

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

August 26, 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 Nos. C-2018-3006116, P-2018-3006117
DiBernardino, Docket No. C-2018-3005025 (consolidated)
Britton, Docket No. C-2019-3006898 (consolidated)
Obenski, Docket No. C-2019-3006905 (consolidated)
Andover, Docket No. C-2018-3003605

**Flynn Complainants' Response to Motion For Leave to
Reply to Answer to Sunoco's Motion for Partial Summary
Judgment On Consequence Without Probability**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is the Flynn Complainants' Response to Sunoco's Motion for Leave to Reply to Answer to Motion for Partial Summary Judgment on Consequence without Probability.

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

Very truly yours,


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 NO. C-2018-3006116
CAROLINE HUGHES and	:	DOCKET NO. P-2018-3006117
MELISSA HAINES	:	DOCKET NO. C-2018-3005025
<i>Complainants,</i>	:	DOCKET NO. C-2019-3006898
v.	:	DOCKET NO. C-2019-3006905
	:	DOCKET NO. C-2018-3003605
	:	
SUNOCO PIPELINE L.P.,	:	
<i>Respondent.</i>	:	
	:	

**FLYNN COMPLAINANTS' RESPONSE TO SUNOCO'S MOTION FOR LEAVE TO
REPLY TO ANSWER TO SUNOCO'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CONSEQUENCE WITHOUT PROBABILITY**

Flynn Complainants, having been served with Sunoco's Motion for Leave to Reply to Answer, and desiring to respond thereto, hereby answer as follows.

All they had to do was call! A simple request of counsel would have been greeted with the standard courtesy that any other litigant would have received. The parties could easily have entered into a stipulation and submitted it to the ALJ for approval.

1. Denied as stated. Admitted that the *Mattu* citation inadvertently and importantly left out the subsequent Commonwealth Court reversal. In *Mattu*, the Commission was reversed for accepting lay testimony on an expert matter and the case now has no precedential value.

In the present case, however, Sunoco is challenging an expert's testimony and suggesting that that testimony was insufficient. The Complainants' Answer to the Summary

Judgment motion more than adequately demonstrated that Jeff Marx's direct testimony and surrebuttal testimony are sufficient to survive Sunoco's motion.

Sunoco also wishes to file a Reply in order to respond to the Flynn Complainants' statement of undisputed facts. Complainants have no objection to that request either. Sunoco cites 52 Pa. Code § 5.243(e) which "prohibits the introduction of evidence during rebuttal which should have been included in the party's case-in-chief."

What Sunoco fails to do, however, is actually apply this provision to the facts of the current proceeding. The four secret Sunoco consequence summaries were not even relevant until John Zurcher's rebuttal testimony incorrectly asserted that consequence without a probability analysis is meaningless. That happened on June 15th. In this physical world the arrow of time does not go backwards; Jeff Marx was not and could not have been on notice back in January of the new claim that Mr. Zurcher was to make in June. Flynn Complainants will be addressing this in a separate motion.

The proposed Reply attached as Attachment "A" repeats the erroneous claim that the issue of relying upon consequence without probability has been decided by Your Honor and by the Commission. The proposed Reply also asserts that "Complainants rely on a single case in their respective answers." (Reply at ¶ 4). These claims are simply and obviously wrong. Indeed, it is puzzling that experienced counsel would mischaracterize the contents of a filing which the Judge could so easily see is at odds with what Sunoco asserts.

First, Complainants' argument distinguishes the two cases upon which Sunoco incorrectly replies.

Second, the argument does rely upon another case, *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987), relative to Mr. Zurcher's entirely unsupported claim.

In addition the Answer cites non-decisional sources as well, including, importantly, the case regulation Judge Barnes relied upon in her previous ruling: 52 Pa. Code § 3.1.

Mostly, Sunoco is using the proposed Reply to regurgitate the erroneous claims made in its Motion for Partial Summary Judgment. The Flynn Complainants believe that their Answer to the Motion is sufficient and they will not at this time repeat what they said in that filing. If Sunoco wishes to do so, however, Complainants have no objection.

