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REPLY TO:
Center City

March 24, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

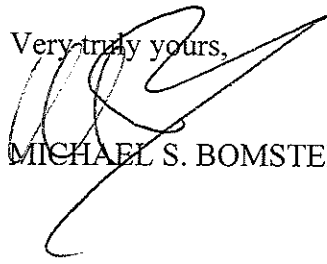
Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.
Docket Nos. C-2018-3006116 and P-2018-3006117
**MOTION TO DISMISS OBJECTIONS AND COMPEL
ANSWERS TO DISCOVERY REQUESTS**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Motion to Dismiss Objections and Compel Answers to Discovery Responses in the above-referenced proceeding.

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

Very truly yours,



MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Judge Barnes (Via email and First Class Mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	
Rosemary Fuller	:	
Michael Walsh	:	
Nancy Harkins	:	C-2018-3006116
Gerald McMullen	:	P-2018-3006117
Caroline Hughes and	:	
Melissa Haines	:	
	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

**MOTION TO DISMISS OBJECTIONS AND COMPEL
ANSWERS TO DISCOVERY REQUESTS**

Complainants, having received Respondent's objections to interrogatories and a document request, and desiring to oppose same, hereby move to dismiss said objections and compel answers for the reasons set forth below:

1. Respondent served Complainants with timely objections to Complainants First Interrogatories and Document Request. The objections were 39 pages long and were quite detailed.

2. Practice with respect to a motion to dismiss and compel answers in response to objections is governed by regulation. 52 Pa. Code § 5.342(g) provides:

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

3. 52 Pa. Code § 5.349(d) provides a similar procedure for objections to document requests.

4. A hard copy of Respondent's Objections was sent on March 12th and received either March 13th or 14th. Electronic notice, however, was received at 5:29 p.m. on March 11th, after the 4:30 p.m. cutoff.

5. 52 Pa. Code § 1.54 provides in pertinent part that when a filing user has agreed to accept electronic service, then electronic mail notice constitutes service.

6. Under § 1.56(e) Respondent's Objections were deemed served on March 12th. It is clear that Complainants' instant motion was required to be filed by close of business on Friday, March 22nd and it was not.

7. 52 Pa. Code § 1.15 provides that, "Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act." The instant motion is being filed at the opening of business the day after it was due.

8. Counsel's practice is to file responses well prior to due dates. In the instant case, for example, Complainants' Motion for Reconsideration was filed within 10 days of receipt of the Second Interim Order. The Reply to New Matter was filed within 11 days of receipt of New Matter; and the response to Preliminary Objections was filed within 8 days of receipt of Preliminary Objections.

9. Complainants' counsel was unable to complete responses to Respondent's objections by the close of business on Friday, March 22, 2019, when the instant motion was due. The press of filing a Motion for Reconsideration and deadlines in other matters made it impossible, despite best efforts.

10. The instant motion also is governed by 52 Pa. Code § 5.483(a), which allows the Presiding Officer to "regulate the course of the proceeding." 52 Pa. Code § 1.2(a) permits

liberal construction in order to “secure the just, speedy and inexpensive determination of every action or proceeding” and the “presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.”

11. Complainants’ discovery requests cover a great number of important areas at issue in this proceeding and the rights and welfare of a great number of people are at stake.

12. Complainants submit that it would be manifestly unjust for a delay of a few hours at this stage of the proceeding to cause so substantial a loss.

13. Complainants have attached hereto their responses to Respondent’s Objections.

14. For the reasons set forth therein, Complainants ask that the Objections be overruled.

WHEREFORE, Complainants ask that Respondent’s Objections be overruled and that the ALJ order full and complete answers to the interrogatories and document request.

Respectfully submitted,

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Attorney for Complainants

Dated: March 24, 2019

Meghan Flynn
Rosemary Fuller
Michael Walsh
Nancy Harkins
Gerald McMullen
Caroline Hughes and
Melissa Haines

v.

Sunoco Pipeline, L.P.

C-2018-3006116

P-2018-3006117

In general, Sunoco's objections are overbroad and present an unnecessarily burdensome task to respond to. Most of the objections concern statements and representations the Respondent has made that it does not wish to explain or justify. Many are based on Respondent's misreading of the discovery rules.

In its filings as well its public statements, Sunoco repeatedly makes legal assertions regarding the Mariner pipelines. E.g., Sunoco routinely claims that it complies with all state and federal laws and regulations. Complainants do not seek proof of this blanket statement but they have asked in Interrogatory No. 11 for Sunoco to identify the statutes and regulations that it

claims its integrity management program (“PIMP”) complies with. No. 12 asks Respondent to explain how it is in compliance.

Whether PIMP is adequate is a major bone of contention in this case. The information provided will be probative of Complainants’ claim that the program is not adequate. This question is not seeking privileged information. It does not inquire at all into what Sunoco’s attorneys have told Sunoco’s employees or officers. It does not seek trial preparation material or legal theories and Respondent’s citation to § 5.523(a) (discovery of mental impressions, conclusions and opinions) in support of its argument is not merely inapposite; it is misleading.

Below, Complainants addresses Sunoco’s specific objections.

A. Objection to Interrogatory No. 1

1. Identify all records in yours possession, custody or control that relate in part or in whole to the “significant upgrades and testing” for ME1 to which you refer in Section A of your answer to the Flynn Complaint Introduction.

Sunoco objects to identifying records that support its claim that it made significant upgrades and performed testing on ME1. The objections: relevance and burdensomeness.

