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REPLY TO:
Center City

March 19, 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 LP
Docket Nos. C-2018-3006116 and P-2018-3006117
FLYNN COMPLAINANTS' RESPONSE TO MOTION FOR STAY

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Response to Sunoco's Motion for Stay in the above referenced case.

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

Very truly yours,

/s/ Michael S. Bomstein
MICHAEL S. BOMSTEIN

MSB:mik

cc: 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	:	

**FLYNN COMPLAINANTS' RESPONSE TO
MOTION TO STAY PROCEEDINGS**

Introduction

Respondent has moved for a stay of proceedings based on concerns over the COVID-19 pandemic. Part of the motion is based upon facts alleged in its Footnote 2. Since Respondent has not numbered the Footnote 2 facts, Complainants respond initially to Footnote 2.

Response: Denied as stated. On March 17th, attorney Bomstein sent an email to attorneys Snyder and Silva inviting them to discuss what effect, if any, the pandemic should have on the instant proceeding. Respondents' counsel responded promptly with a phone call to Bomstein at 11:30 a.m. on the 17th.

In the conversation, attorney Snyder represented that based on information she had received, ALJ Barnes was not going to be ruling on pre-hearing disputes at least for a while. Bomstein stated he believed that the PUC website already indicated that its offices were closing. Bomstein took that to mean that from that time on, no further e-filings would be acknowledged or considered by judges.

Attorney Silva suggested that the parties stipulate to a 60-day stay in proceedings with a review at the end. Bomstein agreed.

Later on the 17th, Bomstein spoke with a PUC staff member and learned that e-filings were continuing, and he concluded that for the time being there was no good reason voluntarily to curtail pre-hearing deadlines. On the morning of March 18th, Bomstein contacted opposing counsel by email to express his concerns and in the course of that conversation learned that Judge Barnes had said nothing about pre-hearing practice and that the ALJ in an email stated she would revisit matters after April 13th.

Based on that, Bomstein suggested a 30-day delay rather than a 60-day delay would be more reasonable. Opposing counsel stated they would discuss it with their client. *The instant motion followed and, it should be noted, it was accepted for electronic filing at 4:23 p.m.*

I. Motion for Stay

1. Admitted.
2. Denied as stated. Answering Complainants are without knowledge or information sufficient to form a belief as to all of Sunoco's statements but have no reason to disbelieve them either.
3. Admitted. Complainants admit only that Sunoco is seeking a 60-day stay.
4. Denied as stated. Complainants admit only that Sunoco has offered an alternative, which alternative was acceptable to Flynn Complainants prior to Sunoco's filing of the instant motion. At this time, while it appears that the pandemic is growing worse, most law firms large and small have re-located their operations in order to continue operations to the extent feasible. The mere fact that an attorney sits at home at a computer instead of in an office at a computer is not sufficient to let the system grind to a halt.

As proof of this, the instant motion was prepared and filed by Sunoco counsel within hours of the attorneys' last communication. Sunoco is seeking an overbroad hiatus in this proceeding on the one hand but on the other hand is managing to continue its unsafe and environment-destroying pipeline construction operations full steam ahead.

Somehow the pandemic has disabled Respondent's lawyers but it is having no effect on the Mariner East project. Flynn counsel respectfully suggests that is not how pandemics work.

5. Denied as stated. If counsel have the ability to conduct discovery and file motions remotely they should be expected to do so. If there is a delay in resolving disputes between the parties then the ALJ can determine the effect of such delays at an appropriate time.

Flynn Complainants submitted their direct expert testimony mid-January. The Respondent had 90 days to serve its own experts' testimony. 60 days passed before the court systems began to shut down. If there exist reasonable grounds to give Respondent more than the 30 days it currently has left, then that can easily be addressed.

The instant motion, however, says nothing specific to suggest that Sunoco's experts are unable to communicate and prepare their reports remotely. Dr. Zee, e.g., conducts business from Pittsburgh and travels frequently to the West Coast for site work. Complainants managed to work with him and submitted Zee's testimony on time.

