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REPLY TO:

Center City

September 9, 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 FOR SANCTIONS AGAINST SUNOCO FOR
VIOLATION OF ALJ'S JUNE 6, 2019 DISCOVERY ORDER**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Motion for Sanctions Against Sunoco for Violation of ALJ's June 6, 2019 Discovery Order 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
Gerald McMullen
Caroline Hughes and
Melissa Haines

v.

Sunoco Pipeline, L.P.

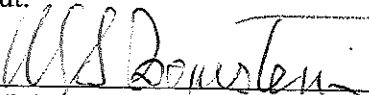
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C-2018-3006116
P-2018-3006117

NOTICE TO PLEAD

To: Parties of Record

Complainants have filed a Motion for Sanctions Against Sunoco for Violation of ALJ's June 6, 2019 Discovery Order in the above-captioned matter, pursuant to regulations of the Pennsylvania Public Utility Commission ("PUC") at 52 Pa. Code Section 5.103. You are hereby notified that because this is a Motion for Sanctions, pursuant to 52 Pa. Code Section 5.371, if you do not file a written response within five (5) days from service of this notice, the PUC may rule on this Motion without further input.


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Attorney for Complainants

Dated: September 9, 2019

**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.	:	

**COMPLAINANTS' MOTION FOR SANCTIONS
AGAINST SUNOCO FOR VIOLATION OF ALJ'S
JUNE 6, 2019 DISCOVERY ORDER**

Complainants, having received Respondent's supplemental discovery responses following the ALJ's June 6, 2019 Discovery Order, now move for imposition of sanctions against Sunoco for the reasons set forth below:

A. Introduction

1. This proceeding commenced over nine months ago.
2. Complainants served Respondent Sunoco with their first discovery requests on or about February 27, 2019.
3. Respondent served Complainants with timely objections to Complainants First Interrogatories and Document Request. The objections were 39 pages long and were quite detailed.

4. Following Complaints' Motion to Dismiss and Compel Answer, the ALJ entered an Order on June 6, 2019, granting the motion in part and denying it in part. (Copy of Order attached as Ex. "A").

5. Three months have elapsed since entry of Judge Barnes' Order.

6. In that time period, Sunoco has "gone through the motions" of appearing to comply with the judge's Order but in fact has done everything possible to stymie Complainants' efforts to obtain information critical to proving their case, violating the June 6th Order

7. 52 Pa. Code § 5.371 is entitled "Sanctions-general" and provides in pertinent part that "(a) The Commission or the presiding officer may, on motion, make an appropriate order if"[a] party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter."

8. 52 Pa. Code § 5.372 is entitled "Sanctions—types" This section provides in pertinent part that "(a) the presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(4) An order with regard to the failure to make discovery as is just.

9. Complainants believe and therefore aver that Sunoco's obdurate and disobedient conduct has been designed to (a) make it impossible for Complainants' expert witnesses to have meaningful review of documents already produced as well as documents refused to be produced;

and (b) otherwise make it difficult for Complainants to prepare for upcoming hearings in this proceeding.

10. If Sunoco's misconduct is allowed, it will prevent Complainants' from demonstrating that the 8-inch and 12-inch pipelines are unduly dangerous; that Sunoco's risk/hazard assessments have improperly been concealed from the public; that Sunoco's real reasons for decisions regarding siting of the Mariner pipelines in high consequence areas are different from what has been made public; that Sunoco's pipeline integrity management program is both deficient and in violation of law; that Sunoco's practices in the operation and maintenance of Mariner pipelines have been reckless and dangerous; that Sunoco routinely fails to give the public timely notice of punctures, leaks and ruptures; and that Sunoco otherwise has habitually operated in complete disregard of its obligations under the Public Utility Code to furnish safe, adequate and reasonable service.

11. As shown below, Sunoco is plainly in contempt of the ALJ's June 6th Order.

B. Siting Plans

12. ¶¶ 26 – 30, 56 – 57 of the Second Amended Complaint allege that location of Mariner in the high consequence areas of Chester and Delaware Counties is unduly dangerous.

13. Complainants' Interrogatories 165 and 166 seek the identity of records reflecting *planning for location* of ME lines and transportation of HVLs in those counties. Sunoco raised certain objections.

14. **ALJ's Order at No. 19:** "Sunoco is directed to produce *a detailed explanation* of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties within ten (10) days of issuance of this Order." (Italics added). The ALJ also ordered that where

interrogatories seek identity of documents the corresponding documents should be produced.
(Order at No. 31).

15. **Sunoco's Response:** Sunoco did not comply within ten (10) days. Sunoco has not yet provided a detailed explanation. Sunoco has identified documents responsive to this request but online access to the Manko, Gold document link has disappeared. Sunoco's position appears to be that the deposition of Matt Gordon suffices to satisfy the order that Sunoco produce a detailed explanation of the ME planning process. Complainants disagree.

C. Revolution Pipeline Documents

16. Interrogatories 206 – 213 refer to the Beaver County explosion. Complainants mistakenly refer to the *Rover* pipeline rather than the *Revolution* pipeline. Sunoco objected to the interrogatories.

17. **The ALJ's Position:** Judge Barnes wrote that “there appears to be a factual dispute over whether Sunoco Pipeline L.P. owned the *revolution pipeline*.” (Italics added). The order at No. 26 says “Sunoco Pipeline LP is directed to respond to Interrogatories Set I, Nos. 207 – 211 within ten (10) days of the date of issuance of this Order.

18. **Sunoco's Response:** Sunoco responded by furnishing information about the *Rover* pipeline. For example,

Sunoco Pipeline L.P.'s Answers to Complainants' Interrogatories, Set I

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

RESPONSE: Rover Pipeline LLC. The Rover pipeline was not the pipeline that failed in the incident to which Complainants refer.

DATE: June 17, 2019

BY: Counsel

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

RESPONSE: Rover Pipeline LLC. The Rover pipeline was not the pipeline that failed in the incident to which Complainants refer.

DATE: June 17, 2019

BY: Counsel

During a recent meet and confer phone call Sunoco's attorneys expressly refused to answer these questions with respect to the Revolution pipeline.

D. Sinkholes

19. The Second Amended Complaint avers in ¶ 97 that witness John Zurcher denies there have been any pipeline incidents involving sinkholes. Notwithstanding his testimony, PUC's Bureau of Investigation and Enforcement ("I&E") in its March 7, 2018 Petition for Ex Parte Emergency Order alleges **it found three separate sinkholes** at three separate locations near 491 Lisa Drive in West Whiteland Township. (BI&E v. Sunoco, C-2018-3000281 at 1)____). Based on that petition, the Commission granted emergency relief on the same date.

With this background, Complainants' Interrogatories 104 – 112 sought detailed information concerning sinkhole incidents along the Mariner pipelines. Sunoco objected.

20. **The ALJ's Ruling:** "Sunoco Pipeline L.P. is directed to respond to Interrogatories Set I, Nos. 104-114 regarding sinkhole incidents in Delaware and Chester Counties only within ten (10) days of issuance of this Order." (Order, No. 12, at 51).

21. **Sunoco's Response:** Sunoco answered Interrogatory No. 104 by stating the events were not sinkholes but that they would continue to compile responsive information:

Sunoco Pipeline L.P.'s Answers to Complainants' Interrogatories, Set I

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

RESPONSE: Sinkholes did not occur. In the events that this request references, the ground surface subsidences that did occur were not in karst geology or other carbonate rock formations. See documents to be produced, some of which are Confidential Materials, Highly Confidential Materials and/or Confidential Security Information.

SPLP continues to compile responsive information and reserves its right to supplement this response, including through its testimony in this proceeding pursuant to 52 Pa. Code § 5.324(a)(2).

DATE: June 17, 2019

BY: Matthew Gordon

22. Thus, despite the fact that I&E referred to the occurrences as sinkholes and the ALJ referred to them as sinkholes, Sunoco insists they are not sinkholes AND in the last 11 weeks the company has provided no meaningful answers to the questions that the ALJ ordered them to answer. Sunoco has failed to answer Nos. 105 – 112.

In the meet and confer discussion between counsel on August 23, 2019, Sunoco's attorneys continued to refuse to answer these interrogatories. Sunoco's blatant disregard of the ALJ's order is nothing short of contemptuous.

E. Missing Maps

23. Sunoco was asked in Interrogatories Nos. 175 and 176 to furnish documents showing locations and depths of the Mariner pipelines in Chester and Delaware. In No. 177, respondent was asked to "[e]xplain how the determination was made to install pipelines at the depths noted in the documents identified in your answer to the above question."

Sunoco objected.

24. **ALJ's Decision:** At No. 22 of her Order, the ALJ ruled that Sunoco “is directed to respond to Interrogatories Set 1, Nos. 175-177 by providing maps showing the location and depth of Mariner East 1, Mariner East 2, Mariner East 2X and the 12-inch workaround pipelines within ten (10) days of the date of issuance of this Order.”

25. **Sunoco's Response:** Sunoco has not complied. The company furnished “alignment sheets” for the 12 inch pipeline only through documents Bates stamped 7001 – 7033. Following the August 23rd phone conference, Sunoco agreed to furnish additional sheets but, as of the date of this filing, they have not done so. Again, more than 11 weeks have passed since Sunoco was ordered to do this.

