**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 :

:

Andover Homeowners Association : C-2018-3003605

:

:

Melissa DiBernardino :  C-2018-3005025

:

Rebecca Britton : C-2019-3006898

:

Laura Obenski : C-2019-3006905

:

v. :

:

Sunoco Pipeline, L.P. :

**ORDER GRANTING SUNOCO PIPELINE, L.P.’S** **PARTIALLY UNOPPOSED MOTION TO STAY PROCEEDING**

Presently before the Pennsylvania Public Utility Commission for consideration is Sunoco Pipeline, L.P.’s (SPLP) Partially Unopposed Motion to Stay Proceeding filed on March 18, 2020. SPLP moves for a 60-day stay of all proceedings in this matter and suspension of the procedural schedule due to the unprecedented disruption that the COVID-19 Pandemic presents to litigation preparation and participation and the Commission’s operations. SPLP also moves that the parties confer and report a status to the Administrative Law Judge within 30-days of the grant of this Motion, with a procedural schedule to be developed at the appropriate time. In the alternative, SPLP moves for a 30-day stay and suspension of the procedural schedule with a meet and confer between the parties within 25-days of the grant of this Motion, status report to the Administrative Law Judge, and a procedural schedule to be developed at the appropriate time. As the Motion requested a 3-day deadline for Answers, I e-mailed the parties requesting responses by March 23, 2020.

Two days prior to SPLP’s filing, on March 16, 2020, Flynn Complainants’ filed a Motion for Leave to Submit Additional Evidence, seeking the admission of three reports into evidence as supplemental exhibits A, B and C attached to the Motion in the above-referenced matter. SPLP intends to file responsive pleadings to this Motion on or before April 16, 2020.

On March 19, 2020, the Flynn Complainants, Uwchlan Township, Laura Obenski, and Clean Air Council filed an Answer to SPLP’s Motion. Andover Homeowners’ Association, Inc. filed an Answer on March 23, 2020. The County of Chester filed an Answer on March 23, 2020. On March 23, 2020, Downingtown Area School District, Rose Tree Media School District and Thomas Killion e-mailed me a response stating they have no objection to the condition that construction of the pipeline cease during the period of the stay. Rebecca Britton e-mailed me her Response on March 20, 2020 that she is open to a discussion in 30-60 days followed by motions to reschedule the proceedings given a stay of construction. The Clean Air Council does not oppose a thirty day stay for aspects of the case the PUC cannot administrate during this time. However, other aspects of the case such as Sunoco’s responsibility to respond to discovery requests should proceed as scheduled. Chester County argues SPLP has not presented reasonable grounds why there should be a 60-day stay as opposed to an extension, if needed, to file its direct testimony. Any stay of the litigation schedule should be accompanied by a stay in all pipeline construction in Chester County. Melissa DiBernardino on March 23, 2020 filed an Answer opposing a stay unless construction was stopped during the stay.

Additionally, on March 23, 2020, SPLP sent me an email correspondence stating that as of Monday, March 23, 2020, SPLP is complying with Governor Tom Wolf’s March 19, 2020 Order restricting non-essential work in the Commonwealth. SPLP is suspending construction of the Mariner East 2 project pending decisions made regarding requests for waivers SPLP has submitted for government approval. SPLP argues that since construction of Mariner East 2 has been suspended, the primary objection of Complainants/Intervenors no longer exists and therefore the procedural schedule in the instant case should be suspended. SPLP contends that although its counsel can work remotely on certain tasks, their ability to meet the deadline for direct testimony is compromised. Additionally, responding to discovery requests is also compromised by lack of access to witnesses and/or documents. SPLP intends to respond to Flynn Complainants’ Motion for Leave to Submit Additional Evidence and Sunoco will not know the full extent of direct testimony of Complainants that Sunoco must respond to. By resolving this issue in the normal course, when the stay terminates, the parties will know the scope of Complainants’ case.

On March 25, 2020, Flynn Complainants submitted an e-mailed response and provided an electronic copy of a letter from Energy Transfer to Chairman Brown Dutrieuille and Executive Deputy Secretary Ziadeh dated March 23, 2020 indicating Sunoco Pipeline, L.P. had suspended construction of pipeline and related infrastructure projects across the Commonwealth as required by Governor Wolf’s March 19, 2020 Emergency Order. By March 21, 2020, all horizontal directional drilling on the Mariner East 2 and 2x project had ceased and all drill stems had been removed, but for a drill stem which was snapped, and therefore left in place. On Friday March 20, 2020, Energy Transfer and Sunoco Pipeline LP submitted to Governor Wolf six requests for waiver of the provisions of the March 19 Executive Order. No waivers have been obtained to date other than permission to conduct such activities to maintain safety. Flynn Complainants argue SPLP’s request for delays are unnecessary as there is no reason SPLP’s experts cannot finish their work on time. An off-the-record telephonic conference was held at 2:00 p.m. on March 25, 2020 to discuss SPLP’s motion and any objections thereto. The Motion is ripe for a decision.

Disposition

In response to the COVID-19 pandemic, on March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency pursuant to subsection 7301 of the Emergency Management Services Code, 35 Pa. C.S. §§ 7101, *et seq.* He proclaimed the existence of a disaster emergency throughout the Commonwealth for a period of up to ninety (90) days (June 6, 2020), unless renewed by the Governor. Governor Wolf has issued “stay at home” orders for 10 counties and there is a list of business types that may continue physical operations, in relation to the Governor's Executive Order mandating closures for COVID-19 mitigation issued on March 19, 2020. The continues to be modified and may be accessed on Governor Wolf’s website: <https://www.governor.pa.gov>.