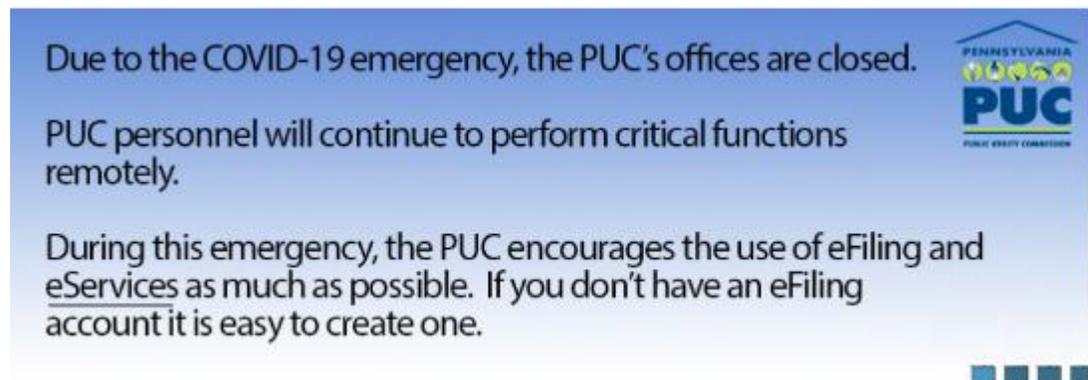
6. Denied as stated. While Complainants cannot attest to this allegation, and they have no reason to deny it was at one point true, they believe it is no longer true. By way of further response, the alleged non-opposition of certain parties is likely based in large part on Sunoco counsel's representation by email on the evening of Tuesday, March 17 that Flynn counsel joined in Sunoco's proposed 60-day stay. That statement was true at the time but counsel's understanding of the facts changed rapidly afterwards.

At 7:11 the next morning Bomstein sent the following email to Sunoco's attorneys:

When we spoke yesterday, I believed that PUC would be shutting down except for emergencies. This was partly confirmed by the suggestion that Judge Barnes would not be making any rulings.

This morning's PUC website is unclear on this point. If the judge can making rulings and we can do business with PUC electronically, that is a different kettle of fish all together. This suggests that we will be able to continue to do electronic filing and proceed with our submission of expert evidence.

Here is what's on the PUC website right now:



Please clarify immediately your understanding of whether the PUC will be functioning sufficiently for us to move forward during the pandemic.

(Emphasis added).

Thus, Sunoco's attorneys were aware early yesterday morning that Bomstein believed the facts were quite different from what he had been given to believe the day before. PUC staff were still accepting electronic filings. Judge Barnes had not stated that all pre-hearing matters needed to come to a halt.

A further conversation took place yesterday morning and Bomstein advised Ms. Silva and Ms. Snyder that he could only agree to a 30 day extension because it now appeared that the parties still had the ability to conduct discovery and submit direct expert testimony.

Unfortunately, the Sunoco attorneys did not see fit to communicate these changed facts to the remaining attorneys and pro se parties and the instant motion was filed instead. It is now unlikely that the remaining intervenors and pro se litigants would agree to Sunoco's proposal.

7. Denied. Every day that Sunoco continues construction of the Mariner East project is one more day when Sunoco's recklessness endangers the Flynn Complainants and their families. This is especially so during the pandemic, when the intrusion of construction workers that travel door to door across residents' yards, some quarantined, during a lockdown, risks further spread of a deadly disease. A blanket delay of 60 days is arbitrary and unreasonable. If the pandemic at some point makes it unrealistic to hold the hearings in late July, a decision can be made at that time.

8. Denied. The averments of paragraph 7 above are incorporated by reference thereto.

9. Denied. Sunoco has been served with Requests for Admissions. Responses are due in April. Sunoco is simply using the pandemic as an excuse to delay responding and to delay hearings while pipeline construction continues unabated.

10. Denied as stated. While parties opposing the stay are concerned about continuing construction, Complainants believe they also concur in the responses set forth hereinabove. Furthermore, the Governor's economy-spanning emergency declaration does not pre-empt the functioning of other Commonwealth agencies. Sunoco's statement is akin to asserting that because industrial manufacturing has not been shut down by the Governor's statement, the Pennsylvania Air Pollution Control Act is null and void for the time being. The Commission is

still fully empowered to exercise its responsibilities, which have not been altered by the emergency declaration.

II. Request for Expedited Response and Ruling

11. Admitted. A three-day response period is reasonable under the circumstances.

III. Conclusion

Wherefore, Flynn Complainants request Your Honor not immediately stay the proceedings but instead set the matter down for a telephonic conference in order to address the pre-hearing schedule in light of the pandemic.

Respectfully submitted,

/s/ Michael S. Bomstein

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Attorney for Complainants

Dated: March 19, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
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CAROLINE HUGHES and	:	
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Complainants	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Flynn Complainants' foregoing Motion upon the persons listed below as per the requirements of § 1.54 (relating to service by a party).

See attached service list.

/s/ Michael S. Bomstein
Michael S. Bomstein, Esq.

Dated: March 19, 2020

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