F. Maintenance and Upgrade Information

26. Interrogatory No. 13 sought records reflecting maintenance and upgrades on the Mariner pipelines. Sunoco Objected.

27. **ALJ Ruling:** The ALJ noted in her disposition that “maintenance and upgrades performed since January 1, 2015 in Chester and Delaware Counties as this information is likely to lead to admissible evidence pertaining to pipeline integrity issues and is not unduly burdensome to Respondent.” In her Order at No. 10, Judge Barnes directed Sunoco within ten (10) days to “produce information *summarizing* maintenance and upgrades performed since January 1, 2015 in Chester and Delaware Counties. (Italics added).

28. **Sunoco Response:** To date, Sunoco has not furnished a “summary.” Counsel have instead pointed to 24,000 pages of material and stated, essentially, it's in there somewhere. In a recent email, counsel stated that a June 17, 2019 email response supplied a “narrative.” That email response:

RESPONSE: See documents to be produced.

SPLP continues to compile responsive information and reserves its right to supplement this response, including through its testimony in this proceeding pursuant to 52 Pa. Code § 5.324(a)(2).

DATE: June 17, 2019

BY: Jay Dresh and Richard Dalasio

29. Clearly, Sunoco has not furnished a summary of 24,000 pages of material.

30. Counsel for Sunoco in her email of August 29, 2019 has stated that the documents to be summarized have a Bates stamp range 7162-31197. Simply identifying a range of more than 24,000 pages does not begin to comply with the June 6, 2019 Order's direction to *summarize*. Sunoco did not appeal the Order and its failure to furnish a meaningful summary is inexcusable.

G. Planning Process for Location and Transportation of HVLs.

31. In Interrogatories Nos. 165 - 166 Complainants Sunoco to identify documents showing the planning for location of new Mariner pipelines as well as for the transportation of HVLs. Sunoco objected.

32. **ALJ's position:** The ALJ directed Sunoco in No. 19 "to produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties within ten (10) days of the date of issuance of this Order. Judge Barnes also separately directed that for each interrogatory seeking the identity of documents that the documents be produced if the interrogatories were directed to be answered.

33. **Sunoco's Response:** Sunoco has identified 83 pages of material from the Manko, Gold document link together with the deposition of engineer Matt Gordon. In the August 23rd

discussion, Sunoco's attorney stated explicitly that the Gordon deposition contains all the necessary information. Complainants disagree.

34. The planning of the Mariner lines for Chester and Delaware Counties would have taken a significant period of time. It was a multi-year process and it involved the potential expenditure of billions of dollars. There would necessarily be internal communications of all sorts from the gestation of the idea to final execution. Documents would necessarily include emails, correspondence, notes, minutes, all kinds written exchanges and commemoration of discussions and exchange of ideas.

35. Obviously, complainants are not looking to obtain field engineers' reports concerning the exact location of pipes at a given site. Planning for the location of the pipelines in high consequence areas of Chester and Delaware Counties, however, must have been done at an administrative and/or executive level.

36. All these materials are discoverable. 52 Pa. Code § 5.349 permits a party "to inspect and copy designated documents—including writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained..."

37. "Documents" under Rule 4009.1 Pa.R.C.P. also includes writings and electronically stored information.

38. Complainants' own definitions in Sections D and E of their First Interrogatories include writings and emails. Those are no broader than under the Pennsylvania Rules or the rules of this Commission.

39. Sunoco's internal communications and communications between Sunoco and the rest of the world clearly are documents. Nothing in the ALJ's Order of June 6, 2019 suggests otherwise.

40. While it is understandable that Sunoco is suggesting that all of its site planning is explained fully in the deposition of Matt Gordon, Complainants believe that claim is untrue and that under the rules of discovery they are entitled to it.

41. Sunoco in its objections to these interrogatories objected to Complainants' definitions. Nothing in the ALJ's June 6th order suggests that Complainants' discovery should be limited to Matt Gordon's deposition transcript.

H. Inaccessibility of Documents

(1) Deliberate Failure to Disclose Organizational Scheme

42. The company Reliable Documents, Inc. is widely used by Pennsylvania law firms for a variety of document-related needs. Reliable does mass copying, Bates stamping and binding. For electronic discovery, Reliable has a platform that it licenses out. The platform enables users to "host" large quantities of materials and then perform search, tag and other functions.

43. Sunoco's attorney used Reliable to produce over 32,000 pages of documentary material. Reliable delivered these materials in five bankers' boxes. Within the five boxes, Reliable inserted hundreds of green separators between separate documents. Sunoco clearly furnished these in order to separate one document from the next but deliberately failed to identify them individually.

44. Sunoco obviously knew what each document was. Nonetheless, Sunoco declined to identify the documents. Thus, even though the materials are Bates-stamped, complainants'

engineers have received over 32,000 pages with no apparent organizational scheme. The amount of extra work generated by Sunoco's concealing the organizational scheme cannot be overstated.

(b) Refusal to Facilitate Engineers' Access to E-Discovery Platform

45. Sunoco's counsel did not simply have Reliable copy over 32,000 pages. Counsel obviously gave Reliable access to the material, almost all of which is stamped "confidential/highly confidential."

46. Complainants believe that counsel's disclosure of confidential/highly confidential material to Reliable was an inadvertent breach of the ALJ's Amended Protective Order. Review of both the original protective order (Document 1595678 dated November 28, 2018) and the amended order (document 1622852, dated June 6, 2019) does not disclose any provision that would have allowed Sunoco or Complainants to share confidential/highly confidential with Reliable. Counsel for Complainants does not believe there was an exception for an outside vendor to access the material.

47. Paragraph 9 of the Amended Order requires that only a "reviewing representative" may review the information. Reliable is not a reviewing representative. Reliable has not signed a non-disclosure form.

48. On or about September 4, 2019, attorney Bomstein exchanged e-mails with attorney Diana Silva of the Manko, Gold firm. He requested that Reliable be given access to the online link for document.

49. The purpose was for Reliable to license to Complainants its e-discovery platform (at Complainants' expense) in order that Dr. Zee and his firm – Complainants' engineers -- might search, tag and perform other operations on the 32,000 plus pages of documents.

50. Ms. Silva wrote back and simply refused, stating supposed concerns over disclosure to the very same firm that she already entrusted to share these confidential/highly confidential documents. The email exchange is set forth below:

Michael Bomstein <mbomstein@gmail.com>

to Diana ▾

Hi, Diana.

We are hooking up with Reliable to get software to assist our engineers in their review of the documents. Our contact there is Dan Reich. Dan needs to be able to link to the data in order to give us a proposal for the project. When I click on the link from August 2nd it seems to have expired. So, I'm putting Dan in this email and asking you to make the data available to him.

Thank you.

MSB

From: **Diana Silva** <DSilva@mankogold.com>

Date: Wed, Sep 4, 2019 at 4:18 PM

Subject: RE: Reliable

To: Michael Bomstein <mbomstein@gmail.com>

Cc: Whitney Snyder (WESnyder@hmslegal.com) <WESnyder@hmslegal.com>

Michael:

While I have no issue extend the access link time period for you or your engineers to access the information— I'm concerned that you are sharing these documents with folks that are not within the scope of the protective order — a vendor is not among the people who are granted access to these documents. If you need to just access the electronic documents yourself, I can extend the expiration time period on the link if it has expired.

Please advise.

Michael Bomstein <mbomstein@gmail.com>

to Diana, Whitney ▾

Reliable is the company that copied all the documents on your instructions and delivered them to me. We need to have meaningful access to 32,000 plus pages. If you don't intend to cooperate just confirm and we'll ask the judge to assist us.

Thank you.

MSB

...

From: **Diana Silva** <DSilva@mankogold.com>

Date: Wed, Sep 4, 2019 at 4:29 PM

Subject: RE: Reliable

To: Michael Bomstein <mbomstein@gmail.com>

Cc: Whitney Snyder (WESnyder@hmslegal.com) <WESnyder@hmslegal.com>

I completely disagree that we have not provided you meaningful access to our document productions.

I provided you full electronic access to all of the Public, Confidential, and Highly Confidential Documents to both you and your experts at Matergenics via an electronic sharefile link – which my IT people here told me does not expire. Nevertheless – here is the link again: <https://mankogold.sharefile.com/d-s1eee2de9e114b7bb> . We also at SPLP's expense, printed hard copies of the Public, Confidential, and Highly Confidential Documents, and delivered them to you directly. I do not understand what else you are looking for at this point. The fact that we used Reliable to make copies for us at our expense to send to you does not mean that you are permitted to provide access to these documents for another purpose.

51. Without the requested access and e-discovery platform available from Reliable, Dr.

Zee's firm will be unable to have meaningful use of the materials they have been supplied.

Complainants' challenge to Sunoco's integrity management practices will be scuttled.

Complainants believe that Reliable is reliable and that counsel for Sunoco have no good reason to keep Complainants from purchasing an e-discovery license from the vendor.

52. The Amended Order dictates that if there is a dispute over whether someone can view the data, the Judge shall resolve the matter. Complainants believe that the Amended

Protective Order should be clarified to permit them to retain Reliable to set up its e-discovery platform for Dr. Zee and his colleagues.

I. Relief

53. Complainants already have waited more than six months to get complete answers and responses to their first discovery requests.

54. In that time, Sunoco has proceeded to build its juggernaut pipeline system, violating state and federal environmental laws, polluting the wells of homeowners and delivering HVLs destined to become plastic bottles to destroy our oceans.

55. Sunoco is in contempt of the ALJ's June 6th Order. As a result, counsel for Complainants has been compelled expend unnecessary time and resources, engage in unnecessary dialogue with Sunoco's attorneys, respond to unfounded objections to discovery, and now to prepare and file the instant motion.

