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September 16, 2019

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Sunoco Pipeline L.P. Docket Number C-2018-3006534; **SUNOCO PIPELINE
L.P.'S MOTION TO STRIKE PORTIONS OF FLYNN ET AL.'S
COMMENTS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline
L.P.'s Motion to Strike Portions of Flynn et al.'s Comments.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth H. Barnes
Per Certificate of Service

Respectfully submitted,



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Dated: September 16, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

July 15 Order at 17 (emphasis added). Flynn ignored this ruling by attempting to introduce evidence and broaden issues as well as including impertinent and scandalous allegations in their Comments.

I. LIST OF PORTIONS OF COMMENTS TO BE STRICKEN

SPLP moves to strike the following portions of Flynn’s Comments:

	Description of Materials	Cites to Locations in Comments
A.	Expert Report with CV and affidavit and statements within Comments referencing or relying thereon	Exhibit A to Comments and: <ul style="list-style-type: none"> - Comments at page 7, entire first paragraph; - Comments at page 39, fourth and fifth paragraph; and - Comment at page 41, third paragraph, second sentence.
B.	Environmental Hearing Board (EHB) Stipulated Order and EHB Adjudication	Exhibit B (which appears to also include the document referenced as Exhibit C within the Comments) to Comments and Comments at page 23 fifth paragraph through entirety of page 25.
C.	PHMSA Notices of Proposed Safety Order regarding Missouri pipeline	Exhibit E ² to Comments and Comments at page 29, second and third paragraphs (referencing Exhibit D, which is apparently the document attached to the Comments as Exhibit E).

² Exhibits C-D are not attached to the Comments. To the extent Flynn intended to attach an Exhibit C, SPLP moves to strike it. The reference to Exhibit D within the Comments appears to be what is attached as Exhibit E to the Comments.

	Description of Materials	Cites to Locations in Comments
D.	Statements regarding 12-inch pipeline	<ul style="list-style-type: none"> - Comments at page 3, first paragraph “Moreover” through end of first paragraph; - Comments at page 15, second sentence of third paragraph through page 16 end of first paragraph; - Comment at page 17, third paragraph, last sentence, “Moreover, the condition of the 12-inch . . .”; - Comments at page 39, last paragraph, second sentence through page 40, entire first paragraph; and - Comments at page 40, first paragraph, reference to 12-inch pipeline and page 41, first three paragraph references to 12-inch pipeline.
E.	“Factual Background” and characterizations of Complaint and Answer, which speak for themselves	<ul style="list-style-type: none"> - Comments at page 4 Section III. through all of page 6; - Comments at page 7 Section c. through page 8 end of paragraph (k); - Comments at page 14, last paragraph “More important for present purposes is Sunoco’s evasive answer . . .” through page 15, first sentence of third paragraph; and - Comments at page 35, third paragraph, phrase referring to I&E’s analysis in Complaint “of Sunoco defective safety and integrity practices”.
F.	Statements regarding replaced section of pipe	Comments at page 16, second paragraph, through page 17 first sentence of third paragraph “An additional reason . . .”.
G.	Statements regarding effects of pin-hole leak on SPLP’s customers	Comments at page 21, entirety of third and fourth paragraphs.
H.	Marx testimony on “risk assessment” that was withdrawn from evidence in <i>Flynn Complaint</i> emergency petition proceeding	<ul style="list-style-type: none"> - Comments at page 42, entire first paragraph; and - Comments at page 44, second paragraph, first sentence.

