**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn : C-2018-3006116

Rosemary Fuller : P-2018-3006117

Michael Walsh :

Nancy Harkins :

Gerald McMullen :

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 IN PART AND DENYING IN PART ANDOVER HOMEOWNERS’ ASSOCIATION, INC.’s MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES AND DOCUMENT REQUEST SET 1**

On October 11, 2019, Andover Homeowners’ Association (Andover) filed a Motion to Compel and on October 16, 2019, Andover filed an Amended Motion to Compel. On November 6, 2019, Sunoco Pipeline, L.P. (Sunoco, SPLP, or Respondent) filed an Answer. An Order Granting In Part and Denying in Part Andover Homeowners’ Association, Inc.’s Amended Motion to Compel Responses to Interrogatories and Document Request Set 1 was issued on November 27, 2019. On December 26, 2019, SPLP served Andover with Answers to Andover’s First Set of Interrogatories, which contained some objections. On January 6, 2020, Andover filed a Motion to Strike Objections to Request for Production (Motion), which I am treating as a Motion to Compel pursuant to 52 Pa. Code § 5.342(g). SPLP filed an Answer Opposing Andover Homeowners’ Association, Inc.’s Motion to Strike Objections to Requests for Production (Answer) on January 13, 2020. SPLP argues the Motion is procedurally deficient and contains new averments of fact not verified in violation of 52 Pa. Code § 1.36. Additionally, Sunoco argues that it has already provided the required responsive information to each interrogatory at issue. The Motion to Compel is ripe for a decision.

Disposition

I am disregarding the procedural defect of Andover’s failure to attach: 1) a notice to plead; and 2) SPLP’s objections or answers to discovery pertinent to its motion pursuant to 52 Pa. Code §§ 1.2 and 5.342(g). SPLP’s Answer is timely and includes in its Attachment A, Answers and Objections to Andover’s Interrogatories Set 1. Thus, I have the necessary documents before me to render a decision without violating SPLP’s substantive due process rights.

**Standard And Evidence**

The Commission’s regulations grant the presiding officer “all necessary authority to control the receipt of evidence.” 52 Pa.Code § 5.403(a). The Commission’s regulations also allow Presiding Officers the authority to “regulate the course of the proceeding.” 52 Pa.Code § 5.483(a). Liberal construction is allowed to “secure the just, speedy and inexpensive determination of every action or proceeding” and the “presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” 52 Pa.Code § 1.2(a); see also, 52 Pa.Code § 1.2(c) (“presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.”). The procedural rules allow for liberal discovery of non-privileged matter reasonably designed to address matters reasonably anticipated from the face of the complaint. *George v. Shirra*, 814 A.2d 202, 2014 (Pa. Super. 2002).

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:

**§ 5.361. 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).

Set 1, Nos. 9, 38, 57, 59, 61, 63, 75, 139 and 141

Andover requests an Order compelling SPLP to provide full and complete responses to many Interrogatories and Requests for Production of Documents. Regarding Set 1, Nos. 9, 38, 57, 59, 61, 63, 75, 139 and 141, Andover is not satisfied with SPLP’s response that it will provide additional information responsive to these interrogatories when it serves its experts’ direct testimony on April 14, 2020. Andover argues it will not be able to develop its case or prepare responsive testimony if required to wait until written direct testimony to review any evidence concerning its conduct over the approximately seven years of the Mariner East project. Additionally, Andover requests the Commission “order that a seven year pendency of an ongoing project is not indefinite but fully finite given there was no Mariner East project prior to 2012.” Andover requests a directive compelling SPLP to answer Nos. 9, 39, 40, 50 and 142 covering a time period from the inception of its Mariner East Project in 2012 forward.

Conversely, SPLP argues it is within its rights pursuant to 52 Pa. Code § 5.342(a)(2) to supplement the answers to these questions through its written testimony on April 14, 2020. Andover is not prejudiced by this procedure as it may then request further discovery.

Disposition

Section 5.342(a)(2) provides that answers to interrogatories must identify the name and position of the individual who provided the answer. 52 Pa. Code § 5.342(a). Timely written testimony is not the same as timely answers to interrogatories. Answers should be submitted as answers and not as exhibits or in another form. 52 Pa. Code § 5.342(a)(3). Section 5.412 pertains to written testimony, which is clearly separate from an answer.

