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REPLY TO:  
Center City

September 23, 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' ANSWER TO SUNOCO'S  
MOTION IN LIMINE IN RE MARINER EAST 1**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Response to Sunoco's Motion in Limine in re Mariner East I.

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
Complainants	:	DOCKET NO. C-2019-3006898
v.	:	DOCKET NO. C-2019-3006905
	:	DOCKET NO. C-2018-3003605
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

**FLYNN COMPLAINANTS' ANSWER TO SUNOCO'S  
MOTION IN LIMINE IN RE MARINER EAST 1**

**INTRODUCTION**

Sunoco has now filed another frivolous motion, arguing that because an outside consultant has been approved to conduct a remaining life study on the eight-inch ME1 pipeline<sup>1</sup>, it follows that no such study may be ordered in this proceeding. The fact that Flynn Complainants also have been seeking a remaining life study on the equally dangerous 12-inch HVL pipeline is completely ignored.

As was the case for Sunoco's last two motions, counsel for Respondent again did not bother to ask whether or not the parties might agree that Flynn Complainants' request for appointment of a consultant to study the 8-inch pipeline was now moot. Flynn Counsel would have concurred. *All they had to do was ask.*

This is not to say that Complainants agree with all of Sunoco's current contentions. The need for appointment of an outside consultant to conduct a study of the 12-inch pipeline remains.

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<sup>1</sup> ME1 is the 8-inch line. In order to avoid confusion, in this Answer it is simply referred to as the 8-inch line.

The testimony of Dr. Zee supporting that conclusion remains valid. When one peaks beneath the citations to that testimony it can be seen that most of the material sought to be excluded includes reference to the 12-inch pipeline as well.

For all intents and purposes, the 8-inch line and the 12-inch line are “identical twins.” Sunoco is contending that chronic health issues identified in the 8-inch line as well as some health issues in the 12-inch line should be ignored when considering whether the 12-inch line might be due for a checkup.

Dr. Zee’s powerful testimony says that the entirety of the history of both lines mandates the examination of both lines. The fact that one twin is now going to be seen by a doctor does not mean that the other does not need to do so.

For these reasons as well as those set forth more in detail below, Sunoco’s motion must be denied.

**I. RESPONSE TO SUMMARY OF ARGUMENT**

1 – 4. Denied.

**II. LEGAL STANDARDS**

5 – 9. Admitted.

**III. ARGUMENT**

**A. Only a portion of the requested relief is moot.**

10. Admitted.

11. Denied. Admitted only that the appointment of a consultant to conduct a remaining life study on ME1 is moot. That is not the case for the 12-inch line.

12. Denied as stated. ¶ 11 above is hereby incorporated by reference thereto.

13. Admitted.

14. Denied.

15. Denied as stated. Judge Barnes' reasons for her decision are set forth in her decision and speak for themselves.

16. Denied.

17 – 19. Denied.

**B. Issues and evidence relative to integrity management, cathodic protection and corrosion control should not be removed from this proceeding.**

20 - 21. Denied. Because the issues as to the 12-inch pipeline are not moot, Sunoco's argument fails.

22. Denied. Again, while this argument does apply to the ME1 pipeline it does not apply to the relief requested for the 12-inch line.

23. Denied as stated. Admitted only as to the ME1 pipeline but denied as to the 12-inch pipeline. Indeed, Sunoco's accurate quote on its face belies its claim because it says "In closing, for an expert to be able to **form an opinion as to the present, likely condition of the 12-inch and 8-inch lines**, a good deal more information would be required than has been supplied to Matergenics to date." (Emphasis supplied).

24. Denied.

25. Denied. Dr. Zee's analysis covers both pipelines and clearly identifies problems with both pipelines that requiring a remaining life study.

26. Denied.

**C. Additional Argument**

27. Sunoco is fully aware that Zee's analysis does not consist of one portion for each pipeline. Instead, it forces on the totality of problems in one system managed by one entity that

blatantly disregards its own standards and public laws and regulation. Problems seen in ME1 could exist in the 12-inch line. Problems seen in the 12-inch line are of course concerning.

28. Flynn Complainants' response to Sunoco's pending Motion for Summary Judgment is replete with examples that show Dr. Zee's concern for the 12-inch line based on his examination of thousands of documents containing information on *both* lines. Some of those examples from the Second Amended Complaint and the response to Sunoco's motion are noted here:

(a) The ME1 and the workaround pipeline have leaked multiple times in the past and are likely to leak again (§ 117);

(b) In light of the foregoing history, ME 1 as well as the 12 inch segment of the ME 2 and ME 2X workaround pipeline must be evaluated more closely but [sic] do not believe that the company can be entrusted with the responsibility to evaluate its own pipelines. Only an independent contractor can possibly be expected to conduct a remaining life study of this 1930s pipeline. (§ 144).

