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May 19, 2019

*Via Electronic Filing*  
Rosemary Chiavetti, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

re: **In re Meghan Flynn, et al v. Sunoco Pipeline, L.P.**  
**Docket Numbers C-2018-3006116 and P-2018-3006117**

Dear Secretary Chiavetti:

In connection with the above-captioned action, enclosed for electronic filing with the Commission please find **Certain Intervenor's Opposition to Sunoco Pipeline L.P.'S Motion for Amended Protective Order and in Support of Complainants' Opposition to Same.**

All parties of record have been served pursuant to the attached Certificate of Service.

If you have any questions or concerns, please do not hesitate to contact this office.

Thank you very much for your very kind assistance.

Sincerely,

COUNTY OF DELAWARE  
*Pat Biswanger* /e/

Patricia Sons Biswanger  
Assistant Solicitor

Enclosures

cc: as per Certificate of Service (w/enclosures)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines,	:	
	:	
v.	:	Docket No. P-2018-3006117
	:	Docket No. C-2018-3006116
	:	
Sunoco Pipeline, L.P.,	:	
	:	

**CERTAIN INTERVENORS’ OPPOSITION TO  
SUNOCO PIPELINE L.P.’S MOTION FOR AMENDED  
PROTECTIVE ORDER AND IN SUPPORT OF  
COMPLAINANTS’ OPPOSITION TO SAME**

Certain of the intervenors in this matter, listed below (the “Intervenors”), by and through their undersigned counsel, hereby oppose the Motion for an Amended Protective Order that was filed by Sunoco Pipeline L.P. (“SPLP”) on April 17, 2019. The Intervenors also support the opposition to the present motion filed by the complainants in this matter (“Complainants”).

**I. The Intervenors**

The Intervenors bringing this opposition are:

Chester County  
Delaware County  
East Goshen Township  
Uwchlan Township  
Downingtown School District  
Rose Tree Media School District

**II. The Proposed Amendment That We Oppose**

The Protective Order that is presently in place permits SPLP to designate two levels of confidentiality: (1) Confidential; and (2) Highly Confidential Protected Material.”

According to SPLP, “the sheer number of parties amplifies the risks of data breaches exposing what the Commission recognizes as highly confidential security information revolving around infrastructure security and national security.”

SPLP therefore proposes that “the Protective Order be amended to designate a third category of information that for discovery purposes will only be provided via proctored, in-person review.” SPLP has denominated this third category of information as “Extremely Sensitive Materials.”<sup>1</sup>

SPLP contends that the proposed Amended Protective Order will protect the Extremely Sensitive Materials “while allowing the parties to use such information for purposes of the instant litigation.”

SPLP further argues that “[t]he proposed Amended Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.”

### **III. Intervenor’s Objections to the Proposed Amendment**

Intervenors do not minimize the danger that some of the discovery materials could present, should they fall into the wrong hands.

Indeed, the motivating principle of this entire case is that SPLP works with very dangerous products in sometimes perilous circumstances that may well present an existential threat to the Intervenors and their constituencies. Thus, Intervenors do not dispute that a third category of materials denominated as Extremely Sensitive Materials might be appropriate.

Intervenors do take issue, however, with SPLP’s proposed manner of review of the Extremely Sensitive Materials. According to the proposed Amended Protective Order,

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<sup>1</sup> Intervenors find it curious that SPLP that says it needs this third category of Extremely Sensitive Materials in this action, but it did not need such a category in a similar action: *Pennsylvania State Senator Andrew Dinniman v. Sunoco Pipeline, L.P.*, PUC Docket No. P-2018-30011453 & C-2018-30011451 (the “Dinniman Action”). In the Dinniman Action, Senator Dinniman challenges many of the same practices that SPLP undertakes here, and sought similar discovery. A protective order was issued in the Dinniman Action that included only two categories of documents: (1) Confidential, and (2) Highly Confidential Protected Material.

Information deemed as “EXTREMELY SENSITIVE MATERIALS” . . . will only be provided through in-person review at the offices of Manko, Gold, Katcher & Fox, 401 City Avenue, Suite 901, *Bala Cynwyd, PA 19004*, between the hours of 9AM to 5PM, Monday - Friday. . . . Such review may be proctored and Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of SPLP’s counsel (including taking *detailed notes or cell phone pictures*).

(emphasis added). This process is unduly, even absurdly, restrictive, inconvenient, unnecessary, and will generate excessive expense for Complainants and Intervenors. (As Complainants have pointed out, the experts they have retained thus far are located in Pittsburgh and in Ontario, so a trip to Bala Cynwyd for document review will cause undue expense and inconvenience.)

Further, this process is hardly “the least restrictive means of limitation that will provide the necessary protections from disclosure” that SPLP portrays. Intervenors will not be able to take detailed notes of what will undoubtedly be thousands of pages of very complex documents, some containing charts, graphs, and photographs, making it unlikely that the notetaker can adequately convey what it is he or she is looking at and then be able to analyze the information contained in those documents. Nor will intervenors be able to take cell phone pictures of the documents (but perhaps they could take Polaroids, or 35mm?). The proposed process is preposterous, and outdated.

A company of the size and sophistication of SPLP must be aware that there are other ways of accomplishing the need for security without making Complainants, Intervenors, and their experts wear a bag over their heads. In this, the twenty-first century, there are numerous cloud-based software applications that can provide a restricted private portal by which all three categories of documents can be accessed. Access to each category can be limited to the appropriate Reviewing Representative, and other features, including tracking of such access, can be negotiated. (Possible vendors include Case Anywhere, Q Discovery, and even DropBox.)

To summarize, Intervenors do not object to the third category of documents. Intervenors do, however, object to the primitive, crippling means of access proposed by SPLP and respectfully request that this honorable Commission direct SPLP to make the Extremely Sensitive

Materials available to Intervenors through modern electronic means, *e.g.*, a private portal with password-restricted access.

Respectfully submitted,

*Patricia Biswanger* /e/

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for Chester County, East Goshen Township

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines,	:	
	:	
	:	Docket No. P-2018-3006117
	:	Docket No. C-2018-3006116
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.,	:	

**CERTIFICATE OF SERVICE**

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