	Description of Materials	Cites to Locations in Comments
I.	Scandalous, impertinent, and/or otherwise irrelevant allegations attempting to substantially broaden scope of proceeding and/or introduce evidence	<ol style="list-style-type: none"> 1. Comments at page 8 last paragraph "Given Sunoco's repeated violation of agency orders as well as recent settlement agreements,"; 2. Comments at page 10 entire second paragraph (allegations regarding DEP); 3. Comments at page 13, entire paragraph 2; 4. Comments at page 17, entire last paragraph; through page 18 entire first paragraph; 5. Comments at page 18, third paragraph (allegations of lack of public transparency); 6. Comments at page 19, second paragraph, third sentence, ("Intervenors further submit that I&E's statement in Appendix A of the Joint Petition for Approval Petition[sic] contains important factual misstatements.") through page 20, second paragraph, first three sentences; page 20, third paragraph, second sentence: "Regarding this factor, I&E's claim is a red herring."; page 20, fourth paragraph, "I&E's own Complaint makes clear that it has <i>no idea</i>" (emphasis in original) through page 21, entire second paragraph; page 21, last paragraph, second sentence ("I&E inexplicably suggests that Sunoco is a good citizen. . ."); 7. Comments at page 22 through page 33, third paragraph; 8. Comments at page 33, last paragraph ("The settlement, by Sunoco's own analysis, was achieved in bad faith. . .") through entirety of page 34; 9. Comments at page 41, fourth paragraph through fifth paragraph first sentence; and 10. Comments at page 42, second paragraph (including picture) through page 45 picture.
J.	Allegations and legal arguments seeking relief as to the <i>Flynn Complaint</i> proceeding	Comments at page 45, Section VIII. through entirety of page 48.

II. ARGUMENT

The below sections correlate to the organization of materials to be stricken in the table above. As explained with respect to each category, these materials should be stricken because they: (1) violate Your Honor's July 15 Order ruling that Intervenor comments cannot introduce new evidence or substantially broaden issues in this proceeding; and/or (2) contain scandalous and/or impertinent allegations.

A. Expert Report with CV and affidavit and statements within Comments referencing or relying thereon

Flynn attaches to the Comments as Exhibit A an expert report along with a CV and accompanying affidavit and references and/or relies on these materials within the Comments at pages 7 (entire first paragraph), 39 (fourth and fifth paragraphs), and 41 (third paragraph, second sentence). SPLP moves to strike these materials. An expert report, his CV, and an affidavit accompanying such report is clearly the type of materials that would be considered "evidence." The July 15 Order precluded Intervenor's from submitting evidence, so these materials should be stricken, and appropriate sanctions imposed. Parties should not be able to treat this Commission's long history of adherence to the rules with a view that the rules do not apply to them because they do not regularly practice before it. These materials also attempt to substantially broaden issues in violation of the July 15 Order and should be stricken for this reason as well.

B. EHB Stipulated Order and EHB Adjudication

Flynn attaches to the Comments as Exhibit B an EHB Stipulated Order and an EHB Adjudication and references and relies on these materials within the Comments at page 23, fifth paragraph through the entirety of page 25 (The reference to Exhibit C on page 25 is a reference to the Adjudication contained in Exhibit C). This is an attempt to introduce evidence and substantially broaden issues in this proceeding in violation of the July 15 Order. The EHB materials are clearly an attempt to introduce documentary evidence. Also, these materials are

irrelevant here and thus an attempt to broaden issues beyond the approval of the Settlement. The Commission has never found that SPLP has violated a law or regulation over which it has jurisdiction, which is the applicable consideration regarding “compliance history” for consideration of settlements under the policy statement. *See e.g.*, BI&E Statement in Support at 13-14.

The EHB materials have nothing to do with SPLP’s relevant compliance history or any other factor relevant to the Commission’s consideration of the Settlement at issue here. Flynn attempts to use the EHB Order to argue that after the Order was entered SPLP went on to reach a settlement with DEP that differed from that Order. Comments at 23-25. The Order also clearly dealt with construction of the ME2/2X pipelines, while this proceeding deals with the ME1 pipeline. The Order is irrelevant to approval of the Settlement at issue here and thus an attempt to broaden issues. Flynn attempts to use the Adjudication to argue SPLP didn’t correctly define the scope of a project when obtaining a DEP permit. Comments at 25. Moreover, the Adjudication was a proceeding regarding Clean Air Act permits and has nothing to do with compliance, but instead the scope of a permit. The Adjudication is irrelevant to approval of the Settlement at issue here and thus an attempt to broaden issues. The July 15 Order precluded Intervenors from submitting evidence or substantially broadening issues, so these materials should be stricken.

