



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

September 16, 2019

**VIA ELECTRONIC FILING**

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and  
Enforcement v. Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners  
Docket No. C-2018-3006534  
**I&E Reply Comments**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Reply Comments in Support of the Joint Petition for Approval of Settlement in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "S M Wimer", is positioned above the typed name of Stephanie M. Wimer.

Stephanie M. Wimer  
Senior Prosecutor  
PA Attorney I.D. No. 207522

Michael L. Swindler  
Deputy Chief Prosecutor  
PA Attorney I.D. No. 43319

SMW/jfm  
Enclosure

cc: Honorable Elizabeth H. Barnes  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,  
Complainant,

v.

Sunoco Pipeline, L.P. a/k/a  
Energy Transfer Partners,  
Respondent

Docket No. C-2018-3006534

**REPLY COMMENTS OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE ELIZABETH H. BARNES:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, submits these Reply Comments to the Comments submitted by West Goshen Township, West Whiteland Township and the Flynn Intervenors<sup>1</sup> regarding the Joint Petition for Approval of Settlement (“Settlement”) filed on April 3, 2019 by I&E and Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners (“SPLP” or “Company”). The Settlement resolves alleged violations of the United States Code, Code of Federal Regulations and Pennsylvania Code that I&E avers were discovered during an I&E Safety Division investigation of an ethane and propane leak on SPLP’s Mariner East (“ME1”) pipeline on April 1, 2017 in Morgantown, Berks County, Pennsylvania.

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<sup>1</sup> The “Flynn Intervenors” are a collective reference to Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines, who filed a Complaint against Sunoco Pipeline, L.P. (“SPLP,” “Respondent,” or “Company”) at Docket No. C-2018-3006116, and concurrently filed a Petition for Interim Emergency Relief against SPLP at Docket No. P-2018-3006117 on November 19, 2018. These dockets have been consolidated. The Flynn Intervenors petitioned to intervene in the instant matter averring that they are individuals from Delaware or Chester Counties residing and/or working in close proximity to SPLP’s Mariner East pipelines. The Flynn Intervenors are represented by counsel.

During the pendency of the settlement negotiations that ultimately culminated in the Settlement, several persons and entities sought to intervene in this matter: Thomas Casey on December 21, 2018; West Goshen Township on January 18, 2019; Josh Maxwell on February 8, 2019; West Whiteland Township on February 11, 2019; Edgmont Township on March 19, 2019; and the Flynn Intervenors on June 11, 2019. I&E and SPLP recognized these interests by expressly including language in the Joint Petition for Settlement which provided an opportunity for any interested entity or person to file comments to the Settlement followed by a reply comment period for I&E and SPLP. The Settlement was submitted to the Commission directly for its review and consideration of the outstanding Petitions to Intervene.

By Commission Order entered June 10, 2019, the Commission referred the matter to the Office of Administrative Law Judge (“OALJ”) for further proceedings.

On June 28, 2019, I&E and SPLP filed an Addendum to April 3, 2019 Joint Petition for Approval of Settlement to expand the time in which a party may elect to withdraw from the Settlement should the Settlement be modified in any way.

The matter was assigned to presiding Administrative Law Judge (“ALJ”) Elizabeth H. Barnes who issued an Order on July 15, 2019, which granted all of the Petitions to Intervene, provided the intervenors with the opportunity to file Comments to the Settlement by August 16, 2019, and granted permission to all parties to file Reply Comments by September 16, 2019.<sup>2</sup> (“July 15, 2019 Order”).

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<sup>2</sup> The specific deadlines of August 16, 2019 and September 16, 2019 for the filing of Comments and Reply Comments, respectively, were set forth in ALJ Barnes’ July 15, 2019 e-mail to the parties.

On August 12, 2019, the Flynn Intervenors filed their Comment in Opposition to the Proposed Settlement. (“Flynn Comment”). On August 15, 2019, West Goshen Township filed its Public Comments in Opposition to the Joint Petition for Approval of Settlement Dated April 3, 2019. (“West Goshen Township Comment”). On August 15, 2019, West Whiteland Township filed its Comments in Response to the Joint Petition for Approval of Settlement. (“West Whiteland Township Comment”). I&E hereby files its Reply, addressing each one of the filed Comments in turn.

