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April 19, 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;

Melissa DiBernardino v. Sunoco Pipeline L.P.; Docket No. C-2018-3005025

Rebecca Britton v. Sunoco Pipeline L.P.; Docket No. C-2019-3006898

Laura Obenski v. Sunoco Pipeline L.P.; Docket No. C-2019-3006905

**SUNOCO PIPELINE L.P.'S PREHEARING CONFERENCE MEMORANDUM**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Prehearing Conference Memorandum in the above-referenced proceedings.

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: Hon. Elizabeth H. Barnes (Electronic ebarnes@pa.gov and first class mail)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v. :

SUNOCO PIPELINE L.P., :  
Respondent. :

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MELISSA DIBERNARDINO, :  
Complainant, : Docket No. C-2018-3005025

v. :

SUNOCO PIPELINE L.P., :  
Respondent. :

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REBECCA BRITTON, :  
Complainant, : Docket No. C-2019-3006898

v. :

SUNOCO PIPELINE L.P., :  
Respondent. :

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LAURA OBENSKI, :  
Complainant, : Docket No. C-2019-3006905

v. :

SUNOCO PIPELINE L.P., :  
Respondent. :

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**SUNOCO PIPELINE L.P.'S  
PREHEARING CONFERENCE MEMORANDUM**

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**TO THE HONORABLE ELIZABETH H. BARNES**

Pursuant to 52 Pa. Code § 5.222(d) and Your Honor's March 20, 2019 Order, Sunoco Pipeline L.P. (SPLP) submits this prehearing conference memorandum.

**A. SERVICE**

SPLP requests that each of the below attorneys be included on electronic service of documents in this proceeding.

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SPLP requests that the official service list in this proceeding be updated to include each of these attorneys.

SPLP also requests that all documents filed in this proceeding be electronically served in addition to any hard copy service.

**B. SETTLEMENT**

SPLP is willing to engage in settlement discussions.

**C. DISCOVERY**

SPLP proposes the following modifications to the Commission's discovery regulations to expedite discovery between the parties to be effective only after the service of the Complainants' and any Aligned Intervenor's Surrebuttal testimony. SPLP proposes to have objections to discovery requests due five (5) days after receipt of requests, that a Motion to Compel be due within five (5) days of service of any objections, and that an answer to a Motion to Compel be due within three (3) days of service of a Motion to Compel. SPLP also respectfully requests that Your Honor rule on the motion in an expedited fashion, ideally within three (3) days of receipt of the answer to the Motion to Compel. This serves the Commission's interest in efficient discovery without causing undue delay.

**D. OTHER PROPOSED ORDERS OF DISCOVERY**

SPLP does not propose any further modifications to the Commission's discovery regulations.

**E. SITE VIEW HEARINGS ARE NOT APPROPRIATE IN THIS COMPLAINT PROCEEDING**

This is not a proceeding where a site view is appropriate. Site view hearings are used in proceedings where the Commission must determine whether or not a utility's proposal is in the public interest, and the utility has the burden of proof. Site view hearings are useful where the Commission must determine how the utility's proposal may affect the surrounding area when that

is an issue the Commission can/must consider prior to granting the utility the authority to do what it is requesting to do, such as transmission line siting.

Site view hearings are not appropriate in a complaint proceeding where proximity or pipeline infrastructure existence cannot be a violation of law and cannot be the determining factor in the Commission's decision. Complainants' have the burden of proof to show that SPLP's conduct has violated a statute or regulation. The Commission has very limited authority over siting of pipeline facilities (unlike siting of transmission lines). There has been no specific allegation raised that SPLP's conduct at some particular area has caused an issue where a site visit would be necessary to show whether SPLP has or has not violated the law or a regulation. Instead, site view hearings have been proposed to see facts more akin to those relevant in a transmission line siting case, like how close a facility is to a school or farm and how the facility will impact the landscape solely by its proposed existence. To the extent such facts like distance between a pipeline right-of-way and a school are relevant here, the parties can stipulate to those matters. There is no need for the time and expense of a site view to show a fact that can be ascertained via stipulation. Moreover, to the extent a party wants to prove something via picture, that is easily accomplished by entering photographs into the record as an exhibit. This is not a case where the mere existence and proximity of a pipeline to other structures is a determining issue. The Commission does not have the statutory authority to order a pipeline not be constructed just because it is close to another structure.

