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April 3, 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 CHESTER COUNTY AND NEW
MATTER**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Chester County and New Matter 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.	:		

NOTICE TO PLEAD

TO: Margaret A. Morris, Esquire
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Pursuant to 52 Pa. Code §§ 5.62 and 5.63, you are hereby notified that, if you do not file a written response denying or correcting the enclosed New Matter of Sunoco Pipeline L.P., within twenty (20) days from service of this notice, the facts set forth by Sunoco Pipeline L.P. in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings such as a Reply to New Matter must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Sunoco Pipeline L.P.

Respectfully submitted,

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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: April 3, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	Docket Nos.	C-2018-3006116
ROSEMARY FULLER	:		
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	:		
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING
INTERVENTION OF CHESTER COUNTY AND NEW MATTER**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Chester County’s March 14, 2019 Petition to Intervene in this proceeding because the Petition is untimely and Chester County 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. Chester County filed a Petition to Intervene on March 14, 2019.
4. Chester County’s Petition is untimely. It was filed 116 days after the Complaint and 85 days after the Amended 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. Chester County fails to allege that its Petition was timely filed under 52 Pa. Code § 5.53.

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. Chester County’s Petition was untimely because it was filed 116 days after the Complaint and Chester County 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. Even if there was a Commission regulation that extended the time for intervention based on an amendment to a pleading, which there is not, SPLP notes that Chester County’s Petition to Intervene would still be untimely, as it was filed 85 days after the Amended Complaint was filed. 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. Chester County fails to even allege good cause for allowing it to intervene out of time in this proceeding. There is no good cause to allow Chester County to intervene out of time and its Petition should be denied.

12. Moreover, upon information and belief, Chester County knew about the Complaint and even discussed the contents of the Complaint at County Commissioner meetings as early as December 11, 2018. *See* the publicly available recording of the December 11, 2018 “Sunshine meeting” beginning at 48:34 (<http://view.earthchannel.com/PlayerController.aspx?PGD=chestercopa&eID=274>). The County Commissioners had active discussions of the Mariner East pipeline system and the Complaint involving, at a minimum, one of the Complainants, Ms. Caroline Hughes. At the December 11, 2018 meeting, Ms. Hughes spoke during the public comment period described the Complaint in detail including discussion of the claims, her testimony at the Emergency Hearing, and the relief the Complainants seek. *Id.* As Ms. Hughes finished, she asked that Chester County formally join with the Complaint by filing a to Petition to Intervene:

“I am asking you to Petition to Intervene in our Formal Complaint and support us which is based around the lack of emergency preparedness and safe evacuation.”

Id. at 57:48. Chester County Commissioner Michelle H. Kichline responded to Complainant regarding the request for the County to file a Petition to Intervene stating:

“We are discussing with our legal staff the possibility, the legal possibility of joining in any type of an action with the PUC and we will keep you informed of that.

Id. at 1:03:50. Therefore, the Chester County and its Commissioners had knowledge of the Complaint necessary to file a timely intervention and cannot show good cause necessary for an untimely intervention. Chester County knew about, considered, yet actively chose not to file their

petition to intervene within the 60-day period described in 52 Pa. Code §§ 5.74 and 5.53. Chester County's petition to intervene should be denied as no good cause can be shown for its untimely intervention.

13. Chester County'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.

14. Indeed, Chester County merely states its interest "is not (and cannot) be adequately represented by any other party." Petition to Intervene at 15. 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). Chester County has not provided any reason or support for the notion that their interests are not adequately represented by existing participants. Accordingly, Chester County's Petition to Intervene should be denied on this basis as well.

15. SPLP notes that if Chester County 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."). Chester County has acknowledged this as well, stating "Chester County takes the case as it currently stands and its participation will not broaden the scope of the proceedings." *See* Petition to Intervene at 16. Even if intervention is allowed, Chester County cannot pursue issues beyond the scope of the Amended Complaint.

NEW MATTER

16. SPLP has cooperated with Chester County to provide it with information Chester County sought as allegedly necessary to the preparation of emergency response plan.

17. Pursuant to Pipeline and Hazardous Materials Safety Administration (PHMSA) and Transportation Safety Administration policy, SPLP assisted Chester County in obtaining a copy of its Philadelphia Pipeline System Integrated Contingency Plan (ICP) from PHMSA.

18. On information and belief, PHMSA provided a version that PHMSA redacted to Chester County on or about March 13, 2019.

19. On information and belief, Chester County was dissatisfied with the ICP that PHMSA provided to it because of PHMSA's redactions, but Chester County blamed the redactions on SPLP when it knew that PHMSA had provided the redactions.

