



January 6, 2020

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Via Electronic Filing

*RE: Flynn et.al. v. Sunoco Pipeline L.P., Lead Docket C-2018-3006116
Andover Homeowners' Association, Inc's Motion to Strike Objections to Requests for
Production*

Dear Secretary Chiavetta,

Please find the Motion to Strike Objections to Request for Production filed via the Commission's electronic filing service on this date. We have served a copy of the attached upon the parties pursuant to the attached Certificate of Service.

Please contact me with any questions.

Sincerely,

/s/

Rich Raiders, Esq.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

MEGHAN FLYNN, ROSEMARY FULLER, MICHAEL WALSH,	:	
NANCY HARKINS, GERALD MCMULLEN, CAROLINE HUGHES,	:	C-2018-3006116
AND MELISSA HAYNES,	:	P-2018-3006117
	:	
ANDOVER HOMEOWNERS' ASSOCIATION, INC.,	:	C-2018-3003605
	:	
MELISSA DIBERNARDINO,	:	C-2018-3005025
	:	
REBECCA BRITTON,	:	C-2018-3006898
	:	
LAURA OBENSKI,	:	C-2019-3006905
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.	:	

MOTION TO STRIKE OBJECTIONS TO REQUESTS FOR PRODUCTION

Pursuant to 52 Pa. Code § 5.342(g), Andover Homeowners' Association, Inc.

("Association") moves to request the Pennsylvania Public Utility Commission ("Commission") to strike Sunoco Pipeline L.P.'s objections to the Association's Request for Production of Documents, and avers in support thereof as follows:

1. Under 52 Pa. Code § 5.342(g) concerning objections, a party contesting objections in discovery must move to strike the objections within ten (10) days of the objection being raised.
2. On December 26, 2019, Sunoco Pipeline L.P., ("Sunoco"), respondent, provided a first discovery response to the Association in response to the prior request for interrogatories and request for production of documents. Said response was filed to this docket.

MOTION TO COMPEL MORE FULL AND COMPLETE ANSWERS

1. All above paragraphs are incorporated by reference as if fully recited herein.

2. Again, Sunoco failed to respond to proper questions leading to potentially admissible evidence by raising objections.
3. Specifically, in many places, including questions #9, 38, 57, 59, 61, 63, 75, 139 and 141, Sunoco assert that it would “provide additional information responsive to this Interrogatory when it serves its expert testimony in this matter”.
4. However, given that the Association was able to achieve no discovery in its first discovery request, and has to move to compel at every step, the Association believes that Sunoco will again fail to produce relevant documents associated with such discovery requests.
5. The Association will not be able to develop its case or prepare any responsive testimony if it is required to wait until written direct testimony to review any evidence concerning its conduct over the approximately seven (7) years of the Mariner East project.
6. Sunoco’s written direct testimony is not due for over three more months.
7. The Association is prejudiced in that Sunoco will have run out the clock on this matter given the July hearing dates previously set by the Commission.
8. Therefore, the Association requests leave from the Commission’s Office of Administrative Law Judge to immediately compel full and complete responses to interrogatories and requests for production of documents which it would rather not answer while the Association may still have time to respond to the information.
9. Further, the Association requests that the Commission order that a seven (7) year pendency of an ongoing project is not “indefinite”, but is fully finite given that there was no Mariner East project prior to 2012.

10. Sunoco has not produced any reviews or analyses of high consequence areas in Delaware or Chester County conducted by Sunoco or its agents or contractors during the review to repurpose Mariner East 1 from hazardous liquids service to hazardous, *highly volatile* liquids (HVL) service. The Association believes, and therefore avers, that Sunoco's risk reports may or may not analyze actual risks to actual high consequence locations and populations. The Association seeks to discover if any such evaluation, not within the documents Sunoco has thusfar produced, exists.

11. Sunoco has not produced any reviews or analyses of high consequence areas in Delaware or Chester County conducted by Sunoco or its agents or contractors during the review to install Mariner East 2, Mariner East 2X or the Point Breeze-Montello "work-around" pipeline.

12. Sunoco has not produced any reviews or analyses of the consequences of a potential release from any pipeline subject to this action upon high consequence areas in Delaware or Chester Counties.