#### **F. PROPOSED SCHEDULE FOR TESTIMONY, HEARING, AND BRIEFS**

SPLP is considering Complainants' proposed schedule and will work with the parties at the prehearing conference to reach a mutually agreeable schedule. SPLP believes that only slight

modifications are needed to Complainants' proposed schedule to ensure all parties have adequate time to prepare and present their case.

The use of written testimony is proper here for all experts and all witness that are called by a party with counsel, not solely expert witnesses. Complainants' proposed schedule appears to only consider written testimony for experts. SPLP believes, consistent with Commission practice, that only pro se litigants should be allowed to present their own, lay testimony orally. This is consistent with the treatment of pro se litigants at the Commission. SPLP does not object if pro se litigants want to utilize written testimony. However, SPLP does not agree that any witness represented by counsel should proceed with oral testimony, which will exponentially lengthen the time of the hearing and the length and therefore cost of the transcript. SPLP proposes that a hearing for pro se litigants to present their own lay testimony (if they so choose) be held in late 2019, prior to the submission of written testimony.

Complainants proposed schedule for written testimony is unclear as to whether they intend for all parties to file direct testimony at the same time or whether the direct testimony is for Complainants and aligned Intervenors and then the Rebuttal phase is for Respondent and any aligned intervenors. Either way the schedule is interpreted, it requires modification.

First, assuming that the Direct testimony phase is for all parties, having one date for all parties to submit Direct testimony is inconsistent with the Commission's Order of Procedure, 52 Pa. Code § 5.242(a), which requires the party with the burden of proof to open. Here, SPLP cannot predict what Complainants' testimony will contain and would essentially be guessing at what it should present in its testimony. In fact, Flynn Complainants' have not named a single witness other than the seven Complainants even though it has been approximately five months since they filed their Complaint. Complainants' and aligned intervenors should open the case.

Alternatively, if the schedule is intended to have Complainants open and Respondent file Rebuttal testimony, the time frame for Respondent Rebuttal is extremely prejudicial. Complainants will have had approximately 13 months to develop their case, while giving SPLP only 45 days to respond. This is particularly unreasonable given the number of issues in this proceeding, the fact that Complainants repeatedly seek to add issues, and that SPLP will be responding not just to Complainants but also to approximately 15 intervenors.

Either of the defects are easily cured by: (1) specifying that Complainants and Intervenors aligned with Complainants file Direct Testimony and Surrebuttal Testimony while SPLP and Intervenor Range Resources file Rebuttal Testimony and Rejoinder outlines; and (2) extending the time period between Direct and Rebuttal from 45 days to 90 days and pushing the remainder of the schedule back 45 days.

Another defect in the schedule that fails to conform to Commission practice is closing discovery prior to testimony. Part of the reason written testimony is utilized in sequential phases is to allow the parties to obtain discovery concerning each other's testimony for use in their responsive testimony and/or for cross-examination. Lack of discovery concerning expert testimony will unnecessarily lengthen the time needed for cross-examination and results in a lack of exchange of information on issues that can often narrow the points on which the parties disagree. SPLP believes discovery should, consistent with Commission practice, continue throughout the testimony phases and has proposed discovery modifications above that account for the shorter time period between the later phases of testimony.

Given that Flynn Complainants' and various other parties do not want to file testimony until January 2020, SPLP submits that the parties should be able to reach a mutually agreeable procedure and schedule for submission of testimony and in-person hearings.

**G. WITNESSES.**

SPLP does not have the burden of proof in this proceeding and it cannot predict what specific witnesses it may need to present to defend against the Amended Complaint until Complainants present their testimony. SPLP entered testimony into the record in various proceedings already addressing the issues raised in this proceeding and may rely on and incorporate such evidence into this proceeding. SPLP identifies preliminarily, as potential witnesses:

1. Mr. Joseph Perez, Vice President, Technical Services, Operations and Engineering Services, Energy Transfer
  - a. Topics: Public awareness, emergency response materials, procedures, and training
2. Mr. Gregory Noll, Principal at GGN Technical Resources, LLC
  - a. Topics: Emergency response materials, procedures, and training.
3. Mr. John Zurcher, Principal at Process Performance Improvement Consultants, LLC (P-PIC), Managing Director at The Blacksmith Group
  - a. Topics: Public awareness, emergency response materials, procedures, and training, and issues regarding pipeline safety
4. Mr. Matthew Gordon, Senior Director of Operations, Energy Transfer and SPLP.
  - a. Topics: Pipeline construction and operations
5. Mr. Mike Rosenfeld
  - a. Topics: Pipeline integrity
6. Mr. C. Gus Borkland, Vice President of Emergency Planning/Remediation & Security, Energy Transfer