C. PHMSA Notices of Proposed Safety Order regarding Missouri pipeline

Flynn attaches to the Comments as Exhibit E PHMSA Notices of Proposed Safety Order regarding a Missouri pipeline (the Panhandle Eastern Pipe Line) and references and relies on these materials within the Comments at page 29, second and third paragraphs (referencing Exhibit D, which is apparently the document attached to the Comments as Exhibit E). This is an attempt to introduce documentary evidence and substantially broaden issues in this proceeding in violation of the July 15 Order. Also, these materials are irrelevant here and thus an attempt to broaden the

issues because they are irrelevant to approval of the Settlement. The Commission has never found that SPLP has violated a law or regulation over which it has jurisdiction, which is the applicable consideration regarding “compliance history” for consideration of settlements under the policy statement.

These materials have nothing to do with SPLP’s relevant compliance history or any other factor relevant to the Commission’s consideration of the Settlement at issue here. This type of advocacy and citation to other states and other non-Pennsylvania pipelines was rejected by the Commission as evidence to find even a substantial question of law, let alone an actual violation.³ These materials are irrelevant to approval of the Settlement at issue here and thus an attempt to broaden issues. The July 15 Order precluded Intervenors from submitting evidence or substantially broadening issues, so these materials should be stricken.

D. Statements regarding 12-inch pipeline

Throughout its Comments Flynn makes allegations regarding the 12-inch pipeline (Comments at page 3, first paragraph “Moreover” through end of first paragraph; page 15, second sentence of third paragraph through page 16 end of first paragraph; page 17, third paragraph, last sentence, “Moreover, the condition of the 12-inch . . .”; page 39, last paragraph, second sentence through page 40, entire first paragraph; and page 40, first paragraph, reference to 12-inch pipeline and page 41, first three paragraph references to 12-inch pipeline.). The only pipeline at issue in this proceeding is the Mariner East 1 pipeline. The July 15 Order precluded Intervenors from substantially broadening issues, statements regarding the 12-inch pipeline are irrelevant to approval of the Settlement, so these materials should be stricken.

³ *State Senator Dinniman v. SPLP*, Docket Nos. P-2018-3001453 et al, Order and Opinion at 35, 39-40 (Order entered June 15, 2018); *See Flynn et al. v. SPLP*, Docket Nos. C-2018-3006116 et al, Order Denying Petition for Emergency Interim Relief and Certifying Material Question at 11 (Order entered December 11, 2018).

E. “Factual Background” and characterizations of Complaint and Answer, which speak for themselves

Instead of referring or quoting to the Answer and Complaint, throughout the Comments Flynn summarizes and characterizes these documents which speak for themselves, making various unfounded assumptions and mischaracterizations of their contents and attempting to add its own “facts”. (Comments at page 4 Section III. through all of page 6; page 7 Section c. through page 8 end of paragraph (k); page 14, last paragraph “More important for present purposes is Sunoco’s evasive answer . . .” through page 15, first sentence of third paragraph; and page 35, third paragraph, phrase referring to I&E’s analysis in Complaint “of Sunoco defective safety and integrity practices”).

For example, on page 5, Flynn alleges SPLP did not notify neighborhood residents of the leak at issue, that closing valves will not stop the release of materials, and that the total amount of the leak is unknown, adding its own facts and assumptions to introduce evidence and broaden issues. On pages 7 and 8, Flynn opines on which allegations of the Complaint are “material,” adds its own characterizations of BI&E’s allegations (such as “obvious,” “improper,” and “ignore” – words not used in the Complaint), and fails to mention that SPLP in its verified Answer denied portions of these allegations. On pages 14 and 15, Flynn characterizes SPLP’s Answer as “evasive.” On page 35 mischaracterizes BI&E’s analysis in its Complaint as finding SPLP’s practices “defective,” again a description not used in the Complaint.