The question is relevant to pipeline integrity issues and Sunoco does not claim otherwise. Instead, Sunoco claims the integrity of ME1 is not at issue in this case and therefore not relevant, rehashing its previous attempt to conflate the scope of the Complaint with the scope of Complaint’s request for interim emergency relief. Judge Barnes has already ruled that pipeline integrity issues may be litigated in this proceeding.

As regards burden, this objection is characteristic of many Sunoco objections. Translated into plain English: “We have a lot of documents and you can only have some of them.” Complainants’ response: “Who gets to decide which ones you produce and which you don’t?”

Plainly, Complainants are entitled to an opportunity to see what non-privileged documents confirm Respondent's assertion that it made significant upgrades and performed tests. Sunoco clearly believed it was relevant and important to stake out these claims and put them to the fore at the beginning of its answer. Complainants are entitled to verify whether the claims are true.

B. Objection to Interrogatories 3 – 9

3. For each such product identified in your answer to No. 2 above, for the period 2014 to the present, broken down by year, state how much product was shipped all together irrespective of destination.

4. For each product identified in your answer to No. 3 above, identify the person that took delivery of the product.

5. What are the projected hourly and daily rates of volume of HVLs in the workarround pipeline in the high consequence areas of Chester and Delaware counties?

6. For each identifiable segment of ME1, including the Montello to Twin Oaks segment, state what you expect the maximum expected volume of HVLs to be.

7. For each segment identified in your answer to No. 6 above, what will be the rates and volumes be (by product)?

8. Identify all shippers transporting HVL products on Mariner East pipelines to destinations within Pennsylvania.

9. Identify all shippers transporting HVL products on Mariner East pipelines to destinations outside Pennsylvania.

Sunoco objects that information regarding the identity of liquids flowing through the pipelines is not relevant to any of the matters raised in the Complaint. The matters in the Complaint fall into three principal areas: the public awareness plan is inadequate; the pipelines have been sited dangerously close to homes, schools and other public facilities; and Sunoco's integrity management program is inadequate and unlawful.

Without knowledge of the amounts and types of HVLs flowing through the subject pipelines, Complainants' experts may be unable to ascertain the dangers posed by their location in high consequence areas. Accordingly, these interrogatories seek relevant information.

C. Objection to Interrogatory 10

10. Identify all records in your possession, custody or control that relate in part or in whole to the "significant upgrades and testing" for the 12 inch pipeline to which you refer in Section B of your answer to the Flynn Complaint Introduction.

Relevance and undue burden are the bases for Respondent's objection to No. 10. Evidence of upgrades and testing has been sought in response to Sunoco's claim that there have been upgrades and testing on the 12 inch pipeline. That is relevant to the claim that the 12-inch line is unsafe. As regards undue burden, Complainants' response regarding Interrogatory No. 1 is hereby incorporated by reference.

D. Objection to Interrogatory 11

11. Identify all records containing information on the maintenance and upgrades of ME1, the 12 inch pipeline, and the workaround pipeline.

Relevance, undue burden and legal theories and conclusions are the three grounds for objection to Interrogatory No. 11. The pipeline integrity management program is central to Complainants' Complaint. Certainly, this question is relevant to those claims.

Complainants incorporate by reference their responses above to Sunoco's objections to Interrogatory No. 1, having to do with claims of undue burden. Complainants' question relates solely to PIMP, not to all of Sunoco's operations. It should be very easy for Respondent to answer this interrogatory.

Sunoco just throws out “legal theories and conclusions” as somehow a shield against a simple question as to identifying statutes and regulations that contain PIMP requirements. It does not take a legal theory to identify a provision of CFR that refers expressly to integrity management. The answer does not require legal conclusions either.

E. Objection to Interrogatory 12

12. BIE in its Complaint at ¶ 28 alleges that “SPLP’s procedures have since been revised.” Identify each procedure that has been revised since the date of the Morgantown Incident.

Complainants’ response in Section D above is hereby incorporated by reference.

F. Objection to Interrogatory 13

13. For each said procedure set forth in your answer to No. 14 above, where applicable, describe what the previous procedure had been.

Records containing information on maintenance and upgrades are an important part of determining the adequacy of the integrity management programs and, therefore, are relevant and discoverable. Complainant’s response as to undue burden in Section A above is hereby incorporated.

G. Objection to Interrogatories 14 – 103.

14. Do you agree with BIE’s allegation in ¶ 29 of its Complaint that, “any testing related to the adequacy of cathodic protection must consider the eight (8) inch and twelve (12) inch pipelines because they are located in the same right of way?”

15. If you do not agree entirely with BIE’s allegation as set forth in No. 17 above, please explain in detail the reasons for your disagreement.

16. The BIE Complaint in ¶ 30 alleges that at station 2459+00, which is approximately 1,030 feet from the leak, SPLP’s records indicated cathodic protection readings of -628 millivolts (“mV”) in 2016 and -739 mV in 2015.” Is this statement accurate?

17. If the statement noted above in No. 19 is not accurate, explain in detail how it is not.

18. In your Answer to ¶ 74 of the Amended Formal Complaint (“the Flynn Complaint”) you refer to NACE SP0169-2007. Do you agree that the excerpt below, entitled 6.2 Criteria,” is an accurate excerpt?

6.2 Criteria

6.2.1 It is not intended that persons responsible for external control be limited to the criteria listed below. Criteria that have been successfully applied on existing piping systems can continue to be used on those piping systems. Any other criteria used must achieve corrosion control comparable to that attained with the criteria therein.