WHEREFORE, Complainants pray that Judge Barnes enter an order forthwith, granting this Motion and directing Sunoco forthwith to:

(a) maintain its digital document link for the benefit of all persons who have executed non-disclosure forms for the duration of this proceeding;

(b) furnish Reliable Document, Inc. with such access to Manko, Gold's digital document link as Reliable shall require in order to license its e-discovery service to Complainants and their experts who have executed non-disclosure forms;

(b) for each green separator in the five boxes of documents provided to Complainants' counsel state clearly what the associated document is and identify the attendant time period and the Bates stamp range;

(c) provide Complainants a detailed explanation of the planning process relative to location of Mariner pipelines, valves, compressor stations, and pumping stations in Delaware and Chester Counties, the explanation to include without limitation: (1) why alternative routes within Delaware and Chester Counties were not selected; (2) why new Mariner construction is taking place close to schools, medical, nursing and senior facilities, including as close as seven feet to Sts. Peter and Paul Catholic School; (3) why Sunoco's public statements and publications have not disclosed to the public the probability of injuries, fatalities and property damage in the event of a leak or rupture of HVL pipelines in Chester and Delaware Counties; (4) how Sunoco selected the depths at which it has been laying and planning to lay new Mariner pipelines; (5) what discussions Sunoco planners had relative to persons who are unable to travel on foot away from a pipeline leak or rupture; (6) how Sunoco compared the dollars and cents costs of alternative routes -- including costs of eminent domain acquisition -- to the costs of routes through high consequence areas of Chester and Delaware Counties that were selected; and (7) discussion of Sunoco's quantitative analysis of the environmental and other impacts of the routes chosen and the alternative routes that were not chosen.

(d) respond to Complainants' Interrogatories Set I, Nos. 207 – 211 as though the questions sought information on the Revolution pipeline;

(e) for its response to Interrogatory No. 210 also identify and supply all documents in Sunoco's possession, custody or control relating to the investigation into and determination of the cause(s) of the Beaver County explosions

(f) respond to Interrogatories Set I, Nos. 104-114 regarding sinkhole incidents and all other known earth subsidence events in Delaware and Chester Counties only. The term sinkhole as used here shall include earth subsidence events;

(g) furnish maps showing locations and depths of all the Mariner pipelines in Chester and Delaware Counties;

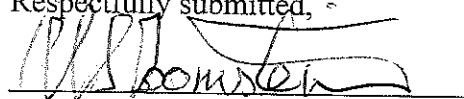
(h) *summarize* maintenance and upgrades performed since January 1, 2015 in Chester and Delaware Counties. (Italics added). For *each* of the green divider pages in the said Bates range, Sunoco shall summarize improvements noted in each document and *separately* summarize maintenance as noted in each document.

(i) furnish all emails, correspondence, notes, minutes, written exchanges and commemoration of discussions and exchange of ideas in its possession, custody or control reflecting planning for the location of the pipelines in high consequence areas of Chester and Delaware Counties. Sunoco shall not dump on Complainants notes and reports reflecting field observations and decisions relative to the installation of pipelines in the locations selected for the pipeline routes.

(j) Sunoco shall pay Complainants' counsel of record a reasonable sum for the time involved in dealing with Sunoco's recalcitrant conduct in complying with the June 6th Order.

(k) Failure to comply completely with a new Order shall result in imposition of further sanctions upon application of Complainants.

Respectfully submitted, ~



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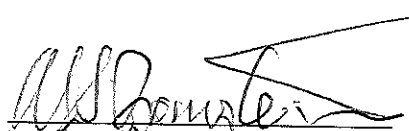
Tel.: (215) 592-8383

Dated: September 9, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below as per the requirements of § 1.54 (relating to service by a party). The document also has been filed electronically on the Commission's electronic filing system.

See attached service list.


Michael S. Bomstein, Esq.

Dated: September 9, 2019

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EX. "A"

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

Sunoco Pipeline, L.P. (Sunoco, SPLP, or Respondent) filed a certificate of service on March 11, 2019, showing it had objected to Complainants' Interrogatories Set 1, Nos. 1, 3-9, 10-118, 123, 127, 144, 155-166, 169, 173-184, 195-216, 219-221, 228, 232-260 and Complainants Set 1 Request for Production of Documents, Nos. 1-5 and 7.

On March 24, 2019, Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (collectively Complainants) filed a Motion to Dismiss Objections and Compel Answers to Discovery Requests at Docket Nos. C-2018-3006116 and P-2018-3006117.

On April 1, 2019, Sunoco filed an Answer to the Complainants' Motion to Compel. Respondent contends the motion should be denied because the interrogatories at issue are untimely, procedurally defective, vague, seek legal theories and conclusions,

overbroad, and unduly burdensome. On April 2, 2019, Complainants filed a Supplemental Discovery Memorandum. On April 30, 2019, Complainants filed an Additional Memorandum in Support of Motion to Compel Discovery. On May 16, 2019, Sunoco filed a Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure. Sunoco moves to strike Complainant's Supplemental Discovery Memorandum and Additional Memorandum in Support of Motion to Compel Discovery. The Motion to Compel is ripe for a decision.

Timeliness of Filing

Sunoco requests the motion to compel be denied because it was untimely filed more than ten (10) days after objections were made to the interrogatories and request for production of documents in violation of 52 Pa. Code § 5.342(g). Additionally, Complainants failed to attach Sunoco's Objections to their Motion to Compel. Instead, the objections are mischaracterized and/or ignored by Complainants. Further, Sunoco moves to strike the Supplemental and Additional Memorandums as they violated 52 Pa. Code § 5.1(a) in that no briefs or memorandums in support of motions are expressly permitted by the regulation. Likewise no answer to an answer is permitted. The motion to compel should have set forth all grounds therefore and the statutory or other authority upon which it relies. 52 Pa. Code § 5.103.

Complainants admit their motion to compel was due March 22, 2019. However, they claim counsel was unable to file by Friday, March 22, 2019, due to pressing business matters, and subsequently filed the next business day, Monday, March 24, 2019.

Disposition

The Commission's regulations grant the presiding officer "all necessary authority to control the receipt of evidence." 52 Pa.Code § 5.403(a). The Commission's regulations also allow Presiding Officers the authority to "regulate the course of the

proceeding.” 52 Pa.Code § 5.483(a). Liberal construction is allowed 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.” 52 Pa.Code § 1.2(a); see also, 52 Pa.Code § 1.2(c) (“presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.”).

Although I find the Motion to Compel was untimely filed and without the Objections attached, I am disregarding these procedural defects and will consider Sunoco’s Objections as Attachment B to its Answer. Complainants’ excuse of other pressing business matters is good cause for a one business-day lateness in filing and Sunoco’s substantive rights are not violated.

Standard And Evidence

The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

§ 5.321. Scope.

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Section 5.361 of the Commission’s regulations, however, provides various limitations on the scope of discovery:

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a).

Complainants' Set 1, Nos. 1 and 10

Complainants' Set 1, No. 1 provides:

Identify all records in your 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.

Complainant Set 1 No. 10 states:

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.

Sunoco Pipeline L.P.'s Position

SPLP objected to these requests on the grounds that they are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

The request in Complainant Set 1, No. 1, is not reasonably tailored to lead to the discovery of relevant evidence and is

unduly burdensome and overbroad because it requests “all records” which is likewise defined overbroadly. Taken literally this request could pertain to hundreds of thousands of documents. This request for all records is a fishing expedition and is not reasonably tailored to discover admissible evidence.

SPLP Objections at 8, 10.

Sunoco argues that Complainants fail to address the overbreadth of the requests, which taken by their terms mean any documents related in any way to the significant upgrades and testing that SPLP performed on ME1 and the 12-inch pipeline prior to placing them in NGL service. These requests encompass approximately 6 years of documents. Sunoco is willing to describe the upgrades it made and tests it performed and provide records confirming those tests and upgrades regarding Chester and Delaware Counties, not the overbroad and unduly burdensome request lodged regarding other counties that is not reasonably calculated to lead to admissible evidence. The requests are a fishing expedition and are not allowed. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971).

Complainants’ Position

Complainants respond that Sunoco has claimed in its Answer to the Complaint that it made significant upgrades and performed testing on ME1 and Complainants’ question is relevant to pipeline integrity issues in the instant proceeding. Complainants are entitled to verify whether Sunoco’s claimed defense is true.

Disposition

Sunoco shall be compelled to describe the upgrades it made and tests it performed and provide records confirming those tests and upgrades regarding Chester and Delaware Counties since January 1, 2013, as the production of such information is reasonably calculated to lead to admissible evidence and is tailored such that it is not unreasonably burdensome and irrelevant.

Complainants' Set 1, Nos. 3-9

Complainant Set 1, No. 3-9 state:

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 workaround 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 Pipeline L.P.'s Position

SPLP objected to these requests as follows:

SPLP objects to these requests because they do not seek information relevant to this proceeding. Set 1, Nos. 3-9 all seek information related to SPLP's commercial intra and inter-state operations. The specific volumes of product ship, shippers, parties taking delivery, rates of volume, expected volumes, rates, and shippers by delivery destinations do no relate to any of Complainant's claims in these proceedings. These requests all appear to seek

information parties such as Complainant's have attempted to use to argue SPLP is not a public utility. However, Complainant makes absolutely no such claim in its Complaint. The Commission and appellate courts have repeatedly and conclusively decided SPLP is a PUC-certificated utility and that its Mariner pipelines provide public utility service. Moreover, evidence regarding specific destinations, shippers, rates, and the inter or intra-state nature of transportation on the pipeline would not even be dispositive to whether SPLP is providing service to or for the public. The test is whether SPLP is willing and able to provide service to or for the public. It is. Complainant's legally incognizable theory regarding bearing risk for non-Pennsylvania services is nothing more than attempting to rehash SPLP's public utility status. Such claims are not relevant here.

