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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

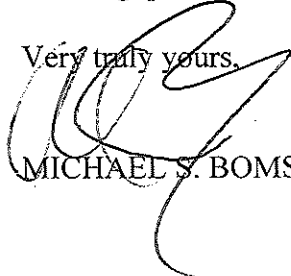
The Flynn Complainants' Response to Motion for Leave to Reply To Answer to Sunoco's Motion for Partial Summary Judgment on Pipeline Integrity

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 Pipeline Integrity.

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	:	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 MOTION FOR LEAVE
TO REPLY TO ANSWER TO SUNOCO'S MOTION
FOR PARTIAL SUMMARY JUDGMENT ON PIPELINE INTEGRITY**

The 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. The *Mattu* citation inadvertently and importantly left out the subsequent Commonwealth Court reversal. The Commission was reversed for accepting lay testimony on an expert matter. In the present case, however, Sunoco is challenging an expert's testimony and suggesting that that testimony was insufficient; apples and oranges. The Flynn Complainants' Answer to the Summary Judgment Motion more than adequately demonstrated that Dr. Zee's direct testimony and surrebuttal testimony were sufficient to survive Sunoco's motion.

Sunoco also incorrectly asserts that Flynn Complainants have improperly raised undisputed facts “many of which are either not facts or not material facts sufficient to overcome summary judgment.” (Motion at ¶ 1). Complainants do not agree the facts are incorrect or that they have been improperly raised. At the same time, they have no objection to Sunoco seeking to identify facts that it believes are incorrect or “improper.”

The proposed Reply attached as Attachment “A” makes the erroneous claim that Flynn Complainants are asserting that they are not required to “show a violation of law or regulation.” (Reply at ¶1) The suggestion that Complainants “are essentially alleging that the Commission can order relief here without finding a violation of law because the relief they are requesting is ‘novel’” (Reply at ¶ 40) has no foundation in anything Complainants have written. Notably, Sunoco fails to cite any place in Complainants’ Answer to the summary judgment motion that supports this false assertion.

Sunoco cites *Seese* and *West Penn* to make the obvious point that an investigation is not warranted without evidence of law or regulation. (Reply at ¶ 6). Dr. Zee’s direct and surrebuttal testimony offer numerous instances in which Sunoco failed to follow accepted engineering standards for integrity management. The Complaint alleges that federal integrity management standards have not been maintained and numerous examples are provided in Dr. Zee’s direct testimony and in his surrebuttal testimony.

Pennsylvania has adopted as its minimum safety standards the minimum federal standards applicable to HVL pipelines. By way of example, the -850 mV standard for cathodic protection has not been maintained and PHMSA recently found that Sunoco could not document that it followed the alternative standard. Dr. Zee has asserted in his direct testimony that Sunoco

consistently has failed to maintain records that would support a finding that it has been following proper integrity management practices; indeed, Sunoco does not even follow its own plans.

The recent PHMSA findings at nine separate locations in Honey Brook, Chester County, support Dr. Zee's testimony as well. Thus, the notion that Dr. Zee's testimony does not support a finding of violation of law or regulation is just preposterous.

It is worth noting that Sunoco blithely glides over the requirements of 52 Pa. Code § 59.33(a), which requires public utilities such as Sunoco to "exercise reasonable care to reduce the hazards to which employees, customers and others maybe subjected to (sic) by reason of its equipment and facilities." Certainly, a company that repeatedly violates pipeline integrity standards is not exercising reasonable care to reduce hazards. Indeed, hardly a month goes by without Sunoco spilling pipeline drilling fluids into pristine marshes and residential neighborhoods. Dr. Zee's findings and conclusions on any of these points are not equivocal.

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

3. Admitted.

Respectfully submitted,

/s/ Michael S. Bomstein
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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

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