20. On March 14, 2019, Chester County issues a press release stating, *inter alia*, "Anger, frustration, exasperation, disgust – these words don't even begin to cover how we feel about this *latest action by Sunoco*. To call this a "plan" is ridiculous, and to say that they are cooperating is an insult," said Chester County Commissioners' Chair Michelle Kichline." (emphasis added) (Press Release included as Attachment A).

21. On March 19, 2019, SPLP provided Chester County with a confidentiality agreement to protect the Confidential Security Information and Sensitive Security Information in the ICP that would allow the County access to the unredacted ICP.

22. On or about March 28, 2019 the executed confidentiality agreement was provided to SPLP by Chester County and SPLP hand-delivered a copy of the ICP to Chester County officials on March 28, 2019.

WHEREFORE Sunoco Pipeline L.P. respectfully requests Chester County's Petition to Intervene be denied.

Respectfully submitted,



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Dated: April 3, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

ATTACHMENT A

Posted on: March 14, 2019

Chester County Commissioners Decry Sunoco's Emergency Pipeline Plan

Large portions of long-awaited pipeline emergency management plan blacked out for "security reasons"

After many requests, and eventually demands, the Chester County Commissioners confirmed receipt today by the Department of Emergency Services of the long-awaited Sunoco pipeline emergency management plan. But the confirmation came with disdain as the Commissioners noted that Sunoco's plan was heavily redacted for "security reasons", and that according to Mike Murphy, Director of Chester County's Department of Emergency Services, only about five percent of the plan is usable.



"Anger, frustration, exasperation, disgust – these words don't even begin to cover how we feel about this latest action by Sunoco. To call this a "plan" is ridiculous, and to say that they are cooperating is an insult," said Chester County Commissioners' Chair Michelle Kichline.

Over the past two years, Chester County has reached out to Sunoco on many occasions to gather crucial pipeline emergency safety information that would allow the Department of Emergency Services (DES) to work with all first responders to better prepare for mass notification and neighborhood emergency practices in the event of a pipeline disaster. DES leaders and the County Commissioners have formally contacted Sunoco directly as well as through the Public Utility Commission (PUC) and PEMA.

Sunoco agreed to provide the emergency plan via the Pipeline and Hazardous Materials Safety Administration (PHMSA), which in turn redacted a significant portion of the plan.

"This 'plan' is worthless," said Chester County Commissioner Kathi Cozzone. "For Sunoco to claim that they have sent us their emergency plan is beyond wrong and this document does not let them 'check that box' to say they have cooperated, because yet again, they haven't."

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"We reached out to all pipeline operators with a presence in Chester County and the only one that refused to provide an emergency plan was Sunoco," added Commissioner Cozzone. "None of the other pipeline operator plans include large chunks of blacked-out information, and the reason for this is that none of the other operators insisted on sending the plan through the Pipeline and Hazardous Materials Safety Administration."

The Commissioners announced at the end of February the County's plan to take legal action against Sunoco, beginning with intervention in the Flynn et al. v. Sunoco Pipeline LP proceedings before the Pennsylvania Public Utility Commission. The Petition to Intervene was filed today. In addition to the legal action, the Commissioners gave notice to Sunoco Pipeline LP of the termination of two temporary easements on the Chester County Library property that were granted to Sunoco in 2017. The notice explained that there were no terms for renewal of the temporary easements within the 2017 agreements.

Commissioner Terence Farrell said, "Because the document we received withholds critical safety information we are exploring further legal action to get what our first responders really need, and what our citizens deserve."

"Those police, fire and EMS personnel on the front line are doing everything that they can to be trained and equipped for a pipeline disaster. The one part missing is Sunoco's comprehensive emergency plan, and despite Sunoco's claims, we still do not have that."

The training that Chester County's Department of Emergency Services and first responders undertake for scenarios such as a pipeline leak or explosion include tabletop exercises and emergency drills to validate response plans, attendance at advanced pipeline emergency courses throughout the country, work with municipalities to ensure their plans and procedures are synced with the operators' and County plans, and training with a pipeline prop at the County's Public Safety Training Campus. The County has also purchased combustible gas detectors for fire departments as well as specialized equipment for the County's Haz Mat team.

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Posted on: March 25, 2019



VERIFICATION

I, C. Gus Borkland, P.G., Vice President – Emergency Planning/Remediation & Security, on behalf of Energy Transfer, hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



C. Gus Borkland, P.G., VP-Emergency
Planning/Remediation & Security
ENERGY TRANSFER

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:

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Dated: April 3, 2019