Moreover, SPLP objects to No. 4, 7, 8, and 9 because they seek information of competitively sensitive customer information without the customer being joined or notified of the request. SPLP also objects to No. 9 because it seeks information outside the Commission's jurisdiction and irrelevant to this proceeding. SPLP's obligations as a Pennsylvania Public Utility end where the customer takes delivery. What a customer does with that product is not within SPLP's control and is not relevant to this proceeding.

Objections at 9-10.

Sunoco contends that Complainants are mischaracterizing Sunoco's objection as objecting to providing the identity of the liquids flowing through the pipelines. Response at 3. That was not Sunoco's objection and it responded to Complainants Interrogatory Set 1, No. 2, and provided the identity of the liquids flowing through the pipelines. Most of these interrogatories do not seek the information Complainants state they need. Complainants state: "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." Response at 3.

The only information sought in these requests that relates to the claims as Complainants have stated them is a request for information regarding the amount of product in the pipelines now and projected for the future, not who shipped it, or where it came from, or where it goes, or who receives it, or volumes since 2014 – none of that information is relevant to Complainants' claims. Complainants' requests regarding volumes in Nos. 5-7 are unclear as to what information Complainants are seeking and in what format. In the spirit of compromise and subject to and without waiver of its objections, SPLP is working with Complainants to provide them with information on volumes.

Complainant's Position

Complainants argue that 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.

Disposition

Sunoco need not answer questions 3, 4, 8, and 9 as I fail to see how the information sought in these interrogatories is relevant or reasonably calculated to lead to the discovery of admissible evidence. The aggregate volumes of product shipped, shippers, parties taking delivery, rates, and shippers by delivery destinations do not relate to any of Complainant's claims in these proceedings. However, Interrogatories Nos. 5-7 seek information reasonably calculated to lead to the discovery of admissible evidence. In No. 5, Complainants request "rates of volume" and in No. 7 they request "rates and volume" so it is ambiguous. I infer the questions seek information pertaining to what the projected product type and volumes will be in the workaround pipeline and ME1 in Chester and Delaware Counties including the maximum amount of product that can be transported. This information pertaining to volume is relevant to safety risks associated with the Mariner East Project and relevant to emergency evacuation plans and public

awareness programs in Delaware and Chester Counties. Therefore, I will compel a response to these questions within 10 days from the date of issuance of this order.

Complainants' Set 1, Nos. 11-12

Complainant Set 1, No. 11 states:

You state that your pipeline integrity management program ("PIMP") "continues to function in compliance with the law." Identify each statute and regulation of which you are aware that sets out PIMP requirements.

Complainant Set 1, No. 12 states:

With reference to your answer to No. 11 above, explain how you are in compliance with each such statute and regulation.

Sunoco Pipeline L.P.'s Position

SPLP objected to these requests on the basis that they are overbroad and unduly burdensome and seek SPLP's legal opinions and legal theories.

SPLP also objects to Complainant Set 1 No. 11 because it seeks disclosure of legal theories or opinions. Under Section 5.323, discovery may not include disclosure of legal research or legal theories. 52 Pa. Code § 5.323(a). Complainant Set 1, No. 11 seeks legal theories and conclusions and thus is not an allowable request under the Commission's regulations.

...

SPLP further objects to this request as unduly burdensome. This request is essentially seeking to have SPLP explain how it is in compliance with every applicable section of the PHMSA and Pa PUC regulations, the Public Utility Code, and the Pipeline Safety Act.

Objections at 10-11.

Sunoco contends that Complainants are seeking to have Sunoco tell them what parts of the law Sunoco believes applies to it and how it believes it complies with

that law. Moreover, Complainants' instructions expressly state that the word "you" "shall refer both to Sunoco and/or any other person representing or purporting to represent Sunoco in any capacity, including its attorneys." Interrogatory Definition B. The plain terms of these requests show that they are seeking legal theories and conclusions.

Moreover, these requests are overbroad and unduly burdensome. Requiring SPLP to explain how it is in compliance with each and every applicable law and regulation concerning pipeline integrity management is no small task. Pipeline integrity management is a complex and technical subject matter with many aspects. The request for explanation is a fishing expedition – it is seeking to have SPLP give an explanation of every aspect of integrity management without stating with particularity how any single one of those aspects is particularly relevant to Complainants' claims that SPLP violated a law or regulation

In the spirit of compromise and subject to and without waiver of its objections, SPLP will produce its integrity management plans, which reference various applicable regulations. Complainants can determine for themselves how these documents comply with applicable regulations.

Complainants' Position

Complainants argue they are not requesting legal theories or conclusions, merely provisions of CFR that refer expressly to integrity management.

Disposition

Discovery "may not include the disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories." 52 Pa. Code § 3.323(a). The Pennsylvania Supreme Court has held:

As has been observed, the work product protection supports our judicial system, based on the adversarial process by allowing counsel privacy to develop ideas, test theories, and explore strategies in support of the client's interest, without fear that the documents in which the ideas, theories and strategies are written will be revealed to the opposing counsel. Allowing counsel to document legal theories without concern of disclosure encourages better representation of clients, which in turn benefits justice.

Barrick v. Holy Spirit Hosp. of the Sisters of Christian Charity, 625 Pa. 301, 312-13, 91 A.3d 680, 686 (2014).

I agree with Sunoco that it appears Complainants are requesting legal theories and conclusions. That is not allowed. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Cmwlth. 1971) ("Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.") (quoting *American Car & Foundry Company v. Alexandria Water Company*, 70 A. 867, 869 (Pa. Super. 1908)).

However, the Commission's rules provide that "parties are encouraged to exchange information on an informal basis." 52 Pa. Code § 5.322. As Sunoco is willing, Sunoco will be compelled to provide Complainants with integrity management plans, which reference various applicable regulations. Complainants can determine for themselves how these documents comply with applicable regulations.

Complainant Set 1, No. 13

Complainant Set 1, No. 13 states:

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

Sunoco Pipeline L.P.'s Position

Sunoco objected to this request because it seeks irrelevant information and is overbroad and unduly burdensome. Sunoco argues that Complainants' Response fails to address the burden associated with this request. The word "records" means all documents related to maintenance and upgrades of ME1 and the 12-inch pipeline. This request also encompasses 90-years' worth of such documents, which is an overbroad and unduly burdensome fishing expedition. Moreover, Complainants' wholly fail to address how approximately 90-years' worth of records could be relevant. Sunoco argues that the statute of limitations for violation of the public utility code is three years. 66 Pa. C.S. § 3314(a).

- (a) **General rule.**--No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

Id. To obtain any relief in this proceeding, Complainants have to show SPLP violated the public utility code within the past three years of the Complaint.

Complainants' Position

Complainants contend the question is relevant to the pipeline integrity issue. Complainants argue 66 Pa. C.S. § 3314 does not apply to limit discovery to 3 years as Complainants do not seek damages or penalties against Sunoco. Specifically, Complainants plead:

If further discovery were to support a claim under Chapter 33 a separate proceeding would have to be initiated that identified one or more of the eleven possible violations as the basis for such a proceeding. That case would be subject to the Section 3314 limitations. The instant case, however, is not.

Complainants' Supplemental Discovery Memorandum at 1-2.

Disposition

Sunoco is correct that Complainants bear the burden of showing the company violated the public utility code, Commission regulations, or orders within the past three years of the Complaint. I agree that 90 years of records pertaining to over 350 miles of pipeline is unduly burdensome. Sunoco is directed to produce information summarizing maintenance and upgrades performed since January 1, 2015 in Chester and Delaware Counties as this information is likely to lead to admissible evidence pertaining to pipeline integrity issues and is not unduly burdensome to Respondent. Although Complainants aver they are not seeking civil penalties, Respondent was notified via Secretarial Letter dated November 21, 2018 regarding potentials for penalties. Whether or not a request for civil penalties are pled in a Complaint, the Commission has authority to decide if an individual received inadequate service and can order civil penalties be paid for violations of Commission regulations and orders. 66 Pa. C.S. § 3301 *et. seq.* If violations are found, an analysis pursuant to 52 Pa. Code § 69.1201 is generally undertaken by the presiding officer and Commission. Section 69.1201 set forth the factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy.

Additionally, Section 502 of the Public Utility Code provides in pertinent part as follows.

Whenever the commission shall be of opinion that any person or corporation, . . . is violating, or is about to violate, any provision of this part; or has done, or is about to do, any act, matter, or thing herein prohibited or declared to be unlawful; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse to obey any lawful requirement, regulation or order made by the commission; or any final judgment, order, or decree made by any court, then and in every such case the commission may institute injunction, mandamus or other appropriate legal proceedings, to restrain such violations of the provisions of this part, or of the regulations, or orders of the commission, and to enforce obedience thereto.

66 Pa. C.S. § 502. (*Emphasis added.*) The Commission is vested with the authority to issue injunctions against violations of Public Utility Law, 66 Pa. C.S. § 1101, *et seq.* and has issued injunctive relief in other cases involving respondents operating without certificates of public convenience in violation of law. An injunction is designed to protect the public and

prevent irreparable injury through the utility's operations. *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317, (Pa. 1947); *Pa. Pub. Util. Comm'n Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, C-2014-2422723 (Opinion and Order entered May 10, 2016); Cease and Desist Order issued July 1, 2014 at Docket Nos. C-2014-2422723 and P-2014-2426846.

Complainant Set 1, Nos. 14-103, 197-205

Complainant Set 1, Nos. 14-103 state:

14. 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.

