

LAW OFFICES
PINNOLA & BOMSTEIN

MICHAEL S. BOMSTEIN
PETER J. PINNOLA

ELKINS PARK OFFICE
8039 OLD YORK ROAD
ELKINS PARK, PA 19027
(215) 635-3070
FAX (215) 635-3944

100 SOUTH BROAD STREET, SUITE 2126
PHILADELPHIA, PA 19110
(215) 592-8383
FAX (215) 574-0699
EMAIL: mbomstein@gmail.com

MT. AIRY OFFICE
7727 GERMANTOWN AVENUE, SUITE 100
PHILADELPHIA, PA 19119
(215) 248-5800

REPLY TO:
Center City

February 3, 2020

Electronic Filing

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

Re: Flynn, et al. v. Sunoco Pipeline L.P.,
Docket No. C-2018-3006116 and P-2018-3006117
**FLYNN COMPLAINANTS' RESPONSE TO SUNOCO'S "OMNIBUS"
MOTION AND REQUEST FOR TEN DAY ANSWER PERIOD**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Response to Sunoco's "Omnibus" Motion and Request for Ten Day Answer Period 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: 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	:	

**FLYNN COMPLAINANTS' RESPONSE TO SUNOCO'S
"OMNIBUS" MOTION AND REQUEST FOR TEN DAY ANSWER PERIOD**

On January 20, 2020, counsel for Flynn Complainants wrote ALJ Barnes seeking guidance as to the procedure to deal with discovery and trial matters not previously addressed in the ALJ's orders. The letter was sent simultaneously to all counsel and pro se parties of record. Judge Barnes responded by suggesting counsel seek to resolve the issues amicably and, if unable to do so, to consider filing a motion. Counsel for Sunoco stated that she would file a motion and Sunoco has now done so.

The parties have engaged in ongoing paper discovery, as recently as January 13, 2020, when Sunoco served answers to interrogatories that it had been compelled to serve pursuant to a motion to compel filed by Flynn Complainants. To date, the ALJ has not entered any order restricting ongoing discovery.

Respondent's new motion is predicated on the strange notion that "discovery is ongoing" (Motion at 5) but that Complainants' opportunity to introduce new evidence has passed, Complainants having "had abundant time to conduct discovery for presentation of their Direct

case.” (Motion at 9)¹ For the reasons set forth below, Flynn Complainants ask Your Honor to deny Sunoco’s Motion and instead enter an amended Procedural Order that addresses Complainants’ concerns.

I. **Introduction and Summary**

1. Denied as stated. The Pretrial Order did not expressly address discovery issues or evidentiary issues arising from discovery.

2. Admitted.

3. Denied. Lay witnesses in October or November would have had no opportunity to produce documents or address matters based on answers to interrogatories not furnished until December, January and later. § 5.243(e) does not apply because there would have been no opportunity to present such discovery in October or November. Likewise, following the upcoming deposition of Matthew Gordon, Complainants may wish to call the witness as on-cross during the hearing. Mr. Gordon was not one of Complainants’ lay witnesses and he certainly is not one of their experts. Respondent’s position fails to address these concerns.

4. Denied. Respondent fails to offer any authority to support its position. The obvious purpose of the email was to find out what procedural path the ALJ wished to be followed.

5. Denied. This claim is reminiscent of Sunoco’s earlier contention that, at the November 2018 hearings, Flynn Complainants waived certain rights. There was no factual nor legal basis for that assertion or this one either. The notion that Complainants accepted the schedule and, therefore, waived the right to discovery and to the evidentiary use of discovery is without basis in the law or in the applicable rules of procedure. Further, the suggestion that Complainants have been dilatory in pursuit of discovery is equally and obviously unfounded.

¹ Sunoco is implicitly asking the ALJ to ignore the long delays occasioned by its failure to produce discovery except upon repeated discovery enforcement orders.

6. Denied as stated. Flynn Complainants' concern is their ability to use the fruits of discovery and also to introduce documentary evidence that does not require authentication by the lay witnesses or the expert witnesses.

7. Admitted.

II. Request for Expedited Answer and Ruling

8. Admitted.

III. Argument

A. Flynn Complainants did not make a request for relief.

9. Denied as stated. First, the ALJ has discretion with respect to requests for relief. Second, the email was not a request for relief; it was a request for guidance as to the procedure to be followed.

