denied as a conclusion of law to which no response is required.

37. Denied that Sunoco has not conducted a risk assessment of its pipelines in Chester and Delaware Counties – in fact, Sunoco did and produced its risk assessment and the results for the operating Mariner East pipelines in Chester and Delaware County. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents). The allegations of this paragraph are further denied as a conclusion of law to which no response is required.

38. Denied as a conclusion of law to which no response is required.

39. Denied as a conclusion of law to which no response is required.

40. Denied as a conclusion of law to which no response is required.

41. Denied as a conclusion of law to which no response is required.

42. Denied as a conclusion of law to which no response is required.

43. Denied as a conclusion of law to which no response is required.

44. Denied as a conclusion of law to which no response is required.

45. Denied as a conclusion of law to which no response is required.

46. Denied as a conclusion of law to which no response is required. The allegations and citation to the affidavit of Attorney Raiders and the affidavit of Jeffery Marx in this paragraph are also denied for the reasons set forth at length in response to paragraph 26 above,

which are incorporated by reference as if set forth fully herein.

47. Denied as a conclusion of law to which no response is required.

48. Denied as a conclusion of law to which no response is required.

49. Denied that SPLP has not conducted a risk assessment of its pipelines in Chester and Delaware Counties – it in fact did and produced its risk assessment and the results for the operating Mariner East pipelines in Chester and Delaware Counties. *See* Exs. 1 and 2, ¶¶ 2.b-d, i., Bates Nos. SPLP00007034-SPLP0007161, SPLP00031808-SPLP00032109, and SPLP00031198-SPLP00031521; *see also* Affidavit of Dalasio, ¶ 2 (listing risk assessment documents).

50. Denied as a conclusion of law to which no response is required.

51. Denied as a conclusion of law to which no response is required.

WHEREFORE, Sunoco respectfully requests that Your Honor deny the Flynn Complainants' Motion and Amended Motion for Partial Summary Judgment and award such other relief to Sunoco as is just, reasonable, and appropriate.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Dated: September 16, 2020

# **EXHIBIT 1**



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December 30, 2019

**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.

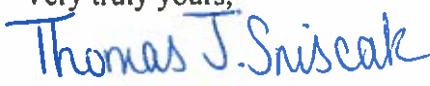
**SUNOCO PIPELINE L.P. AND COMPLAINANTS MEGAN FLYNN ET AL.  
JOINT STIPULATION OF RECORD TO AMENDED PROTECTIVE ORDER  
AND PROCEDURAL SCHEDULE**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P. and Complainants Megan Flynn et al.'s Joint Stipulation of Record to Amended Protective Order and Procedural Schedule (Stipulation).

SPLP and Complainants jointly request that Administrative Law Judge Elizabeth Barnes approve and enter this stipulation into the record of this proceeding.

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.

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**Stipulation of Record to Amended Protective Order and Procedural Schedule**

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Sunoco Pipeline L.P. ("SPLP") and Complainants Megan Flynn et al. at PUC Docket C-2018-3006116 ("Complainants") by and through undersigned counsel jointly agree to the below stipulations regarding terms and conditions of Complainants' access to certain information and procedure for submission of materials to the Commission and the Administrative Law Judge. ("Stipulation"):

1. Solely for purposes of preparing expert testimony in this proceeding, SPLP will allow Complainants' expert, Dr. Mehrooz Zamanzadeh and the following associates at Matergenics, Anil Kumar, Chikcrim, Edward Larkin, George Bayer and Erik Lahti, (collectively and individually "Reviewers") during in person review sessions conducted in accordance with the Amended Protective Order in this proceeding, to take notes ("ESM Notes") of such portions Complainants expert will designate of certain Extremely Sensitive Materials ("ESM") described in Paragraph 2 of this Stipulation. Except as expressly set forth in this Stipulation, ESM shall continue to be governed by the Amended Protective Order entered in this proceeding.
2. The ESM to which this Stipulation applies are:
  - a. Narrative Interrogatory Responses to Flynn Set 1, Nos. 5-7.
  - b. Sunoco Logistics Pipeline Integrity Management Plan; SPLP00007094-SPLP00007161

- c. Energy Transfer Pipeline Integrity Management Plan; SPLP00007034-SPLP00007093.
- d. Appendices to Energy Transfer Pipeline Integrity Management Plan; SPLP00031808-SPLP00032109.
- e. 2013 Mariner East Hazard Assessment; SPLP00031198-SPLP00031253.
- f. 2017 ME2 Hazard Assessment; SPLP00031254-SPLP00031319.
- g. 2018 Hazard Assessment of Re-route of ME2 Pipeline; SPLP00031320-SPLP00031354.
- h. 2018 Butane Spill Assessment; SPLP00031355-SPLP00031449.
- i. Sunoco Logistics Risk Model Workbook SPLP00031450-SPLP00031521.

SPLP hereby affirms that the ESM identified above comprises the entirety of ESM materials that it has produced in discovery during this proceeding to date.

- 3. Complainants Reviewers shall identify by bates range the portions of the ESM in Paragraph 2 that are necessary to presentation of their case, and provide this designation to SPLP 24 hours in advance of any in-person review session pursuant to the terms of the Amended Protective Order or as otherwise agreed by counsel for Complainants and SPLP.
- 4. At any such session, handwritten notes ("ESM Notes") on standard letter sized paper may be made by the Reviewers. At the conclusion of any review session, all ESM Notes shall be provided to SPLP's review proctor. SPLP's counsel may designate redactions of the ESM Notes as it deems necessary to protect ESM. Any disputes over the redactions shall immediately be addressed with the Administrative Law Judge via telephone. SPLP shall retain a copy of the ESM Notes. SPLP does not waive its right to a hearing on the confidentiality level of any ESM Notes.
- 5. ESM Notes are subject to the Amended Protective Order in this proceeding and shall be treated as ESM except that, after the review and copying described above, Reviewers may retain the original and make copies of ESM Notes as described below and only for the limited purpose of preparing expert testimony or exhibits to be submitted in the proceeding. All ESM Notes shall contain the following watermark or footer:

EXTREMELY SENSITIVE MATERIALS, CONFIDENTIAL SECURITY INFORMATION NOT SUBJECT TO DISCLOSURE TO THIRD PARTIES UNDER THE PROVISIONS AND PROCEDURES SPECIFIED IN THE AMENDED PROTECTIVE ORDER AT CONSOLIDATED PUC DOCKET C-2018-3006116 *ET AL.*, AND THE PUBLIC UTILITY CONFIDENTIAL SECURITY INFORMATION DISCLOSURE PROTECTION ACT (35 P.S. §§ 2141.1 TO 2141.6) AND THE PUC'S REGULATIONS IMPLEMENTING SUCH ACT AT 52 PA. CODE §§ 102.1 – 102.4.

- 6. Reviewers shall not share or otherwise disclose ESM Notes with or to anyone other than Reviewers and SPLP's counsel or proctor representatives.
- 7. All ESM Notes in Reviewers' possession shall be stored securely as follows:

- a. Only original handwritten paper notes and copies thereof shall be stored by Reviewers in a safe or other secure locked location to which only Reviewers have access.
  - b. Reviewers shall not electronically reproduce (other than for copying as described above), mail or otherwise electronically transmit ESM Notes.
8. All ESM Notes shall be destroyed in accordance with Paragraph 19 of the Amended Protective Order.
9. If Complainants want to include any ESM in Paragraph 2 as an exhibit to testimony, Complainants counsel will inform SPLP's counsel of each document to be included. SPLP will include the designated ESM as part of its exhibits when it submits its testimony.
10. Complainants shall, on the dates that their Direct and Rebuttal testimony are due, serve only SPLP's counsel with their testimony and exhibits via a secure link that SPLP's counsel will provide. Complainants' shall, in their testimony, indicate any portions of the testimony that are Confidential, Highly Confidential or ESM by highlighting such portion of their testimony in yellow. SPLP shall have four days<sup>1</sup> to review confidentiality designations and modify such designations as necessary as well as add appropriate markings on the documents pursuant to the Amended Protective Order. Within four days of receipt of the testimony, SPLP shall:
  - a. provide a redacted, public version of the testimony to Complainants' counsel for electronic service on the parties to this proceeding as well as any public exhibits;
  - b. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any versions of testimony or exhibits containing Confidential or Highly Confidential Materials;
  - c. serve the Administrative Law Judge with any testimony or exhibits containing or discussing Highly Confidential, Confidential, or ESM; and

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<sup>1</sup> Provision to other parties in the proceeding of Complainants' testimony four days after the deadline is only potentially prejudicial to one party – Range Resources. The testimony schedule in this proceeding only allows for Respondent (SPLP) and intervenors aligned with Respondent to file responsive testimony to Complainants' testimony. June 6, 2019 Procedural Order at Ordering Paragraph 2. Range Resources is the only intervenor aligned with SPLP, and thus the only other party that may file responsive testimony to Complainants' testimony. Counsel for SPLP is authorized to represent that Range Resources does not oppose this provision. Since no other party may file responsive testimony to Complainants' testimony, a delay of four days in receiving Complainants' testimony is not prejudicial.



