

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

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

RECEIVED

OCT 15 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED
OCT 15 2020
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 pipeline¹, 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.

¹ 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. Zec'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 13th 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 disbanded, 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

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: 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

SERVICE LIST

VIA ELECTRONIC MAIL

Thomas J. ~~Sniscak~~ Esq.
Whitney E. Snyder, Esq.
Hawke, McKeon & ~~Sniscak~~ LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Robert D. Fox, Esq.
Neil S. ~~Witkes~~ Esq.
Diana A. Silva, Esq.
Manko, Gold, ~~Katcher~~ & Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
rfox@mankogold.com
nwwitkes@mankogold.com
dsilva@mankogold.com

Anthony D. ~~Kanagy~~ Esquire
Garrett P. Lent, Esquire
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com
glent@postschell.com
*Counsel for Intervenor Range Resources –
Appalachia LLC*

Erin McDowell, Esquire
3000 Town Center Blvd.
Canonsburg, PA 15317
emcdowell@rangeresources.com
Counsel for Range Resources Appalachia
Rich Raiders, Esquire
Raiders Law
606 North 5th Street
Reading, PA 19601
rich@raiderslaw.com
*Counsel for Andover Homeowner's
Association, Inc.*

Vincent M. ~~Pompo~~
Guy A. ~~Donatelli~~ Esq.
24 East Market St., Box 565
West Chester, PA 19382-0565
vpompo@lambmcerlane.com
gdonatelli@lambmcerlane.com
*Counsel for Intervenor West Whiteland
Township, Downingtown Area School
District, Rose Tree Media School District*

Leah Rotenberg, Esquire
Mays, ~~Connard~~ & Rotenberg LLP
1235 Penn Avenue, Suite 202
Wyomissing, PA 19610
rotenberg@mcr-attorneys.com
*Counsel for Intervenor Twin Valley School
District*

Margaret A. Morris, Esquire
~~Reger Rizzo & Darnall~~ LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
mmorris@regerlaw.com
*Counsel for Intervenor East Goshen
Township, County of Chester*

Mark L. Freed
Joanna Waldron
Curtin & ~~Heefner~~ LP
2005 S. Easton Road, Suite 100
Doylestown, PA 18901
mlf@curtinheefner.com
jaw@curtinheefner.com
Counsel for Intervenor ~~Wyck~~ Township

James C. Dalton, Esquire
Unruh Turner Burke & Frees
P.O. Box 515
West Chester, PA 19381-0515
jdalton@utbf.com
*Counsel for West Chester Area School
District*

James R. Flandreau
Paul, Flandreau & Berger, LLP
320 W. Front Street
Media, PA 19063
jflandreau@pfbllaw.com
Counsel for Intervenor Middletown Township

Patricia Sons Biswanger, Esquire
217 North Monroe Street
Media, PA 19063
patbiswanger@gmail.com
Counsel for County of Delaware

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

James J. Byrne, Esquire
Kelly S. Sullivan, Esquire
McNichol, Byrne & Matlawski, P.C.
1223 N. Providence Road
Media, PA 19063
jjbyrne@mbmlawoffice.com
ksullivan@mbmlawoffice.com
Counsel for Thornbury Township, Delaware County

Michael P. Pierce, Esquire
Pierce & Hughes, P.C.
17 Veterans Square
P.O. Box 604
Media, PA 19063
Mppierce@pierceandhughes.com
Counsel for Edmonk Township

Thomas Casey
1113 Windsor Dr.
West Chester, PA 19380
tcaseylegal@gmail.com
Pro se Intervenor

Rebecca Britton
211 Andover Drive
Exton, PA 19341
rbrittonlegal@gmail.com
Pro se Complainant

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

Laura Obenski
14 South Village Avenue
Exton PA 19341
ljobenski@gmail.com
Pro se Complainant

Josh Maxwell
Mayor of Downingtown
4 W. Lancaster Avenue
Downingtown, PA 19335
jmaxwell@downingtwn.org
Pro se Intervenor

Virginia Marsille Kerslake
103 Shoen Road
Exton, PA 19341
vkerslake@gmail.com
Pro Se Intervenor

LAW OFFICES
PINNOLA & BOMSTEIN
100 SOUTH BROAD STREET, SUITE 2126
PHILADELPHIA, PA 19110



15

RECEIVED

OCT 15 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chivetta
PA PUC
Commonwealth Keystone Bldg
400 North Street, 2nd Fl

1712032020 OCT 15 2020 Harrisburg, PA 17120