The verified Complaint and Answer are attached to the Joint Petition and speak for themselves. To the extent statements within those documents are relevant, they can be cited or quoted. Flynn’s attempts to add facts, assumptions, and characterizations and broaden issues, as well as attempt to essentially litigate the Complaint are wholly outside the scope of whether the Settlement should be approved, violate the July 15 Order, and/or are scandalous or impertinent. Thus, these materials should be stricken.

F. Statements regarding replaced section of pipe

Flynn's Comments make unfounded assumptions and accusations and mischaracterize the Complaint, creating a conspiracy theory regarding the amount of pipe that SPLP replaced. (Comments at page 16, second paragraph, through page 17 first sentence of third paragraph). Flynn first alleges an eight-foot section of pipe was replaced by 83-feet of pipe. Comments at 16. That is not what the Complaint states. The Complaint states an 8-foot section of pipe was tested and that SPLP replaced 83-feet of pipe. Complaint at PP 26-27. Flynn then inconsistently argues the amount of pipe SPLP removed is unclear and then alleges that since the Complaint states an 8-foot section was sent for analysis but SPLP replaced 83 feet of pipe SPLP "either has concealed or destroyed the missing 75-foot section of pipeline" and engaged in a "coverup." Comments at 16-17. Flynn also implies that BI&E's inspection and investigation was inadequate, inferring BI&E was unaware or not present for the removal of the pipe, by alleging SPLP "concealed or destroyed" the 75 feet of pipe "to prevent official from examining the pipeline and learning its true condition." *Id.*

Flynn states these unfounded assumptions and conspiracy theory that attempt to introduce new facts somehow mean the Settlement should not be approved. Comments at 17. They do not. Instead, this is an attempt to broaden issues and litigate the Complaint. Flynn apparently believes they should conduct BI&E's inspection and enforcement, which they do not have standing to do. These wild accusations are also scandalous and impertinent matter. Flynn makes no attempt to show how its conspiracy theory is relevant to the approval of the Settlement, instead just asserting it is. Flynn's unfounded assumptions, allegations and conspiracy theory attempt to introduce facts into evidence and substantially broaden issues in violation of the July 15 Order and are scandalous and impertinent. These materials should be stricken.

G. Statements regarding effects of pin-hole leak on SPLP's customers

Flynn's Comments attempt to raise issues regarding the effect of the pin-hole leak on SPLP's customers (Comments at page 21, entirety of third and fourth paragraphs), which they do not have standing to raise. Flynn et al are not SPLP's customers and have never alleged that they are, thus they have shown no interest, let alone a direct, substantial, and immediate interest required for standing as to any effect on SPLP's customers. Flynn now attempting to raise SPLP's customers' interests is absurd considering Flynn's Complaint attempts and their emergency petition attempted to shut-down SPLP's Mariner East pipelines in total disregard to the significant detrimental effects on SPLP's customers. Flynn's hypocritical and opportunistic argument for which it lacks standing should be stricken.

H. Marx testimony on "risk assessment" that was withdrawn from evidence in Flynn Complaint emergency petition proceeding

Flynn's Comments improperly discuss and rely on testimony of Jeffrey Marx regarding a "risk assessment" (Comments at page 42, entire first paragraph; and page 44, second paragraph, first sentence). This testimony was presented in Flynn et al.'s emergency petition hearing in their complaint proceeding. It is clearly an attempt to introduce evidence. Moreover, this is an attempt to broaden issues. While Flynn included these materials to argue how approval of the Settlement would affect them, the "risk assessment" testimony is irrelevant because risk of a release happening on the ME1 pipeline was not evaluated,⁴ but instead just the consequences using

⁴ The allegations of the risk of a pipeline-related emergency alleged in the Flynn Petition and Complaint were based upon a report prepared by Quest Consultants, Inc. (the "Quest Report"). See Pet. ¶¶ 30-33. During the hearing, Petitioners called the author of the Quest Report, Jeffery Marx, whom Petitioners proffered as their expert on risk and quantitative analysis. As a component of Mr. Marx's testimony, Petitioners initially admitted the Quest Report into evidence, over SPLP's objection. N.T. 277:10 (introduced), 302:21-22 (admitted). During cross-examination of Mr. Marx challenging the faulty assumptions on which the Quest Report was based, Petitioners' counsel conceded that "risk analysis has nothing to do with what we're talking about in our case." N.T. 320:12-13. Petitioners' counsel again objected to cross-examination questioning of Mr. Marx regarding probability of risks from a pipeline-related emergency, and stated that "[o]ur case is not about the frequency of events or risk analysis. . . ." N.T. 327:18-20.

