**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al. : C-2018-3006116 (consolidated)

: P-2018-3006117

MELISSA DIBERNARDINO : C-2018-3005025 (consolidated)

REBECCA BRITTON : C-2019-3006898 (consolidated)

LAURA OBENSKI : C-2019-3006905 (consolidated)

:

v. :

:

SUNOCO PIPELINE L.P. :

ANDOVER HOMEOWNERS’ :

ASSOCIATION, INC. : C-2018-3003605

:

v. :

:

SUNOCO PIPELINE L.P. :

**ORDER**

**GRANTING IN PART AND DENYING IN PART**

**FLYNN COMPLAINANTS’ MOTION FOR SANCTIONS**

On September 9, 2019, Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (collectively Flynn Complainants) filed a Motion for Sanctions against Sunoco Pipeline, L.P. (Sunoco, SPLP or Respondent) for Violation of an Order Granting in Part and Denying in Part Complainants’ Motion to Compel Responses to Complainants’ Interrogatories and Document Request Set I issued on June 6, 2019 and for violating the Amended Protective Order also issued on June 6, 2019.

Flynn Complainants’ Interrogatories 165 and 166

Flynn Complainants aver their Interrogators 165 and 166 seek identification of records reflecting the planning for locating Mariner East lines and transportation of Highly Volatile Liquids in those counties. Sunoco was directed to produce a detailed explanation of its Mariner East planning process from its inception in siting locations for the pipelines, valves, compressor stations and pumping stations in Chester and Delaware Counties. Flynn Complainants contend Sunoco has failed to provide a detailed explanation and although it identified documents responsive to the request, the link to the documents has disappeared.

Conversely, Sunoco contends it should not be sanctioned as it has been attempting in good faith to respond to the discovery requests and has provided Flynn Complainants’ counsel with electronic links that do not expire as well as paper copies upon request. Sunoco produced six documents that contain Mr. Gordon’s and Mr. Vieth’s testimonies and give detailed explanations of the planning process.

I will direct the documents be made accessible in the requested shared links.

Interrogatories 206 – 213

Flynn Complainants aver they mistakenly referred to the “Rover” pipeline instead of the “Revolution” pipeline in their interrogatories 206-213. The Order compelled a response regarding whether Sunoco owned the “Revolution” pipeline. Sunoco furnished a response regarding the Rover pipeline and refuses to answer questions about the Revolution pipeline.

Sunoco argues it answered the Interrogatories 206 – 213 and if Flynn Complainants want to ask questions regarding the Revolution pipeline, then they should serve additional interrogatories upon Sunoco.

I agree with Sunoco, that Flynn Complainants are free to serve additional interrogatories questioning ownership of the Revolution pipeline. Sunoco should not be sanctioned for providing answers to Interrogatories 206-213 as stated even though the presiding officer interpreted the questions to inquire about the “Revolution” pipeline instead of the “Rover” pipeline. Sunoco should be given an opportunity to object.

Interrogatories 104-112

Flynn Complainants sought detailed information concerning sinkhole incidents along the Mariner East pipelines. The Order limited the scope of inquiry to Delaware and Chester Counties only. Sunoco responded stating the events were not sinkholes but rather “subsidences” not in karst geology or other carbonate rock formations. Flynn Complainants aver Sunoco has failed to produce any meaningful answers to Questions 105-112.

Conversely, Sunoco contends it did not fail to provide a response. Sunoco produced documents at Bates Ranges SPLP0000265-5714 (Public) and SPLP00000047-2625, 5892- (Confidential and Highly Confidential) in response to Interrogatory 104. Regarding Interrogatories 105-112, Sunoco contends that Complainants clearly sought information regarding sinkholes, not subsidences or other geological events. Sunoco contends there is a difference between these scientific and technical distinction terms and it cannot be sanctioned for not answering interrogatories it was not asked (changing the word “sinkhole” to “subsidence”). Sunoco contends that it has a right to object to interrogatories and if forced to respond to the interrogatories as written to encompass the word “subsidence” instead of how they are in fact written “sinkhole” deprives SPLP of that right to object.

I agree with Sunoco that if Flynn Complainants want a history of subsidence events, they may request same in a further set of interrogatories. I find in favor of Sunoco on this issue.

Interrogatories Nos. 175-176

Flynn Complainants seek compliance with a directive that maps be provided showing the location and depth of Mariner East 1, Mariner East 2, Mariner East 2X and the 12-inch workaround pipelines. They aver Sunoco has only furnished “alignment sheets” for the 12-inch pipeline through documents Bates stamped 7001-7033.