- d. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any testimony or exhibits containing or discussing ESM.
11. At hearing, SPLP shall be responsible for copying, transporting, and providing paper copies of Complainants' testimony and exhibits that are Confidential, Highly Confidential or ESM for use at hearing, including copies for the court reporter, Administrative Law Judge, and copies for use by counsel and witnesses at the hearing. Complainants' counsel shall be responsible for providing copies at hearing of all public versions of their testimony and exhibits. All copies of Confidential, Highly Confidential and ESM used at hearing and not in the possession of the ALJ or court reporter shall be returned to SPLP at the conclusion of each hearing day.
12. SPLP shall complete post-hearing filing of Complainants' testimony and exhibits that are Confidential, Highly Confidential, or ESM pursuant to 52 Pa. Code § 5.412a(d).
13. Complainants and SPLP will use best efforts to limit inclusion of ESM in testimony, exhibits, briefs, exceptions, and reply exceptions and to limit on the record discussion of ESM.
14. Access to testimony, exhibits, transcripts, briefs, exceptions and reply exceptions containing Confidential, Highly Confidential, or ESM shall be in accordance with the Amended Protective Order.
15. Complainants' shall, in their Main and Reply Briefs, indicate any portions of the brief that are Confidential, Highly Confidential or ESM by highlighting such portion of their brief in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, on the date their Main Brief and Reply Brief is due, serve only SPLP's counsel with briefs for SPLP's counsel to review confidentiality designations and modify such designations as necessary. SPLP's counsel shall, within two days<sup>2</sup> of receipt of Complainants' briefs:
  - a. provide a redacted, public version of the brief to Complainants' counsel for electronic service on the parties to this proceeding as well as any public exhibits;
  - b. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any briefs containing Confidential or Highly Confidential Materials;

---

<sup>2</sup> SPLP believes provision to other parties in the proceeding of Complainants' main brief two days after the deadline is only potentially prejudicial to one party – Range Resources. Range Resources is the only party aligned with SPLP, and thus the only party other than SPLP that should be replying to Complainant's main brief. Responsive briefs are not allowed to reply briefs, so Counsel for SPLP is authorized to represent that Range Resources does not oppose this provision. Since no other party should need to file a reply brief addressing Complainants' main brief, a delay of two days in receiving Complainants' main brief is not prejudicial.

- c. serve the Administrative Law Judge with any briefs containing or discussing Highly Confidential, Confidential, or ESM; and
  - d. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any briefs containing or discussing ESM.
- 16. Access to versions of the Administrative Law Judge's decision in this matter containing Confidential, Highly Confidential, or ESM shall be pursuant to the Amended Protective Order.
- 17. Once the Administrative Law Judge issues a decision in this matter and if the decision contains ESM or Highly Confidential Materials, SPLP and Complainants shall jointly request the Commission to:
  - a. extend Complainants' exceptions and reply exceptions periods from 20 days to 60 days for exceptions and 10 days to 30 days for reply exceptions;
  - b. extend for all other parties the exceptions and reply exceptions periods from 20 days to 55 days for exceptions and 10 days to 25 days for reply exceptions;<sup>3</sup>
  - c. allow Complainants and SPLP to utilize the following procedures for filing and service of Complainants' exceptions and/or reply exceptions:
    - i. Complainants' shall, in their exceptions and reply exceptions, indicate any portions of their exceptions and reply exceptions that are Confidential, Highly Confidential or ESM by highlighting such portion of their exceptions and reply exceptions in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, five days prior to the respective date their exceptions or reply exceptions are due, serve only SPLP's counsel with the exceptions and reply exceptions for SPLP's counsel to review confidentiality designations and modify such designations as necessary.
    - ii. SPLP's counsel shall:
      - 1. one day prior to the date Complainants' exception or reply exceptions are due, provide a redacted, public version of the brief to Complainants' counsel for filing and service on the parties to this proceeding as well as any public exhibits;

---

<sup>3</sup> These time extensions combined with the review provisions in subsection c result in the following procedure: All parties must have their exceptions done within the shorter time period, but there are five additional days built into the schedule for the filing of Complainants' exceptions and reply exceptions so that SPLP has time to review these documents for confidentiality status prior to their filing.

2. file with the Secretary and serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order any exceptions or reply exceptions containing Confidential or Highly Confidential Materials;
3. serve the Administrative Law Judge with any exceptions or reply exceptions containing or discussing Highly Confidential, Confidential, or ESM; and
4. file with the Secretary and retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any exceptions or reply exceptions containing or discussing ESM.

18. Complainants' withdraw their Motion to Reclassify with prejudice dated November 8, 2019.

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*Counsel for Sunoco Pipeline L.P.*

Approved:

---

Honorable Elizabeth H. Barnes  
 Administrative Law Judge

## 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).

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*Pro se Complainant*



Thomas J. Sniscak, Esquire  
Kevin J. McKeon, Esquire  
Whitney E. Snyder, Esquire

Dated: December 30, 2019

# **EXHIBIT 2**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	C-2018-3006116
Rosemary Fuller	:	P-2018-3006117
Michael Walsh	:	
Nancy Harkins	:	
Gerald McMullen	:	
Caroline Hughes and	:	
Melissa Haines	:	
Andover Homeowners Association	:	C-2018-3003605
Melissa DiBernardino	:	C-2018-3005025
Rebecca Britton	:	C-2019-3006898
Laura Obenski	:	C-2019-3006905
v.	:	
Sunoco Pipeline, L.P.	:	

**ORDER ADMITTING STIPULATION INTO THE RECORD**

On December 30, 2019, Sunoco Pipeline L.P. (“SPLP”) and Complainants Megan Flynn *et al.* at PUC Docket C-2018-3006116 *et al.* (“Complainants”) (collectively “moving parties”) filed a Stipulation of Record to Amended Protective Order and Procedural Schedule for my approval and admission into the record at the above-captioned consolidated proceeding.

The moving parties jointly agree to the below stipulations regarding terms and conditions of Complainants’ access to certain information and procedure for submission of materials to the Commission and the Administrative Law Judge. (“Stipulation”):



1. Solely for purposes of preparing expert testimony in this proceeding, SPLP will allow Complainants' expert, Dr. Mehrooz Zamanzadeh and the following associates at Matergenics, Anil Kumar, Chikcrim, Edward Larkin, George Bayer and Erik Lahti, (collectively and individually "Reviewers") during in person review sessions conducted in accordance with the Amended Protective Order in this proceeding, to take notes ("ESM Notes") of such portions Complainants expert will designate of certain Extremely Sensitive Materials ("ESM") described in Paragraph 2 of this Stipulation. Except as expressly set forth in this Stipulation, ESM shall continue to be governed by the Amended Protective Order entered in this proceeding.
2. The ESM to which this Stipulation applies are:
  - a. Narrative Interrogatory Responses to Flynn Set 1, Nos. 5-7.
  - b. Sunoco Logistics Pipeline Integrity Management Plan; SPLP00007094-SPLP00007161
  - c. Energy Transfer Pipeline Integrity Management Plan; SPLP00007034-SPLP00007093.
  - d. Appendices to Energy Transfer Pipeline Integrity Management Plan; SPLP00031808-SPLP00032109.
  - e. 2013 Mariner East Hazard Assessment; SPLP00031198-SPLP00031253.
  - f. 2017 ME2 Hazard Assessment; SPLP00031254-SPLP00031319.
  - g. 2018 Hazard Assessment of Re-route of ME2 Pipeline; SPLP00031320-SPLP00031354.
  - h. 2018 Butane Spill Assessment; SPLP00031355-SPLP00031449.
  - i. Sunoco Logistics Risk Model Workbook SPLP00031450-SPLP00031521.

SPLP hereby affirms that the ESM identified above comprises the entirety of ESM materials that it has produced in discovery during this proceeding to date.

3. Complainants Reviewers shall identify by bates range the portions of the ESM in Paragraph 2 that are necessary to presentation of their case, and provide this designation to SPLP 24 hours in advance of any in-person review session pursuant to the terms of the Amended Protective Order or as otherwise agreed by counsel for Complainants and SPLP.
4. At any such session, handwritten notes ("ESM Notes") on standard letter sized paper may be made by the Reviewers. At the conclusion of any review session, all ESM Notes shall be provided to SPLP's review proctor. SPLP's counsel may designate redactions of the ESM Notes as it deems necessary to protect ESM. Any disputes over the redactions shall immediately be addressed with the Administrative Law Judge via telephone. SPLP shall retain a copy of the ESM Notes. SPLP does not waive its right to a hearing on the confidentiality level of any ESM Notes.
5. ESM Notes are subject to the Amended Protective Order in this proceeding and shall be treated as ESM except that, after the review and copying described above, Reviewers may retain the original and make copies of ESM Notes as described below and only for

the limited purpose of preparing expert testimony or exhibits to be submitted in the proceeding. All ESM Notes shall contain the following watermark or footer:

EXTREMELY SENSITIVE MATERIALS, CONFIDENTIAL SECURITY INFORMATION NOT SUBJECT TO DISCLOSURE TO THIRD PARTIES UNDER THE PROVISIONS AND PROCEDURES SPECIFIED IN THE AMENDED PROTECTIVE ORDER AT CONSOLIDATED PUC DOCKET C-2018-3006116 *ET.AL.*, AND THE PUBLIC UTILITY CONFIDENTIAL SECURITY INFORMATION DISCLOSURE PROTECTION ACT (35 P.S. §§ 2141.1 TO 2141.6) AND THE PUC'S REGULATIONS IMPLEMENTING SUCH ACT AT 52 PA. CODE §§ 102.1 – 102.4.