## **I. THE SETTLEMENT AS FILED IS IN THE PUBLIC INTEREST**

At the outset, it should be noted that the Settlement presents a carefully crafted package of relief that very likely cannot be obtained at the conclusion of litigation as SPLP has agreed to perform actions above and beyond those required by applicable law or regulation. In essence, the presiding ALJ and Commission likely lack the authority to direct or order SPLP to perform certain actions captured by this Settlement that exceed the standards set forth in the Federal pipeline safety regulations.

Specifically, SPLP has agreed to retain an independent expert, selected by I&E, to perform a Remaining Life Study of ME1 that is intended to assess the longevity of the pipeline using specific calculations and metrics that were suggested by I&E and agreed-to by SPLP. A summary of the independent expert’s findings will be publicly available, excluding proprietary or confidential security information (“CSI”).<sup>3</sup> Furthermore, the

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<sup>3</sup> The Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6, prohibits disclosure of material that could compromise security or endanger life, safety, or public utility facilities. Government agencies are prohibited from releasing, publishing or disclosing a public utility record that contains CSI, pursuant to 35 P.S. § 2141.5(a), and any public official or employee who knowingly or recklessly releases such information faces stiff penalties. 35 P.S. § 2141.6.

Remaining Life Study will be supplemented on an annual basis for as long as ME1 transports highly volatile liquids and an annual summary report will be publicly available, excluding proprietary information or CSI. The Remaining Life Study serves to continually enhance the evaluation of the integrity of ME1 in addition to the requirements pertaining to integrity management of a pipeline as set forth in the Federal pipeline safety regulations. Importantly, there is no current requirement under Federal law or regulation for a pipeline operator to perform a Remaining Life Study.

Moreover, SPLP agreed to perform In-Line Inspections (“ILI”) and Close Interval Surveys once every eighteen (18) months for the next three (3) calendar years, which is an interval in excess of the Federal regulatory requirements. *See* 49 C.F.R.

§ 195.452((j))(3) (requiring a pipeline operator to establish five-year assessment intervals not to exceed sixty-eight (68) months for assessing the pipeline’s integrity. Such assessment may be performed by using an internal inspection tool capable of detecting corrosion. 49 C.F.R. § 195.452(j)(5)(i)). *See also* 49 C.F.R. § 195.573(a)(2) (permitting a pipeline operator to determine when a close interval survey or comparable technology is practicable and necessary). These remedial measures, which include implementation of SPLP’s revised and improved cathodic protection procedures and increased ILI runs and Close Interval Surveys, are designed to mitigate and reduce corrosion as well as the severity of leaks on the entire length of ME1.

Had this matter been fully litigated, neither I&E nor the intervening parties would have been able to obtain relief outside of what the law and regulations prescribe. I&E, thus, submits that the Settlement as filed is in the public interest and should be approved

expeditiously and without modification so that the public may promptly realize the benefits of the Settlement.

I&E hereby incorporates its Statement in Support of the Joint Petition for Approval of Settlement that was filed on April 3, 2019.

## **II. REPLY COMMENTS**

### **A. I&E Reply to the West Goshen Township Comment**

The West Goshen Township Comment heavily relies on the extra-record expert opinion report of Robert B. Kuprewicz, President of Accufacts Inc. (“Accufacts”), which was appended as Exhibit “A.” The West Goshen Township Comment also includes Exhibit “B,” the Consent Order and Agreement between the Pennsylvania Department of Environmental Protection (“DEP”) and SPLP dated February 8, 2018 and associated documents. I&E has separately, but concurrently, filed a Motion to Strike both Exhibits “A” and “B” as impermissible extra-record evidence. Accordingly, I&E’s response to the West Goshen Township Comment will not address the substance of the Accufacts report or DEP Consent Order and Agreement.<sup>4</sup> The remainder of the West Goshen Township Comment presents no reasonable basis to alter the Settlement as filed.

