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REPLY TO:
Center City

October 21, 2019

Via Electronic Filing

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.
Docket Nos. C-2018-3006116 and P-2018-3006117
**COMPLAINANTS' ANSWER TO SUNOCO'S MOTION IN LIMINE
TO PRECLUDE OFFER AND ADMISSION OF EXHIBITS**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Answer to Sunoco's Motion in Limine to Preclude Offer and Admission of Exhibits in the above-referenced proceeding.

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

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Judge Barnes (Via email and First Class Mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NO. C-2018-3006116
CAROLINE HUGHES and	:	
MELISSA HAINES	:	DOCKET NO. P-2018-3006117
	:	
Complainants	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

**COMPLAINANTS’ RESPONSE TO SUNOCO’S MOTION
IN LIMINE TO PRECLUDE OFFER AND ADMISSION OF EXHIBITS**

Sunoco previously filed a motion in limine that asks the ALJ in the October hearings not to admit inadmissible evidence, not to allow non-experts to give expert testimony, to keep witnesses from “incorrectly alarming” the public, and to keep witnesses from wasting the court’s time with unduly repetitive testimony

Sunoco now has filed a motion to preclude the offer and admission of certain of Complainants’ exhibits, largely on the grounds set forth in its earlier motion. For the reasons set forth therein as well as the reasons set forth below, Sunoco’s motion should be denied.

I. ARGUMENT

A. Lay Witness Objections

1. Denied as stated. None of Complainants’ witnesses will be presenting technical opinion evidence. None will offer testimony to a reasonable scientific certainty.

2. Denied as stated. The ALJ may rely upon the doctrine of judicial notice as to facts that meet judicial notice criteria. The ALJ also may accept into evidence factual findings contained in official publications of governmental authorities .

3. The answer set forth in paragraph 1 above is hereby incorporated by reference thereto.

4. Denied as stated. The rule that experts may rely on other experts' reports does not apply to lay witnesses.

5. Denied. Sunoco just brushes through Friedman 4 through 7 as though they all are the same. They are not. It is acknowledged that a statement in a report that there is such a thing as a "blast/impact zone" or that the blast/impact zone is as great as half a mile is a matter of expert opinion in the first instance. When that information, however, is a finding of an official government agency or a finding of an engineering firm hired by the government it is not excludable hearsay.

It must also be noted that this proceeding has been bifurcated. The testimony of Complainants' engineering experts will not be submitted in the first instance until January, 2020, over two months from now. Engineer Jeff Marx from Quest Consultants will give testimony on hazard distances and probable fatalities, much as he did in the November, 2018 injunction proceeding. That testimony was given under oath before the same judge and Sunoco's attorneys and Range Resources attorneys had ample opportunity to cross-examine Mr. Marx.

Complainants already are fully aware of Marx's testimony and have formed beliefs based on that testimony.¹ No good reason exists why that testimony may not be incorporated from the official record into the record on October 23, 2019. Here is the portion of the testimony that Complainants intend to incorporate:

¹ Counsel has reviewed the transcript of the hearing. It is clear the Quest report was not admitted into evidence.

1 BY MR. BOMSTEIN:

2 Q. Please answer the question.

3 A. Based on the quantitative risk analysis that we
4 completed this summer, the maximum hazard distance or
5 maximum vulnerability zone from the eight-inch in the one
6 pipeline was approximately one-quarter mile, from the
7 20-inch in the two-line it's approximately one-half of a
8 mile. Now, the hybrid line that uses some 20-inch and some
9 12-inch would be some distance in between those two
10 previously stated distances.

Friedman Exhibit 7 is a G2 Integrated Solutions study commissioned by Delaware County Council at a cost of \$110,000 in public funds. The report was delivered to Timothy Boyce, Delaware County's Director of Emergency Services. Mr. Boyce will testify in his official capacity in this case next year. Friedman 8, the Council's approval resolution, confirms the official nature of the report.