19. If your answer to No. 21 above is that the excerpt is not accurate, please explain.

20. Was the 6.2 Criteria provision in effect from 2015 at least through April 1, 2017?

21. For the period from the time ME1 became operational through the present, identify all methods that Sunoco has successfully applied to control external corrosion on the M1 pipeline.

22. Identify all documents in your possession that pertain to the methods noted in your answer to No. 24 above.

23. Identify all findings of corrosion on the ME1 pipeline.

24. Identify all documents in your possession that pertain to the findings of corrosion referred to in No. 26 above.

25. Identify all punctures, leaks and ruptures found on the ME1 pipeline.

26. Identify all documents in your possession that pertain to the punctures, leaks and ruptures identified in your answer to No. 28 above.

27. In your answer to ¶ 74 of the Flynn Complaint, you refer to “O&M Procedures.” What are O&M Procedures?

28. For the period from the time ME1 became operational through the present, identify all O&M procedures that set forth criteria you use to assess external corrosion.

29. For the period from the time ME1 became operational through the present, identify all O&M procedures that describe methods you use to control external corrosion.

30. For the period from the time ME1 became operational through the present, identify all records containing information on actual steps taken to control external corrosion.

31. Is it your contention that, for the period from the time ME1 became operational through the present, Sunoco was not required to achieve a negative cathodic potential of at least -850 mV?

32. If your answer to No. 34 above "yes," identify each NACE alternative standard that made it unnecessary for you to achieve -850 mV potential.

33. For each NACE alternative standard set out in your answer to No. 35 above, explain what steps you took to meet the requirements of the standard.

34. Identify all records that reflect all the steps that you took to meet the requirements of each alternative standard identified in your answer to No. 35 above.

35. With respect to ¶ 32 of the BIE Complaint, BIE makes certain allegations as to how you performed side drain measurements at Station 2459+00. What is a side drain measurement?

36. What is the purpose of taking side drain measurements?

37. Is ¶ 32 of the BIE Complaint an accurate description of how you performed side drain measurements?

38. If your answer to No. 40 above is in the negative, please furnish a more accurate description.

39. Set forth each date on which you performed side drain measurements on ME1, the 12 inch pipeline and the workaround pipeline.

40. The BIE Complaint in ¶ 33 asserts that "several" of the side drain measurements indicate current was flowing away from the pipelines. How many of the side drain measurements disclosed currents flowing away from the pipelines?

41. With reference to ¶ 33 of the BIE Complaint, for each side drain measurement that you took, what were the actual quantitative measurements of the currents?

42. With reference to ¶ 33 of the BIE Complaint, what consideration was given to other interference sources, including but not limited to geological (e.g., high iron rocks)?

43. Do you agree that electrical current flowing away from a pipeline is a sign of corrosion?

44. If your answer to No. 46 above is in the negative, explain fully.

45. If you do not agree that electrical current flowing away from the pipeline is an indication that the cathodic protection system is not performing to specification, please explain why.

46. Is it your contention that in a multiple pipe right of way there is no interference of current magnitudes between pipes?

47. If “yes” to No. 49 above, please explain fully.

48. What is an “earth current technique?”

49. If it is your contention that side drain measurements are not an earth current technique, please explain fully.

50. Is it your contention that § 6.2.2.3.1 does not caution that an earth current technique is often meaningless in multiple pipe rights of way?

51. If your answer to No. 53 above is “yes,” please explain fully.

52. In your answer to ¶ 74 of the Flynn Complaint, you stated:

SPLP analyzed and documented that the testing it used, taken together, demonstrated that net protective current was flowing toward both lines from the north and south, since the lines share the same CP system(s), any CP current accumulated on either line will remain on that line as it returns to it (sic) source, and there would not be a current exchange between the lines through the soil, as the resistance of the electrolyte to the pipe surface is much greater than the resistance of the metallic path through the pipe itself.

Identify all records containing or reflecting your analysis and documentation of the testing referred to above.

53. With reference to the testing discussed in your answer to ¶ 74 of the Flynn Complaint, how many rectifiers were in the system being tested?

54. Identify the specifications for each rectifier noted in your answer to No. 56 above.

55. State what load was on each rectifier noted in your answer to No. 56 above.

56. How far down each line does each rectifier influence?

57. What is the per mile loss of cathodic protection from each rectifier or circuit?

58. With reference to the testing discussed in your answer to ¶ 74 of the Flynn Complaint, what do you mean by “net protective current?”

59. Relative to the testing discuss in your answer to ¶ 74 of the Flynn Complaint, explain in detail how you determined the net protective current.

60. With reference to the testing discussed in your answer to ¶ 74 of the Flynn Complaint, did your calculation include measurements of currents flowing away from the pipes?

61. Identify all records containing the data involved in the measurements of net protective current as described in your answer to ¶ 74 of the Flynn Complaint.

62. ¶ 35 of the BIE Complaint alleges that “SPLP’s records concerning close interval potential surveys (“CIPS”) of ME1, which were performed in 2009, 2013 and 2017, demonstrate that only “on” potentials were measured.” If BIE’s allegation is not entirely accurate, please explain fully.

63. With reference to ¶ 35 of the BIE complaint, did you also measure “off” potentials?

64. If your answer to No. 66 above is in the affirmative, identify all records that document the potentials that were measured.

65. ¶ 35 of the BIE Complaint alleges that “the CIPS do not contain accurate and reliable data needed to assess cathodic protection on the pipeline in that the CIPS do not align with footages and test station points.” If this allegation is not entirely accurate, explain fully.

