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October 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., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)
Laura Obenski, Docket No. C-2019-3006905 (consolidated)
v.
Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S MOTION IN LIMINE REGARDING LAY
WITNESS HEARING EVIDENCE AND REQUEST FOR EXPEDITED
SEVEN DAY ANSWER PERIOD AND EXPEDITED RULING**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Motion in Limine regarding the October 23 and 24, 2019 Lay Witness Hearings in this matter and **request for expedited seven-day answer period and expedited ruling**. Because this document does not contain new averments of fact, it does not require a verification.

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: Honorable Elizabeth Barnes (by email and first class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos. C-2018-3006116 (consolidated)
	:	P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No. C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No. C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No. C-2019-3006905 (consolidated)
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

NOTICE TO PLEAD

- TO:
- Michael S. Bomstein, Esquire for Flynn Complainants
 - Anthony D. Kanagy, Esquire for Range Resources-Appalachia LLC
 - Erin McDowell, Esquire for Range Resources-Appalachia LLC
 - Rich Raiders, Esquire for Andover Homeowner's Association, Inc.
 - Vincent M. Pompo, Esquire for West Whiteland Township, Downingtown Area School District, Rose Tree Media School District
 - Leah Rotenberg, Esquire for Twin Valley School District
 - Margaret A. Morris, Esquire for East Goshen Township and County of Chester
 - Mark L. Freed, Esquire for Uwchlan Township
 - James C. Dalton, Esquire for West Chester Area School District
 - James R. Flandreau, Esquire for Middletown Township
 - Patricia Sons Biswanger, Esquire for County of Delaware
 - James J. Byrne, Esquire for Thornbury Township
 - Michael P. Pierce, Esquire for Edgmont Township
 - Josh Maxwell, Mayor of Downingtown
 - Thomas Casey
 - Melissa DiBernardino
 - Virginia Marcille-Kerslake
 - Rebecca Britton
 - Laura Obenski

PLEASE TAKE NOTICE that Sunoco Pipeline L.P. (“SPLP”) has filed a Motion *In Limine* regarding the October 23 and 24, 2019 Lay Witness Hearings (“Motion”). Pursuant to 52 Pa. Code § 5.103, **you are hereby notified that that an answer or other responsive pleading shall be filed within seven (7) days of service of the Motion¹.** Your failure to file an answer or other responsive pleading will allow the presiding officer to rule on the Motion without a response from you. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Respectfully submitted,



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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: October 9, 2019

¹ Pursuant to 52 Pa. Code § 5.103(c), this motion requests an expedited, 7-day response period. To the extent the presiding officer grants the expedited response period requested, answers shall be due within 7-days, allowing for resolution of this motion prior to the Lay Witness hearings in this proceeding.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**SUNOCO PIPELINE L.P.'S MOTION IN LIMINE REGARDING LAY WITNESS
HEARING EVIDENCE AND REQUEST FOR EXPEDITED SEVEN DAY ANSWER
PERIOD AND EXPEDITED RULING**

Pursuant to 52 Pa. Code §§ 5.103 and 5.483 Sunoco Pipeline L.P. moves for rulings to preclude introduction of evidence at the October 23 and 24 Lay Witness Hearings in this matter that is inadmissible, irrelevant, immaterial, and/or unduly repetitive. SPLP requests that Your Honor issue a ruling that answers to this motion be submitted seven days from service and that Your Honor rule on this motion prior to the October 23, 2019 hearing day. *Infra* Section II. Ruling on this motion will result, if granted, in conserving the time and expense of all parties, and focus the proceeding to avoid redundant testimony. Equally if not more important, it will avoid witnesses (who are neither experts nor qualified to give opinions nor to act as a *faux* experts) giving unqualified opinions that can confuse if not incorrectly alarm the public. Expert opinions should be based upon science and generally accepted principles, not the subjective views of unqualified witnesses who offer opinions who clearly are not experts under longstanding Pennsylvania law. Stated differently, opposing pipelines and utility facilities in your county or municipality does not under any state or federal law accepted by any judicial

body, qualify one to provide expert opinions as to what is from a science, engineering and pipeline standpoint constitutes safe and adequate.