6. Reviewers shall not share or otherwise disclose ESM Notes with or to anyone other than Reviewers and SPLP's counsel or proctor representatives.
7. All ESM Notes in Reviewers' possession shall be stored securely as follows:
  - a. Only original handwritten paper notes and copies thereof shall be stored by Reviewers in a safe or other secure locked location to which only Reviewers have access.
  - b. Reviewers shall not electronically reproduce (other than for copying as described above), mail or otherwise electronically transmit ESM Notes.
8. All ESM Notes shall be destroyed in accordance with Paragraph 19 of the Amended Protective Order.
9. If Complainants want to include any ESM in Paragraph 2 as an exhibit to testimony, Complainants counsel will inform SPLP's counsel of each document to be included. SPLP will include the designated ESM as part of its exhibits when it submits its testimony.
10. Complainants shall, on the dates that their Direct and Rebuttal testimony are due, serve only SPLP's counsel with their testimony and exhibits via a secure link that SPLP's counsel will provide. Complainants' shall, in their testimony, indicate any portions of the testimony that are Confidential, Highly Confidential or ESM by highlighting such portion of their testimony in yellow. SPLP shall have four days<sup>1</sup> to review confidentiality designations and modify such designations as necessary as well as add appropriate markings on the documents pursuant to the Amended Protective Order. Within four days of receipt of the testimony, SPLP shall:

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<sup>1</sup> Provision to other parties in the proceeding of Complainants' testimony four days after the deadline is only potentially prejudicial to one party – Range Resources. The testimony schedule in this proceeding only allows for Respondent (SPLP) and intervenors aligned with Respondent to file responsive testimony to Complainants' testimony. June 6, 2019 Procedural Order at Ordering Paragraph 2. Range Resources is the only intervenor aligned with SPLP, and thus the only other party that may file responsive testimony to Complainants' testimony. Counsel for SPLP is authorized to represent that Range Resources does not oppose this provision. Since no other party may file responsive testimony to Complainants' testimony, a delay of four days in receiving Complainants' testimony is not prejudicial.

- a. provide a redacted, public version of the testimony to Complainants' counsel for electronic service on the parties to this proceeding as well as any public exhibits;
  - b. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any versions of testimony or exhibits containing Confidential or Highly Confidential Materials;
  - c. serve the Administrative Law Judge with any testimony or exhibits containing or discussing Highly Confidential, Confidential, or ESM; and
  - d. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any testimony or exhibits containing or discussing ESM.
11. At hearing, SPLP shall be responsible for copying, transporting, and providing paper copies of Complainants' testimony and exhibits that are Confidential, Highly Confidential or ESM for use at hearing, including copies for the court reporter, Administrative Law Judge, and copies for use by counsel and witnesses at the hearing. Complainants' counsel shall be responsible for providing copies at hearing of all public versions of their testimony and exhibits. All copies of Confidential, Highly Confidential and ESM used at hearing and not in the possession of the ALJ or court reporter shall be returned to SPLP at the conclusion of each hearing day.
12. SPLP shall complete post-hearing filing of Complainants' testimony and exhibits that are Confidential, Highly Confidential, or ESM pursuant to 52 Pa. Code § 5.412a(d).
13. Complainants and SPLP will use best efforts to limit inclusion of ESM in testimony, exhibits, briefs, exceptions, and reply exceptions and to limit on the record discussion of ESM.
14. Access to testimony, exhibits, transcripts, briefs, exceptions and reply exceptions containing Confidential, Highly Confidential, or ESM shall be in accordance with the Amended Protective Order.
15. Complainants' shall, in their Main and Reply Briefs, indicate any portions of the brief that are Confidential, Highly Confidential or ESM by highlighting such portion of their brief in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, on the date their Main Brief and Reply Brief is due, serve only SPLP's counsel with briefs for SPLP's counsel to review confidentiality designations and modify such designations as necessary. SPLP's counsel shall, within two days<sup>2</sup> of receipt of Complainants' briefs:

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<sup>2</sup> SPLP believes provision to other parties in the proceeding of Complainants' main brief two days after the deadline is only potentially prejudicial to one party – Range Resources. Range Resources is the only party aligned with SPLP, and thus the only party other than SPLP that should be replying to Complainant's main brief. Responsive briefs are not allowed to reply briefs, so Counsel for SPLP is authorized to represent that Range Resources does not

- a. provide a redacted, public version of the brief to Complainants' counsel for electronic service on the parties to this proceeding as well as any public exhibits;
  - b. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any briefs containing Confidential or Highly Confidential Materials;
  - c. serve the Administrative Law Judge with any briefs containing or discussing Highly Confidential, Confidential, or ESM; and
  - d. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any briefs containing or discussing ESM.
16. Access to versions of the Administrative Law Judge's decision in this matter containing Confidential, Highly Confidential, or ESM shall be pursuant to the Amended Protective Order.
17. Once the Administrative Law Judge issues a decision in this matter and if the decision contains ESM or Highly Confidential Materials, SPLP and Complainants shall jointly request the Commission to:
- a. extend Complainants' exceptions and reply exceptions periods from 20 days to 60 days for exceptions and 10 days to 30 days for reply exceptions;
  - b. extend for all other parties the exceptions and reply exceptions periods from 20 days to 55 days for exceptions and 10 days to 25 days for reply exceptions;<sup>3</sup>
  - c. allow Complainants and SPLP to utilize the following procedures for filing and service of Complainants' exceptions and/or reply exceptions:
    - i. Complainants' shall, in their exceptions and reply exceptions, indicate any portions of their exceptions and reply exceptions that are Confidential, Highly Confidential or ESM by highlighting such portion of their exceptions and reply exceptions in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, five days prior to the respective date their exceptions or reply exceptions are due, serve only SPLP's counsel with the exceptions and reply exceptions for SPLP's counsel to review confidentiality designations and modify such designations as necessary.

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oppose this provision. Since no other party should need to file a reply brief addressing Complainants' main brief, a delay of two days in receiving Complainants' main brief is not prejudicial.

<sup>3</sup> These time extensions combined with the review provisions in subsection c result in the following procedure: All parties must have their exceptions done within the shorter time period, but there are five additional days built into the schedule for the filing of Complainants' exceptions and reply exceptions so that SPLP has time to review these documents for confidentiality status prior to their filing.

ii. SPLP's counsel shall:

1. one day prior to the date Complainants' exception or reply exceptions are due, provide a redacted, public version of the brief to Complainants' counsel for filing and service on the parties to this proceeding as well as any public exhibits;
2. file with the Secretary and serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order any exceptions or reply exceptions containing Confidential or Highly Confidential Materials;
3. serve the Administrative Law Judge with any exceptions or reply exceptions containing or discussing Highly Confidential, Confidential, or ESM; and
4. file with the Secretary and retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any exceptions or reply exceptions containing or discussing ESM.

18. Complainants' withdraw their Motion to Reclassify with prejudice dated November 8, 2019.

#### Disposition

The above Stipulation amends the discovery rules and the procedural schedule pursuant to the Procedural Order and Amended Protective Order issued on June 7, 2019. The Stipulation adds a new procedure allowing for the taking of notes of ESM subject to review and possibly redaction by SPLP's counsel and "review proctors." The Stipulation also addresses the treatment of confidential information in general throughout this adversarial proceeding before the Commission.

Notably, in Paragraph No. 4, the Stipulation provides for a procedure for resolving discovery disputes regarding ESM information, whereby unresolved disputes are presented to the presiding officer via a phone conference. If there is no informal resolution, then a hearing may be held.

The Stipulation is a reasonable resolution to Complainants' Motion to Reclassify filed on November 8, 2019. The agreed upon terms appear to comply with the Public Utility

Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6 and the Commission regulations at 52 Pa. Code §102.1 *et seq.* (Confidential Security Information). Specifically, Section 102.4(h) provides:

(h) *Discovery requests in adversarial proceedings.* The challenge and request to review procedures described in this chapter do not apply to exchanges of documents among parties in adversarial proceedings pending before the Commission. In adversarial proceedings, a party wishing to limit availability of records containing confidential security information must move for an appropriate protective order before the presiding officer in accordance with accepted rules and procedures for issuing protective orders.

52 Pa. Code § 102.4(h).

I encourage the parties to notify me in advance of the time and date of any in-person review session such that I may make myself available between the hours of 8:00 a.m. and 4:30 p.m. for a phone conference in the event there is an impasse regarding the redaction of ESM notes at the conclusion of the session. I also encourage the parties to use a good faith effort to resolve any disputes regarding the redaction of any notes taken by Complainants' expert witnesses regarding ESM. If a hearing is ultimately requested prior to the resolution of a discovery dispute involving the appropriate confidentiality level of any ESM notes, a hearing may be scheduled and held.

### **ORDER**

THEREFORE,

IT IS ORDERED:

1. That the Stipulation of Record to Amended Protective Order and Procedural Schedule filed on December 30, 2019 is approved and admitted into the record at Docket No. C-2018-3006116 *et al.*

2. That the discovery rules and procedural schedule pursuant to the Procedural Order and Amended Protective Order issued on June 7, 2019 are amended in accordance with the approved Stipulation of Record to Amended Protective Order and Procedural Schedule.

