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January 4, 2021

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
Harrisburg, PA 17120

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)  
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)  
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)  
Laura Obenski, Docket No. C-2019-3006905 (consolidated)  
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605 (consolidated)  
v. Sunoco Pipeline L.P.

**SPLP ANSWER OPPOSING JOINT MOTION FOR LEAVE TO SUPPLEMENT  
RECORD**

Dear Secretary Chiavetta:

Enclosed for filing is Sunoco Pipeline L.P.'s Answer Opposing Joint Motion for Leave to Supplement Record in the above-referenced proceeding. Because this document does not contain new averments of fact, it does not require a verification.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully,

*/s/Whitney E. Snyder*

Thomas J. Sniscak  
Whitney E. Snyder

*Counsel for Sunoco Pipeline L.P.*

WES/BRB/das

Enclosure

cc: Per Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated: January 4, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER’S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

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**SUNOCO PIPELINE L.P.’S ANSWER  
OPPOSING JOINT MOTION FOR LEAVE TO SUPPLEMENT RECORD**

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Pursuant to 52 Pa. Code § 5.103(c), Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing the Joint Motion of Flynn Complainants, Clean Air Council, and Andover Homeowners’ Association, Inc. (Joint Movants) for Leave to Supplement Record filed on December 14, 2020 (Motion). SPLP is not required to admit or deny allegations of the Motion.<sup>1</sup> For the reasons set forth herein, the Motion should be denied.

1. Joint Movants seek to enter into the evidentiary record a letter that SPLP sent to the Commission about Act 127 of 2011, Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* (Act 127) pipeline operator registration. The letter shows that it was clarifying to the Commission which entity owned a set of Act 127 pipeline assets that have nothing to do with this proceeding.

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<sup>1</sup> Compare 52 Pa. Code § 5.61(b)-(c) (allegations in complaint may be deemed admitted if not specifically denied) with 52 Pa. Code § 5.103 (regarding response to motions and containing no similar provision).

2. The Motion should be denied because:

a) it does not comply with the Commission’s regulations as Joint Movants fail to show good cause to re-open the evidentiary record in this proceeding;

b) even if good cause were shown, the “evidence” relied upon stands for nothing new and is unnecessary for Your Honor or the Commission to consider and decide Joint Movants’ purely legal argument that Act 127 does not apply to SPLP’s public utility pipelines as a matter of law; and

c) the “evidence” itself does not stand for the proposition asserted by the Joint Movants – the December 1, 2020 letter sought only to fix a clerical error in the Commission’s Act 127 registration records and has nothing to do with the issues asserted in this proceeding.

I. **THE MOTION DOES NOT COMPLY WITH THE COMMISSION’S REGULATIONS REGARDING CLOSE OF THE RECORD AND AFTER-DISCOVERED EVIDENCE.**

3. The Motion does not comply with the Commission’s evidentiary regulations. Joint Movants’ request is an improper attempt to supplement the record two days prior to the main briefing deadline without good cause shown. The Commission’s regulations are clear regarding additional matter after the close of the record:

**§ 5.431. Close of the record.**

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, **additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer** or the Commission upon motion.

(c) Subsections (a) and (b) supersede 1 Pa. Code § § 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

52 Pa Code § 5.431 (emphasis added).

4. Here, the record closed at the conclusion of the hearings in this matter on October 14, 2020, except that Your Honor granted SPLP the right to present responsive evidence regarding a newly admitted exhibit, Flynn Exhibit No. Direct 4, by October 28, 2020 to address SPLP's due process concerns regarding the newly presented exhibit. See *Flynn et al v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006116, Briefing Order (Order entered Oct. 23, 2020). On October 28, 2020, SPLP timely responded to Flynn Exhibit No. Direct 4. Therefore, the record officially closed under Your Honor's direction on October 28, 2020. The instant Motion and the evidence sought to be admitted have nothing to do with Flynn Exhibit No. Direct 4.

5. On December 14, 2020, the Joint Movants filed the instant motion for leave to supplement the record. Under the Commission's regulations, after the close of the record, additional matter may not be accepted unless allowed "for good cause" by the presiding officer or the Commission. See 52 Pa. Code § 5.431(b). The Motion failed to allege *any* good cause for Your Honor to admit the evidence attached to the Motion.