unrealistic and unlikely assumptions,⁵ and thus this argument makes the unfounded assumption that if the Settlement were approved, it would result in a worst-case scenario substantial release of product on the ME1 pipeline. These materials are clearly an attempt to introduce evidence and broaden issues in violation of the July 15 Order and should be stricken.

I. Scandalous, impertinent, and/or otherwise irrelevant allegations attempting to introduce evidence and/or substantially broaden scope of proceeding

1. Comments at page 8 last paragraph “Given Sunoco’s repeated violation of agency orders as well as recent settlement agreements,”

Here, Flynn alleges SPLP has repeatedly violated agency orders and settlement agreements, with no proof that the Commission found SPLP violated any agency order or settlement agreement over which it has jurisdiction, which is the relevant consideration for compliance history concerning approval of the Settlement. Accordingly, this is an attempt to substantially broaden issues. This allegation also relies on attempts to introduce evidence of other agency proceedings. Moreover, Flynn only argues that SPLP violated one agency order and settlement agreement, belying its characterization of repeated violation. Comments at 23-24. This statement should be stricken as scandalous, impertinent and in violation of the July 15 Order.

Petitioners in fact conceded that it is unlikely that a pipeline-related emergency would occur: “We’ve conceded that the relative incidents of events is small.” N.T. 328:15-16. In fact, Petitioners failed to offer any evidence of the probability of an incident.

Ultimately, during cross-examination and upon scrutiny of the conclusions and findings in the Quest Report, Petitioners withdrew the report from evidence. N.T. 329:14-330:3. During a colloquy with Judge Barnes, Petitioners’ counsel again conceded that they “have not put on evidence of risk and we have not focused on risk. . .,” and “that this case from our perspective is not about the risk of an event happening . . . [w]e concede that.” N.T. 353:1-2, 353:15-18. Petitioners’ counsel confirmed that “[w]e’ve put on no evidence today, we didn’t intend to put on any evidence today how often these things happen[.]” N.T. 354:3.

⁵ Mr. Marx admitted that his hypothetical analysis was based on worst-case assumptions that over-predict the impact of his hypothetical worst-case scenario. See e.g., N.T. 307, 314, 323-327, 329. Mr. Marx agreed that he only applied worst-case assumptions and limited his evaluation to the most catastrophic circumstance of a complete rupture of a pipeline that would result in the most catastrophic emergency conditions. N.T. 304:14-18. Mr. Marx testified that his analysis over-predicts the impact (and over-estimates the risk) because he only evaluated the worst-case scenario. N.T. 310:17-311:5.

2. *Comments at page 10 entire second paragraph (allegations regarding DEP)*

Here, Flynn raises a fine SPLP paid to DEP, alleging the fine did not serve as a deterrent. This statement is irrelevant to consideration of the Settlement – it is not a Commission matter. Moreover, it introduces facts into evidence and makes unfounded assumption regarding deterrence. This paragraph should be stricken as scandalous, impertinent and in violation of the July 15 Order.

3. *Comments at page 13, entire paragraph 2*

Here, Flynn attempts to introduce evidence of SPLP notification regarding the Morgantown leak, alleging SPLP made “a mockery” of its public awareness program. This unfounded characterization is scandalous and impertinent. Moreover, Flynn makes no attempt to link this to approval of the Settlement. It is not a relevant consideration and thus is an attempt to substantially broaden issues. This paragraph should be stricken as scandalous, impertinent and in violation of the July 15 Order.