13. Association Counsel has executed the Amended Protective Order and has had the opportunity to participate in Sunoco's data review, including attending the August 2019 site visit at Flynn Complainants' consultant in Pittsburgh.

WHEREFORE, Andover Homeowner's Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer the impacted interrogatories, though allowing Sunoco leave to supplement their response in their written direct testimony, and any other relief as may be just.

REQUEST FOR LEAVE TO PROPOUND SUPPLEMENTAL DISCOVERY UPON SUNOCO

14. All above paragraphs are incorporated by reference as if fully recited herein.
15. Though the Association seeks immediate answers to its discovery requests, it understands that Sunoco will likely serve additional documents upon the Association as part of its written direct testimony.
16. The Association believes that these documents and the written direct testimony will raise additional issues to which the Association would have responded had it been in possession of the discovery information in a timely manner.
17. Therefore, the Association requests leave from the Commission's Office of Administrative Law Judge to propound supplemental discovery upon Sunoco after an opportunity to review Sunoco's written direct testimony.

WHEREFORE, Andover Homeowner's Association, Inc. respectfully requests that the Commission grant leave to the Association to propound supplemental discovery upon Sunoco within twenty (20) days of receipt of Sunoco's written direct testimony to address any gaps in the documents provided with said written direct testimony, and any other relief as may be just.

MOTION TO STRIKE OBJECTIONS FOR "UNDEFINED PERIOD OF TIME"

18. All above paragraphs are incorporated by reference as if fully recited herein.
19. Again, Sunoco failed to respond to proper questions leading to potentially admissible evidence by raising objections.
20. Specifically, in many places, including questions #9, 39, 40, 50 and 142, Sunoco assert that it objects due to the request covering "an undefined period of time".

21. However, Sunoco has only pursued the Mariner East project for approximately seven (7) years, where the project was believed to have begun in approximately 2012.
22. The discovery request was designed to cover the entire pendency of the Mariner East project, as the Association clearly did not request any information from before the Mariner East project existed.
23. Sunoco fully knows when it started the Mariner East project and what steps it took to pursue this project after it launched this effort.
24. Therefore, nothing in the request is “indefinite”. The request is fully definite from the start date of Mariner East project kickoff, whatever that date may have actually been on or about some point believed to be in 2012.

WHEREFORE, Andover Homeowner’s Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer the impacted interrogatories, where any request for information about Mariner East include the entire time period in which Sunoco pursued the Mariner East project from 2012 forward, and provide full and complete answers to all identified questions within thirty (30) days of Order, and other relief as may be just.

MOTION TO STRIKE OBJECTIONS FOR LACK OF JURISDICTION

25. All above paragraphs are incorporated by reference as if fully recited herein.
26. In Interrogatory 23, Sunoco objects to Association discovery due to an alleged lack of Commission jurisdiction over Sunoco’s duty to operate a safe and efficient pipeline system. See, 66 Pa. C.S. § 1501.

27. In Interrogatory 23, Sunoco somehow believes that the Commission may not consider water supplies as a safety issue under the Commission's omnibus authority to regulate pipeline safety.
28. In Sunoco's answer, it claims that it performed certain tasks of notifying water suppliers, yet provides absolutely no information about such contacts.
29. Sunoco also claims that it used a web site believed by the Association to provide at best incomplete information about water supplies.
30. This request is not to learn where Sunoco may have learned about issues, but to discover the actual work that Sunoco, its agents and consultants actually performed in completing such tasks.
31. Sunoco obviously has any information it actually produced, if it in fact did any such work itself, in addressing this interrogatory.
32. None of the information about such contacts is available in any source.
33. This interrogatory requested that Sunoco actually provide documentation of its conduct, not offer generalized non-answers and vague assurances of undocumented conduct.
34. Sunoco offers the same non-answers to Interrogatories #97-101, not curing any defects in its answers.
35. Sunoco also non-answers Interrogatories #110-111 concerning required municipal permits, alleging that compliance with other law is outside the Commission's jurisdiction.