I. INTRODUCTION

1. Complainants and Intervenors here have proposed to present the testimony of approximately 36 witnesses over two hearing days. Timing alone dictates limiting presentation of evidence, particularly where it appears time will be wasted on attempting to present evidence that is inadmissible, irrelevant, immaterial, and/or unduly repetitive. Your Honor has if not the obligation “the power to exclude irrelevant, immaterial or unduly repetitive evidence.” 52 Pa. Code § 5.483. Your Honor has already exercised this power to rule regarding the October 23 and 24 Lay Witness Hearings that: “Testimony should not be overly repetitive or cumulative. 52 Pa. Code 5.401. (b)(1).”¹ That power should be exercised prior to the hearing so that all parties understand the scope of what is allowed to be presented and time can be used efficiently. To the extent evidence is precluded from being introduced and that ruling is followed, it will significantly cut down on hearing time that would otherwise be used arguing objections.

2. Specifically, SPLP moves to exclude from presentation the following types of evidence and testimony:

- Opinion Evidence From Lay Witnesses Who Are Not Experts And Under Clear And Longstanding PA Law May Not Offer Opinions.
- Duplicative/Repetitive Evidence.
- Irrelevant Evidence Including Issues for Which Parties Lack Standing.

¹ *Flynn et al. v. SPLP*, August 2, 2019 Procedural Order at Ordering Paragraph 6.

3. **Opinion Evidence.** It cannot be disputed that this is a hearing for lay witnesses only and that all parties have had notice of this since the hearing's inception.² It is black letter law that lay witness opinion testimony *is not admissible* and cannot support a finding of fact³ and that these are evidentiary rules that the Commission and every Pennsylvania court or tribunal must follow.⁴ Various witnesses intend to present such opinion testimony as discussed in

² *Flynn et al v. SPLP*, June 6, 2019 Procedural Order at p. 9 and Ordering Paragraph 2.

³ Pa. R.E. 701(c), 702. The Commission has consistently rejected lay witness testimony on technical issues such as health, safety, and the probability of structural failure as these necessarily "require expert evidence to be persuasive enough to support the proposing party's burden of proof." *Application of PPL Elec. Utilities Corp.*, A-2009-2082652, 2010 WL 637063, at *11 (Jan. 14, 2010) (emphasis added); *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (ALJ "properly disregarded" testimony from 13 lay witnesses related to concerns and personal opinions about damage to pipes, lead leaching, toxicity to fish and home filtration expenses because "the nature of these opinions ... was scientific and required an expert."); *Lamagna v. Pa. Elec. Co.*, C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (lay witness was "not qualified to testify or offer exhibits related to health and safety issues outside of her direct personal knowledge."); *Bergdoll v. York Water Co.*, No. 2169 C.D. 2006, 2008 WL 9403180, at *8-9 (Pa. Cmwlth. 2008) (unreported) (prohibiting independent contractors from offering expert testimony on water source and cause of sewer blockage; while witnesses were qualified to offer certain testimony as to facts and the extent of damage at issue, the source of the water and cause of the sewer blockage at issue "was not within their expertise"); *see also*, *Application of Shenango Valley Water Co.*, No. A-212750F0002, 1994 WL 932364, at *19 (Jan. 25, 1994) (President of water company was "not qualified to provide expert testimony regarding the ratemaking value of utility property" when, notwithstanding his skills and expertise as to the operation of a public utility, he was "...not a registered professional engineer and has never been a witness concerning valuation of utility property in any proceeding before the Commission... lacks of knowledge regarding standard ratemaking conventions concerning capital stock as an item of rate base, cash working capital and the ratemaking requirements of Section 1311 of the Public Utility Code.")

⁴ The Pennsylvania Supreme Court has recognized that any relaxation of the rules of evidence in administrative settings cannot permit lay witnesses to testify to technical matters "without personal knowledge or specialized training." *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602 (personal knowledge), 701 (opinion testimony by lay witnesses) and 702 (testimony by expert witnesses) generally applicable in agency proceedings); *Nancy Manes*, C-20015803, 2002 WL 34559041, at *1 (May 9, 2002) (the Commission abides by the Pennsylvania Supreme Court's standard "that a person qualifies as an expert witness if, through

Section III.A. below. For example, Eric Friedman testifying to “impacts of highly volatile liquid transportation, including pipeline and valve site issues, within the context of the Association, its Members, its neighbors and other stakeholders in the immediate vicinity of Association property and within the potential “blast zone” of any such incident.” See Attachment A, Andover Homeowners’ Association September 12, 2019 Witness List. Testimony regarding potential impacts and impact radius is technical and scientific evidence that Mr. Friedman as a lay witness cannot offer.

4. Your Honor must preclude such evidence from being introduced into the record prior to the hearing in order to follow Pennsylvania law and to avoid a waste of time and potential due process issues by not allowing legitimate testimony and legitimate cross examination to occur.

