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March 4, 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. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116
and P-2018-3006117; **SUNOCO PIPELINE L.P.'S ANSWER
OPPOSING INTERVENTION OF UWCHLAN TOWNSHIP**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Uwchlan Township in the above-referenced 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: Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:		
ROSEMARY FULLER	:		
MICHAEL WALSH	:		
NANCY HARKINS	:		
GERALD MCMULLEN	:		
CAROLINE HUGHES and	:		
MELISSA HAINES	:		
	:	Docket Nos.	C-2018-3006116
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING
INTERVENTION OF UWCHLAN TOWNSHIP**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Uwchlan Township’s February 13, 2019 Petition to Intervene in this proceeding because the Petition is untimely and Uwchlan Township has not shown its interests are not adequately represented.

1. On November 19, 2018 Complainants filed the Complaint and Petition.
2. On December 20, 2018 Complainants filed an Amended Complaint.
3. Uwchlan Township filed a Petition to Intervene on February 13, 2019.
4. Uwchlan Township’s Petition is untimely. It was filed 86 days after the Complaint.

¹ SPLP notes that it is not required to specifically answer the allegations within a petition to intervene, and any such allegations are not deemed admitted by SPLP’s non-response. Compare 52 Pa. Code § 5.66 (“party may file an answer to a petition to intervene within 20 days of service, and in default thereof, may be deemed to have waived objection to the granting of the petition. Answers shall be served upon all other parties.”) with § 5.61(b)(3) (as to form of answers to complaints, answers must “Admit or deny specifically all material allegations of the complaint”).

5. Uwchlan Township does not allege its Petition was timely filed.
6. 52 Pa. Code §§ 5.74 and 5.53 require a petition to intervene in a proceeding be filed within 60 days of the initiating pleading in a proceeding, absent “good cause shown.”
7. Uwchlan Township’s Petition was untimely because it was filed 86 days after the Complaint and Uwchlan Township has not averred good cause for allowing untimely intervention.
8. The December 20, 2018 amendments to the Complaint did not extend the time for interventions. There is no Commission regulation that extends the time for intervention when an amendment to a pleading is filed. A petition to intervene is due 60 days from an initiating complaint. 52 Pa. Code §§ 5.74 and 5.53.
9. In contrast, the Commission’s regulations expressly extend the answering time period when an amended pleading is filed to require an answer within 20 days of the amended pleading. 52 Pa. Code § 5.65(a). The presence of a specific Commission regulation that extends the time for an answer in the event of an amended pleading coupled with the absence of any Commission regulation regarding intervention and amended pleadings means that the Commission has not changed the time period for intervention in the event of an amended pleading. *See, e.g., Popowsky v. Pennsylvania Public Utility Com’n*, 869 A.2d 1144, 1159 (Pa. Cmwlth. 2005) (the inclusion of a specific matter in a statute implies the exclusion of other matters).
10. To allow untimely intervention, the petition to intervene must show good cause. 52 Pa. Code § 5.74.
11. Uwchlan Township fails to even allege good cause for allowing it to intervene out of time in this proceeding. There is no good cause to allow Uwchlan Township to intervene out of time and its Petition should be denied. Moreover, Uwchlan Township knew about the Complaint and even filed a “Letter in Support” with the Commission regarding the Complaint dated January

14, 2019. This letter in support was added to the above referenced dockets on January 16, 2019. Therefore, Uwchlan knew about, considered, yet actively chose to file a letter in support within the 60-day period described in 52 Pa. Code §§ 5.74 and 5.53, rather than filing a timely petition to intervene. Uwchlan Township's petition to intervene, in light of their interaction with and knowledge of the case, should be denied.