66. ¶ 35 of the BIE Complaint alleges further that “certain features, such as rectifiers, areas with parallel pipelines and overhead power lines are not identified in the records where such information is critical in the determination of the validity and accuracy of the test results.” If this statement is not entirely accurate, explain fully.

67. Is it your contention that in determining the validity and accuracy of CIPS it is not necessary to account for the presence of rectifiers, parallel pipelines and overhead power lines?

68. If your answer to No. 70 above is “yes,” please explain fully.

69. Is it your contention that it is not necessary to identify in your records of CIPS surveys the presence of rectifiers, parallel pipelines and overhead pipelines?

70. If “yes” to No. 72 above, please explain fully.

71. Identify each place in your records where you note the presence of rectifiers, parallel pipelines and overhead pipelines in connection with CIPS.

72. With respect to the requirements for external corrosion monitoring set out in 49 C.F.R. § 195.573, your answer to ¶ 74 of the Flynn Complaint states that “Regulations do not require annual ILI testing.” For the period from when ME1 became operational until the present, identify all documents showing (a) each and every test that you did perform to monitor external corrosion control, and (b) the results of those tests.

73. In your response to ¶ 74 of the Flynn Complaint you write, “SPLP did conduct other tests to evaluate the cathodic protection status where necessary consistent with its procedures in place at the time.” Identify where in your records you set out your procedures to determine whether testing to evaluate cathodic protection status is necessary.

74. Identify where in your O&M Manual you describe corrosion control procedures.

75. You state in your answer to ¶ 74 of the Flynn Complaint that, “In some instances, SPLP also used Scope of Work documents to supplement its O&M procedures for specific tasks.” What are Scope of Work documents?

76. Identify all documents that show Scope of Work documents were used to supplement O&M procedures?

77. State where you retain copies of Scope of Work documents for corrosion control procedures.

78. ¶ 36 of the BIE Complaint identifies records examined by BIE relative to its investigation of inspections using your In-Line Inspection (“ILI”) tool. Identify all records relative to the ILI inspection you conducted in 2016 to

detect anomalies and measure corrosion in the ME1 segment between Twin Oaks and Montello.

79. With respect to your response to No. 81 above, do you agree that the ILI tool failed and no data were available from the 2016 inspection?

80. If your answer to No. 82 above is in the negative, please explain fully.

81. Do you agree that you conducted another ILI inspection for the same Twin Oaks to Montello segment of ME1 in 2017?

82. Where are all the records of the additional ILI inspection in 2017?

83. What conclusions did you draw as to the cause of metal loss identified in the 2017 inspection?

84. Did you rule out corrosion as a cause or possible cause of the metal loss in connection with the 2017 inspection?

85. What steps if any did you take as a consequence of the metal loss findings from the 2017 inspection?

86. In your answer to ¶ 74 in the Flynn Complaint you state "SPLP's manual provides SPLP will create a list of segments where CIPS should be utilized and where such testing is not practical and necessary the list will document the reasons. SPLP created and maintains this list." Where is this list located and retained?

87. Identify all records for the Morgantown line segment reflecting any inspections or maintenance performed on that segment.

88. Identify all records for the Morgantown line segment from prior to the Morgantown Incident reflecting a finding or decision that any type of testing is not practical or reasonable.

89. For the Morgantown line segment, identify all testing that showed whether adequate cathodic protection levels were met or not met prior to the Morgantown Incident.

90. In reference to your answer to ¶ 74 of the Flynn Complaint, identify all of the "several consecutive ILI reports with cathodic protection data" that you say SPLP compared to look for corrosion or corrosion growth.

91. The BIE Complaint in ¶ 41 alleges that Sunoco's procedures for compliance with § 195.402 "did not include any detail on how to accomplish

the five CIPS metrics [required by § 195.173]. In response, you state in ¶ 74 of your answer to the Flynn Complaint that “[r]eview of 195.402 shows that there are not prescriptive standards of what details must be contained in an O&M manual.” What is an O&M manual?

92. In reference to the quote cited in No. 94 above, what do you mean by “prescriptive standards?”

93. Do you agree that 49 C.F.R. § 195.402(a) states that an O&M manual requires an operator to “prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities...?”

94. If your answer is “yes” to No. 95 above, what is your understanding of the meaning of “written procedures for conducting” in this regulation?

95. Do you agree that 49 C.F.R. § 195.402(c) dictates that the O&M manual must include procedures for, inter alia, “...maintaining...the pipeline system?”

96. If your answer is “yes” to No. 98 above, is it your contention that “procedures for maintaining” means something other than a description of how to obtain, evaluate and accomplish the five CIPS metrics set out in § 195.173?

97. If your answer is “yes” to No. 99 above, please explain fully.

98. The BIE Complaint in ¶ 38 alleges that your O&M Manual procedure for § 195.571, relative to adequacy of cathodic protection, (a) fails to state any applications of or limitations on the criteria list, (b) fails to incorporate the precautionary notes of NACE SP01169-2007 at § 6.2.2.3 regarding use of earth current techniques in multiple rights of way, and (c) failed to require documentation. Is this allegation factually incorrect?

99. If the answer to No. 101 above is “yes,” please explain why these things were not included.

100. For a period of five years prior to the date of the Morgantown Incident, identify all records of each analysis, check, demonstration, examination, inspection, investigation, review, survey and test performed in connection with your corrosion control measures.