Sunoco argues it should not be sanctioned because it is working on providing the requested maps and Flynn Complainants’ direct testimony is not due until January 2020.

Sunoco shall be given an extension of time to provide the maps, until November 15, 2019. That should provide Flynn Complainants with enough time to review the maps prior to their deadline for direct testimony.

Interrogatory 13

Interrogatory 13 seeks records reflecting maintenance and upgrades on the Mariner pipelines. Flynn Complainants argue Sunoco has not furnished a summary of 24,000 pages of material.

Sunoco contends it did produce summary information and supporting records including Bates Range SPLP000007166, which contains a summary for pressure testing the 12-inch pipeline.

I agree with Sunoco that its responses are compliant with the June 6, 2019 Order.

Interrogatories 165-166

Flynn Complainants argue Sunoco was directed to produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations in Delaware and Chester Counties. Sunoco identified 83 pages of material and the deposition of Matt Gordon as a response. Complainants request documents at an administrative or executive level.

In response, Sunoco argues it complies with the directive. I agree. Flynn Complainants are free to serve further interrogatories on this issue.

Access to Documents

Flynn Complainants aver Sunoco did not identify documents properly in its responses. They claim Sunoco breached the June 6, 2019 Amended Protective Order by giving Sunoco’s agent vendor, Reliable, access to confidential/highly-confidential materials to respond to discovery requests. Flynn Complainants contend that without access and e-discovery platform available from Reliable, Dr. Zee’s firm cannot use the materials they have been supplied. They argue that Sunoco has no good reason to prevent Complainants from purchasing an e-discovery license from the vendor.

Sunoco contends it gave its highly confidential information to a vendor for copying purposes only and has not violated the Amended Protective Order. Sunoco can give access to these documents as it deems secure and reasonably compliant with the law regardless of the Amended Protective Order as they are Sunoco’s own documents. Sunoco objects to the creation of an electronic document review platform by Reliable because that is something over which Sunoco would have no control over the granting or denying access.

I agree with Sunoco on this issue as an order compelling Sunoco to allow Reliable to create an electronic document review platform will cause Sunoco to lose control over CSI information, contrary to the intent of the Amended Protective Order. There is a difference between one photocopy compared to electronic platform access. Dr. Zee can still review the documents, just not on an electronic platform set up by Reliable. In order to assist review of the documents, Sunoco will be compelled to identify the associated document and attendant time period and Bates stamp range regarding each of the “green separators.”

Regarding Flynn Complainants’ request for attorney fees as sanctions, the Commission lacks jurisdiction to award attorney’s fees or costs. *See Feingold v. Bell of Pennsylvania,* 477 Pa. 1, 383 A.2d 791 (1977). 52 Pa. Code §5.101(a)(4). *See Edward Kovler & Elena Glozman v. PECO Energy Co.,* C-2013-2365555, 2013 WL 6248460, at \*4 (Pa. Pub. Util. Comm’n Nov. 18, 2013) (“Nothing in the Public Utility Code, the Commission’s regulations or orders gives the Commission the power to grant attorney fees in this case.”); *MCI Worldcom, Inc. v. Bell Atlantic-Pa.,* 94 Pa. P.U.C. 509 (Pa. Pub. Util. Comm’n Dec. 21, 2000) (“The Commission does not have jurisdiction to award attorney’s fees and costs.”); and *Pennsylvania Pub. Util. Comm’n v. Nat’l Fuel Gas Distribution Corp*., 63 Pa. P.U.C. 68 (Pa. Pub. Util. Comm’n Jan. 8, 1987). Accordingly, the Motion for Sanctions and attorney’s fees will be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines’ Motion for Sanctions filed on September 9, 2019 at consolidated Docket No. C-2018-3006116 is granted in part and denied in part.
2. That Sunoco Pipeline, L.P. is directed to maintain and not close its digital document link until the close of record in this consolidated proceeding.
3. That Sunoco Pipeline, L.P. is directed to provide the maps referred to in Interrogatories Nos. 175-176 on or before November 15, 2019.
4. That Sunoco Pipeline, L.P. shall identify the associated document and attendant time period and Bates stamp range regarding each of the “green separators” on or before November 15, 2019.

Date: October 21, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

**C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP**

*(Revised 10/21/19)*

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