3. That in all other respects, the Procedural Order and Amended Protective Order remain in full force and effect.

4. Complainants' Motion to Reclassify Putative Confidential Documents filed on November 8, 2019, is deemed withdrawn.

Date: January 2, 2020

\_\_\_\_\_/s/  
Elizabeth H. Barnes  
Administrative Law Judge

*(Revised 10/21/19)*

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*Representing Sunoco Pipeline LP*

RICH RAIDERS ESQUIRE  
606 NORTH 5<sup>TH</sup> STREET  
READING PA 19601  
**484.509.2715**  
**Accepts E-Service**  
*Representing Intervenor Andover  
Homeowners' Association Inc.*

ANTHONY D KANAGY ESQUIRE  
GARRET P LENT ESQUIRE  
POST & SCHELL PC  
17 N SECOND ST 12<sup>TH</sup> FL  
HARRISBURG PA 17101-1601  
**717.612.6034**  
**Accepts E-Service**  
*Representing Intervenor Range  
Resources Appalachia*



ERIN MCDOWELL ESQUIRE  
3000 TOWN CENTER BLVD  
CANONSBURG PA 15317  
**725.754.5352**

*Representing Intervenor Range  
Resources Appalachia*

LEAH ROTENBERG ESQUIRE  
MAYS CONNARD & ROTENBERG LLP  
1235 PENN AVE  
SUITE 202  
WYOMISSING PA 19610  
**610.400.0481**

**Accepts E-Service**  
*Representing Intervenor Twins Valley  
School District*

MARGARET A MORRIS ESQUIRE  
REGGER RIZZO & DARNALL  
2929 ARCH STREET 13TH FLOOR  
PHILADELPHIA PA 19104  
**215.495.6524**

**Accepts E-Service**  
*Representing Intervenor East Goshen  
Township*

VINCENT MATTHEW POMPO  
ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
PO BOX 565  
WEST CHESTER PA 19381  
**610.701.4411**

*Representing Intervenor West Whiteland  
Township*

MARK L FREED ESQUIRE  
JOANNA WALDRON ESQUIRE  
CURTIN & HEEFNER LLP  
DOYLESTOWN COMMERCE CENTER  
2005 S EASTON ROAD SUITE 100  
DOYLESTOWN PA 18901  
**267.898.0570**

**Accepts E-Service**  
*Representing Intervenor Uwchlan  
Township*

JAMES R FLANDREAU  
PAUL FLANDREAU & BERGER LLP  
320 WEST FRONT ST  
MEDIA PA 19063  
**610.565.4750**

**Accepts E-Service**  
*Representing Intervenor Middletown  
Township*

PATRICIA BISWANGER ESQUIRE  
PATRICIA BISWANGER  
217 NORTH MONROE STREET  
MEDIA PA 19063  
**610.608.0687**

**Accepts E-Service**  
*Representing Intervenor County of  
Delaware*

GUY DONATELLI ESQUIRE  
LAMB MCERLANE PC  
24 EAST MARKET ST  
BOX 565  
WEST CHESTER PA 19381  
**610.430.8000**  
*Representing Intervenor Rose Tree  
Media School District*

JAMES DALTON  
UNRUH TURNER BURKE & FREES  
PO BOX 515  
WEST CHESTER PA 19381  
**610.692.1371**  
*Representing Intervenor West Chester  
Area School District*

JAMES BYRNE ESQUIRE  
MCNICHOL BYRNE & MATLAWSKI PC  
1223 N PROVIDENCE RD  
MEDIA PA 19063  
**610.565.4322**  
**Accepts E-Service**  
*Representing Intervenor Thornbury  
Township*

MELISSA DIBERNARDINO  
1602 OLD ORCHARD LANE  
WEST CHESTER PA 19380  
**484.881.2829**  
**Accepts E-Service**

VIRGINIA MARCILLE KERSLAKE  
103 SHOEN ROAD  
EXTON PA 19341  
**215.200.2966**  
**Accepts E-Service**  
*Intervenor*

LAURA OBENSKI  
14 S VILLAGE AVE  
EXTON PA 19341  
**484.947.6149**  
**Accepts E-Service**

REBECCA BRITTON  
211 ANDOVER DR  
EXTON PA 19341  
**215.776.7516**  
**Accepts E-Service**

JOSH MAXWELL  
MAYOR OF DOWNINGTOWN  
4 W LANCASTER AVENUE  
DOWNINGTON PA 19335  
*Intervenor*

THOMAS CASEY  
1113 WINDSOR DR  
WEST CHESTER PA 19380  
*Intervenor*

KELLY SULLIVAN ESQUIRE  
MCNICHOL BYRNE & MATLAWSKI  
1223 NORTH PROVIDENCE RD  
MEDIA PA 19063  
**610.565.4322**  
**Accepts E-Service**  
*Representing Thornbury Twp.*

MICHAEL P PIERCE ESQUIRE  
MICHAEL P PIERCE PC  
17 VETERANS SQUARE  
PO BOX 604  
MEDIA PA 19063  
**610.566.0911**  
**Accepts E-Service**  
*Representing Edgmont Twp.*

KATHRYN URBANOWICZ ESQUIRE  
JOSEPH OTIS MINOTT ESQUIRE  
CLEAN AIR COUNCIL  
135 SOUTH 19TH STREET SUITE 300  
PHILADELPHIA PA 19103  
**215.567.4004**  
**Accepts e-Service**

# **EXHIBIT 3**

**From:** Thomas Sniscak <TJSniscak@hmslegal.com>  
**Sent:** Friday, September 4, 2020 9:26 AM  
**To:** Michael Bomstein  
**Cc:** Robert Fox; Neil Witkes; Diana Silva; Whitney Snyder  
**Subject:** Flynn Motion for Partial Summary Judgment

Good morning Michael,

Our SPLP legal team believes your Motion for Partial Summary Judgment makes two misrepresentations that are at the heart of your Motion. These misrepresentations are of facts you knew or should have known are false. In addition, your Motion is supported by an affidavit from Attorney Raiders that appears to be contrary to PA RPC 3.7 and Section 3 of the Engineer Registration Law. Therefore, we are seeking that you both withdraw your Motion and enter into the stipulation below in paragraph 3. SPLP will file it and ask it to be entered as part of the record. ***We seek your agreement no later than noon on Tuesday, September 8, 2020.*** If we do not have your agreement to the stipulation by that time, we will file our Answer shortly thereafter and seek sanctions on the following bases:

1. **Misrepresentations.**

The Motion is based on two false assertions: (1) that SPLP was required by Order of Judge Barnes to produce its risk analysis/assessment but did not, and (2) because SPLP did not produce the risk analysis/assessment it does not exist as required by law. Both of those assertions are unquestionably false. Indeed, SPLP produced its risk analyses/ assessments and repeatedly made them available for your review. Actually, you stipulated that those documents ***were produced*** in this case, and that they were classified as “Extremely Sensitive Materials” in the Stipulation of Record to Amended Protective Order and Procedural Schedule. This Stipulation was entered into the record as an Order from ALJ Barnes on January 2, 2020.

As the Stipulation shows, among the Extremely Sensitive Materials that were produced, there were two versions of its Integrity Management Plans and Appendices – one that was applicable for the time period before SPLP was acquired by Energy Transfer, and one that is applicable since that time. The Integrity Management Plans and Appendices describe Sunoco’s risk models and related methodology and have related appendices that include the risk models themselves and their results. (Appendix F.1 - PRS-195 Risk Model, Bates Nos. SPLP00032035-SPLP00032057) and (Risk Model Workbook, Bates Nos. SPLP00031450-SPLP00031498), and (Results Bates Nos. SPLP00031499-SPLP00031521).

Pursuant to the Amended Protective Order, Sunoco provided copies of these materials to you and designated expert witnesses during not just one, but four in-person review sessions held on: (1) August 6, 2019 in Pittsburgh at the office of Flynn Complainants’ designated expert witness, Dr. Zee of Matergenics; (2) August 21, 2019 at Sunoco’s counsel’s office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at your own office. In fact, on the morning of the January 6, 2020 review session in Pittsburgh, you asked for a list of Extremely Sensitive Materials that would be provided at that in-person review session, and counsel for Sunoco sent a list via email and referenced the list of documents and bates ranges contained in the joint stipulation, including the risk analyses/assessments.

Significantly, three of these review sessions took place before your direct testimony was due. Despite that fact, you did not raise the argument regarding the risk analyses/assessments in direct or surrebuttal testimony. Therefore, your Motion is also in violation of the Omnibus Order and 52 Pa. Code § 5.243(e) which prohibits the introduction of evidence which should have been included in the party's case-in-chief. You cannot circumvent that Order by attempting to introduce it by means of your Motion for Partial Summary Judgement or by any other means contrary to order of presenting evidence. We would remind you that the schedule for presentation of evidence was agreed to by you and resulted in Judge Barnes' Order as the way parties should present the same.

Finally, we are aware that the Motion's allegations have been publicized online and are being used to fundraise for this litigation which further underscores the sanctionable nature of these misrepresentations. This publication only adds to a false narrative about what has been produced in the case. I hope we can agree that misinformation is not good.

## **2. Likely violations of PA RPC 3.7 and Section 3 of the Engineer Registration Law.**

Because Mr. Raiders is an attorney representing a party in this proceeding, he cannot have dual roles and serve as a witness to anything in this proceeding which Mr. Raiders has attempted to do just that through his affidavit, which goes beyond procedural assertions or advocacy relating to his role as attorney and instead expressly states expert opinions. Pa. R.P.C. Rule 3.7 provides the following prohibition:

### **3.7 Lawyer as Witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or,
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

In his affidavit, Mr. Raiders also represents himself as an "engineer" even though he is not a licensed and registered professional engineer in violation of Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, Act of May 23, 1945, P.L. 913, No. 367 Cl. 63. Section 3 of the Engineer Registration Law states:

**Section 3. Practice of Engineering, Land Surveying or Geology Without Licensure and Registration Prohibited.**

(a) In order to safeguard life, health or property and to promote the general welfare, **it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer. . . .**

(b) **A person shall be construed to practice or offer to practice engineering . . . who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist. . . .**

(emphasis added). Mr. Raiders' affidavit expressly holds himself out as an engineer. As the attorney who signed and filed this Motion you are also responsible for Mr. Raiders conduct, under Pa.R.C. Rule 3.7 and Section 3 of the Engineer Registration Law. .

