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March 18, 2020

**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)  
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605 (consolidated)  
v.  
Sunoco Pipeline L.P.

**PARTIALLY UNOPPOSED MOTION TO STAY PROCEEDINGS AND  
REQUEST FOR EXPEDITED RESPONSE AND RULING**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s partially unopposed Motion to Stay Proceedings in this matter and **request for expedited three-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,

*/s/ Whitney E. Snyder*  
Thomas J. Sniscak  
Whitney E. Snyder  
*Counsel for Sunoco Pipeline L.P.*

WES/das

Enclosure

cc: Honorable Elizabeth Barnes (by email [ebarnes@pa.gov](mailto:ebarnes@pa.gov))  
Per Certificate of Service

## 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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/s/ Whitney E. Snyder

Thomas J. Sniscak, Esquire  
Whitney E. Snyder, Esquire

Dated: March 18, 2020

**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)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

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**NOTICE TO PLEAD**

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PLEASE TAKE NOTICE that Sunoco Pipeline L.P. (“SPLP”) has filed a Motion to Stay Proceedings (“Motion”). Pursuant to 52 Pa. code § 5.103, **you are hereby notified that an answer or other responsive pleading shall be filed within three (3) days of service of the Motion.**<sup>1</sup> Your failure to file an answer or other responsive pleading will allow the presiding office 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.

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<sup>1</sup> Pursuant to 52 Pa. Code § 5.103(c), this motion requests an expedited, 3-day response period. To the extent the presiding office grants the expedited response period requested, answers shall be due within 3-days.

Respectfully submitted,

/s/ Whitney E. Snyder

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*Counsel for Sunoco Pipeline L.P.*

Dated: March 18, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
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ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

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**PARTIALLY UNOPPOSED MOTION TO STAY PROCEEDINGS AND REQUEST FOR  
EXPEDITED RESPONSE AND RULING**

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Pursuant to 52 Pa. Code § 5.103 and the June 6, 2019 Procedural Order at Ordering ¶ 3,<sup>1</sup> Sunoco Pipeline L.P. (SPLP), moves for a 60-day stay of all proceedings in this matter and suspension of the procedural schedule due to the unprecedented disruption that the COVID-19 Pandemic presents to litigation preparation and participation and the Commission's operations. SPLP also moves that the parties meet and confer and report a status to the Administrative Law Judge within 30-days of the grant of this Motion, with a procedural schedule to be developed at

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<sup>1</sup> The June 6, 2019 Procedural Order states: "That, except for good cause, any requests for a change in the scheduled hearing dates, briefing deadlines, or other deadlines must be submitted to me in writing no later than five (5) days prior to the scheduled date, if possible. 52 Pa. Code §1.15(b). Requests for changes must state the agreement or opposition of other parties, and must be sent to the presiding officer and all parties of record."

the appropriate time. In the alternative,<sup>2</sup> SPLP moves for a 30-day stay and suspension of the procedural schedule with a meet and confer between the parties within 25-days of the grant of this Motion, status report to the Administrative Law Judge, and a procedural schedule to be developed at the appropriate time. Finally, given that counsel for the seven Flynn Complainants concur in the 30-day stay, that counsel for the majority of intervenors have represented that they do not oppose the 60-day stay, that SPLP gave prior notice to all parties via email dated March 17, 2020, and that there are upcoming deadlines for responsive pleadings and testimony, SPLP requests a 3-day expedited response time and an expedited ruling on this Motion.

## **I. MOTION FOR STAY**

1. The COVID-19 Pandemic has and will continue, likely for months, to cause an unprecedented disruption to preparation and litigation of this proceeding and Your Honor's and the Commission's operations. Around the state, judicial systems are ordering scaled-back operations or closures under the March 16, 2020 Order by the Pennsylvania Supreme Court, which declared a statewide judicial emergency due to the concerns of the COVID-19 Pandemic. While ranging in breadth, courts are suspending operations and civil matters into the indefinite future and

