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REPLY TO:
Center City

April 19, 2019

Via Electronic Filing

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

Re: Flynn, et al. v. Sunoco Pipeline L.P., Docket Nos. C-2018-3006116 and
P-2018-3006117

COMPLAINANTS' PREHEARING CONFERENCE MEMORANDUM

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Prehearing Conference Memorandum.

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

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Judge Barnes (Via email and First Class Mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn, et al.	:	
	:	C-2018-3006116
v.	:	P-2018-3006117
	:	
Sunoco Pipeline, L.P.	:	

COMPLAINANTS' PREHEARING CONFERENCE MEMORANDUM

Pursuant to Order dated March 20, 2019, and in accordance with 66 Pa.C.S. § 333 and 52 Pa.Code § 5.222, Flynn Complainants submit the following Prehearing Conference Memorandum:

- a.) *The names, addresses, telephone number and e-mail address of any person the parties wish to have listed on the service list or e-mail distribution list.*

On behalf of Complainants, please serve all filings upon Complainants' counsel, Michael S. Bomstein, Esq. via electronic service. Contact information for counsel is as follows:

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- b.) *A statement regarding possible settlement of the case, subject to approval of the Pennsylvania Public Utility Commission.*

Complainants have worked with Respondent in good faith and resolved a limited number of discovery-related disputes. There may be additional areas of agreement regarding discovery and motions that arise in the future. Complainants have not discussed with Respondent settlement of Complainants' claims and do not believe that there is a reasonable possibility of resolving their

claims through settlement.

c.) *A proposed plan and schedule of discovery.*

As a result of Sunoco's obstructionist tactics, Complainants currently lack most relevant information about leaks on the ME 1 pipeline and most relevant documents. Absent meaningful discovery, Complainants are unable to create a plan and schedule of discovery at this time.

Assuming, however, that Sunoco is directed to provide meaningful discovery and that it complies fully, and assuming that full answers and a complete production of documents are furnished by the end of May, Complainants and their expert consultants will need until the end of July to sift through, organize, and analyze the data. At that point Complainants will be in a position to identify persons needed to be deposed and set up a mutually acceptable deposition schedule. Complainants believe it is unlikely there will be fewer than ten depositions. With scheduling requiring coordination with counsel, it is unlikely that depositions and production of deposition transcripts can be completed before the end of October. At that time, the transcripts will need to be reviewed and analyzed by the Complainants' expert consultants so that their reports can be prepared by mid-December.

d.) *Other proposed orders with respect to discovery.*

Complainants seek oral argument in Harrisburg on all outstanding discovery issues and ask that an appropriate Order be entered following argument. Complainants' counsel is available on short notice.

e.) *Statement regarding whether there is any need for a site view.*

Complainants believe a site view would enhance understanding of factual elements of their claims in a way that courtroom demonstratives cannot. If agreeable to the Court, Complainants will recommend sites in close geographic proximity to one another to make the viewing as efficient as possible.

f.) A proposed schedule for the submission of expert written testimony, conducting an in-person hearing, and the submission of briefs.

Direct Written Expert Testimony	January 15, 2020 (or 90 days after close of discovery)
Rebuttal Written Expert Testimony	February 28, 2020 (or 45 days after Direct Written Witness Expert Testimony)
Sur-Rebuttal Written Expert Testimony	March 30, 2020 (or 30 days after Rebuttal Written Expert Testimony)
Written Rejoinder Outlines	April 30, 2020 (or 30 days after Sur-Rebuttal Written Expert Testimony)
In Person Hearing	June 1, 2020 (or 30 days after Written Rejoinder Outlines)
Production of Notes of Testimony	(Regular Production) June 15, 2020
Main Brief	July 31, 2020 (or 45 days after receipt of notes of testimony)
Reply Briefs	August 15, 2020

g.) Names, business addresses, and telephone numbers of witnesses the party expects to call and the subject matter of each witness' testimony.

Complainants do not yet have a complete list of witnesses they intend to call at hearing as discovery is not complete. Preliminarily, Complainants expect to call the following:

1.) The seven Complainants are expected to testify as to their relationship to the subject pipelines and their specific concerns.

