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July 9, 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 PRELIMINARY OBJECTIONS TO SECOND AMENDED COMPLAINT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Preliminary Objections to Second Amended Complaint 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 No. C-2018-3006116
Complainants,	:	Docket No. P-2018-3006117
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

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

Respectfully submitted,

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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: July 9, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
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	:	
Complainants,	:	Docket No. C-2018-3006116
	:	Docket No. P-2018-3006117
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF SUNOCO PIPELINE L.P.
TO THE SECOND AMENDED FORMAL COMPLAINT OF MEGHAN FLYNN ET AL.**

Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Second Amended Formal Complaint of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Complainants). SPLP requests that paragraphs 67-93 of the Second Amended Complaint be stricken as legally insufficient, containing scandalous and impertinent matter, and containing allegations for which Complainants lack standing where these Paragraphs directly violate and ignore the Order Granting in Part and Denying in Part Complainants’ Motion for Reconsideration of Second Interim Order issued in this proceeding on June 6, 2019.¹

¹ SPLP previously filed Preliminary Objections to the First Amended Complaint on January 10, 2019. The Second Interim Order dated March 12, 2019 in this proceeding granting in part and denying in part SPLP’s Preliminary Objections. The Second Interim Order denied the following preliminary objections, which SPLP will not raise again herein, but reserves its right to raise these issues in the future: Failure to join necessary parties, insufficient verification, and lack of jurisdiction over Chester and Delaware County emergency response agencies and school districts.

1. Paragraphs 67-93 of the Second Amended Complaint must be stricken because they were filed in direct violation of the Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order issued in this proceeding on June 6, 2019. That order specifically denied Complainants' request to amend their complaint a second time to include allegations nearly identical to the allegations that the Commission Bureau of Investigation and Enforcement (BIE) raised in its formal complaint at Docket No. C-2018-3006534 (the Morgantown Complaint).

2. The Commission's regulations allow a respondent to file preliminary objections to a complaint on the following grounds:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101.

3. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R.C.P 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be

granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

4. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

5. Here, on or about March 21, 2019 Complainants' filed a Motion for Reconsideration that requested permission to amend the complaint to include allegations nearly identical to the Morgantown Complaint. The Motion contained as an Attachment the proposed new paragraphs that would incorporate I&E's Complaint, which were labeled as paragraphs 67-93 therein and appear to be identical to Paragraphs 67-93 of the Second Amended Complaint.

6. ALJ Barnes clearly denied Complainants' request to include the Morgantown Complaint allegations in their Second Amended Complaint. She stated:

Leave to amend a complaint is not permitted where there is an error of law or resulting prejudice to an adverse party. *Piehl v. City of Philadelphia*, 601 Pa. 658, 672 (2009) citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 (Pa. 1983). The doctrine of *lis pendens*, first recognized in *Hessenbruch v. Markle*, 194 Pa. 581, 593, 45 A. 669, 691 (1900), was designed to protect a defendant from having to defend several suits on the same cause of action at the same time. The prior case, the parties, and the requested relief must be the same for the doctrine to bar a suit. *Hillgartner v. Port Authority of Allegheny County*, 936 A.2d 131, 137 (Pa. Cmwlth. 2007). Additionally, the prior action must be pending. *Norristown Auto Co. v. Hand*, 562 A.2d 902 (Pa. Super. 1989). Once the

defense is raised, a court may dismiss or stay the subsequent proceedings. If the identity test is not strictly met, but the action involves a set of circumstances where the litigation of two suits would create a duplication of effort on the part of the parties, waste judicial resources and “create the unseemly spectacle of a race to judgment” the trial court may stay the later-filed action. *Crutchfield v. Eaton Corp.*, 806 A.2d 1259 (Pa. Super. 2002).

“Prior to judicial resolution of a dispute, an individual must as a threshold show that he has standing to bring the action.” *Stilp v. Commonwealth*, 927 A.2d 707, 710 (Pa. Cmwlth. 2007). The seminal case for standing is *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975), which states that a person who is not adversely affected by the matter he seeks to challenge is not “aggrieved” and, therefore, has no standing to obtain judicial relief.

To establish an “aggrieved” status, a party must have a substantial interest, that is, there must be some discernible adverse effect to some interest other than the abstract interest of all citizens having to comply with the law. Additionally, an interest must be direct, which means that the person claiming to be aggrieved must show causation of the harm to his interest and not a remote consequence of the judgment, a requirement addressing the nature of the causal connection. *Pilchesky v. Doherty*, 941 A.2d 95 (Pa.Cmwlth. 2008).