Complainants are familiar with the contents and conclusions of the official report. They are aware that G2's report found that a flammable cloud from a full-bore rupture of a 20-inch pipeline could extend over 6,000 feet.

The G2 report and its contents are admissible, whether by virtue of the doctrine of judicial notice or PRE Rule 803(8) as an exception to the hearsay rule.

6. Denied as stated. As set forth already above in paragraph 5, it is not necessary for Complainants to give expert testimony on the blast/impact zone. They can reasonably testify to what they believe based on Jeff Marx's testimony as well as on the G2 report.

7. Denied as stated. Once again, Sunoco paints with a broad brush seeking to eliminate 18 more exhibits without demonstrating individually that they are inadmissible. While it is Sunoco's burden to justify the exclusion, Complainants below will briefly address Sunoco's claims:

(a) Friedman 15 - 17 are official National Transportation Safety Board ("NTSB") reports of investigations into catastrophic accidents involving ethane, butane and propane ruptures. In two of the three accidents there were fatalities. Sunoco does not object to No. 17 (Missouri explosion with fire extending 1250 feet) but as evidence they are all identical.

Each of the three NTSB reports has an identification number that can be used to go directly to the official government website. There can be no question of their provenance. Each report is a public record and the contents can be judicially noticed.

(b) Friedman 21 is another official United States Government publication, relating to the value of a statistical life. There can be no question of its provenance. The document is a public record and the contents can be judicially noticed. Mr. Friedman's background, to which he will testify, is sufficient for him to understand and explain the meaning of the exhibit.

(c) Friedman 22 is an excerpt from another official U.S. Government publication, the Emergency Response Handbook. There can be no question of its provenance. The document is a public record and the contents can be judicially noticed.

(d) Friedman 23 - 26 are excerpts from another official U.S. Government publication. PHMSA publishes statistics on pipeline events and pipeline operators. These exhibits, for

example, show the number of Sunoco pipeline leaks compared to other similar operators' leak records. There can be no question of these documents' provenance. The exhibits are public records and the contents can be judicially noticed.

(e) McMullen Exhibit 31 is a photograph taken by Gerald McMullen on August 26, 2019, showing a Sunoco electrical box in dilapidated condition with exposed wire. It does not take an expert to recognize the condition of the device and the fact that it is a cathodic test station can be established by the witness without hiring an expert.

(f) Hughes Exhibit 6 is the West Chester Area School District's Hazardous Materials Emergency Protocol that has been distributed to West Chester Area residents. Mrs. Hughes will testify to receiving the document and any concerns she has as a local resident. No expertise is required for her testimony.

(g) Fuller Exhibit 10 is an excerpt from the Delaware County G2 Risk Assessment, Friedman 7, already discussed above. The witness is familiar with the area shown in the photographic image and will point out facilities within the probable rupture area.

(h) Fuller Exhibit 17 is the Middletown Township Emergency Operations Plan. Mrs. Fuller will testify to receiving the document and any concerns she has as a local resident. No expertise is required for her testimony.

(i) Fuller Exhibit 18, once again, is a federal government publication entitled "An ADA Guide for Local Governments." The witness will give her lay comments on the guide.

B. Video Narration Objections

8. Denied. On the second day of the injunction hearing in this proceeding, Gregory Noll gave expert testimony as an emergency responder. Sunoco during his testimony played a video of "table top" training exercises. The video is identified on page 492 of the transcript and the

reporter went off the record while everyone watched. It was later identified and the parties were given a link to be able to see the video at another time.

Exhibits Friedman 1, McMullen 35 and Hughes 5 are videos taken from an aerial drone. Each is narrated by a different person who is familiar with the area shown in the video clip. Links are provided so that the videos may be viewed outside of the hearing.

Sunoco first objects to the videos based on the separate grounds of hearsay, lack of expertise and lack of necessity. The hearsay objection is unfounded. Narration is furnished by Complainants familiar with what is depicted visually.