- Meghan Flynn
212 Lundgren Road
Lenni, PA 19052
P: (570) 856-4485

- Rosemary Fuller
226 Valley Road
Media, PA 19063
P: (610) 235-7971

- Michael Walsh
12 Hadley Lane
Glen Mills, PA 19342
P: (610) 864-5586

- Nancy Harkins
1521 Woodland Road
West Chester, PA 19380
P: (484) 678-9612

- Gerald McMullen
200 Hillside Drive
Exton, PA 19341
P: (484) 883-7013

- Caroline Hughes
1101 Amalfi Drive
West Chester, PA 19380
P: (484) 883-1156

- Melissa Haines
176 Ronald Road
Aston, PA 19014
P: (215) 206-9129

2.) Sunoco and BI&E agents and employees whose names are expected to be disclosed during the course of depositions and written discovery are expected to testify regarding Sunoco's planning, operation, maintenance, and inspection practices and various other aspects of the Mariner East 1 and the workaround pipeline.

3.) Expert witnesses in the fields of risk analysis, pipeline integrity, emergency preparedness, and economic analysis -- as deemed appropriate based on ongoing discovery-- are expected to provide testimony in their areas of expertise as applied to Mariner East 1 and the workaround pipeline.

Complainants will disclose the names of the witnesses they intend to call as discovery progresses and reserve the right to amend this list. Complainants also reserve the right to call witnesses identified by other parties.

h.) *A list of the issues and sub-issues of this proceeding, which the parties intend to address and a statement of the party's position on each of the issues and sub-issues listed if applicable to their case.*

1.) *Consolidation of Complaints*

Complainants do not oppose the consolidation of complaints for limited purposes, such as to prevent redundancy of hearing testimony. Complainants are opposed to consolidation to the extent that consolidation would create significant delay in the instant case. Complainants' position is set forth more fully in Complainants' Response to Motion to Consolidate, filed March 28, 2019.

2.) *Petitions to Intervene*

Complainants do not oppose any of the petitions to intervene pending as of the date of this filing.

3.) *Protective Order*

Complainants agree to continue to abide by the Protective Order that was put in place in this matter on November 28, 2018 and do not believe that Order requires amendment at this time.

4.) *Public Awareness/Emergency Preparedness*

Issue: Whether Respondent has developed and implemented a legally sufficient emergency preparedness plan that will protect the health and safety of Complainants in the event of a pipeline emergency.

Complainants Position: Sunoco has failed to develop appropriate plans; has not disseminated such plans to the public; has not provided the public with reliable information regarding the detection of or hazards associated with an unintended release; and has not sufficiently advised local municipalities, school districts, businesses, and residents of steps to be taken to avoid harm in the event of an emergency.

5.) *Mass Warning Systems*

Issue: Whether Respondent at all times uses every reasonable effort to warn and protect the public from danger associated with Mariner East 1 and the Mariner East workaround

pipeline.

Complainants' Position: Sunoco has failed to use every reasonable effort to warn and protect the public from the danger associated with its pipelines. It would, for example, be reasonable for Sunoco to, at its own expense, equip every structure within the blast zone of Mariner East 1 and the workaround pipeline with HVL detection and alarm systems. It has not done so.

Issue: Whether Respondent furnishes and maintains adequate, safe, and reasonable service on Mariner East 1 and the Mariner East workaround pipeline with regard to its warning systems.

Complainants' Position: Sunoco's warning systems are not adequate, safe, or reasonable.

6.) *Pipeline Integrity Management*

Issue: Whether Respondent furnishes and maintains adequate, safe, and reasonable service on Mariner East 1 and the Mariner East workaround pipeline with regard to its pipeline integrity management program.

Complainants' Position: Sunoco's integrity management program as written and implemented is seriously deficient.

Issue: Whether Respondent at all times uses every reasonable effort to protect the public from danger associated with Mariner East 1 and the Mariner East workaround pipeline through its pipeline integrity management program.

Complainants' Position: Sunoco has not used every reasonable effort to protect the public from the danger associated with Mariner East 1 and workaround pipeline through its integrity management program.

7.) *Leak Detection Protocols*

Issue: Whether Respondent furnishes and maintains adequate, safe, and reasonable service on Mariner East 1 and the Mariner East workaround pipeline with regard to its leak detection protocols.

