**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn :

Rosemary Fuller :

Michael Walsh :

Nancy Harkins : C-2018-3006116

Gerald McMullen : P-2018-3006117

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**

**Amending Procedural Schedule; Denying Flynn Complainants’ Motion for Leave to File Supplemental Direct Testimony and Exhibits; and Denying Flynn Complainants’ Motion to Determine Sufficiency of Sunoco Pipeline, L.P.’s Objections and Answer to Request for Admissions**

On March 16, 2020, Flynn Complainants (Complainants) filed a Motion For Leave to File Supplemental Direct Testimony and Exhibits regarding three reports pertaining to pipeline construction activities on the Mariner 2 and 2X in Huntingdon County and pipeline construction of ETC Northeast Pipeline, LLC involving the Revolution Pipeline in Beaver County. On April 6, 2020, Sunoco Pipeline, L.P. (SPLP or Respondent) filed an Answer Opposing Flynn Complainants’ Motion for Leave to Submit Additional Evidence.

On April 13, 2020, Complainants filed a Motion to Determine Sufficiency of Respondent’s Objections and Answer to Request for Admissions (Motion). SPLP filed a timely response. These Motions are ripe for a decision.

Complainants request leave to submit supplemental testimony and exhibits including 3 reports obtained recently from the Pennsylvania Department of Environmental Protection (DEP) concerning pipeline construction on the Mariner East 2 and 2X in Huntingdon County and the ETC Northeast Pipeline, LLC’s pipeline construction of the Revolution Pipeline project in Butler County. Additionally, Flynn Complainants move to compel SPLP to answer a set of Requests for Admissions served on March 16, 2020 (Admissions) concerning two Consent Orders and Agreements (COA) and attachments thereto between (collectively, DEP documents) – (1) a COA between SPLP and DEP regarding construction of the Mariner East 2/2X pipeline project at Raystown Lake in Huntington County; and (2) a COA between DEP and ETC Northeast Pipeline, LLC regarding the Revolution pipeline project, which traverses Allegheny, Beaver, Butler and Washington Counties.

In keeping with my prior discovery ruling regarding this issue, I find SPLP’s objections to these Admissions and the Motion for Leave to Supplement Direct Testimony to be justified. The DEP documents relate to DEP permitting and construction issues in Huntingdon and Beaver Counties, outside of Chester and Delaware Counties. Additionally, the Admissions are an attempt to introduce evidence after Complainants’ direct case and they expand the scope of the proceeding. The scope of discovery is limited to relevant issues in the case as narrowed by the scope of Complainants’ direct testimony. To be newly discovered evidence, there must be a showing that the materials in question could not have been obtained through reasonable diligence at an earlier time. While the Motion alleges the existence of these documents was neither known nor knowable prior to the service of Admissions, I am persuaded by SPLP’s comparison of each Admission to the COAs available as of January 3, 2020 to find there was a basis for each Admission or enough information to provide a basis for an interrogatory obtaining the information requested in the Admission in the COA. The attachments to the COA are cumulative with respect to the Admissions. Therefore, in accordance with Section 5.350(e), SPLP will not be compelled to answer these Admissions pertaining to the DEP’s COA’s because they are not relevant to the issues in the instant case and exceed the scope of the Complainants’ direct case before the Commission. 52 Pa. Code §§ 5.350(e). *See, e.g.*, *Claudio v. Dean Machine Co.*, 831 A.2d 140, 146 (Pa. 2003) (“after-discovered evidence, to justify a new trial, must have been discovered after the trial, be such that it could not have been obtained at the trial by reasonable diligence, must not be cumulativeor merely impeach credibility, and must be such as would likely compel a different result.”) (quoting *Der Hagopian v. Eskandarian,* 396 Pa. 401, 153 A.2d 897 (1959), *cert. denied,* 361 U.S. 938, 80 S.Ct. 381, 4 L.Ed.2d 358 (1960)) (emphasis added). Additionally, Flynn Complainants’ Motion for Leave to File Supplemental Testimony and Exhibits will be denied.

THEREFORE,

IT IS ORDERED:

1. Thatthe Flynn Complainants’ Motion to Determine Sufficiency of Respondent’s Objections and Answer to Request for Admissions is denied.
2. That Flynn Complainants’ Motion for Leave to File Supplemental Testimony and Exhibits is denied.
3. That the proposed procedural schedule at Docket No. C-2019-3006116 as outlined in Sunoco Pipeline, L.P.’s Status Report filed on April 28, 2020 is adopted and the procedural schedule is amended as follows.

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| --- | --- | --- | --- |
| Respondent and Respondent-Aligned Intervenor Rebuttal Written Testimony |  | June 15, 2020 |  |
| Complainants and Complainant-Aligned Intervenor Surrebuttal Written Testimony |  | July 15, 2020 |  |
| Respondent and Respondent-Aligned Intervenor Written Rejoinder Outlines |  | August 14, 2020 |  |
| Hearings |  | September 29, 2020 - October 9, 2020  and  October 13, 2020 –  October 14, 2020 |  |
| Transcripts |  | October 28, 2020 |  |
| Main Briefs |  | December 14, 2020 |  |
| Reply Briefs |  | December 29, 2020 |  |

Date: May 28, 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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