5. **Duplicative and Repetitive Evidence.** Presenting duplicative testimony is a waste of everyone’s time and resources. The Commission does not count noses to determine the weight of testimony.⁵ Your Honor has the power to exclude duplicative and repetitive testimony,

education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue.”)

⁵ *Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish, or Supply Water Service to the Public in Additional Territory in Portions of New Garden Township, Chester County, Pennsylvania*, Docket No. A-2014-2451241, Final Opinion and Order at 22 (Order entered Oct. 1, 2015). (upholding ALJ’s dismissal of duplicative protests and holding “[T]he weight of the testimony cannot be determined by counting noses.”) (quoting *Application of O. D. Anderson, Inc.*, 1974 WL 38598 (Pa.P.U.C.) at *6).

see, e.g., 52 Pa. Code § 5.483, and should do so here to ensure a fair and efficient hearing. For example, it appears each Flynn Complainant is admittedly proposing to present duplicative testimony. *See* Attachment B, Flynn et. al September 11, 2019 Amended Witness List. Each Flynn Complainant’s testimony description contains the following topics:

Location and siting of Mariner pipelines; concerns over adequacy of pipeline awareness plan; lack of early warning system; knowledge of adverse pipeline events; and concerns over possible adverse pipeline events.⁶

Your Honor should rule that Complainants will not be allowed to introduce duplicative testimony. SPLP has no objection to witnesses saying they adopt or agree to what the first witness says on these points (to the extent admissible) and in fact would enter into a stipulation to that effect. But, to allow a repeat of the same testimony is inefficient and a waste of time and resources.

6. Likewise, Ms. Britton proposes to present testimony of a neighbor (Wanda J. Dunn) that appears to be duplicative of her own proposed testimony. *See* Attachment C, Rebecca Britton September 12, 2019 Amended Witness List. Ms. Britton describes the testimony to be presented merely as: “information consistent with my Complaint.” This description itself is an admission of redundancy or repetition. Ms. Britton herself should⁷ be able to testify to the alleged facts of her Complaint given she verified it. A neighbor’s testimony presenting that same evidence is unduly repetitive, unnecessary, and a waste of time. This witness should be precluded from testifying.

⁶ Flynn et. al September 11, 2019 Amended Witness List.

⁷ SPLP does not concede that Ms. Britton is competent to testify as to the alleged facts of her Complaint. A neighbor would be no more competent to testify to such allegations.

7. **Irrelevant Evidence – Nursing Homes/Adult Communities.** Your Honor has correctly held that Complainants, who also are not attorneys, do not have standing to represent others and that this is not a class-action lawsuit.⁸ Disregarding these rulings, the Flynn Complainants propose to present the testimony of an individual whose mother resides in a nursing home (Tom McDonald, who is not a Complainant or Intervenor) and a resident of an adult community (Christi Marshall, who is likewise not a Complainant or Intervenor). Flynn Complainants cannot pursue issues on behalf of a nursing home or an adult community or their respective residents. This proposed testimony relates to issues Complainants do not have standing to pursue and is therefore irrelevant. These two witnesses should be precluded from testifying and similarly cannot advocate on behalf of others as they are not lawyers.

8. **Irrelevant Evidence – Other Pipelines/Events.** Allegations related to other pipelines in other states are irrelevant to the issues here, as the Commission found in rejecting the same type of allegation and argument in its decision and order in *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 et al. Here, for example, various witnesses testimony descriptions include the topic “knowledge of adverse pipeline events.” Adverse pipeline events regarding other pipeline or other states is not relevant here and such testimony should be precluded and instead the issue should be limited to the SPLP pipelines in Chester and Delaware counties at issue.

⁸ *Flynn et al v. SPLP*, June 6, 2019 Order Granting In Part And Denying In Part Complainants’ Motion For Reconsideration Of Second Interim Order at 5-6 (discussing Flynn Complainants cannot bring claims on behalf of others and that “This is not a class action lawsuit.”).

