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REPLY TO:
Center City

January 18, 2019

Via Electronic Filing

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

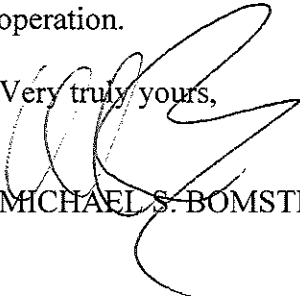
Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P., C-2018-3006116
FLYNN RESPONSE TO PRELIMINARY OBJECTIONS TO
AMENDED FORMAL COMPLAINT

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Complainants' Response to Sunoco's Preliminary Objections in the above referenced proceeding.

Thank you for your courtesies and cooperation.

Very truly yours,


MICHAEL S. BOMSTEIN

MSB:mik
Encl.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NO. C-2018-3006116
CAROLINE HUGHES and	:	
MELISSA HAINES	:	DOCKET NO. P-2018-3006117
Complainants	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

**COMPLAINANTS' RESPONSE IN OPPOSITION
TO PRELIMINARY OBJECTIONS TO COMPLAINANTS'
AMENDED FORMAL COMPLAINT**

Complainants, having been served with the Preliminary Objections of Sunoco Pipeline L.P. ("Sunoco") to the Amended Formal Complaint, and desiring to respond thereto, hereby answer as follows:

I. INTRODUCTION

1. Denied. Count IV should not be dismissed and the cited paragraphs should not be stricken as legally insufficient. It is expressly denied that counsel admitted integrity issues are not a part of "this proceeding." Sunoco conflates the petition and hearing for interim emergency relief with the present complaint. As a review of the record makes clear, counsel agreed there would be no evidence offered related to pipeline integrity issues in the interim emergency hearing held by Judge Barnes. Nothing in the record of the petition proceeding supports the inference that Complainants waived the right to raise pipeline integrity claims, either by way of a

complaint or a future petition for injunctive relief. Further, nothing in the law operates to preclude Complainants from amending their complaint to raise grounds not previously raised.

As to Sunoco's objection related to incorporation by reference, Sunoco in its answer to the Amended Formal Complaint also incorporates by reference. Complainants have incorporated by reference a separate complaint, rather than lengthen their own pleading unnecessarily. The notion that Complainants may not do so is unsupported in law. Indeed, Sunoco ironically objects to Complainants' incorporation by reference based on the rule that pleadings must be concise. Incorporation by reference is as concise as possible.

2. Denied. Sunoco claims that Complainants' verifications fail under 52 Pa. Code §1.36 because they are lay people verifying matters of which only experts can have knowledge and, therefore, only experts can verify such allegations. § 1.36 does not contain any such requirement. Sunoco has not identified any decisional authority supporting its contention.

3. Denied. It is certainly possible that shippers and others will be adversely affected if Sunoco is compelled to abide by the law; that does not entitle Sunoco to violate the law. Denied that joinder of such parties is required and that the Complaint should be dismissed.

4. Denied. Essentially, Sunoco is asserting that if pipeline integrity is found not to be a problem in East Goshen Township, then a complainant who resides in that township does not have standing to question pipeline integrity in West Goshen township next door. This misconstrues Complainants' claims. First, Complainants challenge the integrity management program as inadequate. That program is not geographically local (other than being limited to Pennsylvania). Second, if there is a serious leak, puncture, or rupture in East Goshen, Sunoco's objection incorrectly assumes it will not affect West Goshen.

5. Denied. Sunoco asserts vaguely that Complainants have failed to attach copies of documents that they rely upon in their pleading. Sunoco's use of the term "relies upon" is unsupported in statute or precedent. The term "relies upon" ordinarily connotes reference to a document, the terms of which are allegedly violated, such as in a contract dispute. In such a case, the document must be attached. Mere reference to a report or document that constitutes evidentiary support does not require attachment to the complaint.

6. Denied. Sunoco mischaracterizes the Complaint, suggesting that Complainants are asking the Commission to take action with respect to the conduct of county emergency services. Nothing in the Complaint makes such a request and, notably, Sunoco does not even bother to identify a citation for such a request in the Complaint. Paragraphs 50 – 52 of the Complaint do not even remotely imply that Complainants are asking the Commission to grant relief against said agencies.