As a result of this Proclamation, on March 16, 2020, the Commission began implementing telework for its entire staff that is capable of doing same. This presents challenges as normal Commission operations are streamlined and modified for critical business. Additionally, Chairman Gladys Brown Dutrieuille issued an *ex parte* Emergency Order *In Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 on March 20, 2020, which was unanimously ratified at Public Meeting on March 25, 2020. The Emergency Order states that the Commission is not currently sending or receiving regular mail from or to the Keystone Building in Harrisburg. The requirement for paper filings is now waived and the Commission shall only accept e-filings of all documents during this period of a proclaimed disaster emergency of Governor Tom Wolf. Filings containing confidential or proprietary information should be emailed directly to the Secretary at [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov). Use of encryption with prior consent of the Secretary is permitted. I believe information containing Confidential Security Information (CSI) may be mailed via overnight mail with advanced e-mailed notice to the Secretary’s Bureau and presiding officer as an exception to the general rule. However, the Emergency Order is clear that service by the Commission will be exclusively electronic and service on Commission staff is also exclusively electronic.

On March 16, 2020, the Pennsylvania Supreme Court issued an Order, which declared a statewide judicial emergency due to the concerns of the COVID-19 Pandemic. While ranging in breadth, courts are suspending operations and civil matters into the indefinite future and allowing liberal procedural modifications from continuances to suspension of time calculations.

The COVID-19 Pandemic and restrictions on business and governmental operations is an unprecedented disruption to the preparation and litigation of this proceeding. Specifically, during the telephonic conference, counsel for SPLP indicated he had not been able to contact at least one witness, whose direct testimony was intended to be filed by April 14, 2020. Counsel for SPLP explained that its witnesses reside in other States and with travel and other restrictions, this creates a hardship in the preparation of direct testimony and discovery responses. Additionally, SPLP argues the in-person hearings scheduled to begin in July will likely be rescheduled due to the pandemic.

I am persuaded SPLP has shown good cause to suspend the litigation schedule because SPLP’s due process rights are being negatively affected by factors beyond its control. A 60-day stay of all proceedings in this matter is warranted as long as SPLP confers with the parties within thirty (30) days and submits a status report to the presiding officer with a proposed procedural schedule going forward. The hearings scheduled for July 17-19, 2020, will be cancelled and rescheduled at a later date.

Regarding requests that SPLP’s construction on Mariner 2 and 2X be enjoined by the Commission pending the 60-day stay, said request for relief will be denied. The request is not being made in the form of a Petition for Interim Emergency Relief pursuant to 52 Pa. Code § 3.6 *et. seq.* Such a Petition was already considered and denied by the Commission on February 1, 2019 at the inception of the Flynn Complainants’ case at P-2018-3006117 and C-2018-3006116. See Opinion and Order affirming an Order Denying Interim Emergency Relief pursuant to 52 Pa. Code §§ 3.6-3.8 and 5.305(e) entered February 1, 2019.

Additionally, the Governor is granted exclusive power to declare a state of emergency and decide what actions he will require or prohibit regarding that emergency. 35 Pa. C.S. § 7301. The Governor has already proclaimed that some construction is an essential business function. SPLP represents that by March 21, 2020, all horizontal directional drilling on the Mariner East 2 and 2x project had ceased and all drill stems had been removed, but for a drill stem which was snapped, and therefore left in place. Currently, six requests for waiver of the provisions of the March 19 Executive Order are pending before the Governor’s Department of Community and Economic Development. No waivers have been obtained to date other than permission to conduct such activities to maintain safety. Whether the Governor will amend his Order or grant the waivers in question are exclusively under the Governor’s jurisdiction.

On March 22, 2020, at Case No. 63 MM 2020, the Pennsylvania Supreme Court recently denied a Petition for Emergency Ex Parte Application for Extraordinary Relief Pursuant to the Court’s King Bench Jurisdiction filed by the Civil Rights Defense Firm, PC, Firearms Policy Coalition, Inc., Prince Law Offices, PC, Trop Gun Shop, Ltd., and Roger Mullins. The majority held that although the Governor’s March 19, 2020 Order provides that businesses performing legal services must cease physical operations, he subsequently added: “Except as required to allow attorneys to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court’s order of March 18, 2020, or similar federal court directive, and lawyers may access their offices to effectuate such functions and directives.” Justice David Wecht issued a Concurring and Dissenting Statement stating that he was troubled by the uncertainty following the Governor’s orders particularly as it concerns the critical work of attorneys, whose legal expertise is necessary for the citizenry to obtain redress of harms, and whose practices is to be regulated under Article V of the Constitution of the Commonwealth.

SPLP’s counsel’s ability to meet with witnesses, obtain documents, and provide responses to discovery requests have been hampered due to recent events beyond its counsel’s control. There is no statutory deadline for the Commission to render a decision regarding the consolidated Complaints in this proceeding. For these reasons, SPLP’s Motion will be granted.

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s Partially Unopposed Motion to Stay Proceeding is granted.
2. That the procedural schedule at Docket No. C-2019-3006116 is suspended for 60-days from the date of entry of this Order except that Sunoco Pipeline, L.P. is directed to file a response to Flynn Complainant’s Motion For Leave to File supplemental direct testimony/exhibits by April 16, 2020.
3. That Sunoco Pipeline, L.P. shall meet and confer with the parties within 30 days of the date of entry of this Order regarding the schedule and shall thereafter submit a status report including a proposed procedural schedule.
4. That the hearing scheduled for July 14-29, 2020 is cancelled and will be rescheduled at a later date.

Date: March 26, 2020 /s/

Elizabeth Barnes

Administrative Law Judge