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

16. For each said procedure set forth in your answer to No. 15 above, identify all documents containing information showing on what date the procedure was revised.

17. 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?"

18. 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.

19. 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?

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

21. 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.

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

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

24. 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.

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

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

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

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

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

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

31. 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.
32. For the period from the time became operational through the present, identify all O&M procedures that describe methods you use to control external corrosion.
33. 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.
34. 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?
35. If your answer to No. 34 above "yes," identify each NACE alternative standard that made it unnecessary for you to achieve -850 mV potential.
36. 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.
37. 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.
38. 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?
39. What is the purpose of taking side drain measurements?
40. Is ¶ 32 of the BIE Complaint an accurate description of how you performed side drain measurements?
41. If your answer to No. 40 above is in the negative, please furnish a more accurate description.

42. Set forth each date on which you performed side drain measurements on MEI, the 12 inch pipeline and the workaround pipeline.
43. 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?
44. 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?
45. 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)?
46. Do you agree that electrical current flowing away from a pipeline is a sign of corrosion?
47. If your answer to No. 46 above is in the negative, explain fully.
48. 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.
49. Is it your contention that in a multiple pipe right of way there is no interference of current magnitudes between pipes?
50. If "yes" to No. 49 above, please explain fully.
51. What is an "earth current technique?"
52. If it is your contention that side drain measurements are not an earth current technique, please explain fully.
53. 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?
54. If your answer to No. 53 above is "yes," please explain fully.

55. 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.

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

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

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

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

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

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

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

63. 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?

64. 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.

65. ¶ 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.

66. With reference to ¶ 35 of the BIE complaint, did you also measure "off" potentials?

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

68. ¶ 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.

69. ¶ 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.

70. 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?

71. If your answer to No. 70 above is "yes," please explain fully.

72. 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?

73. If "yes" to No. 72 above, please explain fully.

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

75. 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.

76. 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.

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

78. 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?

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

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

81. ¶ 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.

82. 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?

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

84. Do you agree that you conducted another ILI inspection for the same Twin Oaks to Montello segment of ME1 in 2017?
85. Where are all the records of the additional ILI inspection in 2017?
86. What conclusions did you draw as to the cause of metal loss identified in the 2017 inspection?
87. Did you rule out corrosion as a cause or possible cause of the metal loss in connection with the 2017 inspection?
88. What steps if any did you take as a consequence of the metal loss findings from the 2017 inspection?
89. 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?
90. Identify all records for the Morgantown line segment reflecting any inspections or maintenance performed on that segment.
91. 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.
92. 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.
93. 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.
94. 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?

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

96. 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... ?"

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

98. 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?"

99. 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?

100. If your answer is "yes" to No. 99 above, please explain fully.

101. The BIE Complaint in ¶ 38 alleges that your 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 SPOI 169-2007 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?

102. If the answer to No. 101 above is "yes," please explain why these things were not included.

103. 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.

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?

SPLP stated the following objections:

SPLP objects to each and every one of these requests because they do not seek information relevant to this proceeding. Each of these requests pertains to BI&E's Morgantown Complaint against SPLP. Complainants have improperly attempted to incorporate that entire Complaint (which relates to events with no discernable effect on Complainants), into their Complaint. As explained in SPLP's Preliminary Objections, Complainants attempt to incorporate the BI&E Morgantown Complaint and/or the issues therein should not be allowed in this proceeding. Complainants also lack standing to make allegations regarding the BI&E complaint, which focuses on a pin-hole leak and alleged past non-conformity with integrity management and cathodic protection regulations. Complainants wholly fail to allege that the Morgantown incident or those past occurrences have in any way

impacted them, let alone had the required direct, immediate, and substantial impact required for standing; those claims should be dismissed from this proceeding and therefore discovery seeking information regarding those claims is irrelevant.

Moreover, BI&E's Morgantown Complaint has resulted in a settlement in principle with a Joint Petition for Settlement forthcoming that will allow for a public comment period for interested persons prior to the Commission deciding whether to approve that settlement. The settlement will promote public safety. Allowing Complainants' to essentially open litigation of that settled Complaint is against Commission policy. Commission policy encourages settlement. 52 Pa. Code § 5.231(a). Allowing a Complainant to essentially act as a private attorney general and litigate a complaint that the actual prosecutory entity brought against SPLP is improper and has a chilling effect on settlements. If SPLP is subject to litigation for the same claims it has settled with BI&E here, that takes away SPLP's incentives to settle cases and agree to terms that promote public safety where it is subject to litigation of those same claims before the same regulatory body regardless of such settlement. Complainants were not discernably affected by the events of the Morgantown Complaint. To the extent Complainants are curious concerning the BI&E Complaint and resolution thereof, they can submit comments to the Commission concerning the Joint Petition for Settlement at that docket.

The interrogatories Complainants propounded demonstrate their complete lack of understanding and knowledge regarding the facts, regulations, and law concerning the Morgantown Complaint, and shows why Complainants should not be allowed to essentially act as a private attorney general for these claims and incorporate them wholly into their Complaint. Moreover, the discovery propounded is in large part an attempt to annoy and harass SPLP as many of the requests seek information contained in SPLP's publicly available Answer to the Morgantown Complaint.

SPLP also objects to these requests for the same reasons stated in Objection to Complainant Set 1, No. 1, which SPLP incorporates herein as if set forth in full. *Supra* Section II. A.

Objections at 19-21, 29.

Sunoco contends that Complainants cannot incorporate BI&E's Morgantown Complaint in their Complaint and these requests are not relevant. Complainants are attempting to litigate BI&E's Morgantown Complaint by seeking information on BI&E's allegations. Complainants are trying to act as a private attorney general, essentially trying to conduct their own investigation of BI&E's allegations. Complainants do not have investigatory powers – that is BI&E's job. Instead, Complainants can use discovery to seek information relevant to their own claims that is reasonably calculated to lead to admissible evidence. Moreover, BI&E's claims have been settled.

Complainants' Position

Complainants argue the Second Amended Complaint alleges additional pipeline integrity management allegations. Some questions concern the Morgantown incident, but most questions pertain to the general practices. As the proposed I&E-Sunoco settlement is confidential Complainants have no way to know which practices have been addressed in the settlement. Complainants contend Sunoco's Answer to the I&E Complaint is marked private and not available for public viewing. Further, I&E sought civil penalties in its complaint and the instant Complainants do not. Complainants seek information pertaining to whether alleged practices in Morgantown leading to an incident apply to Delaware and Chester Counties.

Disposition

Because these requests pertain to the I&E complaint proceeding and I am not granting Complainants leave to add identical averments to the I&E complaint to a Second Amended Complaint pursuant to the doctrine of *lis pendens*, Sunoco need not answer these requests.

Complainant Set 1, Nos. 104-112

Complainant Set 1, Nos. 104-112 state:

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

105. 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?

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

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

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

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

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

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

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

Sunoco Pipeline L.P.'s Position

SPLP stated the following objections based on irrelevance, overbreadth and undue burden:

SPLP objects to Complainant Set 1, Nos. 104-112 because these requests do not seek information relevant to this proceeding. The Amended Complaint does not raise issues of subsidence events or geology. Complainant Set 1, Nos. 104-112 all seek information related to subsidence events and geology that are not relevant to this proceeding according to the allegations raised in the Complaint and

therefore are outside the scope of discovery allowed under the Commission's regulations.

SPLP also objects to these requests for the same reasons stated in Objection to Complainant Set 1, No. 1, which SPLP incorporates herein as if set forth in full. *Supra* Section II. A.

Objections at 21-22.

Sunoco contends that Complainants cannot raise claims regarding geology of the ME1, ME2 or 12-inch pipelines because they did not plead any facts thereto, meaning the Complaint cannot encompass such claims. The Commission's rules of procedure provide that a formal complaint must contain a "clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation." 52 Pa. Code § 5.22(a)(5). The Commission's rule is based on Pennsylvania's Rule of Civil Procedure 1019, which **requires a plaintiff to plead all the facts that he must prove in order to achieve recovery on the alleged cause of action.**

Steven Higgins v. National Fuel Gas Distr. Corp., Docket No. C-2012-2338926, Initial Decision, 2013 WL 1100798, at *2 (Pa. P.U.C.. Feb. 26, 2013) (Colwell, ALJ) (emphasis added). Complainants did not plead facts regarding the Lisa Drive geological issues or any geological issues regarding ME1, ME2, or the 12-inch pipeline. They cannot now seek discovery on claims outside of their Complaint because such claims are irrelevant.

Sunoco contends that Complainants also mischaracterize Mr. Zurcher's testimony in a different proceeding, *State Senator Dinniman v. SPLP*, in an attempt to make their requests relevant to this proceeding. Thus, these requests are irrelevant to Complainants' claims. Likewise, Complainants' statement now, in their unverified Responses, that they believe "sinkholes in Chester County were a consequence of . . . disregard of the geology of the area" does not bring geology within the scope of this proceeding. The scope of the proceeding as to claims Complainants can make is limited to the allegations in the Amended Complaint.

Sunoco argues that the requests are overbroad and unduly burdensome unlimited by geography and thus would apply to information regarding the entire state.

Moreover, Nos. 104 and 112 are, again, “all records” requests, meaning all documents related to a broad topic that fail to identify specific types of documents sought or their relevance. Such fishing expedition is not allowed. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971).