None of the Flynn Complainants have averred that they reside, work or attend school in Morgantown, Berks County. They argue they are not requesting relief in Morgantown, but rather in Chester and Delaware Counties. Although the I&E complaint addresses general practices in addition to a specific leak incident in Morgantown, the Flynn Complainants do not have the same standing as I&E to bring an action regarding reasonableness of service across the Commonwealth of Pennsylvania. This is not a class-action lawsuit. The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa.Code § 1.8 as I&E to bring such a complaint against Respondent.

The Flynn Complainants have not averred that they were personally aggrieved by the leak incident in Morgantown. They may elect to petition to intervene in the I&E complaint proceeding. The averments in I&E’s complaint will be addressed in that proceeding. I am unpersuaded to expand the scope of the instant case to essentially include all issues currently pending before the Commission at Docket No. C-2018-3006534, given the similarity of

the concurrently pending proceeding and the doctrine of *lis pendens*. It is not reasonable to require Sunoco to defend itself in two concurrent complaint proceedings involving identical allegations when the issues may be addressed and potentially resolved in the I&E complaint proceeding, prior to a resolution of the instant case. This is also more judicially efficient. I reiterate my prior statement in the Second Interim Order:

In the event that this relief requested becomes moot at a future date because it occurs as a result of the resolution of the I&E complaint proceeding, it may be denied as moot or Complainants may withdraw this request for relief.

Second Interim Order at 8.

At Public Meeting on May 23, 2019, Commissioner John F. Coleman, Jr.'s Motion passed referring the complaint proceeding initiated by I&E at C-2018-3006534, including five pending Petitions to Intervene and Answers in Opposition thereto, as well as the Petition for Joint Settlement, and an Answer in Opposition to the Joint Petition, to the Office of Administrative Law Judge (OALJ) to designate a presiding officer, for such further proceedings and hearings, as deemed necessary. Although I&E and Sunoco have submitted a Joint Petition for Approval of Settlement, it has yet to be approved by a final Commission order. Any outstanding petitions to intervene will be considered and ruled upon in that proceeding. Persons and entities seeking to intervene in that proceeding will be given an opportunity to be heard and potentially an opportunity to submit statements in support of or in opposition of the settlement.

I am persuaded to allow the Flynn Complainants to file a Second Amended Complaint to aver claims that Sunoco intends to transport HVLs through a hybrid of pipelines specifically in Delaware and Chester Counties at inappropriate maximum operating pressures. Also, Complainants may request a remaining life study regarding not only the ME1 pipeline but also the workaround 12-inch pipeline, which differs from the I&E complaint. Sunoco will have twenty days from the date of service of the Second Amended Complaint to file an Answer and other responsive pleadings.

Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-7.

7. That ALJ Barnes intended to fully preclude these allegations in this proceeding is likewise clear from the Order Granting In Part And Denying In Part Complainants' Motion To Compel Responses To Complainants' Interrogatories And Document Request Set 1 issued on the same day. In that order, ALJ Barnes denied Complainants' motion to compel discovery into any of the allegations regarding the Morgantown Complaint. *Id.* at 14-25. She stated:

Because these requests pertain to the I&E complaint proceeding and I am not granting Complainants leave to add identical averments to the I&E complaint to a Second Amended Complaint pursuant to the doctrine of *lis pendens*, Sunoco need not answer these requests.

Id. at 25.

8. Nonetheless, Complainants ignored these orders and filed the Second Amended Complaint that contains allegations nearly identical to those of the Morgantown Complaint.

Second Amended Complaint Allegation	Identical BI&E Allegation
P 67	PP 14, 15
P 68	P 16
P 69	P 17
P 73	P 18
P 74	P 19
P 75	P 20 (first sentence)
P 76	P 21 (first sentence)
P 77	P 22
P 78 (first sentence)	P 25
P 79 (first two sentences)	P 26
P 80	P 28 (minor difference in last sentence)
P 81	P 29
P 82 (first two sentences)	P 30
P 83	P 31 (except first sentence)
P 84	P 32
P 85 (first sentence)	P 33
P 86	P 34
PP 87, 88, 89	P 35
PP 90 (except last two sentences), 91 (except last sentence)	P 36
P 92 (except last sentence)	P 37
P 93 (except last sentence)	P 38

9. Complainants' ignored and violated the Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order when the included Paragraphs 67-93 in their Second Amended Complaint. Accordingly, these paragraphs are legal insufficient and contain scandalous and impertinent matter.

10. Moreover, as Your Honor has already ruled, Complainants lack standing to raise these allegations. *Supra* Paragraph 6. Accordingly, these Paragraphs should be stricken because Complainants lack standing to bring the allegations therein.

11. Likewise, Your Honor already ruled that these claims are barred by the doctrine of *lis pendens*. *Supra* Paragraphs 6-7. Accordingly, these Paragraphs should be stricken because they are legally insufficient.

WHEREFORE, SPLP respectfully requests that the Second Amended Complaint Paragraphs 67-93 be stricken.

Respectfully submitted,



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Dated: July 9, 2019

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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