Although requests for discovery may continue beyond the deadlines for written testimony pursuant to the directives of the Procedural Order, I am not persuaded by SPLP’s argument that it should not be compelled to provide additional answers if it has more information to Andover prior to the deadline for its expert witness testimony on April 14, 2020. These questions seek information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories above seek information regarding practices in operating pipelines, as applied to Mariner East pipelines, and are wholly relevant to evaluate if SPLP is operating in compliance with applicable law and whether operations should be restricted pending a risk assessment and/or the creation of evacuation plans and public/emergency responder education.

Accordingly, to the extent SPLP has further responses in addition to those outlined in its responses and already provided to Andover, it will be compelled to respond within thirty days from the date of entry of this Order subject to the protections outlined in the Amended Protective Order. SPLP’s objections regarding the time frame for actions shall be sustained in part and the questions in Nos. 9, 39, 40, 50 and 142 shall be modified such that they pertain to actions from January 1, 2012 to the current date.

Andover need not request leave of twenty days from SPLP direct testimony to serve supplemental discovery requests. Andover already has this permission. The request is moot. The Procedural Order provides for amended discovery rules and shortened deadlines after surrebuttal testimony is served. Thus, even after surrebuttal testimony, discovery requests may be made, albeit on a shortened procedural schedule.

No. 23

Regarding No. 23, Andover requests information about contacts SPLP made to water suppliers and regarding its permits from municipalities.

SPLP objects to the question on the grounds that it is not relevant to this proceeding and that the Commission lacks jurisdiction over the subject matter of the question.

Disposition

SPLP has answered No. 23 in part providing alignment sheets and maps of the pipelines route in Chester and Delaware Counties. SPLP also provided a link to a government website, which provides more information. SPLP shall be compelled to identify the names of public water suppliers it contacted and identify the municipal permits it obtained with specificity as to the municipality and type of permit relevant to the Mariner East Project since January 1, 2012 within thirty days from the date of issuance of this Order.

Nos. 28 and 29

Regarding Nos. 28 and 29, Andover seeks a full and complete answer regarding what efforts SPLP undertook to update pipeline monitoring and evaluate its old equipment for HVL service when it introduced HVLs to its 1930s era pipelines.

SPLP objects to the term “investigation” as being overly broad and vague. SPLP answers that steel pipe is compatible to the transport of natural gas liquids and is the safest method of transportation. Pre-existing leak detection and monitoring systems were enhanced including changing leak detection meters from turbine meters to Coriolis meters. Sampling points along the pipelines were also enhanced.

Disposition

The questions above seek information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories seek information regarding practices in operating the Mariner East pipelines and are wholly relevant to evaluate if Sunoco is operating in compliance with applicable law and whether operations should be restricted pending a risk assessment and/or the creation of evacuation plans and public/emergency responder education. The questions are likely to lead to admissible evidence and the answers so far are general and vague. SPLP will be compelled to provide more detailed information regarding the enhancement of the detection and monitoring systems and documentation in support within thirty days.

Nos. 39-52 and 102-103

Regarding Nos. 39-52 and 102-103, Andover seeks responses, documentation, and a detailed description of efforts to implement best practices.

Conversely, SPLP argues it has already provided responsive information including a list of subsidences in Chester and Delaware Counties. SPLP’s evaluation of the ground surface subsidences and remedial efforts will be produced.

Disposition

SPLP will be compelled to provide an evaluation of the ground surface subsidences and remedial efforts regarding Chester and Delaware Counties since January 1, 2013, as the production of such information is reasonably calculated to lead to admissible evidence and is tailored such that it is not unreasonably burdensome and irrelevant.

Nos. 58-63

Regarding Nos. 58-63, Andover requests SPLP be compelled to answer how it implemented Energy Transfer Partners’ (ETP) 195 Manual. Even if SPLP no longer manages a 195 Manual, it can still answer these questions that are relevant to whether the operator is compliant with Part 195 of the Code of Federal Regulations.

SPLP claims it provided information in response to Andover Set 1 and implied Andover had not reviewed the 30,000 confidential pages. SPLP already provided answers to Flynn Complainants Interrogatories Set 1, Nos. 121 and 122. SPLP objects to No. 59 as overbroad and unduly burdensome.

Disposition

As SPLP has responded to these interrogatories already in its responses to Flynn Complainants Interrogatories Set 1 Nos. 121 and 122, the objections will be sustained.