10. Denied. See ¶ 9 above.

11. Denied. See ¶ 9 above.

12. Denied. There has been no inappropriate conduct.

B. Flynn Complainants have not asked for a waiver.

13. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

14. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

15. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

16. Denied as stated. Respondents' citations are correct. Factually, however, this averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

17. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

18. Denied as stated. As set forth in ¶ 3 above, lay witnesses in October or November would have had no opportunity to produce documents or answers based on responses to interrogatories not furnished until December, January and later. § 5.243(e) does not apply because there would have been no opportunity to present such discovery in October or November. Likewise, following the upcoming deposition of Matthew Gordon, Complainants may wish to call the witness as on-cross during the hearing. Mr. Gordon was not one of Complainants' lay witnesses and he certainly is not one of their experts. Respondent's position fails to address these concerns.

19. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

20. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

21. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

22. Denied. Your Honor has not ruled on any of the issues presently raised by Flynn Complainants. It is denied that the set of discovery requests was untimely or that Complainants were responsible for delays.

23. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied. The argument is a red herring of the first order. Caroline Hughes, e.g., is not seeking to introduce more evidence. All of the Complainants, however, through counsel, are engaged in additional discovery, the responses to which may be admissible. If another Sunoco pipeline leaks or ruptures in February, 2020, for instance, no good reason exists to preclude the offer of that information into evidence.

24. Denied. It is worth noting that no basis in the regulations or discovery rules is cited in support of this claim.

25. Denied. There are six months between now and the time of the next round of hearings. The assertion of prejudice is groundless.

26. Denied. This averment is a repetition of previous averments which also were a repetition of previous averments. Those averments also were denied.

27. Denied. No one has discussed seeking an extension of the direct testimony deadlines. No one has even sought relief, only guidance as to procedure.

28. Admitted.

29. Denied. See ¶ 27 above.

30. Denied. See ¶ 27 above.

C. Discovery Issues

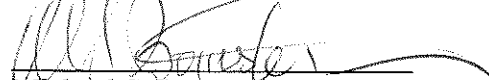
31. Denied. The effect of discovery on trial is important and has not previously been addressed. Second, the deposition of Sunoco manager Matthew Gordon does not require approval; a notice to attend is all that is required. Non-Sunoco persons are a separate matter.

32. Denied. For reasons already stated, the Procedural Order must be amended to address Flynn Complainants' concerns.

IV. Conclusion

WHEREFORE, Flynn Complainants pray that (a) a telephonic conference be arranged expeditiously for the purpose of discussing discovery and evidentiary issues not previously addressed in the current Procedural Order; and (b) an amended order be entered immediately thereafter.

Respectfully submitted,



Michael S. Bomstein, Esq.

Pinnola & Bomstein

PA ID No. 21328

Email: mbomstein@gmail.com

Suite 2126 Land Title Building

100 South Broad Street

Philadelphia, PA 19110

Tel.: (215) 592-8383


Attorney for Complainants

Dated: February 3, 2020

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.


Michael S. Bomstein, Esq.

Dated: February 3, 2020

LEAH ROTENBERG ESQUIRE
MAYS CONNARD & ROTENBERG LLP
1235 PENN AVE
SUITE 202
WYOMISSING PA 19610
610.400.0481
Accepts E-Service
*Representing Intervenor Twins Valley
School District*

MARGARET A MORRIS ESQUIRE
REGER RIZZO & DARNALL
2929 ARCH STREET 13TH FLOOR
PHILADELPHIA PA 19104
215.495.6524
Accepts E-Service
*Representing Intervenor East Goshen
Township*

VINCENT MATTHEW POMPO
ESQUIRE
LAMB MCERLANE PC
24 EAST MARKET ST
PO BOX 565
WEST CHESTER PA 19381
610.701.4411
Accepts E-Service
*Representing Intervenor West Whiteland
Township*

MARK L FREED ESQUIRE
JOANNA WALDRON ESQUIRE
CURTIN & HEEFNER LLP
DOYLESTOWN COMMERCE CENTER
2005 S EASTON ROAD SUITE 100
DOYLESTOWN PA 18901
267.898.0570
Accepts E-Service
*Representing Intervenor Uwchlan
Township*

JAMES R FLANDREAU
PAUL FLANDREAU & BERGER LLP
320 WEST FRONT ST
MEDIA PA 19063
610.565.4750
Accepts E-Service
*Representing Intervenor Middletown
Township*