36. However, Sunoco cites no authority to state that the Commission is incompetent to determine that compliance with other law is not required to show operation of safe and efficient utility service.
37. In fact, Sunoco, in several answers here, points to the Department of Environmental Protection programs to support its compliance with Commission requirements and answers to these interrogatories.
38. Sunoco's attempts to escape review of its municipal permit obligations must fail, as Sunoco has not shown that every single municipal permit it holds for the Mariner East project is unrelated to safe and efficient service, unrelated to any Part 195 obligation, or any other matter over which the Commission has authority to regulate.
39. In fact, at least one expired permit held by Sunoco is associated with Association lands, an expired Thornbury Township, Delaware County grading permit.
40. The Association seeks to learn what municipal permits Sunoco holds for this project, if it has complied with these permits, and if any of these permits may implicate compliance, public health or safety.
41. A full and complete answer to related interrogatories is required to determine if Sunoco endangers the public or violates Commission obligations in its handling of municipal permits.
42. Therefore, Sunoco utterly fails to participate in discovery related to information it alone possesses that directly implicates the safe operation of utility services, regardless of any overlapping jurisdiction of any other agency.

WHEREFORE, Andover Homeowner’s Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer Interrogatory #23 within thirty (30) days of Order, and other relief as may be just.

MOTION TO STRIKE OBJECTIONS CONCERNING FLOW REVERSAL

43. All above paragraphs are incorporated by reference as if fully recited herein.
44. In Interrogatories 28 and 29, Sunoco objects to Association discovery due to an allegedly vague term “investigation”, then proceeds to partially answer the question posed in each interrogatory.
45. Sunoco alleged that it “enhanced” the detection system in its answer to Interrogatory 28, but provides no information other than a vague list of alleged projects that are not supported by any discovery whatsoever.
46. Sunoco’s answer shows that it fully understood that this interrogatory requested all information about how it changed its monitoring system when it introduced HVLs into the Mariner East 1 and 12-inch Point Breeze to Montello (the workaround pipeline).
47. In Interrogatory 29, Sunoco provides a vague answer about compatibility, without any discussion whatsoever of any steps it took to evaluate the pipe, ancillary equipment or other features of the system to determine compatibility with the change of service.
48. In its answer to Interrogatory 29, Sunoco fully knows what investigations it conducted, what it reviewed, and that it somehow, in a manner not described to the Association, showed that the 1930s era pipelines and all ancillary equipment were “compatible” with HVL service.

49. Therefore, Sunoco utterly fails to participate in discovery related to information it alone possesses that directly shows what efforts it took to update pipeline monitoring and evaluate its old equipment for HVL service when it introduced HVLs to its 1930s era pipelines.

WHEREFORE, Andover Homeowner's Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer Interrogatory #28 within thirty (30) days of Order, and other relief as may be just.

MOTION TO STRIKE OBJECTIONS CONCERNING GEOLOGICAL INTERROGATORIES

50. All above paragraphs are incorporated by reference as if fully recited herein.

51. The Association, in Interrogatories 39-52 and 102-103, propounded specific interrogatories upon Sunoco to learn what Sunoco actually did in response to channeling geology, not what it submitted to the Pennsylvania Department of Environmental Protection.

52. Sunoco's vague and unresponsive answer to Interrogatory 45 shows this problem, where Sunoco "has implemented such best practices" and "performed additional geological investigations when necessary and appropriate."

53. However, this interrogatory requested that Sunoco document and describe, in detail, all such efforts, yet the answer is totally unresponsive.

54. The Association sought information in Interrogatories 112-117 about issues believed to or known to have occurred during the Mariner East project.

55. Sunoco's non-answers to these requests denies the Association the opportunity to learn and understand what other safety related issues may implicate Part 195 compliance or

Sunoco's ability to properly implement ETP's 195 Manual and operate a safe and efficient public utility service.

56. Sunoco non-answer Interrogatories 128-132 because it objects to the review of the current 195 Manual covering Mariner East – the ETP 2017 195 Manual.

57. However, this information is utterly relevant as Sunoco has never shown that it operates Mariner East in Delaware and Chester Counties under a 195 Manual separate from other ETP HVL assets.

58. Likewise, Sunoco objects to Interrogatories #134 and 135 concerning Sunoco's interactions with the Delaware River Basin Commission ("DRBC") on the grounds that DRBC proceedings somehow are not relevant to Sunoco's ability to offer safe and efficient pipeline service or do not at all implicate Part 195 compliance.

59. However, Sunoco has failed to show how permits required for pipeline construction fail to implicate pipeline safety, the ultimate mandate of this Commission.