4. *Comments at page 17, entire last paragraph; through page 18 entire first paragraph*

Here, Flynn attempts to introduce evidence from PHMSA’s website regarding “pipeline accidents”, and their causes and effects. Again, Flynn presents no proof that the Commission found SPLP violated any agency order or settlement agreement over which it has jurisdiction, which is the relevant consideration for compliance history concerning approval of the Settlement. It has not. Accordingly, this is an attempt to substantially broaden issues and make inflammatory statements. Moreover, just because there is a leak, that does not mean a violation has occurred.⁶ Flynn also makes no mention of whether this information relates to SPLP’s activities within Pennsylvania and it is clear that the Commission cannot consider information regarding other

⁶ *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-239661 (Initial Decision entered April 22, 2014) (Final by operation of law); *see also Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-000 15494, 2002 WL 31060581 (June 14, 2002).

pipelines and other states.⁷ These paragraphs should be stricken as scandalous, impertinent and in violation of the July 15 Order.

5. *Comments at page 18, third paragraph (allegations of lack of public transparency)*

Here, Flynn makes an unsupported allegation attempting to introduce evidence (consisting of its one sentence allegation) that SPLP “has consistently lacked transparency with the public, local governments, and agencies overseeing the Mariner East project.” This statement again has nothing to do with approval of the Settlement and is totally unsupported; as such it is scandalous and impertinent. It is also an attempt to substantially broaden issues as this proceeding is not about “public transparency.” This paragraph should be stricken as scandalous, impertinent and in violation of the July 15 Order.

6. *Comments at page 19, second paragraph, third sentence, (“Intervenors further submit that I&E’s statement in Appendix A of the Joint Petition for Approval Petition[sic] contains important factual misstatements.”) through page 20, second paragraph, first three sentences; page 20, third paragraph, second sentence: “Regarding this factor, I&E’s claim is a red herring.”; page 20, fourth paragraph, “I&E’s own Complaint makes clear that it has no idea” (emphasis in original) through page 21, entire second paragraph; page 21, last paragraph, second sentence (“I&E inexplicably suggests that Sunoco is a good citizen. . . .”)*

Flynn makes various allegations that BI&E’s Statement in Support makes misstatements and is misleading. These allegations misconstrue the Settlement, BI&E’s Statement, and the Complaint, rely on unfounded assumptions, and misconstrue the law in an attempt to criticize and paint BI&E in a bad light. On page 19 Flynn implies BI&E “misleadingly” describes the Settlement because BI&E states that it will select the expert for the Remaining Life Study. That is not a misleading statement – BI&E will select the expert out of a pool of experts that must be

⁷ *State Senator Dinniman v. SPLP*, Docket Nos. P-2018-3001453 et al, Order and Opinion at 35, 39-40 (Order entered June 15, 2018); *See Flynn et al. v. SPLP*, Docket Nos. C-2018-3006116 et al, Order Denying Petition for Emergency Interim Relief and Certifying Material Question at 11 (Order entered December 11, 2018).

independent which SPLP proposes. Flynn is making the misleading statement. Next on pages 19-20, Flynn argues that BI&E's statements regarding revision of procedures should not "tout" these revisions because Flynn makes an unsupported assumption that the procedures only apply to an 8-foot segment of the pipeline and that the rest of SPLP's practices and pipelines remain unknown. Flynn has no basis to make these assumptions; it has no basis to allege that BI&E did not and does not investigate and inspect SPLP's pipelines and procedures. Flynn's statement is a baseless attack on BI&E.

On page 20 Flynn states BI&E's application of the fourth factor of the Policy Statement (efforts to change practices and procedures to prevent similar conduct in the future) is a "red herring." Flynn relies on its own mischaracterization of the Complaint to make this statement: "I&E's own Complaint makes clear that it has *no idea* what Sunoco's practices have been or what the present conditions are of the [pipelines] other than on the eight (8) foot Morgantown segment." Flynn cannot assume this from the Complaint and also relies on its unsupported assumption that BI&E did not and does not investigate and inspect SPLP's pipelines and procedures. Flynn also argues on pages 20-21 that BI&E's conclusion that SPLP's revision of its procedures prior to the filing of the Complaint demonstrates good faith and cooperation with BI&E is not true harping on insignificant reasons as to why the procedures were changed instead of the pertinent fact that they were changed and now address BI&E's concerns, which does show good faith and cooperation. Finally, on page 21 Flynn mischaracterized BI&E's statement to state that BI&E "inexplicably suggests that Sunoco is a good citizen." BI&E did not say that, instead it focused on SPLP's relevant and accurate compliance history – that to BI&E's knowledge the Commission has not found SPLP in violation of any law or regulation.