Sinkholes

101. Identify all records in yours possession, custody or control that relate in part or in whole to the Sinkhole Incidents.

102. Other than the sinkholes in the Sinkhole Incidents, have other sinkholes occurred along the routes of ME 1, the 12 inch pipeline and the workaround pipelines since 2014?

103. Identify the specific location of each such sinkhole listed in response to No. 105 above.

89 interrogatories related to allegations touching on pipeline integrity management are objected to, first, on the basis of its contention that Complainants in the November proceedings waived the right to assert these claims. The ALJ has now ruled otherwise. In addition, Complainants' proposed Second Amended Complaint no longer incorporates the BIE complaint by reference; thus, additional pipeline integrity management allegations are at issue, with a focus on Chester and Delaware Counties. While some of the questions concern the Morgantown incident, the overwhelming preponderance of questions relate to general practices, all of which have safety implications for Complainants.

Sunoco claims that its impending settlement with BI&E resolves Complainants' complaints regarding pipeline integrity. It argues, with no reference whatsoever to legal authorities, that it should not have to be subject to litigation of the same claims raised in the BI&E complaint. This argument is neither logical nor grounded in law.

First, the supposed settlement is confidential. Complainants have no way of knowing whether even one of Sunoco's shoddy practices has been addressed in the settlement. Complainants have no way of knowing what the scope of the settlement is. Does it cover only the vicinity of the Morgantown leak or the entire Commonwealth? One does not know what is inside the black box.

Second, Complainants have never even seen the Answer to the BI&E complaint that Sunoco claims to have filed. Respondent says the Answer is "publicly available."

(Objections at 20). The online docket chronology indicates that after multiple delays, Sunoco filed an answer on February 1 of this year. But that entry is still marked “private” and there is no document available, unlike the BI&E complaint, which was “made public” on December 13, 2018.

The BI&E Morgantown complaint made very specific allegations as to data obtained during the Morgantown leak investigation. Whether Sunoco has made any factual admissions in its supposed Answer is presently unknown to Complainants. If there were any admissions, Complainants would want to know what remedy has been agreed upon by the parties in that case and how (and whether) it protects the residents of Chester and Delaware Counties.

Respondent suggests that Complainants are purporting to act as “private attorneys general” in insisting that this case go forward and in seeking discovery. Respondent ignores the fact that Complainants and their families — unlike Sunoco’s senior executives — all live in Chester and Delaware Counties and live with the consequences of Sunoco’s misconduct every day.

The underlying factual averments in the BIE Complaint have never been resolved. There was no hearing to determine whether they were accurate or not. The BIE Complaint sought fines; instant Complainants do not.

If Sunoco has changed any of its practices as part of a settlement, then the company can benefit from those changes by so indicating in its answers to the Second Amended Complaint and in responses to interrogatories. If Sunoco has not changed some of the practices being challenged in the Second Amended Complaint, then it will have an

opportunity to defend itself at that time. This is not a situation in which Sunoco will go to trial twice on the same charges.

Absent discovery, Complainants cannot know if Sunoco's shoddy practices as revealed in Morgantown apply to Chester and Delaware Counties. Until that is known, however, it is premature to conclude that Morgantown facts are not relevant.

H. Objection to Nos. 104 – 112

104. Identify when and how Sunoco first learned of each sinkhole identified in the answer to No. 106 above.

105. Identify who, if anyone, Sunoco notified about each sinkhole identified in the answer to No. 106 above.

106. With respect to your answer to No. 108 above, state when such notice of a sinkhole was given.

107. Identify what testing or studies were done as a result of each of the sinkholes identified in your answer to No. 106 above.

108. Identify any mitigating action taken in relation to the sinkholes identified in your answer to No. 106 above.

109. Identify any and all records that relate in whole or in part to the sinkholes identified in your answer to No. 106 above.

Injuries, Deaths and Property Damage

110. Identify all leaks, punctures and ruptures that have occurred on ME1.

111. Identify all leaks, punctures and ruptures that have occurred on the 12 inch line.

112. Identify all leaks, punctures and ruptures that have occurred on the workarround pipeline.

Respondent states that, “[t]he Amended Complaint does not raise issues of subsidence events or geology.” (Objections at 21). Questions relating to sinkholes in Chester County, therefore, according to Sunoco, seek irrelevant information.

¶¶ 94 – 100 of the Second Amended Complaint and ¶¶ 67 – 70 of the Amended Complaint focus on the Beaver County incident. ¶ 97 of the Second Amended Complaint actually states:

Preliminary investigations suggested that a **landslide** may have been the cause of the Beaver County accident. And yet, Sunoco’s own pipeline safety witness seems to be ignorant of the **geological underpinnings** of key pipeline failures. At the Dinniman hearing, Mr. Zurcher stated he knew of “no incidents that any one of those pipeline companies have had with subsidence...There’s never been a failure of a pipeline in one of these areas caused by **geology or a sinkhole or even mining subsidence.**” Litvak, Anya; *“Unstable ground: Pipeline ruptures and drilling problems bring new scrutiny to Pennsylvania’s pockmarked geology”*, Interactive News, Pittsburgh Post-Gazette, available at: <https://newsinteractive.post-gazette.com/mariner-east-2-pipeline-subsidence>. PHMSA records show more than a dozen such incidents across the country, including in Pennsylvania. (Emphasis added).

Thus, contrary to Sunoco’s statement, Complainants devoted seven paragraphs to the Beaver County explosion, the cause of which was suggested to be geological underpinnings. Failure caused by sinkholes has been expressly denied by Mr. Zurcher. Complainants believe that the sinkholes in Chester County were a consequence of poor integrity management and disregard of the geology of the area. Interrogatories 104 – 112, therefore, clearly seek relevant information.