To the extent that a narrator makes a comment that calls for improper expertise, an objection can be made, the video can stop and the ALJ can make a ruling. Since Sunoco has not seen fit in its MIL to identify any specific objectionable spot in the video – which is routinely done in medical malpractice and other kinds of cases – Complainants are unable to respond further on this objection.

As for necessity, Sunoco is making the argument that the Safety Seven must use photographs and explain them rather than video that need little explanation. No legal basis is offered for this claim.

C. Other Hearsay Exhibits

10. Sunoco raises a medley of miscellaneous objections to an additional 20 exhibits. Once again, Respondent names 20 exhibits and fails to furnish any specific objections. Five types of objections are identified. With 20 exhibits and five possible objections for each, Complainants will not here guess what could possibly be a reasonable response and Complainants suggest the ALJ cannot either.

11 and 12. Denied as stated. Sunoco's general recitation of legal principles is largely accurate.

13. Denied. This averment is not addressed to Complainants.

14. Sunoco specifically objects to Friedman 14 and Fuller 20 as hearsay because they are newspaper articles. Friedman 14 is a newspaper article from "State Impact" that contains information that led some of the Complainants to investigate further Sunoco's non-publicized switch from 1480 psi operating pressures to 2100 psi. The article is only being offered for that limited purpose. Fuller 20, like Friedman 14, is a newspaper article from "State Impact" that covers a sinkhole event that occurred down the road from Rosemary Fuller, an event of which she has personal knowledge. The article led Fuller and others to investigate further.

D. Irrelevant Exhibits

15. Denied. Complainants agree with Sunoco that Respondent argued in their first MIL that some witnesses do not have standing to give evidence in this case. Once again, the notion that Complainants do not have standing to give evidence about the proximity – five feet – of Mariner pipelines to the home of Alison Higgins has no basis in law. The proximity of Mariner pipelines, old and new, to homes of Delaware County residents, is an issue in this case. Further, the claim that Marshall, McDonald and Dussling are not Complainants and, therefore, they may not give evidence, is preposterous and without any foundation in the law. The cited portion of the *Dinniman* case does not support their contentions.

16. Denied. Complainants incorporate by reference their response in paragraph 15 above.

17. Denied. Complainants' argument in their response to the first MIL is incorporated by reference thereto. No one contests the general proposition that to pursue a complaint one

must have standing. Witnesses Dussling, Marshall and McDonald are not testifying on behalf of their loved ones; they are testifying on behalf of Complainants who have raised issues about the ability of old and incapacitated persons to follow the safety flyer's admonition to proceed on foot to a safe location.

18. Denied. Sunoco's argument is déjà vu all over again. Why Respondent believes that an argument needs to be repeated three times in two pages will remain a mystery, but Dussling's exhibits demonstrate clearly how reckless Sunoco has been in locating HVL pipelines, an important issue in the Amended Complaint

II. REQUEST FOR EXPEDITION

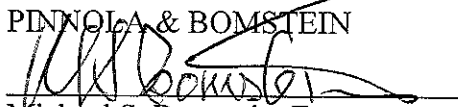
19. Denied as stated. This Answer is being submitted in less than the time requested by Sunoco. Complainants, however, do not believe that Your Honor should be making rulings on the motion prior to the time of the hearing because it may be that oral argument will be required.

III. CONCLUSION

For all of the reasons set forth above, Complainant pray that Your Honor deny Sunoco's motion.

Respectfully submitted,

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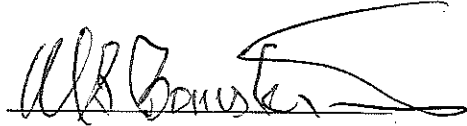
Attorney for Complainants

Dated: October 21, 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 as per the requirements of § 1.54 (relating to service by a party). The document also has been filed electronically on the Commission's electronic filing system.

See attached service list.

A handwritten signature in black ink, appearing to read "Michael S. Bomstein", with a long horizontal flourish extending to the right.

Michael S. Bomstein, Esq.

Dated: October 21, 2019

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