9. SPLP requests Your Honor issue rulings that Complainants and Intervenors are precluded from introducing the types of evidence described herein into the record and that the following proposed witnesses be precluded from testifying on the same basis:

- Wanda J. Dunn
- Tom McDonald
- Christi Marshall

II. REQUEST FOR EXPEDITED ANSWER AND RULING

10. SPLP believes that it is in all parties' and Your Honor's interests to resolve this Motion prior to the October 23 and 24 Lay Witness Hearings. SPLP believes that by precluding introduction of inadmissible, irrelevant, duplicative or otherwise improper evidence prior to hearing, significant hearing time can be saved because there should be less objectionable evidence attempted to be introduced into the record, cutting down on both the time to introduce and present such evidence as well as objections and arguments thereon. Time is particularly important here, where Complainants and Intervenors have proposed to present approximately 36 witnesses in a two day hearing. Accordingly, to allow time for a ruling before hearing, SPLP requests an expedited time for response to this Motion of seven days and a ruling on this motion prior to the commencement of the October 23 hearing day. Finally, in the interest of due process, the Complainants and their aligned intervenors and SPLP should split equally hearing time (equal time to testify and cross examine).

III. ARGUMENT

A. Opinion Testimony

11. It cannot be disputed that this is a hearing for lay witnesses only and that all parties have had notice of this since the hearing's inception.⁹ As detailed in paragraphs 12-15 *infra*, lay witness opinion testimony on technical and/or scientific topics such as pipeline safety, integrity, emergency response, etc is not admissible. It appears from Complainants' and Intervenors' witness lists that various lay individuals intend to give just such inadmissible testimony. Your Honor should preclude introduction of such evidence now to save time at hearing.

12. Lay witnesses cannot give opinion testimony regarding scientific or technical issues, such as pipeline safety, integrity, emergency response, etc. Lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. Pa. R.E 701(c) ("If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is ... not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."). Although the Pennsylvania Rules of Evidence are not strictly adhered to by the Commission, **the Pennsylvania Supreme Court has recognized that any relaxation of the rules of evidence in administrative settings cannot permit lay witnesses to testify to technical matters "without personal knowledge or specialized training."** *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602 (personal knowledge), 701 (opinion testimony by lay witnesses) and 702 (testimony by expert

⁹ *Flynn et al v. SPLP*, June 6, 2019 Procedural Order at p. 9 and Ordering Paragraph 2.

witnesses) generally applicable in agency proceedings); Nancy Manes, C-20015803, 2002 WL 34559041, at *1 (May 9, 2002) (the Commission abides by the Pennsylvania Supreme Court's standard "that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue.").

13. Accordingly, **the Commission has consistently held that lay witnesses are not qualified to testify or offer exhibits related to any issues outside of direct personal knowledge.** *Lamagna v. Pa. Elec. Co.*, C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (lay witness was "not qualified to testify or offer exhibits related to health and safety issues outside of her direct personal knowledge."). Moreover, **to the extent a lay witness offers references to reports or conclusions of others, these may not be considered as substantial evidence because a lay witness cannot rely on such information in reaching a conclusion** – rather, that is the role of a qualified expert witness. *Compare* Pa. R.E. 701 *with* Pa. R.E. 703.

14. While a fact finder may weigh the opinion testimony of a qualified expert, any such testimony of an unqualified lay witness must be excluded and should not be given any evidentiary weight. *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004); *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995). Accordingly, **the Commission has consistently rejected lay witness testimony on technical issues such as health, safety, and the probability of structural failure as these necessarily "require expert evidence to be persuasive enough to support the proposing party's burden of proof."** *Application of PPL Elec. Utilities Corp.*, A-2009-2082652, 2010 WL 637063, at *11 (Jan. 14, 2010) (emphasis added); *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (**ALJ "properly disregarded" testimony from 13 lay witnesses related to concerns and personal opinions about damage to pipes,**

lead leaching, toxicity to fish and home filtration expenses because “the nature of these opinions ... was scientific and required an expert.”); *Lamagna v. Pa. Elec. Co.*, C-2017-2608014, 2018 WL 6124353, at *20 (Oct. 30, 2018) (finding that lay witness testimony and exhibits regarding technical health and safety issues “carry no evidentiary weight and ... were properly objected to and excluded.”).

15. Moreover, that a lay witness may possess some level of knowledge and education in a related subject does not make him an expert on specialized and technical matters such as geology, pipeline construction, pipeline safety, or emergency response, and such unqualified testimony is not credible evidence. *See* Opinion and Order, *Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, P-2018-3001453 *et al.* (June 14, 2018) (acknowledging lack of expert testimony regarding technical geological concerns, thereby necessarily rejecting testimony of lay witness on geological issues without regard for lay witness’s purportedly related education and experience.); *see also*, Joint Statement of Commissioners Coleman and Kennard, *Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, P-2018-3001453 *et al.* (June 14, 2018) (acknowledging “no credible evidence of record to indicate that a clear and present danger exists with respect to the construction activities on ME2 and ME2X in West Whiteland Township” when hearing transcript was “devoid of any expert witness testimony that, to a reasonable degree of scientific certainty, there is a credible and immediate harm with the construction of these lines.”).