12. Further, on information and belief, Uwchlan Township knew about and considered the Flynn et al complaints, and even discussed the outcome of Judge Barnes' decision on the Emergency Petition at a meeting on December 18, 2018. In particular, the Uwchlan Board of Supervisors discussed a "Sunoco Update" by both Dan Daley (Uwchlan Township's Engineer) and Mark Freed (Uwchlan Township's Solicitor and their Counsel in this Petition) at the December 18, 2018 Board of Supervisors Regular Meeting. See the Publicly available Uwchlan Township December 18, 2018 Board of Supervisors Minutes (December 18, 2018) (available at <https://www.uwchlan.com/AgendaCenter/ViewFile/Minutes/12182018-216>).

13. The "Sunoco Update" discusses the Complainant's hearing in November as well as generally discussions about the case. See **Attachment A**, pages 3-4 (December 18, 2018 meeting minutes containing the "Sunoco Update"). Uwchlan Township knew about the Complaint, considered, and actively chose when to file their petition, which under 52 Pa. Code § 5.53 was untimely. Uwchlan Township's Petition to Intervene, in light of their knowledge of the case and the filing, cannot show good cause for a late submission and should therefore be denied.

14. Uwchlan Township's Petition to Intervene should also be denied because it has failed to show that its interests are not already adequately represented in this proceeding. 52 Pa. Code § 5.72 (a)(2); *see generally* Petition to Intervene.

15. Indeed, Uwchlan Township merely states its interest “is not (and cannot) be adequately represented by any other party.” Petition to Intervene at ¶ 16. However, 52 Pa. Code § 5.72(a)(2) expressly provides that to intervene, petitioner must possess “an interest which may be directly affected **and which is not adequately represented by existing participants.**” *Id.* (emphasis added). Uwchlan has not provided any reason or support for the notion that their interests are not adequately represented by existing participants. Accordingly, Uwchlan Township’s Petition to Intervene should be denied on this basis as well.

16. SPLP notes that if Uwchlan Township is nonetheless granted intervenor status, late filed intervenors must take the case as it is and cannot expand the scope of the proceeding. *See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E, Order Granting Petition to Intervene*, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) (“In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands. PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.”). Even if intervention is allowed, Uwchlan Township cannot pursue issues beyond the scope of the Amended Complaint.

WHEREFORE Sunoco Pipeline L.P. respectfully requests Uwchlan Township's Petition to Intervene be denied.

Respectfully submitted,



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Dated: March 4, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

Attachment A

UWCHLAN TOWNSHIP BOARD OF SUPERVISORS MINUTES OF REGULAR MEETING DECEMBER 18, 2018

The meeting was called to order at 7:30 p.m. by Chairman Bill Miller and the Pledge of Allegiance was recited.

Present: Supervisors: Bill Miller, Mayme Baumann and Kim Doan; Township Manager Doug Hanley; Assistant Manager Scott Greenly; Building Inspector/Zoning Officer Tom Cooke; Assistant Zoning Officer Tara Giordano; Township Secretary Katie Churchill; Township Treasurer Susan Bernhard; Fire Marshal Mike Holmes; Chief of Police Scott Alexander; Lieutenant Maureen Doyle; Township Engineer Dan Daley and Township Solicitor Mark Freed.

Mr. Miller announced that the Board met for an Executive Session on November 29, 2018 to discuss a personnel issue.

Minutes: *Mrs. Baumann made a motion to approve the Minutes of November 12, 2018 and Dr. Doan seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.*

REPORTS:

Police: Chief Alexander reported that there were 145 traffic citations issued, 6 criminal arrests and 44 traffic accidents during the month of November. Motor Carrier details conducted resulted in 5 trucks taken out of service. Officer Steven Scott is now fully certified to conduct Motor Carrier details.

There was one incident where Narcan was administered. Year-to-date, Narcan has been administered 9 times.

Treasurer: Ms. Bernhard has submitted her report for the month of November. The following is a list of revenues and expenditures:

<u>Fund</u>	<u>Revenues</u>	<u>Expenses</u>
General	\$1,255,400.09	\$ 602,063.33
Hydrant	71,017.56	9,900.00
State Liquid Fuels	169.64	22,192.21
Sewer	570,415.62	286,475.28

To date, the Township has collected approximately 100% of its budgeted revenues and spent almost 93% of its budgeted expenditures.

