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May 16, 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 MOTION TO STRIKE FILINGS DISALLOWED PURSUANT TO THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure 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	:		
	:	Docket Nos.	C-2018-3006116
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**MOTION TO STRIKE FILINGS DISALLOWED PURSUANT TO THE
COMMISSION’S RULES OF PRACTICE AND PROCEDURE**

Pursuant to 52 Pa. Code § 5.103, Sunoco Pipeline L.P. (SPLP) moves to strike three improper pleadings that Complainants have filed in this docket. All of these pleadings are disallowed under the Commission’s Rules of Practice and Procedure. First, on April 2, 2019, Complainants filed an answer to SPLP’s Answer to Complainants’ Motion to Compel and attempted to disguise their answer as a “Supplemental Discovery Memorandum” (Discovery Memorandum). Second, on April 30, 2019, Complainants filed an “Additional Memorandum in Support of Motion to Compel Discovery” (Additional Discovery Memorandum) filing this document as a brief, which is likewise disallowed under the Commission’s Procedural Rules. Third, on April 17, 2019, Complainants filed an answer to SPLP’s Answer to Complainants’

Motion for Reconsideration of Second Interim Order (Motion for Reconsideration) and attempted to disguise their answer as a “Reply Memo in Further Support of Its Motion for Reconsideration” (Reply Memo) and even filed that document as an answer to a motion, which it clearly is not. SPLP requests that Your Honor strike these filings and that Your Honor not consider any of these filings in rendering decisions in this matter. In the alternative, if these filings are not stricken, SPLP requests that Your Honor consider SPLP’s responses to these filings presented in Section II of this Motion.

I. ARGUMENT

Regardless of the titles Complainants use to masquerade these documents, they are answers to answers or otherwise not allowable pleadings or filings.

Under 52 Pa. Code § 5.1(a), only the following pleadings are allowed:

- (1) Application and protest.
- (2) Formal complaint, answer, new matter and reply to new matter.
- (3) Order to show cause and answer.
- (4) Petition and answer.
- (5) Preliminary objections.
- (6) Motions.

Id. Moreover, the Commission does not allow for briefs or memorandums in support of motions. Instead, a motion “must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies.” 52 Pa. Code § 5.103. There is no provision allowing a party to file as a separate document a brief in support of or in opposition to a motion. Likewise, an answer to an answer is not an allowable pleading. These filings should all be stricken and Your Honor should not consider them in rendering any decisions in this proceeding.

These pleadings are each an attempt to bolster deficient motions, change arguments, and/or offer new arguments. Complainants' original motions should have contained all of the arguments, fact, and law needed to support their motion. Repeatedly supplementing motions with separate briefs and arguments after the fact is not allowed, and it is prejudicial to SPLP because it does not have the opportunity to respond to those belatedly-made arguments.

Complainants' repeated practice of filing inadequate motions and then attempting to bolster those motions or change those motions through subsequent disallowable filings should not be rewarded but rather should be denounced and stopped.

The practice of filing an inadequate motion and/or hiding the ball on arguments in attempt to get the last word in with an answer to an answer or other document is unfair and prejudicial. SPLP is left with three choices: 1. violate the rules of practice and file yet another responsive document, 2. file a motion to strike the improper pleading, spurring another round of pleadings, or 3. do nothing and lose the ability to respond to new or altered arguments. Thus, SPLP is prejudiced because it cannot respond to arguments that should have been included in the initial pleading without violating the rules or filing another pleading attempting to have the rules enforced to which Complainants get to respond. The scenario Complainants create is a waste of the parties' and Your Honor's time and resources, and is in utter disregard of the rules of practice and procedure this Commission adopted to avoid such practices.

Accordingly, SPLP requests that Your Honor strike these filings and that Your Honor not consider any of these filings in rendering decisions in this matter. In the alternative, if these filings are not stricken, SPLP requests that Your Honor consider SPLP's responses to these filings presented below.

II. **SPLP Responses to Reply Memo and Discovery Memorandums**

SPLP only requests that Your Honor consider the below responsive arguments if Complainants filings discussed above are not stricken from consideration of this matter.