16. Moreover, excluding lay opinion testimony now will avoid witnesses (who are neither experts nor qualified to give opinions nor to act as faux experts) giving unqualified opinions that can confuse if not incorrectly alarm the public. Expert opinions should be based upon science and generally accepted principles, not the subjective views of unqualified witnesses

who offer opinions who clearly are not experts under longstanding Pennsylvania law. Stated differently, opposing pipelines and utility facilities in your county or municipality does not under any state or federal law accepted by any judicial body, qualify one to provide expert opinions as to what is from a science, engineering and pipeline standpoint constitutes safe and adequate

17. Here, various witness apparently intend to offer opinions about subject matter that is clearly within the expert realm, including but not limited to:

- o Flynn Complainants identified as witnesses testifying to “adequacy” of public awareness/emergency response, “concerns over possible adverse pipeline events,” and/or the “integrity maintenance process.” Whether something is “adequate” or a “concern” is opinion testimony that a lay witness cannot offer. So too regarding pipeline integrity. *See* Attachment B.

- o Gerald McMullen testifying to “fragile” nature of topography. Whether topography is “fragile” is clearly technical and scientific evidence to which lay witnesses cannot testify. *See* Attachment B.

- o Eric Friedman testifying to “impacts of highly volatile liquid transportation, including pipeline and valve site issues, within the context of the Association, its Members, its neighbors and other stakeholders in the immediate vicinity of Association property and within the potential “blast zone” of any such incident.” Testimony regarding potential impacts and impact radius is technical and scientific evidence that Mr. Friedman as a lay witness cannot offer. *See* Attachment A.

18. Accordingly, Your Honor should preclude introduction of lay opinion testimony on scientific and technical topics such as pipeline safety, impacts, emergency response,

topography, geography, geology, etc. now to save time at hearing that would be wasted introducing and arguing over the admission of such evidence.

B. Duplicative Testimony

19. Presenting duplicative testimony is a waste of everyone's time and resources. Time is a particular concern here given that Complainants and Intervenors have proposed to present 36 witnesses in two days. There is no reason to present duplicative and repetitive testimony because the Commission does not count noses to determine the weight of testimony.¹⁰

20. Your Honor has the power to exclude duplicative and repetitive testimony, *see, e.g.*, 52 Pa. Code § 5.483. Your Honor has already exercised this power to rule regarding the October 23 and 24 Lay Witness Hearings that: "Testimony should not be overly repetitive or cumulative. 52 Pa. Code 5.401. (b)(1)."¹¹ The Commission has recognized the necessity of limiting duplicative and repetitive submissions on identical issues where many parties may intend to present repetitive and similar claims and evidence,¹² and that same reasoning applies here.

¹⁰ *Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish, or Supply Water Service to the Public in Additional Territory in Portions of New Garden Township, Chester County, Pennsylvania*, Docket No. A-2014-2451241, Final Opinion and Order at 22 (Order entered Oct. 1, 2015). (upholding ALJ's dismissal of duplicative protests and holding "[T]he weight of the testimony cannot be determined by counting noses.") (quoting *Application of O. D. Anderson, Inc.*, 1974 WL 38598 (Pa.P.U.C.) at *6).

¹¹ *Flynn et al. v. SPLP*, August 2, 2019 Procedural Order at Ordering Paragraph 6.

¹² *Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish, or Supply Water Service to the Public in Additional Territory in Portions of New Garden Township, Chester County, Pennsylvania*, Docket No. A-2014-2451241, Final Opinion and Order at 22.

21. It appears each Flynn Complainant is proposing to present duplicative testimony. *See* Attachment B. Each Flynn Complainant's testimony description contains the following topics:

Location and siting of Mariner pipelines; concerns over adequacy of pipeline awareness plan; lack of early warning system; knowledge of adverse pipeline events; and concerns over possible adverse pipeline events.¹³

Your Honor should rule that Flynn Complainants will not be allowed to introduce repetitive and duplicative testimony.

22. Likewise, Ms. Britton proposes to present testimony of a neighbor (Wanda J. Dunn) that appears to be duplicative of her own proposed testimony. Ms. Britton describes the testimony to be presented merely as: "information consistent with my Complaint." *See* Attachment C. Ms. Britton herself should¹⁴ be able to testify to the alleged facts of her Complaint given she verified it. A neighbor's testimony presenting that same evidence is unduly repetitive, unnecessary, and a waste of time. This witness should be precluded from testifying.