I. Objection to 113 – 118

113. Identify all injuries, deaths and property damage associated with ME 1.

114. Identify all injuries, deaths and property damage associated with the 12 inch line.

115. Identify all injuries, deaths and property damage associated with the workarround pipeline.

Public Awareness Program (PAP)

116. Is it your contention that the testimony of John Zurcher at the hearing on November 29, 2018 regarding Sunoco's PAP was completely accurate?

117. If your answer to No. 119 above is that the testimony was not completely accurate, state in what respect it was not.

118. What is your Pipeline Awareness Plan ("PAP")?

Leaks and ruptures in the Mariner pipelines that have caused injuries, deaths and property damage are central to Complainants' challenge to Respondent's PIMP. Sunoco objects that the information is all available from PHMSA and that requests that seek data back to the 1930s are unreasonable. It is striking that Sunoco would suggest providing documents related to leaks and ruptures dating back to the 30's is somehow unreasonable and yet the actual operation of a pipeline from the 30's is not.

If Sunoco is representing that all data previously have been furnished to PHMSA, then Sunoco can provide it to Complainants just as readily as it previously provided it to PHMSA. Moreover, the process undoubtedly would take less time. If Sunoco does not have this critical data readily accessible, that is highly concerning in its own right, as it indicates Sunoco does not consider it, yet again demonstrating Sunoco's disregard to safety.

On the assumption that the pipelines in question do not have an infinite lifespan, data going back eight decades may show an increase in leaks and ruptures over the course of

time. This would have a bearing on the question whether the pipes are closing in on the end of their useful life.

J. Objection to No. 123

123. informed of the leak and the need In the event of a pipeline leak detected by one individual who is not a Sunoco employee, how do you expect the public to become to self-evacuate?

In papers filed in the instant proceeding Sunoco asserted that PUC approval of the PAP in the Dinniman case was tantamount to approval of the content of the PAP. This was one of Respondent's defenses relative to the claim that the content public awareness plan was insufficient and otherwise inadequate.

Complainants are entitled to test whether this in fact is Sunoco's contention. A contention is not a legal theory or conclusion and it is discoverable under Rule 4003.1(c) as previously noted above.

K. Objection to Nos. 127, 144, 155 – 162

127. Sunoco has informed the public that a leak could be identified by a hissing sound. Can this sound be heard above regular traffic noise on SR 352 or other heavily travelled roads in Chester and Delaware Counties?

144. How close would a person have to be to an HVL leak in order to smell it?

155. Is the potential impact radius for an HVL leak or rupture any different from the potential impact radius of a natural gas leak or rupture?

156. Identify all data you considered in your answer to No. 155 above.

157. For what distances can HVLs move downwind or downhill while remaining in combustible concentrations?

158. How can HVLs be detected without specialized equipment?

159. How would HVLs dissipate/disperse following a leak?
160. How long would it take for this dissipation to occur?
161. How far could HVLs move while still in a combustible concentration?
162. An HVL leak may cause brown or dead vegetation. How can these conditions be detected in the winter?

Characteristics of leaks and ruptures and the ability to detect them are issues addressed in the interrogatories identified in objection Section K. Sunoco asserts the questions are “hypotheticals that all lack sufficient details and facts for SPLP to be able to respond.” (Objections at 24).

This objection is an extension of Mr. Zurcher’s testimony at the November hearing, when the witness absolutely refused to answer questions concerning the likelihood of death in the event of person standing within feet of an HVL explosion. The obvious answer is that an exact answer depends on a number of variables but, all other things being equal, the closer you are the higher the probability of a fatality. If additional variables are introduced, then the answer will be that there is a range of probable outcomes, from A to B.

Consider Interrogatory No. 144: How close would a person have to be to an HVL leak in order to smell it? Sunoco prides itself on leaks being detectible by smell. If one is at home 100 yards away, it seems unlikely one would smell an HVL leak. These are not idle questions; they go to the heart of Respondent’s contention that its PAP will protect the public.

These questions are not hypothetical. These seek hard, scientific data in order to determine if Sunoco’s public assertions are founded.

L. Objection to Nos. 163 – 164

163. What is your understanding of the term “pipeline integrity management program” (“PIMP”) in relation to pipelines?

164. Identify all documents in which your PIMP is found.

These two questions relate to pipeline integrity. Respondent argues that pipeline integrity issues have been waived. The ALJ disagreed. The Second Amended Complaint includes numerous allegations relating to pipeline integrity. This objection, therefore, does not hold water.

M. Objection to Nos. 165 and 166

165. Identify all records reflecting planning for the location of ME pipelines in Chester and Delaware counties.

166. Identify all records reflecting planning for transportation of HVLs through Chester and Delaware counties.

Complainants have alleged that Sunoco improperly sited the Mariner pipelines in highly populated areas. These two interrogatories ask for documents reflecting the planning process. While Complainants doubt that there are hundreds of thousands of documents relating to planning pipeline routes in Chester and Delaware Counties, once again, these issues involve matters of serious consequence and some slight inconvenience to the malefactor should not outweigh the important of production of relevant documents. The suggestion that these documents are not probative is absurd. The propriety of pipeline siting choices is squarely raised in ¶¶ 26 – 30 of the Amended Complaint and ¶¶ 24 – 28 of the Amended Complaint.