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<sup>2</sup> On Tuesday, March 17, 2020, counsel for SPLP and the seven Flynn Complainants discussed and reached an understanding that Flynn Complainants would concur in a request for a 60-day stay. SPLP's counsel then reached out to parties and sent an email to all parties seeking their position on the 60-day stay. Most intervenors indicated they do not oppose the stay. Then, on Wednesday morning, March 18, 2020, Flynn Complainants' counsel contacted SPLP's counsel and stated he would only be amenable to a 30-day stay. The Clean Air Counsel then indicated that they would only not oppose a 30-day stay. Likewise, on Wednesday March 18, 2020, Andover Homeowner's Association's counsel, which had previously indicated on Tuesday non-opposition to the 60-day stay withdrew non-opposition to any stay.



allowing liberal procedural modifications from continuances to suspension of time calculations.<sup>3,4,5,6</sup>

2. The Commission ALJs are continuing matters and canceling hearings, even if the hearings were scheduled to take place telephonically in the near future.<sup>7</sup> Your Honor has indicated in another proceeding that at least until April 13, 2020 it is doubtful that any orders or notices can be issued during this time period. (See **Attachment A**, March 16 Email from Administrative Law Judge Elizabeth Barnes to parties in Docket Nos. A-2017-2640195, et al.). Today Your Honor indicated that all hearings and conferences in the Office of Administrative Law Judge through April 10 have been cancelled. (See **Attachment B**, March 18, 2020 Email from Administrative Law Judge Elizabeth Barnes to parties in Docket Nos. A-2017-2640195, et al.).

3. Due to the challenges that the COVID-19 Pandemic presents, SPLP moves for a 60-day stay of all proceedings in this matter. SPLP also moves that the parties meet and confer and report a status to the Administrative Law Judge within 30-days of the grant of this Motion, with a procedural schedule to be developed at the appropriate time.

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<sup>3</sup> By General Order No. 20-01 dated March 13, 2020, the United States District Court for the Middle District of Pennsylvania continued all civil and criminal matters for 60 days, with few exceptions.

<sup>4</sup> By Emergency Judicial Order No. 10 of 2020, dated March 17, 2020, the Philadelphia County Court of Common Pleas suspended all operations until at a minimum April 1, 2020, with all Civil filings being suspended (except for civil Emergency Petitions) until further notice. The Order also suspended all Time Calculations pursuant to PA Rule of Judicial Administration 1925(B).

<sup>5</sup> Cumberland County Court of Common Pleas, by Order entered March 16, 2020, ordered strict guidelines on court appearances, including that Judge's "liberally grant requests for continuances."

<sup>6</sup> Dauphin County Court of Common Pleas, by Order entered March 16, 2020, canceled April criminal and civil jury trial term, and required counsel to file a new certificate of readiness, among other cancelations.

<sup>7</sup> *E.g. Joseph Starkey v. National Gas and Electric and PECO Energy Company*. Docket No. F-2019-3013939, Cancellation Notice (Notice filed March 17, 2020) (ALJ Christopher Pell).

4. In the alternative, due to the shifting position of some of the parties,<sup>8</sup> SPLP moves for a 30-day stay and suspension of the procedural schedule with a meet and confer between the parties within 25-days of the grant of this Motion, status report to the Administrative Law Judge, and a procedural schedule to be developed at the appropriate time.

5. The procedural schedule is unrealistic to keep in place at this time. Litigation and preparation are nearly unworkable due to travel restrictions and precautions, particularly given that parties are located in various regions of Pennsylvania and witnesses are located throughout the country. Moreover, the in-person hearings scheduled for July 2020 are unlikely to occur as scheduled due to the impacts of the COVID-19 Pandemic.

6. SPLP has contacted all parties in this proceeding regarding the 60-day stay. SPLP assumes that any party that indicated they do not oppose the 60-day stay likewise does not oppose the 30-day stay. Each parties' position is listed below.

**Parties that do not oppose 60-day stay (13):<sup>9</sup>**

- Downingtown Area School District
- Senator Thomas Killion
- Twin Valley School District
- Chester County
- East Goshen Township
- Middletown Township
- Range Resources – Appalachia LLC
- Delaware County

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<sup>8</sup> *Supra* n. 2.

<sup>9</sup> SPLP reached out to counsel who confirmed non-opposition, and some of whom were in the process of confirming same with their respective clients. Counsel did not indicate prior to the filing of this Motion that they opposed the stay.

- West Chester Area School District
- Thornbury Township
- Edgmont Township
- West Whiteland Township
- Sunoco Pipeline L.P.