23. Accordingly, Your Honor should issue a formal ruling that duplicative and repetitive testimony will not be allowed and preclude Ms. Britton's neighbor Wanda J. Dunn from testifying.

¹³ Flynn et. al September 11, 2019 Amended Witness List.

¹⁴ SPLP does not concede that Ms. Britton is competent to testify as to the alleged facts of her Complaint. A neighbor would be no more competent to testify to such allegations.

C. Irrelevant Testimony

24. Your Honor has correctly held that Complainants do not have standing to represent others and that this is not a class-action lawsuit.¹⁵ Disregarding these rulings, the Flynn Complainants propose to present the testimony of an individual whose mother resides in a nursing home (Tom McDonald, who is not a Complainant or Intervenor) and a resident of an adult community (Christi Marshall, who is likewise not a Complainant or Intervenor). See Attachment B. Flynn Complainants cannot pursue issues on behalf of a nursing home or an adult community or their respective residents. This proposed testimony relates to issues Complainants do not have standing to pursue and is therefore irrelevant. These two witnesses should be precluded from testifying.

25. Allegations related to other pipelines in other states are irrelevant to the issues here, as the Commission found in rejecting the same type of allegation and argument in its decision and order in *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 et al. Here, for example, various witness's testimony descriptions include the topic "knowledge of adverse pipeline events." Adverse pipeline events regarding other pipeline or other states is not relevant here and such testimony should be precluded.

¹⁵ *Flynn et al v. SPLP*, June 6, 2019 Order Granting In Part And Denying In Part Complainants' Motion For Reconsideration Of Second Interim Order at 5-6 (discussing Flynn Complainants cannot bring claims on behalf of others and that "This is not a class action lawsuit.").

26. Accordingly, Your Honor should rule that testimony regarding issues for which Complainants lack standing to pursue, including but not limited to nursing facility and adult community residents that are not Complainants, or are otherwise irrelevant (such as other pipeline and events in other states) shall not be introduced and that Tom McDonald and Christi Marshall will be precluded from testifying.

IV. CONCLUSION

WHEREFORE, SPLP respectfully requests:

- Answers to this Motion shall be filed within 7 days of service.
- The following evidence shall not be introduced at hearing:
 - Opinion testimony
 - Duplicative and/or repetitive testimony
 - Testimony regarding topics Complainants do not have standing to pursue, such as testimony regarding nursing homes and/or adult communities.
 - Testimony regarding otherwise irrelevant topics, such as testimony regarding other pipelines and events in other states.

- The following witnesses shall not testify at the October 23 and 24 hearings: Wanda J. Dunn, Christi Marshall, and Tom McDonald.

Respectfully submitted,



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Kevin J. McKeon, Esq. (PA ID No. 30428)
Whitney E. Snyder, Esq. (PA ID No. 316625)
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Attorneys for Respondent Sunoco Pipeline L.P.

Dated: October 9, 2019

ATTACHMENT A



September 12, 2019

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Via Electronic Filing

*RE: Flynn et. al. v. Sunoco Pipeline L.P., Dockets P-2018-3006117 and C-2018-3006116
Witness List of Andover Homeowners' Association, Inc.*

Dear Secretary Chiavetta,

As directed in the Second Prehearing Order in the above-referenced matter issued September 5, 2019, Andover Homeowners' Association, Inc. hereby submits its witness list for the upcoming October 23 and 24, 2019 Public Hearings in West Chester.

We have served a copy of the Witness List upon the parties pursuant to the attached Certificate of Service.

Please contact me with any questions.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins,	:	
Gerald McMulle, Caroline Hughes and Melissa Haines	:	C-2018-3006116
	:	P-2018-3006117
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

PROPOSED LAY WITNESS LIST OF ANDOVER HOMEOWNERS' ASSOCIATION, INC.

Pursuant to the Second Prehearing Order of September 5, 2019, Intervenor, Andover Homeowners' Association, Inc. ("Association"), has identified the following individual as a potential lay witness who may testify at the Public Utility Commission ("Commission") hearings scheduled for October 23 and 24, 2019 in this matter. The Association may amend this list as necessary if new subject areas for testimony arise.