3. **Stipulation.** Given the above, we are requesting your agreement to the following stipulation:

Sunoco Pipeline L.P. (SPLP) and Complainants Megan Flynn et al. at PUC Docket C-2020-3006116 (Flynn Complainants) by and through undersigned counsel jointly agree to the below stipulations regarding Flynn Complainants August 27, 2020 Motion for Partial Summary Judgment (Motion) and the September 1, 2020 amendment thereto (Amended Motion):

- Flynn Complainants hereby withdraw with prejudice their Motion and Amended Motion.
- Flynn Complainants admit the Motion and Amended Motion were improvidently filed because SPLP produced in this matter and maintains the required risk analyses/assessments.
- Flynn Complainants admit that any reference in the Flynn Motion and Amended Motion to risk analysis are distinct from and have no bearing on SPLP's July 28, 2020 Motion for Partial Summary Judgment on Consequence Without Probability.

Please indicate your agreement to the above stipulation ***no later than noon on Tuesday*** and we will provide you with a copy for signature and take care of the filing.

For and by the SPLP Legal Team:

Tom

**Thomas J. Sniscak**  
**Hawke McKeon & Sniscak LLP**  
**100 North 10<sup>th</sup> Street**  
**Harrisburg, PA 17101**  
**717-236-1300**  
**Ext. 224**  
**Fax: 717-236-4841**  
**Email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)**

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# **EXHIBIT 4**

**From:** Michael Bomstein <mbomstein@gmail.com>  
**Sent:** Friday, September 4, 2020 9:38 AM  
**To:** Thomas Sniscak <TJSniscak@hmslegal.com>  
**Subject:** Re: Flynn Motion for Partial Summary Judgment

Sorry, Tom,

We don't agree. The heart of the motion is your client's failure to perform the federally required risk analysis. We'll let the judge decide it. Have a good weekend. MSB

On Fri, Sep 4, 2020 at 9:26 AM Thomas Sniscak <[TJSniscak@hmslegal.com](mailto:TJSniscak@hmslegal.com)> wrote:

Good morning Michael,

Our SPLP legal team believes your Motion for Partial Summary Judgment makes two misrepresentations that are at the heart of your Motion. These misrepresentations are of facts you knew or should have known are false. In addition, your Motion is supported by an affidavit from Attorney Raiders that appears to be contrary to PA RPC 3.7 and Section 3 of the Engineer Registration Law. Therefore, we are seeking that you both withdraw your Motion and enter into the stipulation below in paragraph 3. SPLP will file it and ask it to be entered as part of the record. ***We seek your agreement no later than noon on Tuesday,***



**September 8, 2020.** If we do not have your agreement to the stipulation by that time, we will file our Answer shortly thereafter and seek sanctions on the following bases:

1. **Misrepresentations.**

The Motion is based on two false assertions: (1) that SPLP was required by Order of Judge Barnes to produce its risk analysis/assessment but did not, and (2) because SPLP did not produce the risk analysis/assessment it does not exist as required by law. Both of those assertions are unquestionably false. Indeed, SPLP produced its risk analyses/assessments and repeatedly made them available for your review. Actually, you stipulated that those documents **were produced** in this case, and that they were classified as “Extremely Sensitive Materials” in the Stipulation of Record to Amended Protective Order and Procedural Schedule. This Stipulation was entered into the record as an Order from ALJ Barnes on January 2, 2020.

As the Stipulation shows, among the Extremely Sensitive Materials that were produced, there were two versions of its Integrity Management Plans and Appendices – one that was applicable for the time period before SPLP was acquired by Energy Transfer, and one that is applicable since that time. The Integrity Management Plans and Appendices describe Sunoco’s risk models and related methodology and have related appendices that include the risk models themselves and their results. (Appendix F.1 - PRS-195 Risk Model, Bates Nos. SPLP00032035-SPLP00032057) and (Risk Model Workbook, Bates Nos. SPLP00031450-SPLP00031498), and (Results Bates Nos. SPLP00031499-SPLP00031521).

Pursuant to the Amended Protective Order, Sunoco provided copies of these materials to you and designated expert witnesses during not just one, but four in-person review sessions held on: (1) August 6, 2019 in Pittsburgh at the office of Flynn Complainants’ designated expert witness, Dr. Zee of Matergenics; (2) August 21, 2019 at Sunoco’s counsel’s office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at your own office. In fact, on the morning of the January 6, 2020 review session in Pittsburgh, you asked for a list of Extremely Sensitive Materials that would be provided at that in-person review session, and counsel for Sunoco sent a list via email and referenced the list of documents and bates ranges contained in the joint stipulation, including the risk analyses/assessments.

Significantly, three of these review sessions took place before your direct testimony was due. Despite that fact, you did not raise the argument regarding the risk analyses/assessments in direct or surrebuttal testimony. Therefore, your Motion is also in violation of the Omnibus Order and 52 Pa. Code § 5.243(e) which prohibits the introduction of evidence which should have been included in the party’s case-in-chief. You cannot circumvent that Order by attempting to introduce it by means of your Motion for Partial Summary Judgement or by any other means contrary to order of presenting evidence. We would remind you that the schedule for presentation of evidence was agreed to by you and resulted in Judge Barnes’ Order as the way parties should present the same.

Finally, we are aware that the Motion’s allegations have been publicized online and are being used to fundraise for this litigation which further underscores the sanctionable nature of these misrepresentations. This publication only adds to a false narrative about what has been produced in the case. I hope we can agree that misinformation is not good.

**2. Likely violations of PA RPC 3.7 and Section 3 of the Engineer Registration Law.**

Because Mr. Raiders is an attorney representing a party in this proceeding, he cannot have dual roles and serve as a witness to anything in this proceeding which Mr. Raiders has attempted to do just that through his affidavit, which goes beyond procedural assertions or advocacy relating to his role as attorney and instead expressly states expert opinions. Pa. R.P.C. Rule 3.7 provides the following prohibition:

**3.7 Lawyer as Witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or,
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

In his affidavit, Mr. Raiders also represents himself as an “engineer” even though he is not a licensed and registered professional engineer in violation of Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, Act of May 23, 1945, P.L. 913, No. 367 Cl. 63. Section 3 of the Engineer Registration Law states:

Section 3. Practice of Engineering, Land Surveying or Geology Without Licensure and Registration Prohibited.

(a) In order to safeguard life, health or property and to promote the general welfare, **it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer. . . .**

(b) **A person shall be construed to practice or offer to practice engineering . . .who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist. . . .**

(emphasis added). Mr. Raiders’ affidavit expressly holds himself out as an engineer. As the attorney who signed and filed this Motion you are also responsible for Mr. Raiders conduct, under Pa.R.C. Rule 3.7 and Section 3 of the Engineer Registration Law. .

**3. Stipulation.** Given the above, we are requesting your agreement to the following stipulation:

Sunoco Pipeline L.P. (SPLP) and Complainants Megan Flynn et al. at PUC Docket C-2020-3006116 (Flynn Complainants) by and through undersigned counsel jointly agree to the below stipulations regarding

Flynn Complainants August 27, 2020 Motion for Partial Summary Judgment (Motion) and the September 1, 2020 amendment thereto (Amended Motion):

- Flynn Complainants hereby withdraw with prejudice their Motion and Amended Motion.
- Flynn Complainants admit the Motion and Amended Motion were improvidently filed because SPLP produced in this matter and maintains the required risk analyses/assessments.
- Flynn Complainants admit that any reference in the Flynn Motion and Amended Motion to risk analysis are distinct from and have no bearing on SPLP's July 28, 2020 Motion for Partial Summary Judgment on Consequence Without Probability.

Please indicate your agreement to the above stipulation ***no later than noon on Tuesday*** and we will provide you with a copy for signature and take care of the filing.

For and by the SPLP Legal Team:

Tom

**Thomas J. Sniscak**  
**Hawke McKeon & Sniscak LLP**  
**100 North 10<sup>th</sup> Street**  
**Harrisburg, PA 17101**  
**717-236-1300**  
**Ext. 224**

**Fax: 717-236-4841**

**Email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)**

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# **EXHIBIT 5**

**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.	:		

**AFFIDAVIT OF RICHARD M. DALASIO, P.E.**

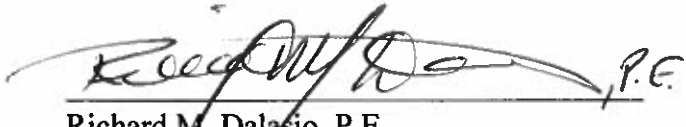
I, Richard M. Dalasio, P.E., state as follows:

1. My name is Richard Dalasio. I am employed by Energy Transfer as a Senior Manager of Pipeline Integrity – East. As part of my responsibilities, I oversee a team of employees who are responsible for implementing the company's integrity management program, including for the Mariner East pipelines in Chester and Delaware County. I am also a licensed professional engineer in the Commonwealth of Pennsylvania.

2. The documents that comprise the risk assessments that Energy Transfer performs to comply with PHMSA regulations at 49 CFR § 195.452 and Appendix C to Part 195 – Guidance for Implementation of an Integrity Management Program, consist of the following documents listed in the Joint Stipulation of Record to Amended Protective Order and Procedural Schedule and related Order entered on January 2, 2020:

- a. Relevant portions of Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries, (Bates Nos. SPLP00007034-SPLP00007093), including, but not limited to, Section 4 – Baseline Assessment Plan;

- b. Relevant portions of Sunoco Logistics Pipeline Integrity Management Plan, (Bates Nos. SPLP00007094-SPLP00007161), including, but not limited to, Section 4 – Risk Management System;
  - c. Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498 and SPLP00032058-SPLP00032106, additional copy as Appendix F.2 to Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries);
  - d. PRS-195 Risk Model (Appendix F.1 to Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries, Bates Nos. SPLP00032035-SPLP00032057); and,
  - e. Results of risk model analysis and assessment for the Mariner East 1 pipeline and 12-inch pipeline for Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521).
3. I understand that the statements set forth herein are made subject to 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

  
Richard M. Dalasio, P.E.