- a. Topics: Emergency planning/remediation, security, geology
- 7. Sam Ariaratnam, Professor and Program Chair of Construction Engineering, Arizona State University
  - a. Topics: Horizontal Directional Drilling
- 8. Tim Bechtel, Rettew
  - a. Topics: Geology
- 9. Paul Chrostowski, CPF Assoc.
  - a. Topics: Wells and water
- 10. Glen Renschler, Wiss, Janey, Elstner, Assoc. Inc.
  - a. Topics: Structural Engineering
- 11. David Demko, GES
  - a. Topics: Geology
- 12. Richard Voith, Econsult Solutions, Inc.
  - a. Topics: Economic impacts of Mariner Projects
- 13. Peter Angelides, Econsult Solutions, Inc.
  - a. Topics: Economic impacts of Mariner Projects
- 14. Steve Compton, Tetra Tech
  - a. Topics: Pipeline routing
- 15. Gregory Crooks, Principal, Environmental Services, Stantec Consulting Ltd.
  - a. Topics: Plume modeling
- 16. Larry Gremminger, Vice President – EH&S, Energy Transfer
  - a. Geology
- 17. Gina Greenslate, Manager – Public Awareness, Energy Transfer

- a. Public awareness, outreach, and emergency preparedness
- 18. Richard Billman, Vice President – Business Development, Energy Transfer
  - a. Economic and financial impacts
- 19. Harry Alexander, Senior Vice President – Production Trading and Marketing and Business Development, Energy Transfer
  - a. Economic and financial impacts
- 20. Richard Dalasio, Senior Manager – Pipeline Integrity, Energy Transfer
  - a. Pipeline integrity
- 21. Jamie Fye, Project Manager, Michels Corporation
  - a. Pipeline construction
- 22. Jay Dresh, Director – Liquid Technical Operations, Energy Transfer
  - a. Pipeline integrity
- 23. Mark McConnell, Project Manager – Field Services, Percheron
  - a. Contacts with landowners
- 24. Potential Additional Witnesses Regarding Emergency Planning for Schools and Communities
- 25. Potential Additional Witnesses Regarding Corrosion

SPLP will identify additional witnesses as necessary to respond to the witnesses and evidence submitted by Complainants. Depending upon Complainants' testimony, SPLP reserves the right to identify and submit other witnesses subject to the form and time of presentation.

Each of these witnesses may present testimony regarding any of the above-stated issues or any other issue that may arise during the course of this proceeding. SPLP reserves the right to adopt any testimony of other witnesses, in whole or in part, to substitute witnesses, and to offer

additional witnesses and exhibits as may be necessary, including but not limited to witnesses and evidence to address the testimony, exhibits, or evidence that may be presented by any party in this proceeding.

## **H. ISSUES**

### **1. Consolidation of Complaints**

SPLP moved to consolidate the Flynn Complaint with similar complaint proceedings that pro se complainants Britton, Obenski, and DiBernardino initiated. SPLP after reviewing various answers to its Motion to Consolidate believes consolidation is appropriate.

### **2. Petitions to Intervene**

The following Petitions to Intervene have not yet been decided upon:

- West Chester Area School District,
- Chester County,
- Thornbury Township,
- Edgmont Township, and
- Senator Thomas Killion

SPLP opposes each Petition to Intervene as described in each Answer Opposing Petition to Intervene respectively.

### **3. Protective Order**

On April 17, 2019, SPLP filed a Motion for Amended Protective Order. SPLP, as discussed in that Motion, believes it should be granted to provide for an additional category of heightened protection for extremely sensitive confidential security information. SPLP will use good faith best efforts to limit the amount of materials subject to such protection and the proposed amended protective order provides a procedure for challenging the designation of materials.