N. Objection to Interrogatory No. 169

169. What consideration was given to the relative risks of locating valve stations near vulnerable populations such as schools, hospitals, senior residences, etc.?

Schools, hospitals and senior residences are identified in the complaints as being particularly vulnerable to pipeline risks. *See, e.g.*, Second Amended Complaint, ¶¶ 22 and 40. Respondent suggests that Complainants need to define “relative risks” and “vulnerable populations,” but Complainants are simply asking Sunoco to state how they looked at the possibility of locating valve stations near schools and hospitals. This question clearly seeks probative information.

O. Interrogatories 173 -177.

165. Identify all risk assessments, studies, reports, memos and other documents your possession, custody or control regarding the safety of ME1 and the workaround pipeline.

166. Identify all risk assessments, studies, reports, memos, test results and other documents in your possession, custody or control that have evaluated the consequences or probable consequences of the ignition of gaseous HVLs following their release from pipelines as a result of punctures, leaks and ruptures.

167. Identify all documents showing the locations of ME1 and ME2 & 2X in Chester and Delaware counties.

168. Identify all documents showing the depth of ME1 and ME2 & 2X below the surface in Chester and Delaware counties.

169. Explain how the determination was made to install pipelines at the depths noted in the documents identified in your answer to the above question.

Sunoco alleges it would be too burdensome to disclose documents that show their evaluation of pipeline safety, the location of their pipelines, and how determinations were made regarding pipeline installation depths. The complaints go into great detail about pipes situated close to schools and near to people's homes. These questions are probative of those allegations. The questions clearly implicate pipeline safety issues and tie in with multiple allegations in the complaints. The burden of producing these documents is nothing compared to the burden of living next to highly volatile liquids pipes. Complainants believe Sunoco has at all pertinent times been aware of safety risks and has successfully concealed its knowledge to date. This information is discoverable.

P. Objections to Nos. 178 – 180

178. Middletown, Delaware County, which Mariner East pipelines either ship or are planned to ship HVLs through the pipes located between her home and 233 Lenni Road?

179. With respect to the property owned by Allison Higgins at 237 Lenni Road, Middletown, Delaware County, what is the horizontal distance between the Higgins house and each Mariner east pipeline that either ships or is planned to ship HVLs?

180. With respect to the property owned by Allison Higgins at 237 Lenni Road, Middletown, Delaware County, for each pipeline identified above, state at which depth the pipes are or will be below the surface.

Alison Higgins is not a Complainant in this proceeding. Likewise, the Morgantown leak incident is not the subject of this case and Glenwood Elementary School is not a Complainant either, but both figure into what Sunoco has been doing in terms of pipeline safety practices.

Higgins resides in Middletown, Delaware County, only yards from the Glenwood Elementary School. She and her neighbor at 233 Lenni Road have homes that are 30 feet apart. In that small space, Respondent has crammed a number of HVL pipelines.

Complainants believe that one of the pipelines almost in Higgins' living room is ME1. Complainants believe that that pipeline may suffer from corrosion and failure of integrity management. Complainants believe that the pipelines' conversion to HVLs placed Higgins, her neighbor and other nearby Delaware County residents in danger. Complainants believe as well that the recent installation of the ME 2 pipes in her yard was done in violation of good engineering practices.

Interrogatories 178 – 180 seek information that is probative of Complainants' allegations as to shoddy engineering practices and improper location of pipelines in Chester and Delaware Counties.

Q. Objection to No. 181 and 182

181. Identify copies of all cost estimates to install HVL leak detector and alarm systems for schools and children's play areas that are within the blast radius of the Mariner East pipelines.

182. If your answer to No. 181 is that you have not obtained any such estimates, explain why not.

Respondent claims that the term "blast radius" requires definition for the company to respond to these interrogatories. Complainants' expert, Jeffrey Marx, used the term "impact zone" during his testimony in the November proceedings. The notion, however, is obvious; the interrogatories are referring to the distance from the source that will be affected when an explosion occurs. If Sunoco has cost estimates to install HVL leak detector and alarm systems for schools and children's play area that might be affected by a pipeline

explosion, the company is asked to identify those estimates. If there are no such estimates, Respondent is asked to explain why not.

While Sunoco may prefer the term “impact area” or some other equivalent term, Complainants submit the question is clear enough.

R. Interrogatories 183 and 184.

184. With respect to incidents in 2018 in which Aqua drilling struck a Mariner line or lines in Middletown, Delaware County, explain fully your understanding of why the incident occurred.

185. Identify all documents related to the incidents identified in your answer to No. 183 above.

Sunoco’s failure to disclose to Aqua the location of its pipes is a danger to the residents of Chester and Delaware Counties. Aqua’s drill struck a Mariner line or lines in Middletown, not far from the Glenwood Elementary School. Fortunately, the line was not ruptured and no one was injured but the incident highlighted Respondent’s failure to maintain its pipes with regard to the public’s safety. Pipeline location and pipeline maintenance both are central to the allegations made by Complainants in this case. To date, Sunoco has given no adequate explanation as to how this could have occurred consistent with its frequent representations to the public that it operates according to the highest, government approved standards. These interrogatories, most certainly, seek discoverable information.

S. Objection to Interrogatories 195 – 205

195. Do you agree completely with Mr. Zurcher’s statement as quoted in ¶ 62 of the Flynn Complaint?

196. If “no” to No. 195 above, please explain fully.

197. Identify all reports, test results, studies and other documents in your possession or control regarding weld records for ME1 in proximity to the April 1, 2017 Morgantown leak

198. Identify all internal analysis and communication related to the determination that failed O-rings caused the leak in Morgantown April 1, 2017.