29. The relief requested in the Second Amended Complaint related to pipeline integrity (Count IV) is very specific:

WHEREFORE, Complainants seek an order directing that an *independent contractor* (a) conduct a "remaining life study" of ME 1 and the 12 inch sections of the workaround pipeline in Chester and Delaware Counties to determine the forecasted retirement age of ME 1, which study should consider the forecasted retirement age by coating type and age of the pipeline; (b) evaluate whether the frequency of leak incidents involving the ME 1 and the 12 inch sections of the workaround pipeline is causally connected either to the design or implementation of Sunoco's Integrity Management Program; and (c) be compensated by Sunoco directly for all fees and costs associated with compliance with said order. Complainants also seek such other and further relief as may be appropriate.

30. Dr. Zee stated clearly that:

Purpose of testimony was (a) review certain public and highly confidential documents, and (b) review the condition of the 8-inch Mariner East 1 (ME1) and the 12-inch portion of the Mariner East 2 (ME2) workaround pipelines. Both of these pipelines date back to the 1930's. Finally, recommendations were sought concerning their future maintenance and/or operation from corrosion point of view. (Zee Direct at 6, ll. 19 – 23).

31. Tables prepared by Zee based on Sunoco records show historic corrosion on both the 8-inch and 12-inch pipelines. (Zee Direct at 9, l. 38 to 11, l. 14). For the 12-inch pipe bar pipe showed the greatest corrosion. (Zee Direct at 12, ll. 1 – 5). The 12-inch line leaked in Delaware County on February 21, 2002. (Zee Direct at 19, l. 18 to 20 at l. 5).

32. There was a pipe failure accident in Westmoreland County on November 25, 2008 due to improper plug installation. (Zee Direct at 20, ll. 8 – 15).

33. In Delaware county on April 10, 2015 involved 12-inch line that leaked due to external corrosion with the most likely mechanism being coating failure that “shielded” CP. (Zee Direct T 20, ll. 18 – 36).

34. Dr. Zee described in great detail the proper scope of pipeline evaluation and assessment relative to the Mariner East 8-inch ME1 and 12-inch bypass pipelines. (Zee Direct at 31, l. 18 – 38 at l. 6).

35. Zee's review of over two thousand Sunoco technical documents shows a pipeline integrity system that lacks a centralized source sufficient to document corrosion incidents, factual corrosion data, corrosion risk assessments/aspects of the aging pipeline and corrosion mitigation. (Zee Direct at 41, ll. 10 – 13).

36. “Based on the PUC formal complaint dated December 13<sup>th</sup> 2018 (Appendix C) and the fact that (a) the 8-inch line and the 12-inch line date back to the 1930s, (b) the records

supplied reflect coatings that shield (interfere with) cathodic protection, (c) corrosive soils and (d) past incidents/accidents, it is more likely than not that accelerated corrosion is taking place that will cause serious damage to people and property in high consequence areas.” (Zee Direct at 41, ll. 19 – 24).

37. “In closing, for an expert to be able to form an opinion as to the present, likely condition of the 12-inch and 8-inch lines, a good deal more information would be required than has been supplied to Matergenics to date. The information needed has been set out in detail above in Part III. The materials furnished, however, raise serious questions as to the condition of these aging pipelines as well as the fitness of Sunoco to operate them.” (Zee Direct at 41, l. 44 to 42 at l. 4).

38. To a reasonable professional certainty Dr. Zee’s opinion:

- (1) Based upon the materials we have been permitted to review, Sunoco may be operating an inadequate integrity management program for the 8-inch pipeline and the 12-inch pipeline considering the leak incidents, age of pipeline and coatings that, if disbonded, shield cathodic protection.
- (2) Based upon the materials we have been permitted to review, important information relative to corrosion data, corrosion risk and corrosion mitigation is lacking.
- (3) Sunoco’s operation of the 8-inch pipeline and the 12-inch pipeline should be reviewed for corrosion risk both externally and internally;
- (4) Sunoco’s operation of the subject 8-inch pipeline and the 12-inch pipeline should be reviewed for safety considerations from a corrosion risk point of view; and
- (5) The question of whether or not Sunoco should be permitted to continue operating these pipelines cannot properly be decided without a thorough investigation by an independent expert. (Zee Direct at 42, ll. 6 – 27).

**IV. ANSWER PERIOD**

Flynn Complainants have no objection to the request for a seven day answer period and this answer is being filed within that time frame.

**V. CONCLUSION**

The request for a remaining life study of ME1 is now moot. As regards the remainder of Sunoco's motion, Flynn Complainants pray Your Honor deny same.

Respectfully submitted,

*/s/ Michael S. Bomstein*

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Dated: September 23, 2020



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the within Answer 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: September 23, 2020

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