60. Sunoco should not be allowed to file any objections to any discovery request concerning other regulatory obligations that have an impact on the public, public safety, or pipeline operations.

61. Municipal and DRBC permits, as well as a variety of other permits, fall into this category.

62. Sunoco seems to argue, without support, that this Commission does not have preemptory authority to review the work of other agencies that implicate public safety, pipeline safety or efficient service.

63. However, that is the opposite of extensive case law and statutory authority granting this Commission wide berth to regulate even in the face of other authority.

64. Therefore, the Commission should Order that the existence of other authority is not an excuse to not answer discovery, and that any objection must clearly state exactly how that other authority is unrelated to any Commission authority.

WHEREFORE, Andover Homeowner’s Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer all Interrogatories discussed above within thirty (30) days of Order, and other relief as may be just.

MOTION TO STRIKE OBJECTIONS CONCERNING PUBLIC AWARENESS PROGRAM

65. All above paragraphs are incorporated by reference as if fully recited herein.

66. Sunoco’s public awareness program advises the public living, working, going to school, or transiting the Mariner East blast radius to “leave the area immediately on foot” if it “suspects a leak,” while avoiding the use of phones and cell phones until reaching “a safe area.”

67. The Association believes this guidance is vague to the point of uselessness, implausible, unworkable, and unrealistic for most or all members of the impacted public, especially at night or during inclement weather.

68. For that reason, the Association believes Sunoco’s public awareness program fails to comply with the applicable requirements of part 195.440. See section 195.440(b) and (d)(4).

69. Its interrogatories and document requests are calculated to discover whether Sunocoor ETP evaluated if its HVL, specifically Mariner East HVL, Public Awareness Program could possibly be implmented or is fatally flawed. .

70. In Interrogatories #57 – 70, 72-81, 86-92, Sunoco refuses to answer questions about its integrated 195 Manual with respect to the Public Awareness Program.
71. Specifically, the Association propounded discovery about how Energy Transfer Partners (“ETP”) executes its 2017 integrated 195 Manual with respect to HVL service.
72. Sunoco’s objection is inoperative as it seems to want to imply, incorrectly, that it operates the Mariner East system under a different 195 Manual than the rest of ETP.
73. But, as the Mariner East project is covered under ETP’s 2017 195 Manual, inquiry into how Sunoco and ETP implement the same 195 manual will directly lead to relevant evidence.
74. Specifically, if during the 2017 impementation of ETP’s 195 Manual, Sunoco did not address or did not correct deficiencies, then Sunoco’s implementation of ETP’s 195 Manual would be deficient with respect to Mariner East.
75. If both Sunoco’s prior 195 Manual and ETP’s 2017 195 Manual were both deficient with respect to 195.440, then any such deficiencies would be relevant to the Association’s claims.
76. If Sunoco relaxed compliance in implementing ETP’s 195 Manual, the Association would discover releveant evidence concerning implementation and maintenance of ETP’s 195 Manual.
77. If ETP allows for different implementation of its integrated 195 Manual for HVL service in different areas, such differences would show relevant evidence about potential deficiencies in ETP’s 195 Manual.

78. Sunoco's non-response does not even acknowledge that it no longer maintains a 195 Manual.
79. Instead, it relies upon ETP's 195 Manual as its own.
80. Sunoco points to its utterly vague testimony during the November 2018 hearing in Flynn instead of answering questions that only arose because of the first Flynn discovery where the Association learned that Sunoco no longer maintains a separate 195 Manual.
81. Such testimony is nonresponsive to how Sunoco implemented ETP's 195 Manual.
82. Sunoco's vague answer to Interrogatories 58-63 also bely the fact that Sunoco no longer manages a 195 Manual, and lays bare Sunoco's attempts to restrict the inquiry to a small section of ETP's HVL assets.
83. Sunoco's vague dismissiveness of other HVL assets covered in ETP's 195 Manual misses the point, where the Association seeks to understand how ETP implements its 195 Manual for HVL service, regardless of which entity ultimately operates the asset.
84. ETP's implementation of its 195 Manual is relevant to Sunoco's compliance, or lack of compliance, with Section 195 as well as Sunoco's duty to offer safe and efficient service.
85. In the remaining interrogatories, the Association seeks to learn what efforts it took to review or update its Public Awareness Program.
86. The Association's request reaches beyond Sunoco's narrow read of API RP 1162, which is one of many components of a Public Awareness Program.
87. The Association seeks to learn if Sunoco reviewed the varying land uses within a mile of the proposed Mariner East 2/2X and the repurposed Mariner East 1/Point Breeze-Montello workaroud pipeline prior to converting them to HVL service.

