**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township :

:

v. : C-2017-2589346

:

Sunoco Pipeline, L.P. :

**ORDER DENYING MOTION TO COMPEL RESPONSES TO SUNOCO PIPELINE, L.P.’S SECOND SET OF DISCOVERY REQUESTS**

On February 2, 2018, Sunoco Pipeline, L.P. (Sunoco) propounded a Second Set of Discovery Requests on West Goshen Township (West Goshen). Objections were due on February 12, 2018. Responses were due on February 22, 2018. On February 12, 2018, West Goshen served objections and responses to the document requests. On February 16, 2018, Sunoco filed a Motion to Dismiss Objections and Compel Production of Documents. On February 21, 2018, West Goshen filed its Response. On March 1, 2018, Sunoco pre-served written testimony. Sunoco’s Motion to Compel is ripe for a decision.

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:

**§ 5.324(a)(3). Discovery of expert testimony.**

1. Consistent with Pa.R.C.P. 4003.5 (relating to discovery of expert testimony trial preparation material), discovery of facts known and opinions held by an expert, otherwise discoverable under § 5.321 (relating to scope), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

\* \* \*

(3) Upon cause shown, the presiding officer may order further discovery by other means, subject to restrictions as to scope and provision concerning fees and expenses as he may deem appropriate.

52 Pa. Code § 5.324(a)(3).

**§ 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).

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

While discovery is broad in Pennsylvania, parties are not entitled to engage in “fishing expeditions.” *Land v. State Farm Mut. Ins. Co.,* 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991).

Sunoco requests West Goshen’s Objections to Sunoco’s Second Set of Interrogatories be overruled and dismissed. Sunoco requests West Goshen be compelled to provide responses to interrogatories. Sunoco further seeks additional time to supplement its witnesses’ testimonies after responses are received.

# With respect to Witnesses Kuprewicz, Sullivan, Carlin and Kessler, Sunoco asks the following interrogatories:

## To the extent not included as exhibits or workpapers to your testimony, please identify all documents, presentations, studies, and communications you relied upon in reaching the conclusions set forth in your testimony.

## Please produce all materials identified in (a) that have not previously been produced to SPLP.

## To the extent not included as exhibits or workpapers to your testimony, please identify all documents, presentations, studies, and communications you considered but did not rely upon in reaching the conclusions set forth in your testimony.

## Please produce all materials identified in (c) that have not previously been produced to SPLP.

## Please admit that you have included all workpapers associated with your testimony and exhibits.

## If you do not so admit, please produce each and every such workpaper in the native electronic format in which they were created.

## Please identify each and every person, other than counsel for WGT and clerical support staff, who assisted in the production of your testimony, exhibits and workpapers.

## To the extent not already provided as exhibits or workpapers, please provide all raw data, computer code (e.g. Stata files), data created during processing, and memoranda related to or used to create each exhibit and each workpaper.

## Please identify all publication(s), including affidavits or testimony submitted in court or regulatory agency proceedings that are not listed in the CV included with your testimony and exhibits in this proceeding.

## Please identify all peer-reviewed publications you authored or co-authored.

## Please identify and provide a copy of all affidavits, prepared testimony, live testimony transcripts, and deposition transcripts submitted by or including statements of Mr. Kuprewicz in court or regulatory proceedings relating to his/her employment as a consultant.

West Goshen objects to these above interrogatories of its expert witnesses as Sunoco did not apply for further interrogation under 52 Pa.Code § 5.324(a)(3) and because West Goshen has already complied with 52 Pa.Code §5.324 in providing the identity of each person West Goshen expects to call as an expert witness at hearing as well as the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion. West Goshen argues the interrogatories objected to go beyond the scope of discoverable material and are more akin to cross-examination and veiled requests for admissions.

On February 2, 2018, West Goshen provided written direct testimony for each witness that sets forth the substance of facts and opinions about which each expert will testify, each witness’ curriculum vitae, and a detailed list of the documents or publications relied upon in preparing each witness’ testimony. I agree with West Goshen that Sunoco’s interrogatories related to documents considered or reviewed but not relied upon, transcripts of testimony or statements ever submitted in any court or regulatory proceeding, work papers, and publications authored exceed the scope of expert discovery set forth in 52 Pa.Code §5.324. These above interrogatories as well as the other disputed interrogatories posed to witnesses Sullivan, Kessler, Carlin and Kuprewicz seek opinions and other information beyond that which is required by 52 Pa.Code § 5.324, and appear to be questions more suitable for cross-examination at the April 25th hearing. See also Pa.R.C.P. 4003.5.

For example, questions including: what is meant by “acceptable” and whether a witness believes it is safe based on the geology discussed in his testimony to perform HDD beneath the Route 202 highway to utilize the SPLP Use Area for the valve site are questions regarding an expert witness’ opinion which can be asked during cross-examination.

Sunoco cited Commission caselaw in support of its position. However, a review of the cases reveals that they pertain more to the scope of cross-examination, rather than discovery. *See Pa.P.U.C. v. Pa. Gas and Water Co.*,68 Pa. PUC 191 (Sept. 29, 1988); *Pa.P.U.C. v. Breezewood Telephone Co.*, 74 Pa.P.U.C. 431 (Feb. 14, 1991).

The corollary to 52 Pa.Code § 5.324 is found in Pennsylvania Rule of Civil Procedure 4003.5, which includes similar provisions limiting the scope of expert discovery, subject to the Court’s ability to order further expert discovery upon “cause shown.” *See* Pa.R.C.P. 4003.5(a)(2). In examining the scope of expert discovery under this rule, the Pennsylvania Supreme Court has recognized that the rule should be read to restrict the scope of all expert discovery, with inquiries into collateral information required to be made through the rule’s “cause shown” criterion. *Cooper v. Schoffstall*, 588 Pa. 505, 521, 905 A.2d 482, 492 (2006). The *Cooper* Court further recognize that the trial court should be involved in determining the appropriate scope of such expert discovery based on the circumstances of the case, in order to “center the discovery on the main issues and to reduce the intrusiveness and burden of collateral forays, while permitting such additional inquiries as the interests of justice may require in special circumstances.” *Id.* at 521, 905 A.2d at 492–93.

In the instant case, Sunoco is seeking supplemental discovery under 52 Pa.Code § 5.324(a)(3) and it is seeking expert opinion and information that can be explored through cross-examination of West Goshen’s experts at the scheduled hearings. *See Cooper,* 588 Pa. at 525, 905 A.2d at 495 (commenting that courts have favored questioning of the witness over production of discovery for exploring bias and credibility). The witnesses will be available for cross-examination and two days of hearings have already been scheduled on April 25 and 26, 2018 at which time oral rejoinder and cross-examination of witnesses will occur. Compelling responses at this time will not necessarily advance judicial economy as supplemental responses may also result in cross-examination. For these aforesaid reasons, West Goshen’s Objections shall be sustained and Sunoco’s Motion to Compel shall be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s Motion to Dismiss Objections and Compel Production of Documents of West Goshen Township filed on February 16, 2018, are denied.

2. That the Objections of West Goshen Township to Sunoco Pipeline, L.P.’s Requests for Production of Documents, Requests for Admission, and Interrogatories (Second Set) are sustained.

Date: March 8, 2018 /s/

Elizabeth Barnes

Administrative Law Judge

**C-2017-2589346 - WEST GOSHEN TOWNSHIP v. SUNOCO PIPELINE L.P.**

***(Revised 02/22/2018)***

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