Complainants’ Position

Complainants argue that even though their Amended Complaint does not raise issues of geology regarding the pipelines in Chester County, Complainants made allegations about potential geological issue regarding a Beaver County incident concerning a natural gas gathering pipeline; thus, they should be allowed to inquire as to geology issues related to ME1 and the 12-inch pipeline. Complainants devoted seven paragraphs to the Beaver County explosion, the cause of which was suggested to be geological underpinnings. Therefore, Complainants assert the sinkholes in Chester County were a consequence of poor integrity management and disregard of the geology of the area. Interrogatories 104-112.

Disposition

Sunoco shall be compelled to answer these requests pertaining to sink hole incidents in Chester and Delaware Counties only within ten days of the date of issuance of this Order. The interrogatories otherwise are overly broad and unduly burdensome.

Complainant Set 1, Nos. 113-118

Complainant Set 1, Nos. 113-118 state:

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

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

115. Identify all leaks, punctures and ruptures that have occurred on the workaround pipeline.

116. Identify all injuries, deaths and property damage associated with ME1.

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

118. Identify all injuries, deaths and property damage associated with the workaround pipeline.

Sunoco Pipeline, L.P.'s Position

SPLP stated the following objections:

SPLP objects to Complainant Set 1 Nos. 113-118 because these requests are unduly burdensome and intended to annoy and harass where the information requested is already publicly available on PHMSA's website. These requests all seek information regarding incidents that SPLP is required to and does report to PHMSA. PHMSA compiles information from these reports and makes it publicly available in spreadsheet form available on its website. As this information is just as readily available to Complainants as Respondent, requests for this publicly available information is unduly burdensome, intended to annoy and harass, and thus is outside the scope of discovery allowable under the Commission's regulations. To the extent these requests seek information beyond the time period for which PHMSA makes such data publicly available, SPLP objects to these requests as not calculated to discovery admissible evidence and unduly burdensome. A request for data back to the 1930's that Complainants have not shown is relevant to their Amended Complaint is a fishing expedition and requires unreasonable investigation. These requests are beyond the scope of allowable discovery under the Commission's regulations.

Objections at 22-23.

Sunoco contends that the length of time Sunoco's pipelines have been in operation is irrelevant to the scope of discoverable materials. Moreover, Complainants' reference to providing documents is non-sensical. Complainants did not request identification or production of documents for these requests.

Sunoco contends that Complainants' request for publicly available information is unreasonable and unduly burdensome because Complainants have not alleged that they are somehow incapable of retrieving this information. Instead, they attempt to place the burden on SPLP to respond to yet another of their unduly burdensome requests. The scope of the request for information back to the 1930's is overbroad and irrelevant as the statute of limitations for violation of the public utility code is three years. 66 Pa. C.S. § 3314(a).

In the spirit of compromise and subject to and without waiver of its objections, SPLP is willing to produce the PHMSA incident data dating back to 1986, which will show all reported incidents, whether there was any injury/death/property damage associated with the incident and provide a copy of the incident report form for each incident. SPLP believes this production will provide more than the relevant information Complainants are seeking without placing an undue burden on SPLP.

Complainants' Position

Complainants argue that leaks and ruptures in the Mariner pipelines that have caused injuries, deaths and property damage are central to Complainants' challenge. Complainants want 80 years of data from Sunoco, which may show whether the pipes are 'closing in on the end of their useful life.'

Disposition

Sunoco will be compelled to answer the interrogatory as modified from January 1, 1986 not 1930, as the latter date places an unduly burdensome request upon Sunoco and it is not likely to lead to the discovery of admissible evidence.

Set 1, No. 123

Set 1, No. 123 states:

123. Is it your contention that PUC approval of the dissemination of the PAP in the Dinniman case was tantamount to approval of the content of the PAP?

Sunoco Pipeline, L.P.'s Position

SPLP stated the following objection to this request:

SPLP objects to Set 1, No. 123 because it seeks a legal conclusion. Section 5.323 prohibits discovery of legal theories and conclusions. 52 Pa. Code § 5.323(a). This request by its terms seeks SPLP's legal conclusions and theories concerning the Commission's Orders in the *Dinniman* proceeding. Accordingly, this request is outside the scope of allowable discovery under the Commission's regulations.

Objections at 23.

Sunoco contends that the plain terms of this request show it is seeking legal theories and conclusions.

Disposition

I agree with Sunoco, that No. 123 impermissibly calls for a legal theory and conclusion. Sunoco need not respond to No. 123.

Set 1, Nos. 127, 144, 155-162

Set 1, Nos. 127, 144, 155-162 state:

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?

Disposition

As Sunoco agrees to provide responses to these requests, Sunoco will be given ten (10) days to respond.

Complainant Set 1, Nos. 163-164

Complainant Set 1, Nos. 163-164 state:

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.

Sunoco Pipeline L.P.'s Position

Sunoco objected to these requests based on integrity not being at issue in these proceedings and undue burden as to request No. 164. SPLP will respond to request

163. In the spirit of compromise and subject to and without waiver of its objections, SPLP will produce its integrity management plans.

Complainants' Position

Complainants argue the Second Amended Complaint includes numerous allegations relating to pipeline integrity; therefore, the objections should be overruled.

Disposition

I agree with Sunoco that Question No. 163 is unduly burdensome. However, Sunoco's integrity management plans are relevant. As Sunoco is willing to produce the plans, it will be compelled to do so within ten (10) days of the date of issuance of this Order. The company need not produce every document within its possession referring to the plans.

Complainant Set 1, Nos 165-166

Complainant Set 1, Nos 165-166 state:

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.

Sunoco Pipeline L.P.'s Position

SPLP provided the following objections:

SPLP objects to these requests because they are overly broad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence. These requests for "all records" interpreted literally could lead to the production of hundreds of thousands of documents and thus are overbroad and unduly burdensome. Moreover, these requests are a fishing expedition because they are not

calculated to lead to discovery of admissible evidence relevant to the Amended Complaint.

Sunoco contends these requests are overly broad and unduly burdensome. That Sunoco sited its pipelines in High Consequence Areas (HCAs) cannot be violation of any applicable law or regulation. The applicable federal regulations incorporated at 52 Pa. Code § 59.33(b), expressly allow for siting pipelines in HCAs. *See, e.g.*, 49 C.F.R. § 195.452 (specifying pipeline integrity management in high consequence areas). Thus, the documents related to planning for the siting of the pipelines and transportation of products is irrelevant because siting the pipelines in HCAs cannot be a violation of the law. Moreover, the scope of this request is behemoth. The term “planning” appears to indicate any documents related to how SPLP chose to site a particular piece of pipe where it did. That would encompass thousands of documents, down to every pipeline profile drawing and the iterations thereof. This is an absurdly overbroad fishing expedition and is not allowed.

In the spirit of compromise and subject to and without waiver of its objections, Sunoco is willing to produce an explanation of its planning process when it considered the location for siting ME2. SPLP believes this will provide Complainants with the information they are seeking without placing an undue burden on SPLP.

Disposition

I agree with Sunoco that the request is overly broad and unduly burdensome. Sunoco will be directed to produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties.

Complainant Set 1, No. 169

Complainant Set 1, No. 169 states:

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

SPLP stated the following objection:

SPLP objects to this request because it assumes a false premise and lack sufficient factual detail for SPLP to be able to respond. Complainant Set 1, No. 169 seeks information regarding SPLP decision-making based on “the relative risks of locating valve stations.” However, the request fails to define what “relative risks” or “vulnerable populations” Complainants assert exist regarding valve stations. As SPLP has stated in its Answer to the Amended Complaint, non-expert allegations concerning valve stations are overstating risks associated with valves.

Objections at 25.

Sunoco contends this request discusses undefined “relative risks of locating valve stations near vulnerable populations” without explaining what is meant by relative risk or vulnerable. SPLP will not guess at what Complainants are trying to ask about. A clearer request would be to explain how SPLP considered locating valve stations near schools, hospitals and senior residences, and if that is the information Complainants seek, that is what they should ask. The question as phrased is too undefined for SPLP to provide a response. In the spirit of compromise and subject to and without waiver of its objections, SPLP will produce an explanation as to how it considered the location of valve stations in Chester and Delaware County for the ME2 pipeline.

Complainants’ Position

Complainants argue the question clearly seeks probative information regarding how Sunoco looked at the possibility of locating valve stations near schools and hospitals.

Disposition

Sunoco will be compelled to explain the considerations it undertook in locating valve stations near schools, hospitals and senior residences in Chester and Delaware Counties.

Complainant Set 1, Nos. 173-177

Complainant Set 1, Nos. 173-177 state:

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

174. 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.

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

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

177. 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 Pipeline L.P.'s position

Sunoco stated the following objections:

SPLP objects to these requests as overbroad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence. These "all documents" requests interpreted literally implicate tens of thousands of documents. Moreover, these requests are a fishing expedition, not calculated to lead to the discovery of admissible evidence. Accordingly, these requests are beyond the scope of allowable discovery under the Commission's regulations.

Objections at 26.

Sunoco contends that Complainants' Responses ignore the extreme overbreadth of these requests and the undue burden response would place on SPLP,

instead making rhetorical arguments about the alleged “burden” of living close to a pipeline. Sunoco is not attempting to conceal information that may be relevant. However, these all related documents requests are clearly a fishing expedition, failing to seek specific records Complainants believe are probative and instead asking for all documents related to extremely broad topics. That is not allowed. Regarding Nos. 175-177, in the spirit of compromise and subject to and without waiver of its objections, Sunoco will produce maps showing the location and depth of ME1, ME2, and the 12-inch pipeline and provide a response to 177. Sunoco believes it has an agreement with Complainants that this production will fulfill their requests for 175-177.