Public Works: Mr. Greenly reported that for the month of November the Public Works Department replaced a culvert on Lori Circle; repaired a broken u-drain pipe on Devon Dr.; cleaned off catch basins prior to heavy rains; salted and plowed roadways once; repaired lawns damaged by snow removal; performed weekly meter checks and monthly grease trap checks; and performed general maintenance of vehicles.

He also reported that for the month of November the daily average flow to Downingtown was approximately 1.96 million gpd and there were no new sewer connections to DARA or the Eagleview Plant. The Township has received 8.6 inches of rain during November with a year-to-date surplus of almost 38 inches.

Fire Marshal: Mr. Holmes reported that during the month of November he responded to 9 fire calls during regular work hours, spent 10 hours of work time handling Fire Department activity, assisted the Public Works

Department with snow plowing, and reviewed plans for commercial buildings and inspected those under construction.

Lionville Fire Co.: Mr. Holmes reported that the Fire Company answered 41 alarms during the month of November, 15 of which were in Uwchlan Township.

Uwchlan Ambulance Corps: No one was present.

Mrs. Baumann made a motion to accept the Reports as submitted and Dr. Doan seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.

BUSINESS:

Graduation Ceremony for the 2018 Citizens Police Academy:

Chief Alexander stated that this is the 2nd graduating class of a program that he hopes will continue. It is a great partnership between the Police Dept. and the public. He thanked the Board for their support and thanked all the officers that helped with instruction.

Lieutenant Doyle also thanked all that were involved in the program. She gave a brief overview of the 11 week program and showed a video highlighting some of the learning experiences.

Officer Steven Scott presented certificates to all the participants. One student, Ken VanCleve, a retired police officer, thanked the officers and stated that throughout his years as an officer interacting with other officers, Uwchlan Township's force is the best. They are courteous, personable and knowledgeable.

Eagleview Plant Operator Recommendation:

Mr. Greenly reported that on November 1, 2018 the Township received 3 bids for Plant Operator. Sewer Engineer, Joe Boldaz, and the Municipal Authority have reviewed each of the bids and have recommended that Environmental Engineering & Management Associates, Inc. (EEMA) be awarded the position of Eagleview Plant Operator.

Mrs. Baumann made a motion to approve EEMA as Eagleview Plant Operator and Dr. Doan seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.

Crown Castle Agreement:

Mrs. Giordano stated that the Township has been working with Crown Castle regarding placement of mini cell towers on existing poles and new utility poles throughout the Township within Township and PennDOT right-of-ways. There are currently 7 proposed locations of which none of the facilities will be Township owned.

The Township has added specifications and requirements to the Agreement, which include obtaining permits, maintenance of the facilities and other miscellaneous items.

Uwchlan Township will receive an annual fee of \$750/antenna placed by Crown Castle regardless who owns the pole and also 5% of the adjusted gross revenue received by Crown Castle for antennas placed on Township facilities in the future. However, the FCC has recently ruled that fees collected by Municipalities will be limited to \$270/antenna and does not allow for revenue sharing beginning in January 2019.

Crown Castle has agreed to honor the original Agreement if the Township approves it before the end of the year.

Mrs. Baumann made a motion to approve the Agreement and Dr. Doan seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.

O'Brien – 21 Andover Dr. - Lot Line Change: Final Plan Approval

The property owners of 109 Broad Meadow Lane will convey 2,662 s.f. of land to Denise and Terrance O'Brien who own 21 Andover Dr., the property adjacent to them. The lot line change and conveyance of the acreage of land as shown on the plan is compliant with the R-2 Zoning regulations.

Mrs. Baumann made a motion to approve the lot line change and Dr. Doan seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.

101 Gordon Dr./100 Welsh Pool Rd.: Conditional Use Acceptance Letter

The Township has received a letter dated November 19, 2018 from Lou Colagrecio, on behalf of 101 Gordon Drive Partners LLC, stating acceptance of all Conditions listed in the Conditional Use Decision & Order for this property.