II. ARGUMENT

A. Legal Standard

7. Admitted.

8. Admitted.

B. Preliminary Objections Seeking Complete Dismissal

1. **Objections Based on 52 Pa. Code § 5.101(a)(4)**

9. Denied. Count IV should not be dismissed and the cited paragraphs should not be stricken as legally insufficient. It is expressly denied that counsel admitted integrity issues are not a part of "this proceeding." Sunoco conflates the petition and hearing for interim emergency relief with the present complaint. As a review of the record makes clear, counsel agreed there

would be no evidence offered related to pipeline integrity issues in the interim emergency hearing held by Judge Barnes. Nothing in the record of the petition proceeding supports the inference that Complainants waived the right to raise pipeline integrity claims, either by way of a complaint or a future petition for injunctive relief. Further, nothing in the law operates to preclude Complainants from amending their complaint to raise grounds not previously raised.

As to Sunoco's objection related to incorporation by reference, Sunoco in its answer to the Amended Formal Complaint also incorporates by reference. Complainants have incorporated by reference a separate complaint, rather than lengthen their own pleading unnecessarily. The notion that Complainants may not do so is unsupported in law. Indeed, Sunoco ironically objects to Complainants' incorporation by reference based on the rule that pleadings must be concise. Incorporation by reference is as concise as possible.

10. Denied. Sunoco has cherry picked the notes of testimony in support of a factually and legally untenable claim. The Petition makes only two claims, neither of which involves pipeline integrity; the public awareness program and the consequences of pipeline leaks and ruptures are the only matters that were raised in the interim emergency proceeding. (N.T. 11-29-18 at 16). Counsel's opening statement simply reiterated the point. The statements by counsel, that pipeline integrity was not an issue for the Petition, do not serve to limit the Complaint, and do not even constitute an admission. *While explicit factual or legal concessions may be considered admissions, a statement that an issue is not being litigated in a particular proceeding is neither.* The two cases cited by Sunoco entail factual and legal statements and are of a different nature from counsel's statement regarding the scope of the Petition and do not shed any light on the instant case. In *Sule v. W.C.A.B. (Draft, Inc.)*, 121 Pa. Cmwlth 242, 245, 550 A. 2d 847, 849 (1988), the Commonwealth Court held that a factual statement by an attorney that

claimant's arm continues to be useless was a binding admission. In *Marmo v. Com. Dept. of Transp.*, 121 Pa. Cmwlth. 242, 245, 550 A. 2d 847, 849 (1988), an attorney in a license revocation hearing stated, "I will concede that the refusal at the hospital was not a refusal under the Code."

11. Denied. Sunoco asserts that the incorporation of the factual allegations in a separate proceeding is not permitted because it violates the rule requiring a complaint to contain a clear and concise statement of the act or admission being complained of. Incorporation by reference, however, is quite concise and something that Sunoco has done in its Answer to the Amended Formal Complaint. Sunoco's argument offers no authorities whatsoever as to whether such incorporation is permissible or not. In *Sams Corp. v. Garin*, 352 Pa. Super. 105, 507 A. 2d 402 (1986), however, the Superior Court expressly approved the practice, relying upon the explicit language of Rule 1019(g) Pa.R.C.P. Complainants' alleged lack of expertise is also raised as an objection but Sunoco offers no foundation for the assertion.

12. Denied. Sunoco blithely asserts Complainants lack standing to make the factual claims set out in the BI&E complaint but they fail to identify the specific factual claims to which they refer and so it is impossible to respond to the company's contention. Essentially, Sunoco is asserting that if pipeline integrity is found not to be a problem in East Goshen Township, then a complainant who resides in that township does not have standing to question pipeline integrity in West Goshen township next door. This misconstrues Complainants' claims. First, Complainants challenge the integrity management program as inadequate. That program is not geographically local (other than being limited to Pennsylvania). Second, if there is a serious leak, puncture or rupture, in East Goshen, Sunoco's objection incorrectly assumes it will not affect West Goshen.