Disposition

Sunoco will be compelled to produce maps showing the location and depth of ME1, ME2 and the 12-inch pipeline and respond to Questions Nos. 175-177. Sunoco is compelled to provide responses to Questions Nos. 173 and 174 confined to Delaware and Chester Counties within ten (10) days of the date of issuance of this Order.

Complainant Set 1, Nos. 178-180

Complainant Set 1, Nos. 178-180 state:

178. With respect to the property owned by Allison Higgins at 237 Lenni Road, 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.

Sunoco Pipeline L.P.'s Position

Sunoco stated the following objections:

SPLP objects to these requests because they do not seek evidence relevant to this proceeding. Each request seeks information regarding property allegedly owned by Allison Higgins. Ms. Higgins is not a Complainant in this proceeding nor is her property listed as the address of any of the Complainants in this proceeding. Complainants do not have standing to represent the interests of others. Accordingly, requests for information regarding Ms. Higgins property are not relevant to this proceeding and are not within the scope of allowable discovery under the Commission's regulations.

Objections at 26.

Sunoco argues that Ms. Higgins is not a Complainant here, that the Morgantown leak incident is not the subject of this case, and that Glenwood Elementary School is not a Complainant either. Siting a pipeline in an HCA is not a violation of law, to the contrary, it is allowed under the law. *See, e.g.* 49 C.F.R. § 195.452. Moreover, Complainants have not plead facts regarding Ms. Higgins, and therefore these topics are outside the scope of the Amended Complaint and thus are irrelevant to this proceeding.

Complainants' Position

Complaints admit Alison Higgins and Glenwood Elementary School are not complainants in the instant proceeding and that the Morgantown leak incident is not the subject of the case; however, these figure into the issue involving Sunoco's safety practices. Ms. Higgins resides in Middletown Township, Delaware County only yards from the Glenwood Elementary School and a number of HVL pipelines are next to her property. Complainants contend Sunoco is not using good engineering practices in locating so many pipelines in such close proximity to the school and Ms. Higgins' residence.

Disposition

Sunoco will be compelled to answer these questions within ten (10) days of the date of issuance of this Order. Although Ms. Higgins and Glenwood Elementary School are not complainants, they reside or are located within Delaware County.

Complainant Set 1, Nos. 181-182

Complainant Set 1, Nos. 181-182 state:

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.

Disposition

As Sunoco agrees to provide responses, Sunoco will be directed to provide responses to these requests within 10 days.

Complainant Set 1, Nos. 183-184

Complainant Set 1, Nos. 183-184 state:

183. 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.

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

Sunoco Pipeline L.P.'s Position

SPLP stated the following objections:

SPLP objects to Set 1, Nos. 183-184 because they do not seek information relevant to this proceeding. The Amended Complaint does not raise allegations concerning

the Aqua line hit that these requests seek information. Accordingly, these requests do not seek information relevant to this proceeding and are beyond the scope of allowable discovery under the Commission's regulations. SPLP also objects to Set 1, Nos. 183-184 for the same reasons stated in Objection to Complainant Set 1, No. 1, which SPLP incorporates herein as if set forth in full. *Supra* Section II. A.

Objections at 28.

Sunoco contends that Complainants did not plead facts regarding the Aqua incident and therefore it is outside the scope of this proceeding and irrelevant. 52 Pa. Code § 5.22(a)(5). The Commission's rule is based on Pennsylvania's Rule of Civil Procedure 1019, which **requires a plaintiff to plead all the facts that he must prove in order to achieve recovery on the alleged cause of action.** *Steven Higgins v. National Fuel Gas Distr. Corp.*, Docket No. C-2012-2338926, Initial Decision, 2013 WL 1100798, at *2 (Pa. P.U.C. Feb. 26, 2013) (Colwell, ALJ) (emphasis added).

In the spirit of compromise and subject to and without waiver of its objections, SPLP is willing to answer No. 183 and for No. 184 provide the One Call report it submitted to the Commission.

Complainants' Position

Complainants' argue that this information is broadly related to pipeline safety and therefore it is relevant.

Disposition

As Sunoco is willing to answer No. 183 and for 184 provide the One Call report it submitted to the Commission, Sunoco will be compelled to do so within 10 days. This should provide the Complainants with the information they are seeking without placing an undue burden on SPLP regarding the "all documents" request.

Complainant Set 1, Nos. 195-196

Complainant Set 1, Nos. 195-196 state:

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.

Disposition

As Sunoco agrees to respond to these requests, it will be compelled to do so within 10 days.

Complainant Set 1, Nos. 206-213

Complainant Set 1, Nos. 206-213 state:

Beaver County Explosions

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.

Sunoco Pipeline L.P.'s Position

Sunoco stated the following objections:

SPLP objects to these requests because they do not seek information relevant to this proceeding. Under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c), in turn, provides that a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding and reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Complainants do not have standing to raise issues regarding the incidents in Beaver County on the Revolution pipeline. That pipeline is not a public utility and the Commission does not have jurisdiction to hear a Complaint under section 701 concerning the Revolution pipeline.

Moreover, the Revolution pipeline was not constructed, owned, or operated by SPLP. The Revolution pipeline is a natural gas gathering line, not an HVL transmission line such as the pipelines at issue in this proceeding. The incidents that occurred regarding the Revolution pipeline are not relevant to this proceeding and thus discovery of such matters is beyond the scope of discovery allowed under the Commission's procedural rules.

Objections at 29-30.

Complainants' argue that SPLP "had placed the Beaver County pipeline in service." Complainants are incorrect. SPLP does not own or operate and did not construct the Revolution pipeline. Complainants' do not have standing to raise allegations concerning a natural gas gathering pipeline half-way across the state that is not a public utility. The only jurisdiction the Commission has over that pipeline is pursuant to Act 12 of 2011. Neither that Act nor the Public Utility Code Section 701 allow for the public to make Complaints against non-public utility pipeline operators. Only the Commission's Bureau of Investigation and Enforcement has the ability to make such Complaint before the Commission. Moreover, Complainants' fail to show how allegations concerning that pipeline have any bearing on the pipelines at issue here. These requests do not seek information relevant to this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence as required under the Commission's regulations. 52 Pa. Code § 5.321(c).

Complainants' Position

Complainants contend that Sunoco placed the Beaver County pipeline in service, which is a factual dispute between the parties. The interrogatories seek information bearing on these allegations.

Disposition

I agree with Complainants that at this stage in the proceedings the question may be relevant and lead to admissible evidence as there appears to be a factual dispute over whether Sunoco Pipeline L.P. owned the revolution pipeline. Sunoco need not respond to No. 206, 212 and 213. However, Sunoco will be directed to respond to Nos. 207-211 to the extent it has knowledge and is able within 10 days.

Complainant Set 1, Nos. 214-216

Complainant Set 1, Nos. 214-216 state:

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?

Sunoco Pipeline L.P.'s Position

SPLP stated the following objections:

SPLP objects to these requests because they are vague, ambiguous, and do not provide enough factual detail for SPLP to be able to respond to them. They are overbroad and seek to inquire into matters beyond the time and geographic scope relevant to this proceeding. Each of these requests seek information regarding leak detection on SPLP's pipelines, including all HVL lines SPLP operates, since the time each pipeline has been in operation. This request is well beyond the scope of what is relevant to this proceeding considering Complainant's do not have

standing to raise claims outside of the geographic area for which they claim standing in Chester and Delaware Counties. *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.). Moreover, the questions do not specify why Complainants mean by leak detection or regular inspection and maintenance. Accordingly, SPLP objects to these requests as overbroad, seeking information not relevant to this proceeding, and thus beyond the scope of discovery allowed under the Commission's regulations. SPLP also objects to these requests as vague, and ambiguous such that SPLP cannot respond to these requests.

Objections at 30-31.

Sunoco objects to the overbroad nature of these requests and their ambiguity. These requests are not limited by time, so they seek information back to the 1930's nor are they limited by geography to Chester and Delaware County. Regarding the scope of the request for information back to the 1930's that is overbroad and irrelevant. The statute of limitations for violation of the public utility code is three years. 66 Pa. C.S. § 3314(a).

Sunoco argues that Complainants fail to show how their overbroad requests are reasonably calculated to lead to discovery of admissible evidence that would meet their burden of proof. For example, if SPLP failed to detect a leak in 1950, that has absolutely no bearing on this case and Complainants have not even attempted to allege how it could. Moreover, these requests are vague and ambiguous and SPLP is not required to guess at what Complainants are asking. It is unclear what Complainants mean by "detected" – are they seeking information regarding the leak detection equipment present on the pipelines and/or leaks that may be detected by other means? It is also not clear whether request Nos. 215-216 only seek information regarding the Mariner pipelines or are so overbroad as to request information regarding other SPLP pipelines not at issue in this proceeding.

Complainants' Position

Complainants argue their questions are probative of the allegations in their complaint and not unduly burdensome. “Detected” means in a broader sense seeking information regarding the leak detection equipment present on the pipelines as well as other means.

Disposition

Sunoco will be directed to respond to No. 214 as pertains to data on or after January 1, 2014. Sunoco will be directed to respond to Nos. 215-216 pertaining to only the ME1, ME2, ME2X and 12-inch workaround pipelines.

Complainant Set 1, Nos. 219-221

Complainant Set 1, Nos. 219-221 state:

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 workaround pipelines, what percentage were first detected by Sunoco?

