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REPLY TO:
Center City

May 29, 2019

Via Electronic Filing

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

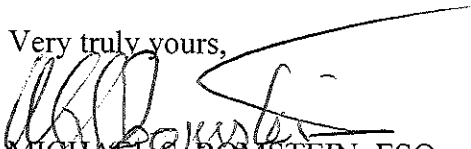
Re: Flynn, et al. v. Sunoco Pipeline L.P., Docket Nos. C-2018-3006116
and P-2018-3006117

**FLYNN COMPLAINANTS' RESPONSE IN OPPOSITION TO
SUNOCO'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 Flynn Complainants' Response in Opposition to Sunoco's Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure.

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.	:	

**FLYNN COMPLAINANTS' ANSWER TO
SUNOCO'S MOTION TO STRIKE FILINGS**

Flynn Complainants, by their attorney, Michael S. Bomstein, having been served with Sunoco's Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure ("the Motion"), and desiring to oppose same, hereby answers as follows.

Sunoco recites 52 Pa. Code § 5.1(a) as limiting the pleadings in a formal proceeding. Section 5.1(a)(6) identifies motions as allowable; it does not, however, include responses to motions. By Sunoco's logic, responses to motions are not permitted. Of course, § 5.103 provides separately for motion practice.

Nothing in § 5.1(a) or § 5.103 precludes the filing of a supplemental answer or response. This clearly is in the discretion of the administrative law judge. Section 1.2 (a) states that the applicable rules "shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

Sunoco writes, "Complainants' original motions should have contained all of the arguments, fact, and law needed to support their motion." (Motion at 3). Complainants,

however, could not have included reference to matters that occurred after the date of their initial filing. Supplemental answers and responses are often filed in “fact-specific” cases when new information becomes available that will have a bearing on the outcome of a pending motion.¹

Complainants’ Supplemental Discovery Memorandum, for example, was only a few pages long. Complainants had filed a Motion to Dismiss Objections and Compel Discovery. Sunoco responded and added two arguments not addressed in the Flynn motion. Only those two arguments were touched upon in the Supplemental Discovery Memorandum.

On April 30, 2019, Flynn Complainants filed an Additional Discovery Memorandum based upon two new important events: development of a new sinkhole and the PUC’s response to Eric Friedman’s right-to-know case. This was brand new information that could not previously have been raised in Complainants’ motion.

The PUC response in the Eric Friedman right-to-know case, for example, has now disclosed the existence of discoverable documents that contain information suggesting that a pipeline event could lead to mass destruction. While it is understandable that Sunoco may not want these documents to be disclosed, the information certainly ought to be considered by the Commission in deciding discovery issues.

On April 17, 2019, Complainants filed a reply Memo in response to Sunoco’s opposition to their Motion for Reconsideration. That Memo, again, only addressed arguments raised by Sunoco in their Answer to Flynn Complainants’ motion.

¹ Counsel has found no express prohibition on the filing of a brief or memorandum in support of a motion. It is odd, however, that Sunoco has filed a motion that emphasizes the importance of strict compliance with the rules of pleading but then goes ahead and ignores those rules. Section 5.1 identifies motions as pleadings. Section 1.31(a) specifically provides that pleadings must be divided into numbered paragraphs. Sunoco’s nine page “motion” has no numbered paragraphs at all. In reality, it is a brief or memorandum, just as many other motions filed by Sunoco are. Some have numbered paragraphs and some do not.

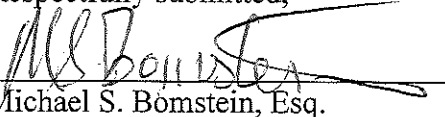
Sunoco cites no decisional authority in support of the claims in its motion/memorandum that the three additional/supplemental memoranda should be stricken. Complainants submit that the matters at stake in this formal proceeding are of substantial public importance.

It should be noted also that in a pending Commonwealth Court case² Sunoco applied to quash an appeal and DEP filed an answer. Sunoco then filed a reply to DEP's answer. DEP contended the reply was improper and should be stricken because the appellate rules provided only for an application and an answer, but not a reply to the answer.

Judge Ellen Ceisler summarily denied the application and allowed Sunoco's reply. Sunoco's position in that case was correct.

For all of the reasons set forth above, Flynn Complainants pray the Commission deny Sunoco's Motion to Strike.

Respectfully submitted,



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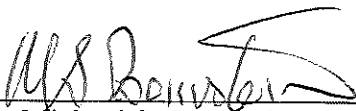
Dated: May 29, 2019

² Department of Environmental Protection v. Clean Air Council, et al., No. 313 CD 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: May 29, 2019

(PARTIES LIST UPDATED MARCH 28, 2019)

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