Resolutions:

1. No. 2018-15: Employee Contributions to the Police Pension Fund
2. No. 2018-16: Payment of Administrative Expenses from the Pension Plan
3. No. 2018-17: Minimum Municipal Obligation for Police Pension Planning
4. No. 2018-18: Budget for 2019
5. No. 2018-19: Tax Rate for 2019

Dr. Doan made a motion to adopt Administrative Resolution Nos. 2018-15 thru 2018-19 and Mrs. Baumann seconded. Mr. Miller asked for public comment. There being none, the motion was carried unanimously.

Sunoco Update:

Dan Daley reported that Sunoco plans to have the 12" re-purposed line in service by the end of the year. There is no definitive schedule for work to begin on the Mariner East II pipeline although Sunoco did indicate that work will begin "somewhere" along the line during the 1st Quarter of 2019.

Mr. Freed noted that the following meetings/actions have taken place:

1. There was a PUC Hearing in November resulting from a complaint made by citizens that there is inadequate available public information provided by Sunoco, that there is lack of a viable plan if a leak should occur. The Judge determined that the public is not in any imminent danger.
2. The PUC Bureau of Investigation conducted an investigation of the re-purposed line and determined there was some corrosion inside. They, in turn, filed a complaint and penalty against Sunoco. More investigation is required.
3. There was a meeting today of Township staff and County Emergency personnel to discuss improvements to the Township's emergency plan. Evacuation routes and additions to the existing plan were discussed as well as possible training of personnel located in facilities that may be near pipeline pump stations.

Janet Toolan asked what type of product the re-purposed line will carry. Mr. Freed gave a background of the pipeline project in the Township and stated that the 12" line to be re-purposed originally carried a petroleum product. The plan to re-purpose the pipe would have it carrying a heavier than air hazardous liquid.

Mark Toolan wanted to know what outcome the Township expects with respect to their dealings with Sunoco and the pipeline project. Mrs. Baumann stated that the Board would just like the residents to be safe. Mr. Miller added that the Township has little recourse against Sunoco, it is beyond the Township's jurisdiction to stop the process, but the Board would like Sunoco to prove that the pipeline project is safe. In the same vein, the Township must make sure that their evacuation plans are in order.

Laura Obenski asked if the Township and the School District are working together, especially since 2 of the schools are located very close to the pumping station in Upper Uwchlan Township. Mr. Freed stated that the Township is working in conjunction with both the County and the School District.

ANNOUNCEMENTS:

1. 12/19 - Zoning Hearing Board – 7:00 pm – Decisions : CVS and 475 Peck Rd (McIntire)
2. 01/07 - Board of Supervisors – Reorganization – 7 pm
3. 01/07 - Park & Recreation - Reorganization and meeting – 7:30 pm
4. 01/08 - Board of Auditors – Reorganization and meeting – 4:00 pm
5. 01/09 - Planning Commission – Reorganization and meeting - 7:30 pm – Comprehensive Plan Presentation
6. 01/10 - Municipal Authority - Reorganization and meeting – 4 pm
7. 01/10 - Historical Commission - Reorganization and meeting – 7:30 pm – Cadwalader House
8. 01/14 - Board of Supervisors – Regular meeting - 7:30 pm
9. 01/16 - Environmental Advisory Council - Reorganization and meeting – 6:30 pm
10. 01/18 - UTIDA - Reorganization and meeting – 8:30 am

OPEN TO THE PUBLIC FOR QUESTIONS AND COMMENTS

There being no other business, Mrs. Baumann made a motion to adjourn the meeting at 8:30 p.m. and Dr. Doan seconded. The motion was carried unanimously.

Respectfully submitted,

Katie Churchill
Township Secretary

/jc

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, 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 and served on the following:

VIA ELECTRONIC AND FIRST CLASS

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Dated: March 4, 2019