Dated: September 15, 2020

# **EXHIBIT 6**

**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.	:	

**AFFIDAVIT OF DIANA A. SILVA, ESQUIRE**

I, Diana A. Silva, Esquire, state as follows:

1. I am counsel for Respondent Sunoco Pipeline, L.P. (“Sunoco”) in the above-captioned consolidated action and provide this Affidavit in support of Sunoco’s Answer Opposing Motion and Amended Motion of Flynn Complainants for Partial Summary Judgment.

2. In my role as counsel for Sunoco, together with Whitney Snyder, Esquire and other members of our respective law firms, I was responsible for coordinating Sunoco’s response to discovery requests in this matter, including written responses to interrogatories and related document productions. The Motion claims that Sunoco did not perform risk assessments under the PHMSA regulations or produce those risk assessments in this case. As set forth in detail herein, as well as in the affidavit of my co-counsel Whitney Snyder, Esquire, and the affidavit of Richard M. Dalasio, P.E., such risk assessment documents, designated as Extremely Sensitive Materials, were produced and are as follows: relevant portions of Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries (Bates Nos. SPLP00007034-SPLP00007093), including Section 4 – Baseline Assessment Plan; relevant portions of Sunoco Logistics Pipeline



Integrity Management Plan (Bates Nos. SPLP00007094-SPLP00007161), including Section 4 – Risk Management System; Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498 and SPLP00032058-SPLP00032106 (additional copy)); PRS-195 Risk Model (Bates Nos. SPLP00032035-SPLP00032057); and, results of risk model analysis and assessment for the Mariner East 1 pipeline and 12-inch pipeline for Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521). All of these documents were listed in the Joint Stipulation of Record to Amended Protective Order and Procedural Schedule and related January 2, 2020 Order.

3. In response to Flynn Complainants’ Interrogatories and related Requests for Production of Documents, and a subsequent June 7, 2019 Order on Motion to Compel, Sunoco produced various documents designated as Extremely Sensitive Materials, which were printed in hard copy and provided at mutually-agreed to review sessions to opposing counsel and any designated expert witness who executed a non-disclosure agreement, in accordance with the procedures of the Amended Protective Order.

4. In addition to the Extremely Sensitive Materials document productions, certain interrogatory responses were also classified as Extremely Sensitive Materials and were also printed and provided in hard copy to opposing counsel and any designated expert witness who executed a non-disclosure agreement, in accordance with the procedures of the Amended Protective Order. A list of the documents designated as Extremely Sensitive Materials are listed in the Joint Stipulation of Record to Amended Protective Order and Procedural Schedule and related January 2, 2020 Order.

5. In accordance with the procedures in the Amended Protective Order, documents and interrogatory responses that were designated as Extremely Sensitive Materials were made

available for in-person review to opposing counsel and any designated expert witness who executed a non-disclosure agreement. Michael Bomstein and Richard Raiders were the only counsel to request an in-person review under these procedures. The only designated expert witness who participated in review of the Extremely Sensitive Materials was Flynn. Complainants' designated expert witness Dr. Mehrooz Zamanzadeh of Matergenics, and his associates Anil Kumar, Anil Chickcrim, Edward Larkin, George Bayer, and Erik Lahti. Flynn. Complainants' designated expert Jeffrey Marx has never participated in a review session, and therefore has never reviewed any Extremely Sensitive Materials.

6. There were four in-person review sessions held on the following dates: (1) August 9, 2019 in Pittsburgh at Matergenics; (2) August 21, 2019 at Sunoco's counsel's office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at Flynn Complainants' counsel's own office. I proctored the August 21, 2019 session at my office in Bala Cynwyd and the August 6, 2020 session at Michael Bomstein's office in Philadelphia. My co-counsel Whitney Snyder proctored the August 9, 2019 and January 6, 2020 sessions in Pittsburgh at Matergenics.

7. When I proctored the second review session on August 21, 2019 at my office in Bala Cynwyd, Michael Bomstein was the only person in attendance. This review session lasted less than two hours. Among other documents designated as Extremely Sensitive Materials, the following risk assessment documents were provided in hard copy in a binder for review at this session:

- a. Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries (Bates Nos. SPLP00007034-SPLP00007093);

- b. Sunoco Logistics Pipeline Integrity Management Plan (Bates Nos. SPLP00007094-SPLP00007161);
- c. Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498); and
- d. Risk assessment results for the Mariner East 1 8-inch pipeline and the 12-inch pipeline that is currently being used as part of the Mariner East 2 system in Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521).

8. I also proctored the fourth review session on August 6, 2019, which was held at Michael Bomstein's office in Philadelphia, and Attorney Bomstein was the only person in attendance. This review session lasted less than two hours. The entire set of documents listed in paragraph 7 above were provided in hard copy in a binder for review at this session, together with the additional appendices to the Energy Transfer version of the Integrity Management Plan that were provided in a supplemental production set, Bates Nos. SPLP00031808-SPLP00032109. These appendices include, among others, Appendix F.1 - PRS-195 Risk Model (Bates Nos. SPLP00032035-SPLP00032057), and Appendix F.2, which is an additional copy of the Sunoco Logistics Risk Model Workbook that was previously produced at the August 21, 2019 review session and listed in paragraph 7 above (Bates Nos. SPLP00031450-SPLP00031498, additional copy produced as Bates No. SPLP00032058-SPLP00032106), and which was also available at the initial August 9, 2019 review session proctored by my co-counsel Whitney Snyder. *See* Snyder Affidavit ¶ 5.

9. Two other review sessions were held on August 9, 2019 and January 6, 2020 in Pittsburgh that were proctored by my co-counsel Whitney Snyder as described in Ms. Snyder's affidavit.

10. The morning of the January 6, 2020 review session, Attorney Bomstein sent an email to me and my co-counsel Whitney Snyder asking what documents would be provided during the in-person review session. I responded by providing the list of documents designated as Extremely Sensitive Materials in the Stipulation of Record to Amended Protective Order and Procedural Schedule, filed on December 30, 2019, and corresponding Order entered by ALJ Barnes on January 2, 2020. A copy of this email string is attached hereto as Exhibit “A.”

11. All of the documents and interrogatory responses designated as Extremely Sensitive Materials were available, produced, and provided at in-person review sessions before Complainants and aligned-intervenor’s deadlines for direct written expert testimony of January 15, 2020, and deadline for surrebuttal testimony of July 15, 2020.

12. Neither Attorney Bomstein, nor Attorney Raiders, nor any other party has requested any additional review sessions.

13. I understand that the statements set forth herein are made subject to 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink that reads "Diana A. Silva". The signature is written in a cursive, flowing style.

---

Diana A Silva, Esquire

Dated: September 16, 2020

# **EXHIBIT A**

## Diana Silva

---

**From:** Michael Bomstein <mbomstein@gmail.com>  
**Sent:** Monday, January 6, 2020 9:05 AM  
**To:** Diana Silva; Anil Chikkam J; George Bayer; Mehrooz Zamanzadeh  
**Cc:** Whitney Snyder  
**Subject:** Re: Today's Review Session

Thanks, Diana,

I will leave it to Matergenics, but I'm pretty sure they will not be very interested in the hazard assessments.

MSB

On Mon, Jan 6, 2020 at 8:58 AM Diana Silva <[DSilva@mankogold.com](mailto:DSilva@mankogold.com)> wrote:

Michael:

The bates numbers are listed in the stipulation and the corresponding order from Judge Barnes. I've copied them here:

1. The ESM to which this Stipulation applies are:

- a. Narrative Interrogatory Responses to Flynn Set 1, Nos. 5-7.
- b. Sunoco Logistics Pipeline Integrity Management Plan; SPLP00007094-SPLP00007161
- c. Energy Transfer Pipeline Integrity Management Plan; SPLP00007034-SPLP00007093.
- d. Appendices to Energy Transfer Pipeline Integrity Management Plan; SPLP00031808-SPLP00032109.
- e. 2013 Mariner East Hazard Assessment; SPLP00031198-SPLP00031253.
- f. 2017 ME2 Hazard Assessment; SPLP00031254-SPLP00031319.
- g. 2018 Hazard Assessment of Re-route of ME2 Pipeline; SPLP00031320- SPLP00031354.
- h. 2018 Butane Spill Assessment; SPLP00031355-SPLP00031449.
- i. Sunoco Logistics Risk Model Workbook SPLP00031450-SPLP00031521.

Diana A. Silva, Esquire  
484.430.2347 | 484.430.5711 (f)

[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

**From:** Michael Bomstein <[mbomstein@gmail.com](mailto:mbomstein@gmail.com)>  
**Sent:** Monday, January 6, 2020 8:52 AM  
**To:** Diana Silva <[DSilva@mankogold.com](mailto:DSilva@mankogold.com)>; Whitney Snyder <[WESnyder@hmslegal.com](mailto:WESnyder@hmslegal.com)>  
**Cc:** Anil Chikkam J <[Anil.Chikkam@matergenics.com](mailto:Anil.Chikkam@matergenics.com)>  
**Subject:** Today's Review Session

Diana,

Can you remind me what the SPLP numbers are for the

IM documents that will be reviewed today?

Thanks.