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

Sunoco Pipeline, L.P.'s Position

SPLP stated the following objections:

SPLP objects to these requests because they are vague, ambiguous, and do not provide enough factual detail for SPLP to be able to respond to them, they are overbroad and seek to inquire into matters beyond the time and geographic scope relevant to this proceeding. Each of these requests seek information regarding percentage or rate of crack and corrosion detection on SPLP's pipelines, including all HVL lines SPLP operates, since the time each pipeline has been in operation. This request is well beyond the scope of what is relevant to this proceeding considering Complainant's do not have standing to raise claims outside of the geographic

area for which they claim standing in Chester and Delaware Counties. Moreover, the questions do not specify why Complainants mean by leak detection or regular inspection and maintenance. Accordingly, SPLP objects to these requests as overbroad, seeking information not relevant to this proceeding, and thus beyond the scope of discovery allowed under the Commission's regulations. SPLP also objects to these requests as vague, and ambiguous such that SPLP cannot respond to these requests.

SPLP objects to Set 1, Nos. 219-221 for the same reasons stated in Objection to Complainant Set 1, No. 1, which SPLP incorporates herein as if set forth in full. *Supra* Section II. A.

Objections at 31-32.

Sunoco objects that these requests are not limited by time, so they seek information back to the 1930's nor are they limited by geography to Chester and Delaware County. Regarding the scope of the request for information back to the 1930's that is clearly overbroad and irrelevant. The statute of limitations for violation of the public utility code is three years. 66 Pa. C.S. § 3314(a).

Sunoco also argues that Complainants fail to show how their overbroad requests are reasonably calculated to lead to discovery of admissible evidence that would meet their burden of proof. This fishing expedition is not allowed. Moreover, these requests are vague and ambiguous and SPLP is not required to guess at what Complainants are asking. It is unclear what Complainants mean by "rate of detection," especially in terms of corrosion. SPLP is not required to guess at what Complainants' are intending to ask.

Complainants' Position

Complainants contend their questions are not vague or ambiguous, but are relevant.

Disposition

Sunoco will be directed to answer Nos. 219-221, limited to information pertaining to leaks since January 1, 2014 and within the confined regions of Delaware and Chester Counties.

Complainant Set 1, No. 228

Complainant Set 1, No. 228 states:

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

SPLP stated the following objections:

SPLP objects to Complainant Set 1, No. 228 because it is vague, ambiguous, and lacking sufficient detail for SPLP to respond to it. Complainant Set 1, No. 228 seeks a description of change made to SPLP's public awareness program "in response to any public safety concerns." The term "public safety concerns" is undefined, very broad, and therefore ambiguous as used in this request. SPLP will not assume what Complainants are attempting to ask. Accordingly, SPLP objects to this request because it is overbroad, vague, and lacking sufficient detail for SPLP to respond to it.

Objections at 32.

In the spirit of compromise and subject to and without waiver of its objections, SPLP will explain changes made to its Public Awareness Plan in the past three years.

Complainants' Position

Complainants contend the Question is not vague or ambiguous and that it is relevant.

Disposition

Sunoco is directed to explain changes made to its Public Awareness Plan since January 1, 2014, within ten days of the date of entry of this Order.

Complainant Set 1, Nos. 232-260

Complainants have agreed with the objections or withdrawn these questions. Sunoco's objections will be sustained to Nos. 232-260.

Complainant Set 1 Document Requests

Complainant Set 1, Requests for Production of Documents state as follows:

1. All documents identified in your responses to Interrogatories Nos. 1, 10 and 13.
2. All documents identified in your responses to Interrogatories Nos. 14, 25, 27, 29, 33, 37, 55, 64, 67, 75, 78, 79, 81, 90, 91, 103.
3. All documents identified in your responses to Interrogatories Nos. 104 and 112.
4. All documents identified in your response to interrogatory No. 164.
5. All documents identified in your responses to Interrogatories Nos. 165, 166, 173, 174, 175, 176, 181, 184, and 190.
6. All documents identified in your responses to Interrogatories Nos. 192 and 194.
7. All documents identified in your responses to Interrogatories Nos. 198 and 204.

Sunoco Pipeline, L.P.'s Position

Sunoco objected to these requests by incorporating its objection to each of the related interrogatories. Objections at 38. SPLP notes that the interrogatories provide that instead of "identifying" documents, SPLP can instead produce such documents. SPLP thus objected to each interrogatory that requested identification of documents as if it were a request for production of documents. SPLP likewise addressed these

interrogatories and requests for production of documents together in this Answer and incorporates its arguments herein as if set forth in full.

Complainant's Position

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

Disposition

Where Sunoco is compelled to provide a response to questions in Set 1, and the response references a document within Sunoco's possession, then Sunoco should also provide a copy of the corresponding document to which it refers as a full and complete answer to Complainants' request for documentation.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline L.P.'s Motion to Strike Filings Disallowed Pursuant to the Commission's Rules of Practice and Procedure is denied.
2. That Sunoco Pipeline L.P.'s request to deny Complainants' Motion to Dismiss Objections and Compel Answers to Discovery Requests as untimely is denied.
3. That Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines' Motion to Dismiss

Objections and Compel Answers to Discovery Requests is granted in part and denied in part.

4. That the objections of Sunoco Pipeline, L.P. to interrogatories Set 1, Nos. 1 and 10 are overruled.

5. That Sunoco Pipeline, L.P. is hereby directed to provide descriptions of pipeline upgrades it made and tests it performed and provide records confirming those tests and upgrades regarding Chester and Delaware Counties since January 1, 2013 in response to interrogatory Set 1, Nos. 1 and 10 within ten (10) days of the date of issuance of this Order.

6. That the objections of Sunoco Pipeline, L.P. to interrogatories Set 1, Nos. 3, 4, 8, and 9 are sustained.

7. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, Nos. 5, 6, and 7 are overruled.

8. That Sunoco Pipeline, L.P. is directed to respond to Interrogatories Set 1, Nos. 5, 6 and 7 within ten (10) days of the date of issuance of this Order.

9. That Sunoco Pipeline, L.P. is directed to respond to Interrogatories Set 1, Nos. 11-12 by providing its integrity management plans, which reference various applicable regulations within ten (10) days of the date of issuance of this Order.

10. That Sunoco Pipeline, L.P. is directed to respond to Interrogatories Set 1, No. 13 by producing information summarizing maintenance and upgrades performed since January 1, 2015 in Chester and Delaware Counties within ten (10) days of the date of issuance of this Order.

11. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, Nos. 14-203, 197-205 are sustained.

12. That Sunoco Pipeline L.P. is directed to respond to Interrogatories Set 1, Nos. 104-112 regarding sinkhole incidents in Delaware and Chester Counties only within ten (10) days of the date of issuance of this Order.

13. That Sunoco Pipeline L.P. is directed to respond to Interrogatories Set 1, Nos. 113-118 regarding all injuries, deaths, property damage, leaks, punctures and ruptures since January 1, 1986 within ten (10) days of issuance of this Order.

14. That Sunoco Pipeline LP's objection to Interrogatories Set 1, No 123 is sustained.

15. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 127, 144, 155-162 within ten (10) days of the date of issuance of this Order.

16. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, No. 163-164 by producing its pipeline integrity management plan within ten (10) days of the date of issuance of this Order.

17. That Sunoco Pipeline LP's objection to Interrogatories Set 1, No. 164 is sustained.

18. That Sunoco Pipeline LP's objection to Interrogatories Set 1, Nos. 165-166 is sustained.

19. That Sunoco Pipeline LP is directed to produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties within ten (10) days of the date of issuance of this Order.

20. That Sunoco Pipeline LP is compelled to respond to Interrogatories Set 1, No. 169 by explaining the considerations it undertook in locating valve stations near schools, hospitals, and senior residences in Chester and Delaware Counties within ten (10) days of the date of issuance of this Order.

21. That Sunoco is compelled to provide responses to Questions Nos. 173 and 174 confined to Delaware and Chester Counties within ten (10) days of the date of issuance of this Order.

22. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 175-177 by providing maps showing the location and depth of Mariner East 1, Mariner East 2, Mariner East 2X and the 12-inch workaround pipelines within ten (10) days of the date of issuance of this Order.

23. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 178-183 within ten (10) days of the date of issuance of this Order.

24. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, No. 184 by providing the One Call report it submitted to the Commission within ten (10) days of the date of issuance of this Order.

25. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 195-196 within ten (10) days of the date of issuance of this Order.

26. That Sunoco Pipeline LP is directed to respond to Interrogatories Set 1, Nos. 207 - 211 within ten (10) days of the date of issuance of this Order.

27. That Sunoco Pipeline LP's objections to Interrogatories Set 1, Nos. 206, 212 and 213 are sustained.

28. That Sunoco Pipeline LP is compelled to respond to Interrogatories Set 1, Nos. 214 as pertains to data on or after January 1, 2014 and to Nos. 215-216 pertaining to only ME1, ME2, ME2X and the 12-inch workaround pipelines within ten (10) days of the date of issuance of this Order.

29. That Sunoco Pipeline LP is compelled to respond to Interrogatories Set 1, Nos. 219-221, limited to information pertaining to leaks since January 1, 2014 and within the confined regions of Delaware and Chester Counties, and No. 228 by

explaining changes made to its Public Awareness Plan since January 1, 2014, within ten (10) days of the date of issuance of this Order.

30. That Sunoco Pipeline LP's objections to Interrogatories Set 1, Nos. 232-260 are sustained.

31. That to the extent Sunoco Pipeline L.P.'s objections to interrogatories have been overruled and the question involved and identification of document as if it were a request for production of document, Sunoco Pipeline LP is required to also furnish true copies of the requested referenced documents to Complainants.

Date: June 6, 2019

/s/
Elizabeth Barnes
Administrative Law Judge

(Revised 6.6.19)

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