Eric Friedman, 2 Fallbrook Lane, Glen Mills, PA 19342 is the President of the Association. As the President, he is responsible for the oversight of the Association's property, which includes several acres of open space conveyed for the enjoyment of the Association's Members. Approximately three (3) of these acres are encumbered by Sunoco Pipeline L.P. ("Sunoco"), respondent here, for operation of four (4) hazardous liquids pipelines. Sunoco is constructing additional valve sites on Association property for the Mariner East 2/2X project, co-located adjacent to the existing Mariner East 1 valve site on Association property.

Denise McCarthy, 17 Hadley Lane, Glen Mills, PA 19342 is a homeowner in the Association. Ms. McCarthy will testify to the impacts of the pipeline. Ms. McCarthy will also testify to her knowledge of what to do if an emergency situation would occur because of the pipeline.

Mr. Friedman is also identified as a lay witness for the complainants in this matter, and will testify on behalf of Flynn et.al. on matters identified in complainants' filing. For the Association, Mr. Friedman will testify to the impacts of highly volatile liquid transportation, including pipeline and valve site issues, within the context of the Association, its Members, its neighbors and other stakeholders in the immediate vicinity of Association property and within the potential "blast zone" of any such incident. Mr. Friedman will also testify about the local land use, the Association's, its Members', and his understanding of the current Public Awareness Program for the pipelines crossing Association property, and his understanding of potential impacts to Association Members in the event of a pipeline incident. Mr. Friedman will also testify about the work done to date by the Association on a public notification system. Mr. Friedman will also testify about Andover home sales before and after Sunoco.

Association and complainant counsel are coordinating Mr. Friedman's testimony to avoid cumulative testimony.

Respectfully Submitted,

Date: September 12, 2019

/s/ Rich Raiders, Esq.
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Raiders Law PC
606 North 5th Street
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610 898 4623 fax
rich@raiderslaw.com
Attorney for Intervenor
Andover Homeowners' Association, Inc.

C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP

(Revised 9/3/19)

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REPLY TO:
Center City

September 11, 2019

Electronic Filing

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

Re: Bureau of Investigation & Enforcements v.. Sunoco Pipeline L.P.,
Docket No. C-2018-3006116 and P-2018-3006117
**FLYNN COMPLAINANTS' AMENDED OCTOBER HEARING
LAY WITNESS LIST**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Amended October Hearing Lay Witness List in the above referenced case.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: ALJ Barnes (Electronic Mail and U.S.P.S. First Class)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NOS. C-2018-3006116
CAROLINE HUGHES and	:	P-2-18-3006117
MELISSA HAINES	:	
Complainants	:	
v.	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

COMPLAINANTS' AMENDED OCTOBER HEARING WITNESS LIST

Pursuant to the ALJ's Prehearing Order of September 5, 2019, Complainants hereby identify the following persons as witnesses for the October hearing:

1. Eric Friedman
2 Fallbrook Lane
Glen Mills, PA 19342

The witness will testify as to his knowledge of pipeline safety, location and siting of Mariner pipelines, concerns over adequacy of pipeline awareness plan, lack of early warning system, knowledge of adverse pipeline events and concerns over possible adverse pipeline events.

2. Gerald McMullen, Ph.D.
200 Hillside Drive
Exton, PA 19341

The witness will testify as to the location and siting of Mariner pipelines, as well as concerns about: NGL pipelines running through his high-consequence township; the fragile nature of the topography in his township; the inadequacy of the pipeline awareness plan; adverse pipeline events; and, possible adverse pipeline events.

3. Caroline Hughes
1101 Amalfi Drive
West Chester, PA 19380

The witness will testify as to location and siting of Mariner pipelines, concerns over adequacy of pipeline awareness plan, lack of early warning system, knowledge of adverse pipeline events and concerns over possible adverse pipeline events.

4. Nancy Harkins
1521 Woodland Road
West Chester, PA 19382

The witness will testify as to location and siting of Mariner pipelines, concerns over adequacy of pipeline awareness plan, lack of early warning system, knowledge of adverse pipeline events and concerns over possible adverse pipeline events.

5. Michael Walsh
12 Hadley Lane
Glen Mills PA 19342

The witness will testify as to location and siting of Mariner pipelines, concerns over adequacy of pipeline awareness plan, lack of early warning system, knowledge of adverse pipeline events and concerns over possible adverse pipeline events.