A. **Complainants' Reply Memo Regarding their Motion for Reconsideration**

In their Reply Memo (answer to SPLP's Answer to Motion for Reconsideration), Complainants are now claiming that their Motion only sought reconsideration of one prong of the Second Interim Order, Reply Memo at 2, when they clearly stated in their Motion that they were seeking reconsideration of five rulings of the Second Interim Order. Motion for Reconsideration at PP 1, 3. This changes Complainants' initial arguments and creates confusion.

Likewise, Complainants raise a new argument as to their interpretation of the Second Interim Order's ruling that Complainants could not incorporate I&E's Morgantown Complaint into their Amended Complaint. Reply Memo at 3. Complainants now claim that the Second Interim Order must have only meant to strike that reference, not the entire concept of incorporating the I&E Complaint into the Amended Complaint based on the falsehood that SPLP only argued that the I&E Complaint could not be incorporated by merely referencing in one sentence the I&E Complaint. *Id.* That absolutely was not the entirety of SPLP's argument on that issue. In fact, SPLP argued that incorporation of the I&E Complaint is improper for many reasons, including the fact that a settlement has been reached in that proceeding, which Your Honor recognized as a factor in striking the incorporation. Second Interim Order at 8 ("Further, the parties in that proceeding have indicated they have a settlement in principle which they intend to reduce to writing and submit as a joint petition for settlement for the Commission's consideration directly.").

Complainants' Reply Memo also attempts to argue that Complainants' met the standard for reconsideration when Complainants' did not even mention such standard in their Motion, let alone allege how they met the standard. As explained in SPLP's Answer, Complainants' have not met the standard for reconsideration. The Reply Memo also attempts to bolster the Motion's misleading allegations concerning the maximum operating pressure of the ME2X pipeline that Complainants seek to add via their proposed Second Amended Complaint. SPLP explained that amending the Complaint to add those allegations is pointless because to the extent they are accurate, they cannot amount to a violation of law. Complainants respond, without citation to any law or regulation, that there is a question whether the MOP is "permitted" or "safe." The standards for the determination of a pipeline's MOP are set forth in 49 CFR 195.406 and 195.106 and have stringent measures for design, construction, and testing and lay out the calculations based on those factors that determine the MOP. SPLP follows these regulations, which are the safety standards applicable here in determining the MOP of its pipelines; therefore its MOP cannot be deemed unsafe. Safe pipeline design and operation is an objective standard based on the federal regulations, not some undefined, subjective standard Complainants use as a catchall. Moreover, there is no regulatory approval for the MOP of these pipelines; it is not a factor that DEP considers in a permitting process. Complainants' attempts to bolster their Motion should not be allowed and Your Honor should strike and not consider their answer to answer in ruling on the Motion for Reconsideration.

B. Complainants' Discovery Memorandum and Additional Discovery Memorandum

Complainants' Discovery Memorandum fails no better, raising new arguments that are wholly meritless, contain misstatements, and/or demonstrate additional attempts to flout the Commission's rules of procedure to their advantage. First, Complainants argue that the three-

year statute of limitations in 66 Pa. C.S. § 3314 only applies to violations of acts prohibited under Chapter 33 of the statute. Discovery Memorandum at 1-2. Complainants' argument lacks merit. The Commonwealth Court has held that Section 3314 is "a general limitation period of three years **for any action under the Code.**" *Suburban East Tires, Inc. v. Pa. P.U.C.*, 582 A.2d 727, 729 (Pa. Commw. Ct. 1990) (applying three-year statute of limitations to consumer complaint against utility) (emphasis added). Complainants intentionally ignored and failed to address this precedential, binding case law that Complainants knew or should have known existed for this exact proposition (**SPLP cited and quoted this case five times** on this point in its Answer to which the Supplemental Discovery Memorandum responds). SPLP Answer to Motion to Compel at 6, 15, 31, 45, 47.