#### *i. Clarification of Applicability of Settlement*

West Goshen Township first asserts that it is unclear whether the Settlement terms apply to the full 300-mile length of ME1 or whether the Settlement is only limited to certain segments of the pipeline. West Goshen Township Comment at 2. I&E clarifies that ME1 is divided into certain segments and these segments cover the entirety of the

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<sup>4</sup> In its Motion to Strike, I&E requested the opportunity to submit a written response to both Exhibits “A” and “B” should they not be stricken.

pipeline. Thus, all of the relief encompassed in the Settlement, including the Remaining Life Study, accelerated ILI runs and Close Interval Surveys, and revised cathodic protection procedures apply to the entire length of ME1. The applicability of the relief obtained by virtue of the Settlement to the entirety of ME1 weighs heavily in favor of approving the Settlement as filed especially since the leak occurred in only one specific location on the pipeline.

West Goshen Township next desires to expand the relief obtained in the Settlement by applying it to SPLP pipelines other than ME1. However, West Goshen Township has not identified in its Comment any specific alleged violations with any other SPLP pipeline, including what it describes as the “ancient” 12-inch “work around pipeline,” that merit modifying the Settlement. West Goshen Township Comment at 2. ME1 is the pipeline that experienced the leak that was investigated by the I&E Safety Division. Nevertheless, all SPLP pipelines stand to benefit from the revised corrosion control and cathodic protection procedures that were implemented by SPLP on a Company-wide basis.

ii. *The Agreed-Upon Civil Penalty is Commensurate with the Alleged Violations*

West Goshen Township attacks the agreed-upon civil penalty set forth in the Settlement and claims that it is disproportionately low when considering the potential for catastrophe. West Goshen Township Comment at 6. However, the Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*

(“Policy Statement”) requires an examination of the consequences of the conduct at issue. 52 Pa. Code § 69.1209(c)(2). It provides that “[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Consequences of a serious nature did not occur with respect to the April 1, 2017 leak in Morgantown. The leak did not result in a fire, explosion or cause personal injury. I&E is unaware of any reported property damage. As consequences of a serious nature did not ensue, this factor weighs in favor of the agreed-upon civil penalty of \$200,000.

In its Statement in Support, I&E cited numerous examples of enforcement matters involving pipeline failures attributable to corrosion that were decided by the Commission over the past ten (10) years. I&E Statement in Support at 15-17. The agreed-upon civil penalty in this matter is squarely on-point when considering that no serious consequences occurred and when comparing the civil penalty to similar matters. Further, if all of the requested relief were monetized in the Settlement, the total could amount to seven figures, which provides unprecedented relief for the leak that occurred.

iii. *The Agreed-Upon Civil Penalty is Commensurate with SPLP’s Documented Compliance History Before the Commission*

West Goshen Township next argues that a maximum civil penalty of \$2,000,000 is warranted to deter future non-compliance and asserts that SPLP has been an irresponsible and cavalier operator. West Goshen Township Comment at 9. West Goshen Township attempts to illustrate SPLP’s alleged non-compliance by providing examples of the pipeline being ordered to shut down, the subject of fines issued DEP, and the subject of a



breach of contract action initiated by West Goshen Township. West Goshen Township Comment at 8-9. However, West Goshen Township does not dispute I&E's statement that the Commission has not found SPLP in violation of any law or regulation or directed SPLP to pay a civil penalty in connection with a violation. West Goshen Township Comment at 8 (confirming that the Commission has not imposed civil penalties on SPLP); I&E Statement in Support at 14.

When evaluating the Policy Statement factor that considers compliance history, 52 Pa. Code § 69.1201(c)(6), the Commission reviews a public utility's compliance with laws and regulations subject to the Commission's jurisdiction and as found in Commission records. For example, the Commission has stated that:

[T]he Respondent's compliance history and the need to deter future violations are important considerations when weighing the amount of a civil penalty. 52 Pa. Code § 69.1201. We believe that it is reasonable to review Commission records for a period of three years prior to the date of the filing of the Complaint in this case and up to and including the date of Commission action in this matter to determine whether a particular company has a satisfactory compliance record.

*Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. First Taxi Cab Company d/b/a C-Pride Taxi Company LLC*, Docket No. C-2016-2548862 (Order entered February 8, 2018) at 4.

With respect to matters involving natural gas distribution companies and pipeline operators, the Commission has similarly considered only compliance records before the Commission. See *Pa. Pub. Util. Comm'n, Bureau of Investigation & Enforcement v. Burgly Gas & Oil Company*, Docket No. C-2014-2411284 (Order entered March 14, 2019) at 11 (finding that since the company had no substantive compliance history with

the Commission, a lower penalty was warranted); *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills MHC, LLC*, Docket No. C-2015-2468131 (Final Order entered August 11, 2016 adopting the Initial Decision of Administrative Law Judge Joel H. Cheskis dated June 7, 2016) (holding there was no history of noncompliance at the Commission as no compliance actions were taken against the entity before the Commission); *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.*, Docket No. M-2013-2338981 (Order entered September 26, 2013) (holding that upon a review of Commission records concerning the Company's compliance history, the case at issue represented the ninth time in approximately five years in which alleged gas safety violations were raised before the Commission).

Therefore, actions taken by other governmental agencies and jurisdictions are not considered in determining a Company's compliance history at the Commission. The agreed-upon civil penalty is supported in the instant matter as it is the first where SPLP would pay a civil penalty to the Commission in connection with alleged violations of federal and state laws and regulations that were brought before the Commission. As such, this Policy Statement factor supports the agreed-upon civil penalty.

iv. *Selection of Qualified Independent Expert to Perform Remaining Life Study and Disclosure of the Study*

West Goshen Township next questions the selection process to retain a qualified independent expert to perform the Remaining Life Study. I&E and SPLP agreed that SPLP must disclose whether any proposed expert previously performed work in relation

to ME1. West Goshen Township asserts that no expert should be considered who previously worked for SPLP or its parent company, Energy Transfer Company (“ETC”), in any capacity and in relation to any SPLP or ETC pipeline. West Goshen Township Comment at 9.

West Goshen Township’s request is challenging at best and likely not possible. The highly technical subject matter of the Remaining Life Study renders the nation-wide field of qualified experts to be slim. I&E assures the Commission that in vetting the proposed experts, it will carefully scrutinize their background including any past associations with SPLP and/or ETC in an effort to evaluate their independence. However, given the vast network of ETC pipelines, I&E is unable to promise that the selected qualified expert would not have performed any work for SPLP and/or ETC. Even if an expert has previously worked in some capacity as a consultant regarding an SPLP or ETC pipeline, such work would not necessarily compromise the expert’s ability to produce a Remaining Life Study based on objectivity and facts.

West Goshen Township suggests that the Remaining Life Study should be released to the public or, alternatively, be provided to West Goshen Township pursuant to an existing non-disclosure agreement with SPLP. I&E cautions that portions of the Remaining Life Study could consist of CSI and therefore would not be able to be publicly released. *See* 35 P.S. § 2141.2 (relating to definition of “Confidential Security Information”). I&E takes no position on West Goshen Township’s request to obtain a copy of the Remaining Life Study through the non-disclosure agreement it maintains with SPLP.

*v. Revision of Procedures and Implementation of Revised Procedures*

West Goshen Township indicates that it cannot comment on the adequacy of SPLP's revised procedures as the Settlement does not disclose the revisions. West Goshen Township Comment at 10. In this instance, I&E sought in the Complaint very specific revisions to SPLP's corrosion control and cathodic protection procedures. Complaint at ¶ 47(c)-(e). The Company agreed to the revisions and has since implemented the revised and improved procedures. I&E asserts that it is unnecessary and indeed would be highly unusual to append documentary evidence to a Settlement to demonstrate that the agreed-upon measures - in this instance, revised procedures - were undertaken to the satisfaction of an intervening party. Rather, I&E, in its role as the prosecutory bureau at the Commission, routinely reviews the procedures of natural gas distribution companies to ensure compliance with federal pipeline safety regulations without the input of third parties.

