

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Bureau of Investigation and Enforcement

Public Meeting August 6, 2020

3006534-OSA

v.

Docket No. C-2018-3006534

**Sunoco Pipeline, L.P. A/K/A Energy
Transfer Partners**

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Comments filed on June 1, 2020, by Sunoco Pipeline, L.P. (Sunoco or SPLP), in response to the Commission's Second Tentative Opinion and Order issued on May 21, 2020 (*Second Tentative Order*) at this docket. Our *Second Tentative Order* approved the Joint Petition for Approval of Settlement (Settlement, Joint Petition or Settlement Agreement) filed on April 3, 2019, by the Commission's Bureau of Investigation and Enforcement (I&E) and Sunoco (collectively, the Parties or Joint Petitioners), with certain clarifications and modifications deemed reasonable and necessary in the public interest.

In the *Second Tentative Order*, in response to comments received, we modified the process for how the final form Remaining Life Study (Safety Study) would be shared with the Joint Petitioners. We reaffirmed that the Independent Expert should release the confidential ME1 Safety Study simultaneously to I&E and Sunoco. With respect to the public Summary, although not expressly stated by the Settlement terms, we confirmed that the Independent Expert, as the party responsible for preparing the final form ME1 Safety Study, is in the best position to draft a comprehensive public Summary of the Safety Study for purposes of public disclosure.

In its comments, Sunoco raises a number of objections to the Commission's modifications. In particular, Sunoco avers that the Commission *sua sponte* imposes procedures for the Independent Expert's submission of the confidential Safety Study and public Summary which violate the CSI Act. Sunoco asserts that the Commission's action operates to effectively require that Sunoco waive its statutory rights under the CSI Act. Sunoco advises that it is strongly considering withdrawing from the Joint Settlement over this issue.

In order to resolve its concerns, Sunoco proposes that the Commission modify the *Second Tentative Order* to direct that the Independent Expert submit the final form ME1 Safety Study in a locked Portable Document Format (PDF) directly to Sunoco in the first instance, solely for the purpose of Sunoco's review to mark CSI. Sunoco would then provide the Independent Expert the portions Sunoco designates as CSI, so that the Independent Expert may mark the CSI provisions. The Independent Expert would then

provide a marked and locked copy of the PDF directly to Sunoco. Sunoco asserts that this procedure is required to enable Sunoco's compliance with the CSI Act's requirement that the utility transmit the information to the agency. Sunoco would then be responsible for providing the Safety Study to I&E. Sunoco further agrees to include an affidavit attesting to the fact that Sunoco did not alter the Safety Study.

With respect to the public Summary, Sunoco proposes that the Commission modify the Settlement terms under the *Second Tentative Order* to direct that the Independent Expert provide the public Summary directly to Sunoco in the first instance, in a locked form PDF. Sunoco will then review the Summary solely for the purposes of marking CSI. If SPLP finds no CSI or other proprietary materials, the Independent Expert may give the Summary directly to I&E. Sunoco proposes that if Sunoco finds CSI or other proprietary materials, it will communicate jointly with I&E and the Independent Expert to excise any such information. Once any CSI/proprietary information is excised, under Sunoco's proposal, the Independent Expert would provide the public Summary to I&E.

While I do not adopt Sunoco's interpretation of the CSI Act, I do acknowledge the Company's concerns regarding the safeguarding of confidential security information. In the interest of preserving the benefits of this settlement¹ and avoiding undue delay in the implementation of its provisions, I move that we exercise our discretion to adopt the requested modifications, with one additional condition. I believe it appropriate to require the Independent Expert to include a signed verification, consistent with 52 Pa. Code §1.36, with both the confidential Safety Study and the Public Summary it delivers to I&E, confirming that its findings have not been modified by Sunoco.

THEREFORE, I move that:

1. The Commission's Order of May 21, 2020, is modified, consistent with this Motion.
2. The Office of Special Assistants prepare a Tentative Opinion and Order consistent with this Motion.
3. Per the terms of the Joint Petition for Approval of Settlement filed on April 3, 2019, at this docket, the Joint Petitioners shall, within twenty (20) days of the entry of this Opinion and Order, file with the Secretary of the Commission, and serve on all Parties to this proceeding, a written statement indicating either an

¹ In this case, the Parties submitted a Settlement of all issues. The Commission's policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

acceptance of the modifications to the Joint Petition for Settlement or an election to withdraw from the Joint Petition for Settlement. Further:

a. If either Joint Petitioner fails to file such a statement within twenty (20) days of the entry of this Opinion and Order, or if either Joint Petitioner timely files an election to withdraw from the Joint Petition for Settlement, the Joint Petition for Settlement shall be disapproved without further action by this Commission, and this matter shall be referred to the Bureau of Investigation and Enforcement for prosecution of the Formal Complaint filed in this proceeding.

b. If both Joint Petitioners file a statement, within twenty (20) days of the entry of this Opinion and Order, indicating acceptance of the modifications to the Joint Petition for Settlement, this Opinion and Order shall become final without further Commission action.

4. A copy of this Opinion and Order be served on all parties to this proceeding.



Date: August 6, 2020

**JOHN F. COLEMAN, JR.
COMMISSIONER**