MSB

# **EXHIBIT 7**



**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.	:		

**AFFIDAVIT OF WHITNEY SNYDER, ESQUIRE**

I, Whitney Snyder, Esquire, state as follows:

1. I am counsel for Respondent Sunoco Pipeline, L.P. ("Sunoco") in the above-captioned consolidated action and provide this Affidavit in support of Sunoco's Answer Opposing Motion and Amended Motion of Flynn Complainants for Partial Summary Judgment.

2. In my role as counsel for Sunoco, together with Diana A. Silva, Esquire and other members of our respective law firms, I was responsible for coordinating Sunoco's response to discovery requests in this matter, including written responses to interrogatories and related document productions. The Motion claims that Sunoco did not perform risk assessments under the PHMSA regulations or produce those risk assessments in this case. As set forth in detail herein, as well as in the affidavit of my co-counsel Diana A. Silva, Esquire, and the affidavit of Richard M. Dalasio, P.E., such risk assessment documents, designated as Extremely Sensitive Materials, were produced and are as follows: relevant portions of Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries (Bates Nos. SPLP00007034-SPLP00007093), including Section 4 – Baseline Assessment Plan; relevant portions of Sunoco Logistics Pipeline

Integrity Management Plan (Bates Nos. SPLP00007094-SPLP00007161), including Section 4 – Risk Management System; Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498 and SPLP00032058-SPLP00032106 (additional copy)); PRS-195 Risk Model (Bates Nos. SPLP00032035-SPLP00032057); and, results of risk model analysis and assessment for the Mariner East 1 pipeline and 12-inch pipeline for Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521). All of these documents were listed in the Joint Stipulation of Record to Amended Protective Order and Procedural Schedule and related January 2, 2020 Order (*see* below ¶¶ 7-8).

3. In accordance with the procedures in the Amended Protective Order, documents and interrogatory responses that were designated as Extremely Sensitive Materials were made available for in-person review to opposing counsel and any designated expert witness who executed a non-disclosure agreement. Michael Bomstein and Richard Raiders were the only counsel to request an in-person review under these procedures. The only designated expert witness who participated in review of the Extremely Sensitive Materials was Flynn Complainants' designated expert witness Dr. Mehrooz Zamanzadeh of Matergenics, and his associates Anil Kumar, Anil Chickcrim, Edward Larkin, George Bayer, and Erik Lahti. Flynn Complainants' designated expert Jeffrey Marx has never participated in a review session, and therefore has never reviewed any Extremely Sensitive Materials.

4. There were four in-person review sessions held on the following dates: (1) August 9, 2019 in Pittsburgh at Matergenics; (2) August 21, 2019 at Sunoco's counsel's office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at Flynn Complainants' counsel's office in Philadelphia. I proctored the August 9, 2019 and January 6,

2020 sessions in Pittsburgh at Matergenics. My co-counsel Diana Silva proctored the August 21, 2019 and August 6, 2020 sessions.

5. At the initial August 9, 2019 review session, the following people were in attendance: Attorney Michael Bomstein; Attorney Richard Raiders; Dr. Mehrooz Zamanzadeh and his associates. The review session lasted less than three hours. Among other documents designated as Extremely Sensitive Materials, the following risk assessment documents were provided in hard copy in a binder for review at the August 9, 2019 in-person review session:

- a. Pipeline Integrity Management Plan - Energy Transfer Company & Subsidiaries (Bates Nos. SPLP00007034-SPLP00007093);
- b. Sunoco Logistics Pipeline Integrity Management Plan (Bates Nos. SPLP00007094-SPLP00007161);
- c. Sunoco Logistics Risk Model Workbook (Bates Nos. SPLP00031450-SPLP00031498); and,
- d. Risk assessment results for the Mariner East 1 8-inch pipeline and the 12-inch pipeline that is currently being used as part of the Mariner East 2 system in Chester and Delaware Counties (Bates Nos. SPLP00031499-SPLP00031521).

6. While reviewing the Extremely Sensitive Materials listed in paragraph 5 above during the initial August 9, 2019 in-person review session, Attorney Raiders noted that certain appendices to the Energy Transfer version of the Integrity Management Plan appear to have been inadvertently omitted. I reviewed the binder of documents and agreed those appendices were not included and confirmed that Sunoco would supplement its production to include the inadvertently-omitted appendices. These appendices were provided in a supplemental production set, Bates Nos. SPLP00031808-SPLP00032109. These appendices include, among

others, Appendix F.1 - PRS-195 Risk Model (Bates Nos. SPLP00032035-SPLP00032057), and Appendix F.2, which is an additional copy of the Sunoco Logistics Risk Model Workbook that was previously produced and available on the August 9, 2019 review session and listed in paragraph 5 above (Bates Nos. SPLP00031450-SPLP00031498, additional copy produced as Bates No. SPLP00032058-SPLP00032106).

7. In response to the Flynn Complainants' November 8, 2019 Motion to Reclassify Putative Confidential Documents, Sunoco and Flynn Complainants' counsel agreed to a Joint Stipulation of Record to Amended Protective Order and Procedural Schedule, filed on December 30, 2019. *See* Ex. 1 to Sunoco's Answer Opposing Motion. This Stipulation specifically identified and listed all of the documents designated as Extremely Sensitive Materials (*see id.* ¶ 2), and also listed the procedures the parties would follow for upcoming in-person review sessions for the purposes of preparing expert testimony, including allowing the ability for designated experts to take notes (*see id.* ¶¶ 1, 3-8). The Stipulation also provided detailed procedures on the use of documents designated as Confidential, Highly-Confidential, or Extremely Sensitive Materials in the parties' direct or rebuttal expert testimony, use in any pre-hearing briefing, use during the hearing, and also how such materials would be treated in post-hearing briefing and the ultimate decision issued in the case. *See id.* ¶¶ 9-17.

8. The Stipulation was entered as an Order by ALJ Barnes on January 2, 2020. *See* Ex. 2 to Sunoco's Answer Opposing Motion.

9. Following the filing of the Stipulation and subsequent Order, I then proctored the third review session on January 6, 2020, at which the following people were in attendance: George Bayer and Anil Chikkam of Matergenics. Neither Attorney Bomstein nor Attorney Raiders attended the January 6, 2020 review session. The entire set of documents listed in

paragraph 5 above were provided in hard copy in a binder for review at the January 6, 2020 session, together with the additional appendices to the Energy Transfer version of the Integrity Management Plan that were provided in supplemental production set as described in paragraph 6 above (i.e., Bates Nos. SPLP00031808-SPLP00032109). This review session lasted less than three hours.

10. The morning of the January 6, 2020 review session, Attorney Bomstein sent an email to me and my co-counsel Diana Silva asking what documents would be provided during the in-person review session, to which Ms. Silva responded by providing the list of documents designated as Extremely Sensitive Materials in the Stipulation and Order. A copy of that email string is attached as Exhibit A to Ms. Silva's affidavit.

11. Two other review sessions were held that were proctored by my co-counsel, Diana A. Silva, Esq. on August 21, 2019 in Bala Cynwyd and August 6, 2020 in Philadelphia, as described in Ms. Silva's affidavit. Neither Attorney Bomstein, nor Attorney Raiders, nor any other party requested additional review sessions.

12. I understand that the statements set forth herein are made subject to 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



---

Whitney Snyder, Esquire

Dated: September 16, 2020

# **EXHIBIT 8**

## Diana Silva

---

**From:** Thomas Sniscak <TJSniscak@hmslegal.com>  
**Sent:** Friday, September 4, 2020 1:46 PM  
**To:** Rich Raiders (rich@raiderslaw.com)  
**Cc:** Robert Fox; Neil Witkes; Diana Silva; Whitney Snyder  
**Subject:** FW: Flynn Motion for Partial Summary Judgment

Good afternoon Rich,

The SPLP Legal team hereby requests that you withdraw your affidavit offered to support the Flynn parties' Motion for Partial Summary Judgment in this matter for the reasons stated in SPLP's email below. We ask that you respond to us by noon on Tuesday September 8<sup>th</sup>.

Thanks,

For and by the SPLP Legal team:

Tom

**Thomas J. Sniscak**  
**Hawke McKeon & Sniscak LLP**  
**100 North 10<sup>th</sup> Street**  
**Harrisburg, PA 17101**  
**717-236-1300**  
**Ext. 224**  
**Fax: 717-236-4841**  
**Email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)**

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---

**From:** Michael Bomstein <mbomstein@gmail.com>  
**Sent:** Friday, September 4, 2020 9:38 AM  
**To:** Thomas Sniscak <TJSniscak@hmslegal.com>  
**Subject:** Re: Flynn Motion for Partial Summary Judgment

Sorry, Tom,

We don't agree. The heart of the motion is your client's failure to perform the federally required risk analysis. We'll let the judge decide it. Have a good weekend. MSB

On Fri, Sep 4, 2020 at 9:26 AM Thomas Sniscak <[TJSniscak@hmslegal.com](mailto:TJSniscak@hmslegal.com)> wrote:

Good morning Michael,

Our SPLP legal team believes your Motion for Partial Summary Judgment makes two misrepresentations that are at the heart of your Motion. These misrepresentations are of facts you knew or should have known are false. In addition, your Motion is supported by an affidavit from Attorney Raiders that appears to be contrary to PA RPC 3.7 and Section 3 of the Engineer Registration Law. Therefore, we are seeking that you both withdraw your Motion and enter into the stipulation below in paragraph 3. SPLP will file it and ask it to be entered as part of the record. ***We seek your agreement no later than noon on Tuesday, September 8, 2020.*** If we do not have your agreement to the stipulation by that time, we will file our Answer shortly thereafter and seek sanctions on the following bases:

1. **Misrepresentations.**

The Motion is based on two false assertions: (1) that SPLP was required by Order of Judge Barnes to produce its risk analysis/assessment but did not, and (2) because SPLP did not produce the risk analysis/assessment it does not exist as required by law. Both of those assertions are unquestionably false. Indeed, SPLP produced its risk analyses/assessments and repeatedly made them available for your review. Actually, you stipulated that those documents ***were produced*** in this case, and that they were classified as “Extremely Sensitive Materials” in the Stipulation of Record to Amended Protective Order and Procedural Schedule. This Stipulation was entered into the record as an Order from ALJ Barnes on January 2, 2020.