Therefore, the West Goshen Township Comment does not present a reasonable basis to modify the Settlement and the Settlement should be approved in its entirety.

**B. I&E Reply to the West Whiteland Township Comment**

In its Comments, West Whiteland Township generally takes no position on the relief sought in the Settlement except that West Whiteland Township supports the agreed-upon term directing SPLP to provide a Remaining Life Study of ME1. However, West Whiteland Township requests that the entirety of the Remaining Life Study and subsequent annual updates, as opposed to a public summary of the Study's findings, be made available to West Whiteland Township. West Whiteland Township Comment at 4.

West Whiteland Township further requests that the Remaining Life Study include a separate section that specifically addresses the portions of ME1 that are situated in West Whiteland Township. West Whiteland Township Comment at 5.

I&E takes no position on West Whiteland Township's request to obtain the full Remaining Life Study provided that such request is made to SPLP. As noted above, the Remaining Life Study could contain CSI and I&E lacks the ability to share or disclose such records. *See* 35 P.S. § 2141.6 (providing penalties on public employees who knowingly release a public utility record containing CSI).

With respect to West Whiteland Township's request that the Remaining Life Study be segmented to include a specific analysis of the portions of ME1 located in West Whiteland Township, I&E respectfully submits that the Remaining Life Study would already capture any threats to the integrity of ME1 in West Whiteland Township as it would for every other municipality in Pennsylvania. *See* the Settlement at p. 6, especially the components of the Remaining Life Study involving the ME1 corrosion growth rate based on recent ILI data, retirement thickness calculations, remaining life calculations by ME1 segment, a replacement or remediation schedule of ME1, and a listing and description of threats to ME1. Thus, requiring the Remaining Life Study to carve out a specific analysis of ME1 in West Whiteland Township is likely redundant, burdensome and provides West Whiteland Township with preferential treatment over other Pennsylvania municipalities. Therefore, the West Whiteland Township Comment does not present a reason to modify the Settlement and the Settlement should be approved as filed.

C. I&E Reply to the Flynn Comment

Like the West Goshen Township Comment, the Flynn Comment includes an extra-record expert opinion report as an evidentiary exhibit. The Flynn Comment also intersperses extra-record evidentiary statements and references to extra-record documents and materials throughout the Comment. I&E has separately, but concurrently, filed a Motion to Strike the portions of the Flynn Comment that consist of extra-record evidence. Accordingly, I&E's reply to the Flynn Comment will not address the substance of the expert report or the extra-record statements and materials that have been identified in I&E's Motion to Strike.<sup>5</sup> The remainder of the Flynn Comment presents no reasonable basis to alter the Settlement as filed.

i. *The Settlement Presents Real, Not Illusory, Public Safety Benefits*

In the Flynn Comment, the Flynn Intervenors describe the relief obtained in the Settlement as "illusory." Flynn Comment at 9. The Flynn Comment accuses I&E of not obtaining any new relief with respect to the revision of SPLP's corrosion control and cathodic protection procedures. *Id.* Subsequent to the April 1, 2017 leak in Morgantown, which led to a lengthy investigation of the I&E Safety Division regarding SPLP's corrosion control program, SPLP deemed it appropriate to revise its procedures concerning the same. The I&E Safety Division reviewed the revised procedures prior to their implementation in the second quarter of 2018. But for the I&E Safety Division investigation and the pressure applied on SPLP by I&E regarding its corrosion control

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<sup>5</sup> In its Motion to Strike, I&E requested the opportunity to submit a written response to Exhibit A of the Flynn Comment, which is the expert report offered by Matergenics Materials and Energy Solutions, as well as the numerous extra-record statements and references made in the Flynn Comment should they not be stricken.

practices, this relief likely would not have been obtained and it is entirely appropriate to include the revised procedures and implementation thereof as a settlement term. As such, the relief is not illusory.

