**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. :

**INTERIM ORDER**

**Denying Complainant Rebecca Britton’s Motion for Sanctions and Deeming the Application for Subpoena filed on October 11, 2019 Withdrawn**

Motion for Sanctions

On September 24, 2019, Complainant Rebecca Britton (Ms. Britton) filed a Motion for Sanctions against Sunoco Pipeline, L.P. (Sunoco, SPLP or Respondent) for Violation of a Discovery Order issued on June 6, 2019. The Motion for Sanctions was served upon Sunoco on September 26, 2019. Complainant requests to view discovery material marked “Confidential Security Information.” Pursuant to 52 Pa. Code § 5.371, Complainant Britton requests Sunoco be directed to provide her access to all materials including those marked “Confidential Security Information” as she has executed a non-disclosure agreement and for Sunoco to be directed to pay “a reasonable sum for a legal counsel” to represent her going forward.

On October 1, 2019, Sunoco filed an Answer Opposing Rebecca Britton’s Motion for Sanctions. Sunoco argues the plain terms of the Amended Protective Order issued on June 6, 2019 does not allow *pro se* complainants to access Highly Confidential marked materials at issue. Rather, only attorneys and experts may review them as they are professionals held to a higher ethical conduct standard by their respective professions. Sunoco contends these restrictions are consistent with the Commission’s regulations concerning protective orders, which clearly only contemplate access to such highly confidential materials to attorneys of record and outside experts, not the parties themselves. 52 Pa. Code § 5.365(c)-(d)(Access to representatives of parties).

Sunoco argues that given recent attacks on Saudi oil fields, release of Confidential Security Information to non-experts and non-attorneys is contrary to the intent of state and federal law designed to protect such information from terrorists. Sunoco cites as authority the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6); 49 U.S.C. § 60138 (protecting certain information contained in facility response plans). Sunoco also cites as authority for its position, a GAO report also establishes the serious national security threat faced by pipelines:

According to TSA, pipelines are vulnerable to physical attacks—including the use of firearms or explosives—largely due to their stationary nature, the volatility of transported products, and the dispersed nature of pipeline networks spanning urban and outlying areas. The nature of the transported commodity and the potential effect of an attack on national security, commerce, and public health make some pipelines and their assets more attractive targets for attack. Oil and gas pipelines have been and continue to be targeted by terrorists and other malicious groups globally.

U.S. Gov’t Accountability Off., GAO-19-48, Critical Infrastructure Protection Actions Needed to Address Significant Weaknesses in TSA’s Pipeline Security Program Management, pgs. 10-11 (Dec. 2018), available at <https://www.gao.gov/assets/700/696123.pdf>.

On October 14, 2019, Ms. Britton filed a Letter in Response to Sunoco’s Answer to Motion to Sanctions, arguing she is a “safety advocate” entitled to view the Highly Confidential information. The Motion for Sanctions is ripe for a decision.

Disposition

To the extent that Ms. Britton desires the ability to view material marked “Confidential Security Information” by a utility pipeline operator, she could advocate for such ability before the General Assembly, which is currently considering amending the Act of November 29, 2006 (P.L.1435, No.156), entitled "An act relating to confidential security information of public utilities; and imposing penalties," in Senate Bill No. 284. Other relevant bills pending include: Pa. House Bill No. 1568 and Senate Bill No. 677. Pa. House Bill No. 1568 proposes to establish a Pipeline Safety and Communication Board and provide for its powers and duties, including the receipt of information relating to pipelines from the Commission and how that information should be treated. Pa. House Bill 1568 also proposes a repeal of the Public Utility Confidential Security Information Disclosure Act, P.L. 1435, No. 156. However, these bills are not yet law and as such are not binding.

The Amended Protective Order issued June 6, 2019 is subject to the current rules of the Commission and the current law under which the Commission operates. 66 Pa. C.S. § 333(i). The Public Utility Confidential Security Information Disclosure Protection Act mandates the Commission create mechanisms for the safeguarding of confidential security information of public utilities from disclosure that may compromise security against sabotage or criminal or terrorist acts.