199. Why did Sunoco not detect the leak that occurred in Morgantown April 1, 2017 prior to it being discovered by a resident?

200. Quantify the size of the Morgantown leak noted in Flynn Complaint ¶ 65.

201. What was the cause of the Morgantown leak?

202. Explain why you did not prevent the Morgantown leak.

203. Did faulty O-rings play any role in the development of the Morgantown leak?

204. Identify all written statements you have made regarding the Morgantown leak.

205. Do accept as correct the findings of PHMSA in its accident report on the Morgantown leak?

Sunoco objects to questions requiring it to explain how the Morgantown incident could possibly have occurred, given the company's supposedly high standards. Objection is made on the same basis as the objections in Section G.

Section G raised two grounds for objection: waiver and settlement. Judge Barnes already has rule on the waiver claim. As regards the settlement argument, Complainants hereby incorporate their previous response, set forth more in detail above in their response to the Section G objections.

Sunoco also objects in this section to Interrogatories 183 and 184 for the reasons set forth in their Section A. In Section A Respondent objects based on relevance and undue burden.

The Morgantown incident is relevant because Complainants believe the investigation will show up the company's shoddy and deceptive practices. Complainants believe that information from the investigation will shed light on the condition of the pipes in Chester and Delaware Counties and facilitate a determination of the condition of those pipes.

With respect to the undue burden claim, it is obvious that any evidence in Sunoco's possession that could potentially inculcate the company is going to be the subject of an undue burden objection. As a corollary, at this stage it seems likely that the only evidence Sunoco will give in discovery voluntarily is that which does not cast it in an unflattering light. The rules of discovery, however, were not so designed and Complainants are entitled to responses to these interrogatories.

T. Objection to Nos. 206 – 213

206. Identify each factual allegation in ¶ 68 of the Flynn Complaint that you contend is inaccurate.

207. Who constructed the Rover pipeline that was involved in the Beaver County Explosions?

208. What company was operating the Rover pipeline at the time of the Beaver County Explosions?

209. When was the Rover pipeline placed in service?

210. What was the cause of the Beaver County Explosions?

211. Did geological features cause or contribute to the Beaver County Explosions?

212. Is the Zurcher quote in Flynn Complaint ¶ 71 inaccurate?

213. If your answer to No. 216 above is “yes,” please explain.

Complainants have alleged that Sunoco had placed the Beaver County pipeline in service immediately prior to its explosion. Respondent asserts that the pipes in question had nothing to do with them (Objections at 30). That presents a factual dispute that may not be resolved at this stage. The interrogatories in question simply seek information that has a direct bearing on these allegations.

U. Objections to Nos. 214 – 216

214. What is the range of leak sizes detected by Sunoco on the Mariner East pipelines?

215. What is the smallest leak Sunoco has detected on an HVL line?

216. What is the smallest leak Sunoco is equipped to detect on an HVL line during the course regular inspection and maintenance?

Leak detection is a major safety concern and one that is raised by Complainants. The ability to detect leaks is critical. Sunoco repeatedly has said that its PIMP has the ability to find leaks and thwart them before they become a problem. This certainly was not the case in Morgantown. These questions focus on that issue and are probative of the allegations in the complaints.

The time frame covered by the interrogatories is longer than Sunoco wishes to address. Respondent furnishes no explanation as to why the time frame is problematic; is it “too many years?” That is similar to its undue burden claim, based on too many pages. As regards the geographic scope of the questions, unless it is the company’s position that it treats

leaks in Chester County and Delaware County differently from leaks elsewhere, the scope should not be an issue.

Vagueness and ambiguity are additional concerns raised by Sunoco relative to these interrogatories. Complainants disagree and, of course, the ALJ can decide for herself.

V. Interrogatories 219 – 221.

219. What is your actual rate of detecting pipeline cracks and corrosion, regardless of the means of detection?

220. Of the leaks that have been detected on Sunoco's ME1 and workaroud pipelines, what percentage were first detected by Sunoco?

221. Out of all cracks and corrosion detected, what percentage is first detected by the public?

Complainants' responses to the Section U objections above are hereby incorporated by reference thereto. Instead of vagueness and ambiguity, Respondent now suggests it is not clear what is meant by leak detection and regular inspection and maintenance. The fact that Sunoco itself has used these or similar terms to tout its stellar integrity maintenance program is somehow overlooked in Respondent's desire not to answer relevant questions.

W. Objection to No. 228

228. What changes were made to Sunoco's PAP in response to any public safety concerns?

"Changes," "response," "public safety" and "concerns" are the key words in Interrogatory No. 228. Not one of these words is vague. "Public safety concerns" means concerns expressed by the public or possibly internal concerns for the public within the company.

The question suggests it is possible that after Sunoco promulgated its PAP that it made further changes in the interest of public safety. While this is unlikely in light of Mr. Zurcher's testimony -- that Sunoco's plan is pretty much a cookie cutter concoction used throughout the industry -- the question is not unreasonable.

X. Objection to Interrogatories 232 – 257

Complainants have no response to this objection.

Y. Objections to Nos. 258- 259

Agreed.

Z. Interrogatory No. 260

Agreed.

III. Objections to Document Requests

Complainants hereby incorporate by reference their responses to Sunoco's objections corresponding to document requests. For those reasons, Respondent should be required to furnish the requested documents.

Respectfully submitted,



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