As the Stipulation shows, among the Extremely Sensitive Materials that were produced, there were two versions of its Integrity Management Plans and Appendices – one that was applicable for the time period before SPLP was acquired by Energy Transfer, and one that is applicable since that time. The Integrity Management Plans and Appendices describe Sunoco’s risk models and related methodology and have related appendices that include the risk models themselves and their results. (Appendix F.1 - PRS-195 Risk Model, Bates Nos. SPLP00032035-SPLP00032057) and (Risk Model Workbook, Bates Nos. SPLP00031450-SPLP00031498), and (Results Bates Nos. SPLP00031499-SPLP00031521).

Pursuant to the Amended Protective Order, Sunoco provided copies of these materials to you and designated expert witnesses during not just one, but four in-person review sessions held on: (1) August 6, 2019 in Pittsburgh at the office of Flynn Complainants’ designated expert witness, Dr. Zee of Matergenics; (2) August 21, 2019 at Sunoco’s counsel’s office in Bala Cynwyd; (3) January 6, 2020 in Pittsburgh at Matergenics; and, (4) August 6, 2020 at your own office. In fact, on the morning of the January 6, 2020 review session in Pittsburgh, you asked for a list of Extremely Sensitive Materials that would be provided at that in-person review session, and counsel for Sunoco sent a list via email and referenced the list of documents and bates ranges contained in the joint stipulation, including the risk analyses/assessments.

Significantly, three of these review sessions took place before your direct testimony was due. Despite that fact, you did not raise the argument regarding the risk analyses/assessments in direct or surrebuttal testimony. Therefore, your Motion is also in violation of the Omnibus Order and 52 Pa. Code § 5.243(e) which prohibits the introduction of evidence which should have been included in the party’s case-in-chief. You cannot circumvent that Order by attempting to introduce it by means of your Motion for Partial



Summary Judgement or by any other means contrary to order of presenting evidence. We would remind you that the schedule for presentation of evidence was agreed to by you and resulted in Judge Barnes' Order as the way parties should present the same.

Finally, we are aware that the Motion's allegations have been publicized online and are being used to fundraise for this litigation which further underscores the sanctionable nature of these misrepresentations. This publication only adds to a false narrative about what has been produced in the case. I hope we can agree that misinformation is not good.

## **2. Likely violations of PA RPC 3.7 and Section 3 of the Engineer Registration Law.**

Because Mr. Raiders is an attorney representing a party in this proceeding, he cannot have dual roles and serve as a witness to anything in this proceeding which Mr. Raiders has attempted to do just that through his affidavit, which goes beyond procedural assertions or advocacy relating to his role as attorney and instead expressly states expert opinions. Pa. R.P.C. Rule 3.7 provides the following prohibition:

### **3.7 Lawyer as Witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or,
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

In his affidavit, Mr. Raiders also represents himself as an "engineer" even though he is not a licensed and registered professional engineer in violation of Section 3 of the Engineer, Land Surveyor and Geologist Registration Law, Act of May 23, 1945, P.L. 913, No. 367 Cl. 63. Section 3 of the Engineer Registration Law states:

**Section 3. Practice of Engineering, Land Surveying or Geology Without Licensure and Registration Prohibited.**

(a) In order to safeguard life, health or property and to promote the general welfare, **it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer. . . .**

(b) **A person shall be construed to practice or offer to practice engineering . . . who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist. . . .**

(emphasis added). Mr. Raiders' affidavit expressly holds himself out as an engineer. As the attorney who signed and filed this Motion you are also responsible for Mr. Raiders conduct, under Pa.R.C. Rule 3.7 and Section 3 of the Engineer Registration Law. .

3. **Stipulation.** Given the above, we are requesting your agreement to the following stipulation:

Sunoco Pipeline L.P. (SPLP) and Complainants Megan Flynn et al. at PUC Docket C-2020-3006116 (Flynn Complainants) by and through undersigned counsel jointly agree to the below stipulations regarding Flynn Complainants August 27, 2020 Motion for Partial Summary Judgment (Motion) and the September 1, 2020 amendment thereto (Amended Motion):

- Flynn Complainants hereby withdraw with prejudice their Motion and Amended Motion.
- Flynn Complainants admit the Motion and Amended Motion were improvidently filed because SPLP produced in this matter and maintains the required risk analyses/assessments.
- Flynn Complainants admit that any reference in the Flynn Motion and Amended Motion to risk analysis are distinct from and have no bearing on SPLP's July 28, 2020 Motion for Partial Summary Judgment on Consequence Without Probability.

Please indicate your agreement to the above stipulation ***no later than noon on Tuesday*** and we will provide you with a copy for signature and take care of the filing.

For and by the SPLP Legal Team:

Tom

**Thomas J. Sniscak**  
**Hawke McKeon & Sniscak LLP**  
**100 North 10<sup>th</sup> Street**  
**Harrisburg, PA 17101**  
**717-236-1300**  
**Ext. 224**

**Fax: 717-236-4841**

**Email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)**

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# **EXHIBIT 9**

BEFORE  
THE  
ZONING HEARING BOARD  
OF  
WEST CORNWALL TOWNSHIP  
LEBANON, PENNSYLVANIA

IN RE: : Case No. 2-15  
:  
PETITION FOR APPEAL FILED :  
BY DOUG LORENZEN, :  
PAMELA BISHOP, PHILLIP J. :  
STOBER and CONCERNED :  
CITIZENS OF LEBANON COUNTY :

TRANSCRIPT OF PROCEEDINGS  
(DAY 3 - PAGES 129-240)

JUNE 8, 2017  
7:00 P.M.

QUENTIN FIRE COMPANY  
SOCIAL HALL  
20 S. LEBANON STREET  
QUENTIN, PENNSYLVANIA

BEFORE: DENNIS TULLI, CHAIRMAN  
STUART HALSELL, MEMBER  
CARL J. STUMPF, MEMBER

KEITH L. KILGORE, ESQUIRE, SOLICITOR

APPEARANCES:

J. DWIGHT YODER, ESQUIRE  
SHEILA V. O'ROURKE, ESQUIRE  
For - Appellants/Petitioners

HELEN L. GEMMILL, ESQUIRE  
JONATHAN D. ANDREWS, ESQUIRE  
For - Sunoco Pipeline, L.P.

KATHY J. SHEFFY,  
COURT STENOGRAPHER

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1       A. I was involved in assisting that team in  
2 scheduling those works.

3       Q. But you were not the person responsible for that?

4       A. No. As you well know, pipelines have thousands  
5 of people working for them, and you have small roles in  
6 lots of projects.

7       Q. I'm trying to understand if your small role in  
8 this project qualifies you as an expert to testify here.  
9 So your role was very small in terms of nominations for  
10 shipments. You were not the lead person in any way when  
11 you were at Buckeye?

12      A. I was not the lead person.

13      Q. Okay. And you're not a licensed professional  
14 engineer, are you?

15      A. No, I am not.

16      Q. When you say you're testifying here as an  
17 engineer tonight, you don't have a license from the  
18 Commonwealth of Pennsylvania as an engineer?

19      A. I do not hold a license.

20      Q. Okay. And to make sure I'm clear, you're not  
21 testifying tonight based on any representations that you  
22 have had as an attorney?

23      A. Not here as an attorney at all.

24      Q. And you do represent clients in opposing, as an  
25 attorney opposing Sunoco Pipeline; is that correct?



# **EXHIBIT 10**

## Diana Silva

---

**From:** ST, ENGINEER <ra-engineer@pa.gov>  
**Sent:** Friday, September 11, 2020 11:17 AM  
**To:** Diana Silva  
**Subject:** Re: [External] Checking Licensure of Individual - Richard Raiders

Good morning,

According to our records, no one with that name has a license as a Professional Engineer, Land Surveyor, or Geologist. The licensee may have applied under a different name or variation thereof. If you were given any further information, I would be more than happy to check our system. If you should have any further questions, please feel free to contact the Board.

Shakeena C. | Clerical Supervisor 2  
PA Department of State | Business Licensing Division  
PO BOX 2649 | Harrisburg, PA 17105-2649  
Phone: 717.783.7049 | Fax: 717-705-5540

---

**From:** Diana Silva <DSilva@mankogold.com>  
**Sent:** Friday, September 11, 2020 10:41 AM  
**To:** ST, ENGINEER <ra-engineer@pa.gov>  
**Subject:** [External] Checking Licensure of Individual - Richard Raiders

**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.*

To whom it may concern:

I called the office's main number and I understand that the State Registration Board for Professional Engineers, Land Surveyors and Geologist office is currently closed due to COVID-19, and that inquiries should be submitted via email. I am trying to confirm whether an individual – **Richard Raiders** – is a licensed professional engineer in the state of Pennsylvania. I utilized the online individual look-up system, and Richard Raiders was not listed as a professional engineer, but I wanted to confirm that the Board had no other record for that individual. I also left a voicemail as instructed by the automated system.

Please feel free to email me at [dsilva@mankogold.com](mailto:dsilva@mankogold.com) or call me on my cell phone at 610-504-0761, if you need any further information to confirm.

Thank you,

Diana Silva

**Diana A. Silva, Esquire**  
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## **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).

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