## SUBSTANTIVE ISSUES

Complainants have the burden of proof in this proceeding to show that SPLP is in violation of law or a Commission regulation that has a discernable effect on Complainants, over which this Commission has jurisdiction. Complainants must prove that SPLP violated the law or regulations within the three-year statute of limitations<sup>1</sup> to obtain any relief, injunction or otherwise.<sup>2</sup> SPLP reserves its right to address additional issues as they may arise during this proceeding. SPLP's position will be finalized in its evidence and briefs submitted under the schedule developed in this proceeding.

SPLP submits that discussion of substantive issues at the prehearing conference is premature, an inefficient use of the parties' time, and will merely result in fruitless and contentious arguments among the parties.

### 4. Public Awareness/Emergency Preparedness

SPLP is not in violation of any applicable law or regulation concerning public awareness and/or emergency preparedness.

### 5. Mass Warning Systems

There is no regulatory or legal requirement for SPLP to install or cause to be installed a "mass warning system." Accordingly, SPLP cannot be found in violation of any statute or regulation regarding this topic and the Commission lacks legal authority to order SPLP to install

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<sup>1</sup> 66 Pa. C.S. § 3314; *Suburban East Tires, Inc. v. Pennsylvania Public Utility Com'n*, 582 A.2d 727, 729, 136 Pa.Cmwlth. 209, 213 (Pa.Cmwlth.,1990) ("This section thus provides a general limitation period of three years for any action under the Code") (applying three-year statute of limitations to consumer complaint against utility).

<sup>2</sup> *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984) ("We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.").

or cause to be installed a “mass warning system.” SPLP notes that to date no party has defined what exactly they intend this phrase to mean.

6. Pipeline Integrity Management

SPLP’s integrity management plans, materials, and execution thereof is not in violation of any law or regulation.

7. Leak Detection Protocols

SPLP is unclear what exactly this topic refers to. 49 C.F.R. § 195.444 referencing API RP 1130 includes requirements regarding computational pipeline monitoring leak detection systems. SPLP is not in violation of any law or regulation regarding leak detection.

8. Remaining Life Study of ME1 and 12” pipeline

SPLP has agreed to conduct a remaining life study of the ME1 pipeline pursuant to a Settlement with the Commission’s Bureau of Investigation and Enforcement at Docket No. C-2018-3006534, which is pending Commission review. There is no regulatory or legal authority to require SPLP to undertake such study involuntarily and SPLP believes the Commission does not have the legal authority to require a remaining life study absent SPLP’s agreement. Regarding the 12-inch pipeline, that pipeline is only intended for use to transport HVLs temporarily until construction of the ME2/2X pipelines is complete. Even if the Commission could order SPLP to undertake a remaining life study of the 12-inch pipeline, given its use for HVLs is intended to be short-term, such study would be pointless.

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

Federal regulations that the Commission has incorporated by regulation as the safety standards applicable to SPLP specifically allow for the installation of pipelines close to dwellings

and public gathering places. SPLP is not in violation of any law or regulation regarding the siting of its pipelines.

10. Valve spacing – status of construction of valves

SPLP's placement and construction of valves is not in violation of any law or regulation. SPLP is or will be in the near future constructing valves for the ME2/2X pipelines as those pipeline segments are completed.

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

SPLP is currently engaged in construction in various areas of Chester and Delaware Counties as the Department of Environmental Protection has permitted. SPLP is not engaging in construction where it does not have a permit or necessary modification thereto in place from DEP.

**I. EVIDENCE**

SPLP does not have the burden of proof in this proceeding and it cannot predict what specific evidence it may need to present to defend against the Amended Complaint and/or Complaints until Complainants present their testimony. SPLP entered extensive evidence into the record in various hearings addressing similar issues that the Amended Complaint raises and may rely on that evidence and incorporate it into the record of this proceeding as necessary going forward.

SPLP intends to present the pre-filed testimony of the above-named witnesses along with any exhibits that witness may sponsor to support his or her testimony. SPLP reserves the right to adopt testimony of other witnesses, in whole or in part, to substitute witnesses, and to offer additional witnesses and exhibits, including but not limited to addressing the testimony, exhibits or other evidence that other parties in this proceeding may present.

Respectfully submitted,

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Dated: April 19, 2019

*Attorneys for Respondent Sunoco Pipeline L.P.*

## 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 and served on the following:

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*Counsel for PA State Senator Thomas H. Killion*



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Kevin J. McKeon, Esquire  
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Dated: April 19, 2019