PATRICIA BISWANGER ESQUIRE
PATRICIA BISWANGER
217 NORTH MONROE STREET
MEDIA PA 19063
610.608.0687
Accepts E-Service
*Representing Intervenor County of
Delaware*

ALEX JOHN BAUMLER ESQUIRE
LAMB MCERLANE PC
24 EAST MARKET ST
BOX 565
WEST CHESTER PA 19381
610.701.3277
Accepts E-Service
*Representing Intervenor Downingtown
Area School District, et al.*

GUY DONATELLI ESQUIRE
LAMB MCERLANE PC
24 EAST MARKET ST
BOX 565
WEST CHESTER PA 19381
610.430.8000
*Representing Intervenor Rose Tree
Media School District*

JAMES DALTON
UNRUH TURNER BURKE & FREES
PO BOX 515
WEST CHESTER PA 19381
610.692.1371
*Representing Intervenor West Chester
Area School District*

NEIL S WITKES ESQUIRE
ROBERT D FOX ESQUIRE
DIANA A SILVA ESQUIRE
MANKO, GOLD, KATCHER & FOX LLP
401 CITY AVENUE
VALA CYNWYD PA 19004
NWITKES@MANKOGOLD.COM
*REPRESENTING SUNOCO PIPELINE
LP*

THOMAS J SNISCAK, ESQUIRE
HAWKE MCKEON AND SNISCAK LLP
100 N TENTH STREET
HARRISBURG PA 17101
TJSNISCAK@HMSLEGAL.COM
*REPRESENTING SUNOCO PIPELINE
LP*

RICH RAIDERS ESQUIRE
606 NORTH 5TH STREET
READING PA 19601
484.509.2715
RICH@RAIDERSLAW.COM
*REPRESENTING INTERVENOR
ANDOVER HOMEOWNERS'
ASSOCIATION INC.*

ANTHONY D KANAGY ESQUIRE
POST & SCHELL PC
17 N SECOND ST 12TH FL
HARRISBURG PA 17101-1601
717.612.6034
AKANAGY@POSTSCHELL.COM
*REPRESENTING INTERVENOR
RANGE RESOURCES APPALACHIA*

ERIN MCDOWELL ESQUIRE
3000 TOWN CENTER BLVD
CANONSBURG PA 15317
EMCDOWELL@RANGERESOURCES.COM
*REPRESENTING INTERVENOR
RANGE RESOURCES APPALACHIA*

JAMES BYRNE ESQUIRE
MCNICHOL BYRNE & MATLAWSKI PC
1223 N PROVIDENCE RD
MEDIA PA 19063
610.565.4322
Accepts E-Service
*Representing Intervenor Thornbury
Township*

MICHAEL P PIERCE ESQUIRE
MICHAEL P PIERCE PC
17 VETERANS SQUARE
PO BOX 604
MEDIA PA 19063
610.566.0911
Accepts E-Service
Representing Edgmont Twp.

MELISSA DIBERNARDINO
1602 OLD ORCHARD LANE
WEST CHESTER PA 19380
484.881.2829
Accepts E-Service

WHITNEY SNYDER, ESQUIRE
HAWKE MCKEON AND SNISCAK LLP
100 N TENTH STREET
HARRISBURG PA 17101
WESNYDER@HMSLEGAL.COM
*REPRESENTING SUNOCO PIPELINE
LP*

VIRGINIA MARCILLE KERSLAKE
103 SHOEN ROAD
EXTON PA 19341
215.200.2966
Accepts E-Service
Intervenor

LAURA OBENSKI
14 S VILLAGE AVE
EXTON PA 19341
484.947.6149
Accepts E-Service

REBECCA BRITTON
211 ANDOVER DR
EXTON PA 19341
215.776.7516
Accepts E-Service

JOSH MAXWELL
MAYOR OF DOWNINGTOWN
4 W LANCASTER AVENUE
DOWNINGTOWN PA 19335
Intervenor

THOMAS CASEY
1113 WINDSOR DR
WEST CHESTER PA 19380
Intervenor

KELLY SULLIVAN ESQUIRE
MCNICHOL BYRNE & MATLAWSKI
1223 NORTH PROVIDENCE RD
MEDIA PA 19063
610.565.4322
Accepts E-Service
Representing Thornbury Twp.