**Parties that concur in or do not oppose 30-day stay (15):**

- Seven Flynn Complainants – Concur in 30-day stay
- Parties listed as not opposing 60-day stay – Do not oppose<sup>10</sup>
- Clean Air Council – Do not oppose

**Parties that oppose any stay (5):**

- Virginia Marcille-Kerslake
- Andover Homeowner’s Association, Inc.
- Melisa DiBernardino
- Laura Obenski
- Uwchlan Township

**Parties that did not indicate their position (4):**

- Thomas Casey
- Josh Maxwell
- Rebecca Britton
- Rose Tree Media School District

7. The proposed stay is not prejudicial to any party. It is unlikely that the in-person hearings will be able to occur in July due to the ongoing impacts of the COVID-19 Pandemic, so the Initial Decision and any Commission decision will likely be delayed even without a stay at this time, and this is not a proceeding in which a telephonic hearing can be held for multiple reasons.

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<sup>10</sup> SPLP assumes parties that do not oppose the 60-day stay do not oppose the 30-day stay.

First, SPLP has the right to confront and cross-examine witnesses in person. Second, there is an Amended Protective Order in place limiting the availability of proprietary information, including Confidential Security Information and if the hearing is telephonic, SPLP cannot be assured that persons who are not eligible to receive this information would not be listening to the hearing when such information is discussed, particularly given the general public's interest in observing these proceedings. Third, it appears the Commission's conference call system limits the number of participants and it appears that system could not handle the volume of parties, witnesses, and the public that would need or want to dial-in. Fourth, a hearing with this many parties via teleconference will be unwieldy and not amenable to a clear and accurate transcript.

8. Moreover, this is a complaint proceeding akin to civil litigation that does not require an expeditious decision under due process principles. Complainants' claims to the extent they were timely were preserved by the filing of their Complaints. There is no emergency or urgent situation that needs resolved. The request for interim relief filed by the seven Flynn complainants was previously denied following a hearing. As other courts have recognized, certain cases implicating due process speedy trial considerations must move forward, but other cases that do not implicate these considerations have, can, or will be stayed or continued. *Supra* nn. 3-6.

9. Likewise, none of the opposing parties have upcoming deadlines for responsive pleadings (other than an answer to this Motion) or testimony that they must figure out how to meet while observing travel restrictions and attempting to telecommute. SPLP has no outstanding discovery due to any of the opposing parties.

10. Parties opposing any stay have raised only one objection – they believe SPLP's construction should be halted if the litigation is stayed. Their position is legally incorrect and the Commission lacks jurisdiction and authority to order such relief. The Governor is granted

exclusive power to declare a state of emergency and decide what actions he will require or prohibit regarding that emergency. 35 Pa. C.S. § 7301. The Governor has already declared a state of emergency and proclaimed that construction is an essential business function.<sup>11</sup> The Commission does not have the authority to override that determination. Likewise, the Commission does not have the expertise or jurisdiction to determine health-related issues opposing parties are attempting to interject. Moreover, SPLP is a certificated public utility and by that status its operations, maintenance, and construction are all “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

## II. REQUEST FOR EXPEDITED RESPONSE PERIOD AND RULING

11. SPLP believes that it is in all parties’ and Your Honor’s interests to resolve this Motion as expeditiously as possible to allow each of us to deal with the upcoming challenges COVID-19 presents. Pursuant to 52 Pa. Code § 5.103(c), SPLP requests a 3-day expedited response time and an expedited ruling on this Motion. Given that counsel for the seven Flynn Complainants concurs in the 30-day stay, that counsel for the majority of intervenors have represented that they do not oppose the 60-day stay, that SPLP gave prior notice to all parties via email dated March 17, 2020, and that there are upcoming deadlines for responsive pleadings and testimony, SPLP requests a 3-day expedited response time and an expedited ruling on this motion.

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<sup>11</sup> Press Release, Wolf Administration Updates Businesses on Guidance for COVID-19 Mitigation Efforts (Mar. 16, 2020) (“**Essential services and sectors include but are not limited to** food processing, agriculture, industrial manufacturing, feed mills, **construction**, trash collection, grocery and household goods. . . .”).