Nos. 86-92

Regarding Nos. 86-92, Andover requests detailed information pertaining to SPLP’s operational decisions that could directly impact ETP’s public awareness program.

Conversely, SPLP claims it has already provided information responsive in its answer to Flynn Complainants Interrogatories Set 1, Nos. 128-140.

Disposition

SPLP’s response to Flynn Complainants Interrogatories Set 1, No. 228 shows information regarding changes in its public awareness program in Pennsylvania since January 1, 2014. This is reasonable. SPLP’s objections will be sustained.

Nos. 91-92

Regarding Nos. 91-92, Andover requests reported and unreported releases in pipelines covered by the ETP 195 Manual. If no changes were made to its public awareness program, SPLP can directly state as such.

Andover acknowledges the likelihood that SPLP will serve additional responses and documents upon it as part of written direct testimony raising additional issues to which Andover will seek supplemental discovery. Andover seeks leave to propound supplemental discovery upon SPLP within twenty (20) days of receipt of SPLP’s written direct testimony to address any gaps in the documents.

Conversely, SPLP argues the questions are overbroad and unduly burdensome as they seek information for pipelines other than the Mariner East Project pipelines. SPLP already provided responsive information to Flynn Complainants Interrogatories Set 1, Nos. 113-118, which covers responses to Nos. 91-92.

Disposition

As SPLP already provided reasonably responsive information to Flynn Complainants Interrogatories Set 1, Nos. 113-118, SPLP’s objections will be sustained. Andover’s request for leave is moot as it already has this permission.

Finally, where SPLP is compelled to provide a response to questions in Set 1, and the response references a document within SPLP’s possession, then SPLP should also provide a copy of the corresponding document to which it refers as a full and complete answer to Andover Complainants’ requests for documentation.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Andover Homeowners’ Association, Inc.’s Motion to Dismiss Objections and Compel Answers to Discovery Requests is granted in part and denied in part.
2. That the objections of Sunoco Pipeline, L.P. to Andover Homeowners’ Association, Inc.’s Interrogatories Set 1, Nos. 9, 38, 57, 59, 61, 63, 75, 139 and 141 are overruled except that responses to Nos. 9, 39, 40, 50 and 142 shall be limited to the time period of January 1, 2012 to the current date.
3. That Sunoco Pipeline, L.P. is hereby directed to provide full and complete responses to Andover Homeowners’ Association, Inc’s Interrogatories Set 1, Nos. 9, 38, 57, 59, 61, 63, 75, 139 and 141 within thirty (30) days from the date of entry of this Order subject to the protections outlined in the Amended Protective Order.
4. That Andover Homeowners’ Association, Inc.’s request for leave of twenty (20) days from SPLP direct testimony to serve supplemental discovery requests is denied as moot.
5. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, No. 23 is overruled.
6. That Sunoco Pipeline, L.P. is directed to respond to Interrogatories Set 1, No. 23 and shall identify the public water suppliers it contacted and the municipal permits it obtained with specificity as to the municipality and type of permit relevant to the Mariner East Project since January 1, 2012 within thirty (30) days from the date of issuance of this Order.
7. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, Nos. 28 and 29 are overruled.
8. That Sunoco Pipeline, L.P. is compelled to provide more detailed information regarding the enhancement of the detection and monitoring systems and documentation in support in response to Nos. 28 and 29 within thirty (30) days from the date of issuance of this Order.
9. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, Nos. 39-52 and 102-103 are sustained in part and overruled in part.
10. That Sunoco Pipeline, L.P. is compelled to provide detailed information regarding an evaluation of the ground surface subsidences and remedial efforts in Chester and Delaware Counties since January 1, 2013 within thirty (30) days of the date of issuance of this Order.
11. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 1, Nos. 58-63, 86-92, and 121-122 are sustained.
12. That to the extent Sunoco Pipeline L.P.’s objections to interrogatories have been overruled and the question involved and identification of document as if it were a request for production of document, Sunoco Pipeline LP is required to also furnish true copies of the requested referenced documents to Complainants. The Company may label the responses “Confidential,” “Highly Confidential” or “Extremely Sensitive Material” as appropriate, and if appropriately labeled, copies will be kept confidential pursuant to the Amended Protective Order.

Date: January 16, 2020 /s/

Elizabeth Barnes

Administrative Law Judge

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

*(Revised 1/16/20)*

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