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August 15, 2019

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

Re: In Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Sunoco Pipeline, L.P., a/k/a Energy Transfer Partners
Docket Number C-2018-3006534

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission please find Intervenor West
Whiteland Township's Comments in Response to Joint Petition for Approval of Settlement with
regard to the above-captioned proceeding.

All parties of record have been served pursuant 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 cooperation and assistance.

Very Truly Yours,

Lamb McErlane, PC

By: /s/ Vincent M. Pompo
Vincent M. Pompo
Solicitor for West Whiteland Township

VMP/ajb
Enclosures
cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant,	:	Docket No. C-2018-3006534
v.	:	
	:	
Sunoco Pipeline, L.P., a/k/a	:	
Energy Transfer Partners,	:	
Respondent.	:	

**COMMENTS OF WEST WHITELAND TOWNSHIP IN RESPONSE TO JOINT
PETITION FOR APPROVAL OF SETTLEMENT**

West Whiteland Township, Chester County, Pennsylvania (the “Township”), hereby submits the following Comments in Response to the Joint Petition for Approval of Settlement filed by Complainant Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement and Respondent Sunoco Pipeline, L.P., a/k/a Energy Transfer Partners in the above-captioned proceeding:

A. OVERVIEW

On December 13, 2018, Complainant Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”) filed a formal complaint against Respondent Sunoco Pipeline, L.P., a/k/a Energy Transfer Partners (“Sunoco”) alleging violations of the United States Code, Code of Federal Regulations and the Pennsylvania Code which were discovered in connection with the investigation of a leak that occurred in Morgantown, Berks County, Pennsylvania.

The I&E complaint further contends that Sunoco’s deficient procedures and overall application of corrosion control and cathodic protection practices are relevant to the entirety of the Mariner East One (“ME1”) pipeline, and thus, there is a statewide concern with Sunoco’s corrosion

control program and the soundness of Sunoco’s engineering practices with respect to cathodic protection.

On February 11, 2019, the Township filed a Petition for Intervention. On March 1, 2019, I&E and Sunoco filed a joint letter of request for abeyance of the proceedings pending the submission of a settlement agreement. On March 4, 2019, the request was granted via Secretarial Letter. On April 3, 2019, I&E and Sunoco submitted a Joint Petition for Approval of Settlement which requested that the Commission render a decision on the Joint Petition rather than refer the matter to the Commission’s Office of ALJ for assignment of a presiding Administrative Law Judge. (“ALJ”).

By Opinion and Order dated June 10, 2019, the Commission concluded that in the interest of assuring due process for all interested parties that the proceeding, including the pending Petitions to Intervene and Joint Petition for Approval of Settlement, be referred to a presiding ALJ. By Order dated July 15, 2019, ALJ Barnes granted West Whiteland Township’s Petition for Intervention and afforded the Township the ability to submit comments to the proposed settlement agreement. The comments of the Township follow.

B. COMMENTS

I. The Rights and Obligations Set Forth in Paragraph 17, Subparagraphs A, C, D, E & F of the Joint Petition for Approval of Settlement.

West Whiteland Township takes no affirmative or negative position in regards to the rights and obligations set forth in the following Paragraph 17 Subparagraphs: Subparagraph A (concerning imposition of a civil penalty); Subparagraph C (concerning in-line inspection and close interval survey frequency of ME1); Subparagraph D (concerning revision of certain Sunoco standard operating procedures); Subparagraph E (concerning the implementation of

revised procedures), and; Subparagraph F (concerning pipe replacement as it relates to corrosion). West Whiteland Township respectfully defers to ALJ Barnes' expertise as to whether these certain rights and obligations constitute terms and conditions that are in the public interest.

II. Paragraph 17, Subparagraph B of the Joint Petition for Approval of Settlement

The Township supports the provisions contained within Paragraph 17, Subparagraph B of the Joint Petition for Approval of Settlement which obligate Sunoco to retain an independent expert to produce a Remaining Life Study for ME1. The Township further supports the agreement that Sunoco will provide a summary report on an annual basis which supplements the Remaining Life Study for so long as the ME1 pipeline remains in Highly Volatile Liquid service. In addition, the Township requests that certain amendments to the Remaining Life Study provisions contained in Paragraph 17, Subparagraph B be adopted.

First, the Township requests that the ALJ direct Sunoco to produce information to the Township as to the Remaining Life Study in greater detail than that of the public. On page 6 of the Joint Petition for Approval of Settlement it is stated that: “[a] summary of the expert’s findings shall be made public (excluding proprietary or confidential security information)”.