2. Failure to Conform to 52 Pa. Code 5.101(a)(2)

13. Denied. Sunoco claims that Complainants' verifications fail under 52 Pa. Code § 5.101(a)(2) 36 because they are lay people verifying matters of which only experts can have knowledge and, therefore, only experts can verify such allegations. § 5.101(a)(2) does not contain any such requirement. Sunoco has not identified any decisional authority supporting its contention either.

14. Admitted in part, denied in part. Admitted that Complainants are not experts in pipeline safety. Denied that Complainants' verifications fail under 52 Pa. Code §1.36 because they are lay people or that only experts can verify Complainants' allegations. § 1.36 does not contain any such requirement. Sunoco has not identified any decisional authority supporting its contention either.

15. Therefore, the Amended Formal Complaint should not be dismissed as requested.

3. Alleged Failure to Join Necessary Parties

16. Denied. The Amended Complaint does not fail to join necessary parties.

17. Admitted.

18. Denied. It is certainly possible that shippers and others will be adversely affected if Sunoco is compelled to abide by the law; that does not entitle Sunoco to violate the law. Joinder of such parties is not required. Notably, once again, Sunoco fails to cite any legal authorities for its claims.

19. Admitted that the parties Sunoco lists were not joined. Denied that they needed to be. It is certainly possible that parties that depend on Mariner East will be adversely affected if Sunoco is compelled to abide by the law; that does not entitle Sunoco to violate the law. Joinder of such parties is not required. It is noteworthy, once again, that Sunoco fails to cite any legal

authorities for its claims. Therefore, the Amended Formal Complaint should not be dismissed as requested.

C. Sunoco's Geographic Scope Objection also is misplaced.

1. Lack of Standing

20. Admitted.

21. Denied. Sunoco is asserting that if pipeline integrity is found not to be a problem in East Goshen Township, then a complainant who resides in that township does not have standing to question pipeline integrity in West Goshen township next door. This misconstrues Complainants' claims. First, Complainants challenge the integrity management program as inadequate. That program is not geographically local (other than being limited to Pennsylvania). Second, if there is a serious leak, puncture or rupture in East Goshen, Sunoco's objection incorrectly assumes it will not affect West Goshen. Denied that the cited case supports Sunoco's contentions.

22. Denied. The cited case made the unassailable point that Ms. DiBernadino did not have the right to represent others persons and entities. Denied that it has any bearing on Complainants' pipeline integrity claims.

23. Denied. ¶ 21 above is incorporated by reference thereto. (See Rule 1019(g) Pa.R.C.P. for rule regarding incorporation practice.)

2. Failure to Attach Documents

24. Denied. Complainants have not violated the rule.

25. Denied. Sunoco asserts vaguely that Complainants have failed to attach copies of documents that it relies upon in their pleading. Sunoco's use of the term "relies upon" is unsupported in statute or precedent and Sunoco offers no authority for its claim. The term

“relies upon” ordinarily connotes reference to a document, the terms of which are allegedly violated. In that case, the document must be attached. Mere reference to a statute or report or document that constitutes evidentiary support does not require attachment.

26. The Amended Formal Complaint should not be dismissed for failure to comply with 52 Pa. Code § 5.22(a)(2).

3. Alleged Lack of Jurisdiction

27. Denied. Complainants have not raised claims in their Amended Formal Complaint against non-public utilities. Sunoco mischaracterizes the Complaint, suggesting that Complainants are asking the Commission to take action with respect to the conduct of county emergency services. Nothing in the Complaint makes such a request and, it should be noted, Sunoco does not bother to identify a citation for such a request in the Complaint. Paragraphs 50 – 52 of the Complaint do not even remotely imply that Complainants are asking the Commission to grant relief against said agencies.

28. Admitted.

29. Admitted.

30. Denied. After reasonable investigation, answering Complainants are without knowledge or information sufficient to form a belief as to the truth of this averment and strict proof thereof is demand, if pertinent, at time of trial.

31. Denied. The said paragraphs should not be stricken.

III. CONCLUSION

WHEREFORE, Complainants pray that neither the Amended Formal Complaint nor portions thereof be dismissed or stricken.

Respectfully submitted,

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Attorney for Complainants

Dated: January 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this day, January 18, 2019, 2018, a true and correct copy of the foregoing has been served upon the following persons via electronic mail, pursuant to 52 Pa. Code § 1.54.

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