Although Complainant Britton’s Motion for Sanctions is genuine, her Motion will be denied because the Commission does not have the authority, absent a directive in the form of legislation, to compel the release of Confidential Security Information to the public unless the utility agrees to its disclosure via terms in a Protective Order or Non-Disclosure Agreement pursuant to an on-going litigation. During litigation, the utility may choose to waive the confidentiality by disclosing it in a publicly-filed pleading. *West Goshen Township v. Sunoco Pipeline, L.P.* C-2017-2589346, 52 Pa. Code § 102.3(c). However, I find no violation of the Amended Protective Order dated June 6, 2019 as the plain terms of the Amended Protective Order do not permit a *pro se* Complainant to review the Highly Confidential materials, only experts and attorneys as “reviewing representatives.” This is an extra-layer of privacy to which Sunoco requested and was ordered.

Regarding Ms. Britton’s claim for attorney fees, 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.

Application for Subpoena

Upon due consideration of the following pleadings: (1) Rebecca Britton’s Application for Subpoena filed on October, 11, 2019; (2) The County of Chester’s Objections to Rebecca Britton’s Subpoena of William Turner filed on October 17, 2019; (3) Rebecca Britton’s Letter request to withdraw subpoena for William Turner filed on October 17, 2019; and (4) Rebecca Britton’s Letter request to withdraw subpoenas for Michael Holmes and Chief Scott Alexander filed on October 18, 2019, Rebecca Britton’s Application for Subpoena is deemed withdrawn.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Rebecca Britton’s Motion for Sanctions and attorney’s fees filed on September 24, 2019 at consolidated Docket No. C-2018-3006116 is denied.
2. That Complainant Rebecca Britton’s Application for Subpoena filed on October 11, 2019 at consolidated Docket No. C-2018-3006116 is deemed withdrawn.

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)*

MICHAEL BOMSTEIN ESQUIREPINNOLA & BOMSTEINSUITE 2126 LAND TITLE BUILDING100 SOUTH BROAD STREETPHILADELPHIA PA 19110**215.592.8383  
*Accepts E-Service****Representing Complainants*

MEGHAN FLYNN212 LUNDGREN ROADLENNI PA 19052*Complainant*

ROSEMARY FULLER226 VALLEY ROAD MEDIA PA 19063**610.358.1262*Accepts E-Service***

*Complainant*

MICHAEL WALSH12 HADLEY LANEGLEN MILLS PA 19342 *Complainant*

NANCY HARKINS

1521 WOODLAND RDWEST CHESTER PA 19382**484.678.9612*Accepts E-Service***

*Complainant*

GERALD MCMULLEN200 HILLSIDE DRIVEEXTON PA 19341

*Complainant*

CAROLINE HUGHES 1101 AMALFI DRIVE WEST CHESTER PA 19380**484.883.1156*Accepts E-Service***

MELISSA HAINES176 RONALD ROADASTON PA 19014*Complainant*

CURTIS STAMBAUGH ASSISTANT GENERAL COUNSELSUNOCO PIPELINE LP212 N THIRD STREET SUITE 201HARRISBURG PA 17101**717.236.1731**

***Accepts E-Service***

*Representing Sunoco Pipeline LP*

NEIL S WITKES ESQUIRE

ROBERT D FOX ESQUIRE

DIANA A SILVA ESQUIRE

MANKO, GOLD, KATCHER & FOX LLP

401 CITY AVENUE

VALA CYNWYD PA 19004

**484.430.2314**

**484.430.2312**

**484.430.2347**

***Accepts E-Service***

*Representing Sunoco Pipeline LP*

THOMAS J SNISCAK ESQUIREHAWKE MCKEON AND SNISCAK LLP100 N TENTH STREET HARRISBURG PA 17101**717.236.1300*Accepts E-Service***

*Representing Sunoco Pipeline LP*

RICH RAIDERS ESQUIRE606 NORTH 5TH STREET READING PA 19601**484.509.2715*Accepts E-Service***