The Township possesses unique obligations pursuant to the Pennsylvania Second Class Township Code, 53 P.S. § 65101, to protect the health, safety and welfare of all citizens and members of the public that work and traverse through the Township. The Township is similarly obligated pursuant to the Pennsylvania Emergency Management Code, 35 Pa. C.S. §7103, to reduce the vulnerability of people and communities to damage, injury and loss of life and property resulting from disaster; and is tasked with providing a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

Additionally, the Township is obligated pursuant to the Pennsylvania Constitution, PA CONST. art. I, § 27, to serve as trustee to protect the natural resources, environment and quality of life in the Township for all citizens and members of the public that work and traverse through the Township.

As a result, the Township requires full and complete access to the content of the Remaining Life Study and the subsequent annual updates in order to properly discharge its statutory and constitutional obligations, subject to appropriate conditions for nondisclosure to third parties of any proprietary or confidential security information. Moreover, there are two Pennsylvania statutory mechanisms in place that by default prevent the Township from disclosure of Sunoco's proprietary and confidential security information.

First, pursuant to the Pennsylvania Right to Know Law, 65 P.S. § 67.101, et seq., the Township is obligated to protect proprietary and confidential secured information through the denial of requests from the public for any record in its possession where the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which includes:

- (i) Documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
- (ii) Lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and
- (iii) Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.¹

¹ 65 P.S. § 67.708(b)(2)

The Right to Know Law also prevents the Township from releasing any record that constitutes or reveals a trade secret or confidential proprietary information.²

Second, pursuant to the Pennsylvania Sunshine Act, 65 Pa. C.S. § 716, the Township is prevented from discussing, deliberating or taking official actions, in a forum open to the public, which would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law.

The exclusion of anything less than the full and complete Remaining Life Study provided to the Township would potentially have a deleterious effect on the Township's officials and emergency response personnel's ability to properly analyze the dangers presented by ME1 and would prevent said persons from making critical decisions related to the protection of the public health and safety. That being said, the Township expressly recognizes the sensitive nature of any proprietary or confidential security information and the desire of Sunoco to shield release of this information from the public. The Township is amenable to engaging with Sunoco to develop measures which allow the release of the information to the Township and other public agencies with emergency planning responsibilities and which would protect the proprietary and confidential security information from disclosure to third parties.

Furthermore, as the Joint Petition for Approval of Settlement contemplates that the Remaining Life Study be produced for the entirety of the span of ME1, the Township requests that Paragraph 17, Subparagraph B be amended to include that Sunoco shall designate within the Remaining Life Study, and provide an updated summary on annual basis, a separate section which addresses the portions of ME1 which are sited within the Township.

² 65 P.S. § 67.708 (b)(11)

As stated by I&E in Paragraph 39 of the Complaint in this matter, the Morgantown leak raises concerns with the integrity of the entirety of the ME1 pipeline:

“While the data reviewed was largely specific to the site of the leak, SPLP's procedures and overall application of corrosion control and cathodic protection practices are relevant to all of ME1 and, thus, I&E alleges that there is a statewide concern with SPLP's corrosion control program and the soundness of SPLP's engineering practices with respect to cathodic protection.”

The ME1 pipeline runs directly through the Township including the center of the commercial district, is located next to the largest mall in Chester County, runs behind the Chester County library, is underneath Route 30 and Amtrak/SEPTA rail lines and is also located within close proximity to schools, senior care facilities, apartment complexes and of course countless residences.

The same engineering and corrosion control practices of Sunoco which are alleged to be the causation of the failure of ME1 in Morgantown are purportedly also utilized for the segments of ME1 located in the Township. As a result, there exists a reasonable belief that all or portions of the ME1 pipeline which are located in the Township may be corroded to an equal or greater degree. Unless and until the Township receives a Remaining Life Study specific to the portions of ME1 which are located within the Township it cannot make the critical assessments necessary to ensure the protection of the health and safety of all persons and property within its jurisdictional boundaries.

By way of further illustration, if the Remaining Life Study produced merely states its conclusions in general terms as to the remaining useful life of ME1 across the Commonwealth, the information in this form would not provide adequate information to the Township that the portions of ME1 sited within its boundaries will require greater control measures or remediation to adhere to the generally stated remaining useful life of ME1. For these reasons, the Township

respectfully suggests that the Remaining Life Study be segmented to include a specific analysis of the portions of ME1 within the Township.

C. CONCLUSION

In conclusion, the Township respectfully requests that ALJ Barnes issue a Recommended Decision which amends Paragraph 17, Subparagraph B of the Joint Petition for Settlement to require Defendant Sunoco to provide the Township with the full and complete Remaining Life Study produced, and annual summary reports for as long as ME1 remains in Highly Volatile Liquid service, including the portions thereof which contain proprietary and confidential security information, and; to require Defendant Sunoco to include within the Remaining Life Study a separate and distinct section which address the remaining life of ME1 within West Whiteland Township.

Respectfully submitted,

LAMB MCERLANE PC

Dated: August 15, 2019

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CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

Via Electronic Mail

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Via electronic mail and U.S. Mail

Dated: August 15, 2019

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