The Flynn Comment's criticism of the agreed-upon civil penalty as posing no deterrent on SPLP is baseless. Flynn Comment at 10. Rather, the civil penalty is commensurate with the alleged violation, as discussed *supra*, and when viewed with the other relief provided in the Settlement, presents a great incentive for SPLP to comply with Federal pipeline safety laws and regulations. The Flynn Comment cites no example of a similar matter, *i.e.* a leak caused by corrosion, with steeper relief.

The process of selecting a qualified independent expert to produce a Remaining Life Study is not flawed as the Flynn Comment suggests. Flynn Comment at 10-11. As mentioned above, I&E makes the ultimate decision regarding the selection of the expert. Further, if the Remaining Life Study detects threats to the integrity of ME1, such information will be at the forefront for I&E's review and use to ensure that SPLP is compliant with applicable regulations. Thus, the ability to direct improvements to ME1 based on the Remaining Life Study is not left in SPLP's "hands," as the Flynn Comment argues. Flynn Comment at 11.

The Flynn Comment criticizes the Remaining Life Study achieved by the Settlement as nothing more than a mandate from Governor Wolf and not additional relief. *Id.* To support their assertion, the Flynn Comment cites to the February 8, 2019 press release of Governor Wolf. However, the Flynn Comment conveniently omits that I&E first demanded that SPLP perform a Remaining Life Study in its Complaint that was filed

on December 18, 2018. Complaint at § 47(a). The Remaining Life Study set forth in the Settlement is a direct result of I&E's demand.

The Flynn Comment's statement that ILIs will never again occur after the Settlement terms are executed is plainly erroneous. Flynn Comment at 12. Federal pipeline safety regulations require that ILIs be performed at five-year assessment intervals not to exceed sixty-eight (68) months. *See* 49 C.F.R. § 195.452((j)(3). The Settlement represents a commitment from SPLP to consider an ILI inspection interval that is more frequent than what the regulations mandate. Accordingly, the Settlement has substantial "teeth" and contains a package of relief that is far more than what the Commission has authority to direct.

ii. *The Relief in the Settlement is Broad and Expands Well Beyond the Area of the Leak*

The April 1, 2017 leak occurred in Morgantown in one specific location on ME1. However, I&E has negotiated for and SPLP has committed to the performance of ILI runs at accelerated intervals on the entire length of ME1, contrary to what they Flynn Comment suggests. Flynn Comment at 14. Furthermore, the Settlement contemplates completion of successful ILI inspections. Therefore, if the ILI tool fails, it will be run again. Moreover, I&E will scrupulously review the results of the inspections and if there are any detected anomalies, those threats will have to be managed by virtue of the Federal pipeline safety regulations.

With respect to the criticism in the Flynn Comment that the Settlement fails to provide relief pertaining to a separate 12-inch "workaround" pipeline, this pipeline did



not experience the April 1, 2017 leak in Morgantown that is the crux of the instant proceeding. Flynn Comment at 15. Thus, it is unreasonable to disapprove or modify the Settlement for not including other SPLP pipelines that are outside the scope of I&E's investigation and Complaint.

iii. *The Settlement is Transparent*

The Flynn Comment fails to accurately portray and thus misrepresents the actions that occurred in the investigation of the section of ME1 in Morgantown that failed. Flynn Comment at 16. I&E's Complaint alleges that an eight (8) foot section of the portion of the pipe that failed was sent to a laboratory for analysis. I&E Complaint at ¶ 26. The eight (8) foot section of pipe was not the only section that was removed; rather, it was the section that was tested. Approximately eighty-three (83) feet of pipe were removed and replaced. I&E Complaint at ¶ 27. The Flynn Comment confuses the events that occurred and its wild speculation on the condition of the remaining seventy-five (75) feet section of pipe that was not tested is groundless, scandalous and completely lacks credibility. In any event, the relief contained in the Settlement includes the entirety of ME1 – well beyond what had been the problematic eight (8) foot section.