88. However, Sunoco fails to answer if it conducted ANY review of these factors with respect to its Public Awareness Program.
89. If Sunoco performed no such analyses, it can, and should respond appropriately.
90. Otherwise, it can describe what processes it did engage in, produce whatever documents may exist to show what work was or was not done, and otherwise fully respond to each Interrogatory.
91. In Interrogatories #86-92, the Association requests information about details of its operational decisions that could directly impact ETP's public awareness program.
92. However, Sunoco refuses to answer any such questions, alleging that its incomplete answers from Flynn Interrogatories are sufficient.
93. However, the Association has reviewed these incomplete answers and believes that much more information is required.
94. As Sunoco is relying upon other interrogatories, and the Association's questions exceed the scope of the previous Flynn requests, the Association requests leave to supplement with more detailed questions in a supplemental discovery request.
95. In Interrogatory #91, Sunoco objects to the Associations' request for HVL information on all ETP lines in the last ten years.
96. However, as Sunoco has no 195 Manual, information about how ETP and its various operating companies responds to reportable or non-reportable (where reportable status is defined on relevant PHMSA Forms 7000-1 for reportable incidents) incidents is fully relevant to the adequacy of Sunoco's Public Awareness Program compliance with

Part 195 and applicable statutory requirements and its ability to operate safe and efficient pipeline service.

97. The non-answer to Interrogatory 91 does not show that Sunoco or ETP is managing its Public Awareness Plan duties in a manner that complies with the requirements to show safe and efficient utility service or compliance with 49 CFR 195.440.

98. The Association further seeks, through this discovery request, information about how Sunoco evaluated each event for reporting purposes, the volume of material released, the time of actual release with relation to the time of reporting, and any calculations used to report or not report an accident to PHMSA.

99. Sunoco's equally unusable Interrogatory #92 response fails to address issues in ETP's 195 Manual, where ETP, not Sunoco, is responsible for deciding what is or is not included in a 195 Manual and each requires subset of this manual.

100. The Association has complained that it believes that the current and previous 195 Manuals are ineffective and cannot be reasonably implemented for any reason.

101. However, lacking a full review of the overarching ETP 195 Manual, a full review of Sunoco's ability to offer a cogent 195 Manual is impossible.

102. Sunoco's non-response to Interrogatory #94 compounds the Association's inability to conduct proper discovery here.

103. Specifically, the Association asked, in Interrogatories #91-92, to identify reported and unreported releases in pipelines covered by the ETP 195 Manual used for Mariner East.

104. However, Sunoco failed to answer the interrogatories to produce the list to answer #94.
105. Without completing the first step, Sunoco excuses itself from answering questions about its release events in pipelines covered by the same 195 Manual as the manual covering Mariner East pipelines.
106. This frustrates the Association's efforts to learn the details of Sunoco's and ETP's compliance or non-compliance with Part 195.
107. Sunoco's non-answers to Interrogatories #95 and 96 also frustrate the Association's efforts to evaluate compliance or non-compliance with ETP's 195 Manual.
108. Sunoco alleges that it "already provided information" concerning what changes it made to its public awareness program, but never answered the question anywhere.
109. If Sunoco did not make any changes to its public awareness program to repurpose Mariner East 1 and the Point-Breeze to Montello lines, it can just directly answer the Interrogatory and state that it did nothing.

WHEREFORE, Andover Homeowner's Association, Inc. respectfully requests that the Commission Order that Sunoco fully and completely answer all Public Awareness Interrogatories within thirty (30) days of Order, leave to propound supplemental discovery upon Sunoco to refine the answers provided by Sunoco in its answers to the Flynn Complainant's discovery, and other relief as may be just.

Respectfully submitted,

/s/

Date: January 6, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons, listed on the following pages, in accordance with the requirements of Rule 1.54 regarding to service by a party.

Respectfully submitted,

/s/

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