Flynn's baseless mudslinging at BI&E is impertinent and scandalous and by relying on unfounded assumptions attempts to introduce evidence. These statements should be stricken as scandalous, impertinent and in violation of the July 15 Order.

7. *Comments at page 22 through page 33, third paragraph*

In this section of its Comments, Flynn engages in irrelevant denigration of SPLP that it incorrectly characterizes as compliance history. The only relevant compliance history here is that the Commission has not found SPLP in violation of any law or regulation. Flynn's allegations here are irrelevant, would violate SPLP's due process rights if considered, are not even related to any type of compliance, and/or attempt to introduce evidence and substantially broaden issues. This entire section should be stricken.

On page 22 Flynn attempts to introduce evidence and allegations concerning the ALJ's Interim Order in the Dinniman proceeding. Under law this is neither precedent nor a final determination on the merits and cannot be considered as a violation, particularly as no violation was actually found. First, that Order was not a Commission order and the Commission overturned that Order regarding ME1. Second, that Order was issued on an emergency basis and where the standard was whether a substantial question of law was presented, where SPLP was not afforded a full and fair hearing on the merits, and where there has been no final determination of a violation of law on the merits. A preliminary injunction is not precedent under Pennsylvania law.⁸ Any implication by Flynn that a preliminary injunction is proof of a violation where, rather, it is no more than a finding that there is a chance to prevail on the merits, is a direct contravention of the law and simply false advocacy. To find that such interim injunctive-type order as evidence of a

⁸ *Buck Hill Falls Co. v. Clifford Press*, 791 A.2d 392, 397 (Pa. Super. 2002) ("In contrast to a permanent injunction, a decision regarding a preliminary injunction is not binding for purposes of a final adjudication."); *see also Humphreys v. Cain*, 477 A.2d 32, 35 (Pa. Cmwlth. 1984).

violation of law prejudices that proceeding when the merits are not yet concluded and violates SPLP's due process rights.

On page 22 Flynn also attempts to introduce evidence of a DEP order regarding a non-SPLP pipeline that it acknowledges is pending appeal. Again, this DEP issue regarding a non-SPLP pipeline is not relevant here.

On page 23, Flynn attempts to use statements from the Governor's press release as evidence of a violation. The suggestion that a statement in a press release amounts is evidence of a violation is false advocacy and wholly ignores due process rights to an adjudication.

On pages 23-25 Flynn alleges SPLP violated a settlement agreement and order regarding DEP issues. This is a blatant attempt to introduce evidence and there is nothing more than Flynn's allegations characterizations to show this purported violation.

On page 25 Flynn again attempts to introduce evidence of a DEP matter concerning a permit application. Even if the matter were relevant (which it is not) there is no notion of a violation, but instead findings regarding the sufficiency of a permit application.

On pages 26-27 and 28-29, Flynn attempts to introduce evidence of PHMSA actions regarding pipelines in Texas and Missouri and terminal facilities in Texas. Again, these were not Commission findings. Also, it is clear that the Commission cannot consider information regarding other pipelines and other states.⁹

⁹ *State Senator Dinniman v. SPLP*, Docket Nos. P-2018-3001453 et al, Order and Opinion at 35, 39-40 (Order entered June 15, 2018); *See Flynn et al. v. SPLP*, Docket Nos. C-2018-3006116 et al, Order Denying Petition for Emergency Interim Relief and Certifying Material Question at 11 (Order entered December 11, 2018).