2. Denied as stated. Complainants disagree with the characterization of the procedural history of the case cited by Sunoco but have no objection to allowing Sunoco a chance to file the proposed Reply.

3. Admitted.

Respectfully submitted,

/s/ Michael S. Bomstein

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

Dated: August 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Flynn Complainants' foregoing Response 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: August 26, 2020

SERVICE LIST

Thomas J. Sniscak, Esquire
Kevin J. McKeon, Esquire
Whitney E. Snyder, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com
Attorneys for Respondent SPLP

Michael P. Pierce, Esquire
Pierce & Hughes
17 Veterans Square
Media, PA 19063
mppierce@piercelandhughes.com
Attorney for Edgmont Twp

James C. Dalton, Esquire
Unruh, Turner, Burke & Frees
P.O. Box 515
West Chester, PA 19381-0516
jdalton@utbf.com
Attorney for West Chester Area

Joseph Otis Minott, Esquire
Alexander G. Bomstein, Esquire
Ernest Logan Welde, Esquire
Kathryn Urbanowicz, Esquire
Clean Air Council
135 South 19th St, Suite 300
Philadelphia, PA 19103
Joe_Minott@cleanair.org
abomstein@cleanair.org
lwelde@cleanair.org
kurbanowicz@cleanair.org

Robert Fox, Esquire
Neil Witkes, Esquire
Diana A. Silva, Esquire
Manko, Gold, Katcher & Fox
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
rfox@mankogold.com
nwwitkes@mankogold.com
dsilva@mankogold.com
Attorneys for Respondent SPLP

Rich Raiders, Esquire
Raiders Law
321 East Main Street
Annville, PA 17003
rich@raidslaw.com
Attorney for Andover Homeowners

James J. Byrne, Esquire
McNichol, Byrne & Matlawski
1223 North Providence Road
Media, PA 19063
jjbyrne@mbmlawoffice.com
Attorney for Thornbury Twp

Erin McDowell, Esquire
3000 Town Center Blvd
Canonsburg, PA 15317
emcdowell@rangeresources.com
Attorney for Range Resources

Guy Donatelli, Esquire
Vincent M. Pompo, Esquire
Lamb McErlane PC
24 East Market Street
West Chester, PA 19382-0565
gdonatelli@lambmcerlane.com
vpompo@lambmcerlane.com
abaumler@lambmcerlane.com
*Attorneys for West Whiteland,
Downingtown SD, Rose Tree
Media Sch Dist, Sen Killion*

Anthony D. Kanagy, Esquire
Garrett P. Lent, Esquire
Post & Schell PC
17 North Second St 12th Floor
Harrisburg, PA 17101-1601 a
akanagy@postschell.com
glent@postschell.com
Attorney for Range Resources

James R. Flandreau, Esquire
Paul, Flandreau & Berger, LLP
320 West Front Street
Media, PA 19063
jflandreau@ptflaw.com
Attorney for Middletown SD

Leah Rotenberg, Esquire
Mays Connrad & Rotenberg
1235 Penn Avenue, Suite 202
Wyomissing, PA 19610
rotenberg@mcr-attorneys.com
Attorney for Twin Valley SD

Mark L. Freed, Esquire
Joanna A. Waldron, Esquire
Curtin & Heefner, LLP
2005 S Easton Road, Ste 100
Doylestown, PA 18901
mlf@curtinheefner.com
jaw@curtinheefner.com
Attorney for Uwchlan Twp

PRO SE INTERVENORS:
Thomas Casey, Esquire
1113 Windsor Drive
West Chester, PA 19380
tcaseylegal@gmail.com

Melissa DiBernardino
1602 Old Orchard Lane
West Chester, PA 19380
lissdibernardino@gmail.com

Virginia Marcielle-Kerslake
103 Shoen Road
Exton, PA 19341
vkerslake@gmail.com

Laura Obenski
14 South Village Avenue
Exton, PA 19341
ljobenski@gmail.com

Josh Maxwell
4 West Lancaster Avenue
Downingtown, PA 19335
jmaxwell@downingtown.org

Rebecca Britton
211 Andover Drive
Canonsburg, PA 15317
rbrittonlegal@gmail.com