The Flynn Comment's challenge to the transparency of the Settlement concerning the relief related to the revision of SPLP's procedures is also meritless. Flynn Comment at 17. I&E's Complaint details in specificity the SPLP procedures in which I&E alleged were deficient at the time of the April 1, 2017 leak. I&E Complaint at ¶¶ 37-38. The Settlement squarely addresses these allegations by including terms indicating that the procedures were revised and the revised procedures were implemented. Thus, the

Settlement is transparent and the argument in the Flynn Complaint that “large information gaps” exist amounts to nothing more than a red herring.

*iv. The Factors Set Forth in the Commission’s Policy Statement Support the Settlement*

I&E’s inclusion of SPLP’s commitment to a Remaining Life Study and revisions to procedures to support the Policy Statement’s fourth factor concerning a company’s efforts to change practices and ensure future compliance is entirely appropriate, contrary to what the Flynn Comment argues. Flynn Comment at 20; 52 Pa. Code § 69.1201(c)(4). The Flynn Comment’s accusation that I&E had no idea of SPLP’s past practices or the conditions of its pipelines is unfounded. Flynn Comment at 20. SPLP, as a regulated public utility, has always been subject to the oversight of the I&E Safety Division.

The Flynn Comment next attacks the Settlement for failing to include an exact number of the customers affected during the duration of the violation. Flynn Comment at 21; 52 Pa. Code § 69.1201(c)(5). No customers in the traditional sense, such as distribution customers, were impacted. Rather, I&E noted in its Statement in Support that the brief shut down of ME1 temporarily impaired shipments. I&E Statement in Support at 13. This information is certainly sufficient for the presiding ALJ and Commission to review the Settlement.

With regard to the Policy Statement factor pertaining to compliance history, 52 Pa. Code § 69.1201(c)(6), I&E has moved to strike a large portion of the Flynn Comment for impermissibly including extra-record evidence. Flynn Comment at 22-33. I&E hereby

incorporates its reply to the West Goshen Township Comment, *supra*, concerning SPLP's compliance history before the Commission.

I&E has also moved to strike the Flynn Comment's argument concerning the seventh Policy Statement factor, namely, whether the Company cooperated with the Commission's investigation. Flynn Comment at 33-34; 52 Pa. Code § 69.1201(c)(7). The Flynn Comment references extra-record evidence of positions that SPLP allegedly took in proceedings in other jurisdictions to demonstrate that SPLP did not cooperate with the instant Commission investigation. As the party to the Commission's investigation, I&E did not experience a lack of cooperation from SPLP. Thus, the Flynn Comment presents no valid justification to alter the Settlement in the instant matter based on the Policy Statement.

*v. The Flynn Intervenors' Separate Complaint Proceeding Should Not Bar  
Expeditious Approval of the Settlement*

The existence of the separate complaint proceeding initiated by the Flynn Intervenors at Docket No. C-2018-3006116 is not a factor that the presiding ALJ and Commission should consider when ruling upon the Settlement as the Flynn Comment erroneously asserts. Flynn Comment at 35-38, 46-48. Rather, it is well settled that the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Considering the procedural posture of a legal proceeding brought by seven (7) individuals is not a recognized benchmark for evaluating a Settlement. Moreover, delaying the expansive

relief obtained in this Settlement on a pipeline that traverses the Commonwealth is not in the public interest. Therefore, the Settlement should be approved without modification.

### **III. CONCLUSION**

For the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the proposed modifications to and/or recommended rejection of the Joint Petition for Approval of Settlement raised in the Comments of West Goshen Township, West Whiteland Township and the Flynn Intervenors be dismissed and that the Joint Petition for Approval of Settlement be approved as filed so that the important public safety benefits set forth in the Settlement may be expeditiously realized.

Respectfully submitted,



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Dated: September 16, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,  
Complainant,

v.

Sunoco Pipeline, L.P. a/k/a  
Energy Transfer Partners,  
Respondent

Docket No. C-2018-3006534

**CERTIFICATE OF SERVICE**

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

Notification by First Class Mail and Electronic Mail:

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