6. Rosemary Fuller
226 Valley Road
Media, PA 19063

The witness will testify as to location and siting of Mariner pipelines, the misrepresentation of facts regarding the pipeline project for the purpose of obtaining permanent easement signatures, concerns over adequacy of pipeline awareness plan, integrity maintenance process, lack of early warning system, lack of a credible emergency plan, failure of Sunoco's leak detection system, knowledge of adverse pipeline events and concerns over possible adverse pipeline events, the inability to get answers to questions from regulatory agencies (DEP, PUC and PHMSA), including those submitted via FOIA and RTK requests and the lack of concern for people's safety, especially those most vulnerable, and the lack of information about the MERO Program.

7. Christi Marshall
Hershey's Mill Adult Community
West Chester, PA

As a resident of Hershey's Mill, the witness will testify as to the nature of the population of the community, the limitations of her paralyzed sister and others at Hershey's Mill, the location of Mariner pipelines relative to the community.

lack of early warning system, her knowledge of emergency response plans, and problems relative to responding to an HVL emergency.

8. Tom McDonald
646 Thorncroft Dr.
West Chester, PA 19380

The witness's mother has been a resident at Wellington for over ten years, the last two of which have been in the assisted living facility. 37 of the assisted living's 64 residents live on second floor. Most use a wheelchair or walker to ambulate. The skilled nursing section of Wellington's patient's are even more limited. In an evacuation, the limited number of elevators would be an impediment. In the case of a leak the facility's topography (being downhill) would be a serious problem.

9. Bibianna Dussling
76 War Admiral Lane
Media, PA 19063

The witness will testify as her personal knowledge of emergency planning and services, the location of Mariner pipelines relative to the community. lack of early warning system, her knowledge of local emergency response plans, problems relative to responding to an HVL emergency, concerns as a parent of children at Glenside Elementary School, concerns as a homeowner living next to Mariner pipelines.

Respectfully submitted,



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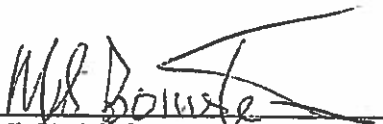
Attorney for Complainants

Dated: September 11, 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 mail:

SEE ATTACHED LIST


Michael S. Bomstein

Dated: September 11, 2019

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ATTACHMENT C

Rebecca Britton
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September 12, 2019

VIA ELECTRONIC FILING

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

August 20, 2019

Re: Rebecca Britton v. Sunoco Pipeline L.P.; Docket No. C-2019-3006898

Meghan Flynn. et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116 and
P-2018-3006117;

REBECCA BRITTON'S LAY WITNESS LIST AMMENDED

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Rebecca Britton's lay witness list.

If you have any questions regarding these filings please do not hesitate to contact me.

Very Truly Yours,



Rebecca Britton
Pro se
September 12, 2019

September 12, 2019

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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rebecca Britton
211 Andover Dr.
Exton, PA 19341
Complainant

:

:

Docket No. C-2019-3006898

v.

:

SUNOCO PIPELINE L.P.,
Respondent.

:

MEGAN FLYNN *et al*

:

**Docket Nos. C-2018-3006116
P-2018-3006117**

v.

SUNOCO PIPELINE L.P.,

:

:

LIST LAY WITNESS

Micheal Holmes, Fire Marshall Uwchlan Township

Testify to information presented to Township Officials responsible for public safety and other information consistent with my complaint. 610.363.0518

Chief Scott Alexander, Police Chief Uwchlan Township

Testify to information presented to Township Officials responsible for public safety and other information consistent with my complaint. 610.363.0518

Yet to be determined, Chester County Emergency Management Employee
Testify to information presented to County Officials responsible for public safety and other information consistent with my complaint. 610.344.5000

\

Dr. Emilie Lonardi Downingtown Area School District Superintendent
Testify to information presented to School District Officials responsible for school safety and other information consistent with my complaint. 610.269.8460

Mrs. Wanda J. Dunn Neighbor Uwchlan Township
Testify to information consistent with my complaint. I reserve the right to change this neighbor should her health decline and will inform all parties as soon as possible if changes are needed.

I intend to give testimony during the October hearing.

I continue to reserve the right to cross examine any other witness during the hearing.

Respectfully Submitted,

A handwritten signature in black ink that reads "Rebecca Britton". The signature is written in a cursive style with a small flourish at the end.

Rebecca Britton

September 12, 2019

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 1.54 (relating to service by a party).

This document has been filed via electronic filing:

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Honorable Elizabeth Barnes
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Rebecca Britton
Pro se
September 12, 2019

VERIFICATION

I, Rebecca Britton, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in cursive script that reads "Rebecca Britton".

Rebecca Britton
Pro se
September 12, 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).

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