6. First, Joint Movants requested that Your Honor allow the supplemental evidence at Paragraph 6 of the Motion because "The Movants **believe that Sunoco will argue in its brief** that Act 127 ...." Motion at ¶ 6 (emphasis added). Under no evidentiary or legal standard is the Movants **belief** as to what legal arguments SPLP **may or may not** make in its brief "good cause" to reopen the evidentiary record.

7. Second, Joint Movant's request that Your Honor allow the supplemental evidence because "the Movants wish to utilize this information in their briefs, which are immediately due." Motion at ¶ 8. This is not "good cause" to reopen the evidentiary record as the information is unnecessary for the Joint Movants to develop their legal arguments. If the Joint Movants wish to

argue in their briefs about the meaning of Act 127, they are free to do so. Indeed, the Flynn Complainants did just that. *See* Flynn et al Main Brief at 91-93. However, such legal argument does not require any supplemental evidence – Act 127 speaks for itself. That the “Movant’s believe[d] that Sunoco will argue” or that they “wish to utilize this information in their briefs” is not good cause to reopen the record in this proceeding and disregard the Commission’s evidentiary regulations and procedures. Motion at ¶¶ 6, 8.

8. Your Honor has already ruled upon Joint Movants’ disregard for the Commission’s evidentiary regulations, and the instant motion is no different. *See Flynn et al v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006116, Order Amending Procedural Schedule; Denying Flynn Complainants’ Motion for Leave to File Supplemental Direct Testimony and Exhibits; and Denying Flynn Complainants’ Motion to Determine Sufficiency of Sunoco Pipeline, L.P.’s Objections and Answer to Request for Admissions (Order entered May 28, 2020) (hereinafter “May 28, 2020 Order.”) In that Order, Your Honor agreed with SPLP’s objections to Flynn Complainants’ Motion for Leave to File Supplemental Direct Testimony and Exhibits and denied the request:

To be newly discovered evidence, there must be a showing that the materials in question could not have been obtained through reasonable diligence at an earlier time. While the Motion alleges the existence of these documents was neither known nor knowable prior to the service of Admissions, I am persuaded by SPLP’s comparison of each Admission to the COAs available as of January 3, 2020 to find there was a basis for each Admission or enough information to provide a basis for an interrogatory obtaining the information requested in the Admission in the COA. The attachments to the COA are cumulative with respect to the Admissions. Therefore, in accordance with Section 5.350(e), SPLP will not be compelled to answer these Admissions pertaining to the DEP’s COA’s because they are not relevant to the issues in the instant case and exceed the scope of the Complainants’ direct case before the Commission. 52 Pa. Code §§ 5.350(e). *See, e.g., Claudio v. Dean Machine Co.*, 831 A.2d 140, 146 (Pa. 2003) (“after-discovered evidence, to justify a



new trial, must have been discovered after the trial, be such that it could not have been obtained at the trial by reasonable diligence, must not be cumulative or merely impeach credibility, and must be such as would likely compel a different result.”) (quoting *Der Hagopian v. Eskandarian*, 396 Pa. 401, 153 A.2d 897 (1959), *cert. denied*, 361 U.S. 938, 80 S.Ct. 381, 4 L.Ed.2d 358 (1960)) (emphasis added). Additionally, Flynn Complainants’ Motion for Leave to File Supplemental Testimony and Exhibits will be denied.

May 28, 2020 Order at 2-3.

9. Here, Joint Movants’ explanations for why the supplemental exhibit should be admitted into the record include “Movants believe that Sunoco will argue in its brief” and that Movants “wish to utilize this information” in legal argument. This is not good cause to reopen the record, squarely fails to meet the after-discovered evidence standard that Your Honor previously applied, is purely cumulative, and the evidence, if allowed, would not likely compel a different result. Indeed, before Your Honor ruled on the admissibility of this supplemental evidence, Flynn Complainants made the legal argument in their Main Brief that Act 127 does not apply to public utilities. *See* Flynn Complainants Main Brief at 91-93. There is no good cause or need to consider the supplemental evidence. Therefore, the Motion should be denied.