Second, Complainants' argument why they did not include SPLP's objections with their Motion to Compel as required under 52 Pa. Code § 5.342(g) lacks merit. Discovery Memorandum at 2. Complainants claim that the word "objection" is unclear. SPLP's document was clearly labeled objections; what is unclear is what Complainants believe this requirement could refer to other than including SPLP's actual objections. The fact that Complainants followed the requirement in the same rule to include their interrogatories verbatim belies the argument that they did not understand the requirement to include SPLP's actual objections. Instead, to gain apparent advantage, Complainants mischaracterized and omitted key portions of SPLP's objections. This demonstrates Complainants' repeated violation of the rules of procedure to gain advantage.

Finally, in their Additional Discovery Memorandum in support of their Motion to Compel, Complainants' raise new, misleading arguments and unverified allegations without even attempting to link these arguments and allegations to specific issues of the discovery dispute. Complainants raise a subsidence event that did not expose any pipeline, offering speculation that such event "may implicate the issues raised in" their Complaint, with no attempt to show how this irrelevant allegation supports their discovery motion. Additional Discovery Memorandum at 1. It does not—it is clearly offered as innuendo via speculation.

Next, Complainants also make a highly misleading argument based on an out-of-context statement that the Commission has referred "to the potential for 'mass destruction' to the public living near these facilities in the event of a terrorist attack" when justifying its refusal to make confidential security information public. Additional Discovery Memorandum at 2 (quoting only "mass destruction" from Metro Affidavit). Mr. Metro stated:

7) The requested records are "Confidential Security Information" within the meaning of The Public Utility Confidential Security Information Disclosure Protection Act (PUCSIDP A) (35 P.S. §§ 2141.1- 2141.8). In my professional opinion, disclosure of the requested records would compromise security against sabotage or criminal or terrorist acts, and non-disclosure is necessary for the protection of life, safety, public property or public utility facilities.
8) I based my opinion on the definition of "confidential security information" contained in PUCSIDPA and on that there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, or mass destruction.
9) In my professional opinion, release of the requested records would compromise security against sabotage or criminal or terroristic acts regarding pipeline facilities by illustrating the extent of the impact zone, including casualty and damage assessments at various ranges, regarding an accident (or sabotage event) on a pipeline. These Reports and Inspection Reports explicitly provides how such an assessment can be made (as well as the assessment for this particular pipeline); information which could clearly be used by a terrorist to plan an attack a pipeline (and particularly on these Sunoco pipelines, as they contains the specific operating

parameters of the pipelines) to cause the greatest possible harm and mass destruction to the public living near such facilities.

10) In my professional opinion, release of the requested records would allow for awareness of the potential effectiveness of a sabotage act on a pipeline (and in particular on these pipelines) to harm the public and create mass destruction, thereby potentially inciting such acts and creating a great risk to public safety.

Metro Affidavit at 2-3 (attached to Additional Discovery Memorandum). The context of this quote is that the Commission is fulfilling its duty to protect disclosure of Confidential Security Information to the public in a right-to-know request proceeding. Mr. Metro is explaining that the information in the documents is the type of information that those with malignant intent could use to attack the pipeline to cause mass destruction. *Id.* This is no revelation. That certain operational and locational information of almost any utility could be used by those with malignant intent to cause mass destruction is true of almost all utilities, such as natural gas pipelines, electric transmission facilities, and water mains. It's the reason for the Act. *See Re: Implementation of the Public Utility Confidential Security Information Disclosure Protection Act*, Docket No. L-00070185/57-256, 38 Pa.B. 4608 ("On November 29, 2006, Governor Edward Rendell signed into law the Public Utility Confidential Security Information Disclosure Act (CSI Act) (35 P. S. §§ 2141.1--2141.6). The CSI Act provides safeguards for confidential security information of public utilities that is provided to State agencies from disclosure that may compromise security against sabotage or criminal or terrorist acts.") That fact is no support to grant Complainants' request for a fishing expedition of essentially all documents in SPLP's possession relating to the Mariner East pipelines.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests Your Honor strike and not consider in rendering any decision in this matter Complainants April 30, 2019 Additional Memorandum in Support of Motion to Compel Discovery; April 2, 2019 Supplemental Discovery Memorandum, and April 17, 2019 Reply Memo in Further Support of Motion for Reconsideration. In the alternative, SPLP respectfully requests Your Honor consider its responses to these filings presented in Section II. of this Motion.

Respectfully submitted,



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Dated: May 16, 2019

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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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