On pages 28 and 30, Flynn attempts to introduce evidence of additional PHMSA matters. Again, these were not Commission findings. They also were not matters involving the ME1 pipeline.

On page 30 Flynn attempts to introduce evidence of DEP permit violations. The DEP Consent Order and Agreement have nothing to do with SPLP's relevant compliance history or any other factor relevant to the Commission's consideration of the Settlement at issue here. Moreover, that order dealt with construction of the ME2/2X pipelines while this proceeding deals with the Mariner East 1 pipeline.

On pages 31-33 Flynn attempts to introduce evidence of alleged "undisclosed changes in operating pressures" and various statements to the media. There is not even an allegation of some form of violation and this material is again irrelevant.

Flynn's allegations here are irrelevant, would violate SPLP's due process rights if considered, are not even related to any type of compliance, and/or attempt to introduce evidence and substantially broaden issues. This entire section should be stricken.

8. *Comments at page 33, last paragraph ("The settlement, by Sunoco's own analysis, was achieved in bad faith. . .") through entirety of page 34*

Here Flynn attempts to introduce evidence from an EHB proceeding to argue BI&E and SPLP have acted in bad faith because the Settlement contains terms that are above and beyond regulatory requirements. This argument is nonsense and irrelevant. These materials that attempt to introduce evidence and substantially broaden issues in violation of the July 15 Order should be stricken.

9. *Comments at page 41, fourth paragraph through fifth paragraph first sentence*

Here, Flynn introduces evidence and makes unsupported assumptions to assert that approval of the Settlement is likely to result in a leak or rupture with “disastrous consequences,” to the Flynn intervenors, relying on evidence it attempts to introduce regarding other pipelines. There is no basis for the assumption that the Settlement will result in a pipeline failure, let alone a substantial failure, and these inflammatory, unsupported assertions that attempt to substantially broaden issues should be stricken.

10. *Comments at page 42, second paragraph (including picture) through page 45 picture*

Here, Flynn continues to introduce evidence in an attempt to make inflammatory allegations of potential disaster if the Settlement were approved. Again, there is no basis for the assumption that the Settlement will result in a pipeline failure, let alone a substantial failure, and these inflammatory, scandalous, impertinent and unsupported assertions that attempt to substantially broaden issues should be stricken.

J. *Allegations and legal arguments seeking relief as to the Flynn Complaint proceeding*

Flynn’s Comments make various arguments that the Settlement should not be approved because of the potential legal effect of approval of the Settlement on their Complaint proceeding (Comments at page 45, Section VIII. through entirety of page 48) that are not ripe for consideration, and have nothing to do with whether the Settlement should be approved. This is an attempt to substantially broaden the issues in this proceeding and introduce evidence. Flynn clearly states that it’s allegations and arguments concerning effects on its complaint proceeding are a reason not to approval the settlement. Comments at page 48, last sentence. The effect of approval of Settlement on Flynn’s Complaint proceeding cannot be determined here because the outcome of this proceeding is unknown and Flynn cannot introduce evidence here regarding its

complaint proceeding so the issue is not and cannot be ripe for determination within this proceeding. Moreover, that approval of the Settlement may have undetermined effects on other litigation is not a relevant consideration to approval of the Settlement and is thus an attempt to substantially broaden issues. These materials that attempt to introduce evidence and substantially broaden issues in violation of the July 15 Order should be stricken.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests that Your Honor strike¹⁰ the portions of Flynn's Comments (including attachments) listed in the table in Section I above and given the nature of Flynn complainants blatant disregard of Your Honor's Order and offering misleading information it should be sanctioned with dismissal of its intervention and participation in this proceeding.

Respectfully submitted,



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Dated: September 16, 2019

¹⁰ If any of these portions of the Comments listed above are not stricken, SPLP requests that it be provided 30 days to file additional Reply Comments addressing non-stricken materials. Additionally, SPLP reserves the right to seek interim relief directly to the Commission for this blatant disregard of Your Honor's Order and the Commissions' rules and applicable law.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system.

VIA ELECTRONIC AND FIRST CLASS

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