**II. EVEN IF GOOD CAUSE WERE SHOWN, THE “EVIDENCE” STANDS FOR NOTHING – THE LEGAL ARGUMENT ON THE PLAIN LANGUAGE OF ACT 127 DOES NOT REQUIRE THIS “EVIDENCE.”**

10. As both the Joint Movants in the Motion (Motion at ¶ 7) and Flynn Complainants in their main brief (Flynn Complainants Main Brief at 91-93) argue, Act 127, by definition, does not apply to public utilities. *See* 58 P.S. § 801.102 (excluding public utility from definition of pipeline operator). As shown in both the Motion and in Flynn Complainants’ main brief, this legal argument in no way requires the supplemental “evidence” that the Joint Movants request Your Honor allow after the close of the record. Act 127 is a statute, and the plain language of the Act speaks for itself

and such statutory interpretation by Your Honor or the Commission is strictly a legal question—not one dependent on the evidence Joint Movants seek to introduce.

11. However, while Act 127 by its plain language does not apply to public utilities, Act 127 was the most recent pronouncement from the General Assembly on pipeline safety. In so doing, the General Assembly adopted the safety standards and regulations for pipeline operators implemented in 49 CFR for pipeline operators and prohibited the Commission from enacting regulations more stringent than the federal regulations. 58 P.S. §§ 801.302, 801.501. While Act 127 may not apply to public utility pipelines, it provides guidance for the Commission regarding the safety standards for pipelines with a focus on the underlying requirements of the Federal pipeline safety laws. Any different consideration would lead to conflicting results, as many public utility and non-public utility pipelines are co-located and in proximity, which would lead to disparity in regulatory regimes should different standards apply. The Commission cannot go further in regulating Act 127 pipelines than PHMSA’s regulations, and SPLP argues that this should guide the Commission when regulating public utility pipelines as the most recent pronouncement from the General Assembly on pipeline safety. Again, this purely a legal question not one dependent in any way upon the evidence Joint Movants seek to introduce.

**III. THE “EVIDENCE” ITSELF DOES NOT STAND FOR THE PROPOSITION ASSERTED BY JOINT MOVANTS – THE DECEMBER 1, 2020 LETTER TO THE COMMISSION SOUGHT ONLY TO CLARIFY OWNERSHIP OF NON-UTILITY ASSETS WITHIN THE COMMISSION’S ACT 127 REGISTRATION RECORDS.**

12. Exhibit A to the Motion contains the December 1, 2020 letter filed by SPLP’s counsel regarding “PA PUC Act 127 Registration Clarification; Docket No. A-2012-2294765.” See Motion Exhibit A. The letter was filed by SPLP’s counsel to correct a clerical error in the Commission’s Act 127 registration system regarding Docket No. A-2012-2294765 and an entity that no longer

exists - “Sunoco Inc.” This letter has no bearing on the outcome of the instant complaint and is wholly unrelated to the Joint Movants’ burden of proof. As the letter discusses:

- Sunoco Inc. ceased operations in September 2012 and transferred assets to new ownership by Philadelphia Energy Solutions Refining and Marketing (PESRM) at A-2015-2475345;
- In 2013, Sunoco Legal Counsel requested that SPLP submit the final Act 127 Registration filing for calendar year 2012 on behalf of Sunoco Inc., which no longer existed;
- SPLP does not and did not own the assets transferred to PESRM;
- Act 127 Registration for the assets transitioned to Philadelphia Energy Solutions;
- Philadelphia Energy Solutions subsequently shut down due to a refinery accident in 2019; and
- SPLP requested that the Commission correct the Act 127 registration records and close Docket No. A-2010-2294765 regarding the no longer existent Sunoco, Inc.

*See* Motion Exhibit A.

13. Nothing in this letter stands for the proposition the Joint Movants assert - that “Sunoco will argue in its brief that Act 127 prohibits the Commission from imposing regulations upon pipeline operators more stringent than the minimum standards required by the Commission or the Pipeline and Hazardous Materials Safety Administration.” Motion at ¶ 6. The December 1, 2020 Letter is wholly irrelevant to this proceeding and by its contents does not stand for the proposition Joint Movants allege. The December 1, 2020 Letter is irrelevant and does not warrant disregarding the Commission’s regulations to allow Joint Movants to supplement the record, which has closed.

**IV. CONCLUSION**

For the reasons stated herein, Your Honor should deny the Joint Motion of the Flynn Complainants, Clean Air Council, and Andover Homeowner's Association for leave to supplement the record.

Respectfully submitted,

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