### **III. CONCLUSION**

WHEREFORE, SPLP respectfully requests:

1. Answers to this Motion shall be filed with 3 days of service.
2. Your Honor enter an order:
  - a. staying the above captioned proceeding for 60 days;
  - b. suspending the current procedural schedule; and
  - c. requiring SPLP to meet and confer with the parties within 30 days of said Order regarding the schedule and submit a status report thereafter including development of a procedural schedule at an appropriate time.
3. Or in the alternative to Paragraph 2, Your Honor enter an order:
  - a. staying the above captioned proceeding for 30 days;
  - b. suspending the current procedural schedule; and
  - c. requiring SPLP to meet and confer with the parties within 25 days of said Order regarding the schedule and submit a status report thereafter including development of a procedural schedule at an appropriate time.

Respectfully submitted,

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Dated: March 18, 2020

# **ATTACHMENT A**



## ATTACHMENT A

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**Sent:** Monday, March 16, 2020 9:12 AM

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**Subject:** RE: [External] Application of Transource Pennsylvania, LLC - Docket Nos. A-2017-2640195, et al.

ALL:

The Prehearing Conference regarding the Application of Transource Pennsylvania, LLC at Docket Nos. A-2017-2640195 on March 18, 2020 is **cancelled** due to management directives. I will be teleworking from home until April 13, 2020 with access to work e-mails and voice mails. However, it is doubtful any orders or notices can be issued by me during this time period. A further prehearing conference will be rescheduled after April 13, 2020. I apologize for any inconvenience this may cause you.

I wish you all well.

Regards,

Elizabeth Barnes  
Administrative Law Judge

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**Subject:** [External] Application of Transource Pennsylvania, LLC - Docket Nos. A-2017-2640195, et al.

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**RE: Application of Transource Pennsylvania, LLC for Approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection - East and West Projects in Portions of Franklin and York Counties, Pennsylvania - Docket No. A-2017-2640195 & A-2017-2640200**

**Petitions of Transource Pennsylvania, LLC for a finding that a building to shelter control equipment at the Rice Substation in Franklin County, Pennsylvania and the Furnace Run Substation in York County, Pennsylvania are reasonably necessary for the convenience or welfare of the public - Docket Nos. P-2018-3001878 & P-2018-3001883**

**Application of Transource Pennsylvania, LLC for approval to acquire a certain portion of the lands of various landowners in York and Franklin Counties, Pennsylvania for the siting and construction of the 230 kV Transmission Lines associated with the Independence Energy Connection - East and West Projects as necessary or proper for the service, accommodation, convenience or safety of the public - Docket Nos. A-2018-3001881, et al.**

Attached is the Prehearing Memorandum of Transource Pennsylvania, LLC and PPL Electric Utilities Corporation filed in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

**A. JoLene Langan**  
**Secretary**  
**Post & Schell, P.C.**  
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# **ATTACHMENT B**

## ATTACHMENT B

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**Subject:** Re: Transource PA

All:

The PUC offices are closed until April 1, 2020. Chief ALJ Rainey has canceled all hearings and conferences in the Office of Administrative Law Judge through April 10. Today's prehearing conference is canceled and will be rescheduled as soon as possible.

I hope you are all well.

Regards

Elizabeth Barnes  
Administrative Law Judge  
Pennsylvania Public Utility Commission

---

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**Subject:** Transource PA

Counsel and Parties:

Yesterday, the Pennsylvania Public Utility Commission issued a directive to convert large in person conferences into telephonic conferences in an attempt to thwart the spread of COVID-19. Accordingly, the In Person Prehearing Conference regarding the Application of Transource Pennsylvania, LLC A-2017-2640195 et al. scheduled for 10:00 a.m. – 11:00 a.m. on March 18, 2020 is being converted to a Call-In Telephonic Prehearing Conference. You will receive notice in the mail.

The toll free number is **877-931-1680**, Passcode Participant **#55872942**.

There are a limited number of persons able to participate by phone (approximately 20). If you are willing to abide by decisions made regarding the procedural schedule going forward, please do not call in. If multiple attorneys represent the same client, I ask that you use as few ports as possible.

Please reply to this e-mail if you intend to participate by phone. I will do my best to be sure everyone wanting to participate is present at the prehearing conference.

Also, ALJ Andrew Calvelli is no longer working at the Commission. He has taken a job as a Federal Immigration Judge in New York City. You may remove his name from any correspondence.

Regards,

Elizabeth Barnes  
Administrative Law Judge