Complainants' Position: Sunoco's leak detection protocols are not adequate, safe, or reasonable. Most leak detection historically has been provided by the public furnishing information to Sunoco. The use of in-line inspections has proved to be insufficient. Sunoco's

cathodic protection program is not working. The frequency of inspections is inadequate.

Issue: Whether Respondent at all times uses every reasonable effort to protect the public from danger associated with Mariner East 1 and the Mariner East workaround pipeline through its leak detection protocols.

Complainants' Position: Sunoco does not at all times use every reasonable effort to protect the public through its leak detection protocols. Most leak detection historically has been provided by the public furnishing information to Sunoco. The use of in-line inspections has proved to be insufficient. Sunoco's cathodic protection program is not working. The frequency of inspections is inadequate.

8.) *Remaining Life Study of ME1 and 12" pipe*

Issue: Whether Sunoco's existing practices with respect to Mariner East 1 and the workaround pipeline warrant further determination and recommendations by an independently appointed expert consultant.

Complainants' Position: Yes. Independent, expert study of these pipelines, including a remaining life study of both pipelines with transparent, actionable results, is needed.

9.) *Location of pipelines close to dwellings and public gathering places*

Issue: Whether the siting the Sunoco's Mariner East 1 and workaround HVL pipelines and service in high consequence areas is consistent with Sunoco's obligations to provide safe adequate and reasonable service under the Public Utility Code, including but not limited to 66 Pa.C.S. § 1501, and applicable regulations.

Complainants' Position: Considerations of public safety and other factors strongly militate in favor of cessation of service in high consequence areas.

10.) *Valve spacing - status of construction of valves*

Complainants are not familiar with the current status of valve station construction. Whether the spacing and location of valves stations for Mariner East 1 and the workaround pipeline are adequate, safe, and reasonable will be determined through discovery.

11.) ***Horizontal Directional Drilling – status of construction permits, construction activities, etc.***

As of February 8, 2019, Governor Wolf and the Department of Environmental Protection have suspended all permit applications and approvals due to Sunoco's non-compliance. Many of Sunoco's HDD sites are pending approval of technical reevaluations or major modification and cannot proceed. HDD that is not subject to new approvals, permits, or modifications is continuing.

12.) ***Economic costs and benefits of the Mariner East Project***

Issue: What are the economic costs of the Mariner East Project, including the potential for loss of human life, and has Sunoco met its obligation to protect the public in light of those costs?

Complainants' Position: All costs of the Mariner East Project must be accounted for when considering whether Sunoco has met its obligations under the Public Utility Code and PUC regulations. Sunoco has never accounted for all costs of the Mariner East Project.

13.) ***Outstanding discovery disputes***

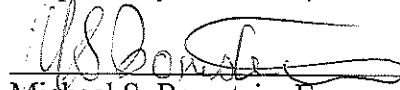
Issue: Whether the Commission in its adjudicative capacity has a right and a duty to entertain claims of affected Del-Chesco Complainants that they are entitled to discovery of admitted Sunoco hazard assessments in furtherance of their pipeline integrity challenge when the Commission through its Bureau of Investigation & Enforcement ("BI&E") already has broadly asserted that all aspects of such assessments are both confidential and matters of national security.

Complainants' Position: Complainants are entitled to discovery in support of their claims despite the proceedings and position of BI&E. Matters of confidentiality and national security can be resolved through in-camera inspection.

i.) *A statement describing the evidence the party proposes to present at hearing, relating the evidence to each of the issues and sub-issues the party intends to address.*

In the absence of meaningful discovery Complainants are unable to supply this information fully at present. It is anticipated that Complainants will present lay witnesses and four experts: risk assessment, pipeline integrity, emergency preparedness and economic analysis. In addition to testimony, Complainants expect to present as evidence documents furnished by Sunoco and BI&E through the course of discovery, documents identified by Sunoco and intervenors that they intends to use at trial, and such documents and reports as may be utilized in support of Complainants' experts testimony.

Respectfully submitted,



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Attorney for Complainants

Dated: April 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing 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 and served on the following via electronic and first-class mail:

SEE ATTACHED LIST


Michael S. Bomstein

Dated: April 19, 2019

(PARTIES LIST UPDATED MARCH 28, 2019)

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