*Representing Intervenor Andover Homeowners’ Association Inc.*

ANTHONY D KANAGY ESQUIRE

GARRET P LENT ESQUIRE

POST & SCHELL PC

17 N SECOND ST 12TH FL

HARRISBURG PA 17101-1601

**717.612.6034**

***Accepts E-Service***

*Representing Intervenor Range Resources Appalachia*

ERIN MCDOWELL ESQUIRE

3000 TOWN CENTER BLVD

CANONSBURG PA 15317

**725.754.5352**

*Representing Intervenor Range Resources Appalachia*

LEAH ROTENBERG ESQUIRE MAYS CONNARD & ROTENBERG LLP1235 PENN AVE SUITE 202WYOMISSING PA 19610**610.400.0481*Accepts E-Service***

*Representing Intervenor Twins Valley School District*

MARGARET A MORRIS ESQUIREREGER RIZZO & DARNALL2929 ARCH STREET 13TH FLOORPHILADELPHIA PA 19104**215.495.6524*Accepts E-Service***

*Representing Intervenor East Goshen Township*

VINCENT MATTHEW POMPO ESQUIRELAMB MCERLANE PC24 EAST MARKET ST PO BOX 565WEST CHESTER PA 19381**610.701.4411***Representing Intervenor West Whiteland Township*

MARK L FREED ESQUIRE  
JOANNA WALDRON ESQUIRECURTIN & HEEFNER LLPDOYLESTOWN COMMERCE CENTER 2005 S EASTON ROAD SUITE 100DOYLESTOWN PA 18901**267.898.0570*Accepts E-Service***

*Representing Intervenor Uwchlan Township*

JAMES R FLANDREAUPAUL FLANDREAU & BERGER LLP320 WEST FRONT ST MEDIA PA 19063**610.565.4750*Accepts E-Service***

*Representing Intervenor Middletown Township*

PATRICIA BISWANGER ESQUIREPATRICIA BISWANGER217 NORTH MONROE STREETMEDIA PA 19063**610.608.0687*Accepts E-Service***

*Representing Intervenor County of Delaware*

GUY DONATELLI ESQUIRE

LAMB MCERLANE PC24 EAST MARKET STBOX 565WEST CHESTER PA 19381

**610.430.8000***Representing Intervenor Rose Tree Media School District*

JAMES DALTONUNRUH TURNER BURKE & FREESPO BOX 515WEST CHESTER PA 19381**610.692.1371***Representing Intervenor West Chester Area School District*

JAMES BYRNE ESQUIRE

MCNICHOL BYRNE & MATLAWSKI PC

1223 N PROVIDENCE RD

MEDIA PA 19063

**610.565.4322**

***Accepts E-Service***

*Representing Intervenor Thornbury Township*

MELISSA DIBERNARDINO

1602 OLD ORCHARD LANE

WEST CHESTER PA 19380

**484.881.2829**  
***Accepts E-Service***

VIRGINIA MARCILLE KERSLAKE

103 SHOEN ROAD

EXTON PA 19341

**215.200.2966**

***Accepts E-Service****Intervenor*

LAURA OBENSKI

14 S VILLAGE AVE

EXTON PA 19341

**484.947.6149**

***Accepts E-Service***

REBECCA BRITTON

211 ANDOVER DR

EXTON PA 19341

**215.776.7516**

***Accepts E-Service***

JOSH MAXWELL

MAYOR OF DOWNINGTOWN

4 W LANCASTER AVENUE DOWNINGTON PA 19335

*Intervenor*

THOMAS CASEY

1113 WINDSOR DR

WEST CHESTER PA 19380

*Intervenor*

KELLY SULLIVAN ESQUIRE

MCNICHOL BYRNE & MATLAWSKI

1223 NORTH PROVIDENCE RD

MEDIA PA 19063  
**610.565.4322  
*Accepts E-Service****Representing Thornbury Twp.*

MICHAEL P PIERCE ESQUIRE

MICHAEL P PIERCE PC

17 VETERANS SQUARE

PO BOX 604

MEDIA PA 19063  
**610.566.0911  
*Accepts E-Service****Representing Edgmont Twp.*

KATHRYN URBANOWICZ ESQUIRE

JOSEPH OTIS MINOTT ESQUIRECLEAN AIR COUNCIL135 SOUTH 19TH STREET SUITE 300PHILADELPHIA PA 19103**215.567.4004Accepts e-Service**