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July 10, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)
Laura Obenski, Docket No. C-2019-3006905 (consolidated)
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605
(consolidated)
v.
Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S MOTION TO COMPEL RESPONSES TO FIRST
REQUEST FOR ADMISSIONS AND INTERROGATORIES TO FLYNN
COMPLAINANTS**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Motion to Compel Responses to First Request for Admissions and Interrogatories to Flynn Complainants.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth Barnes (by email ebarnes@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos. C-2018-3006116 (consolidated)
	:	P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No. C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No. C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No. C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER'S ASSOCIATION, INC.	:	Docket No. C-2018-3003605 (consolidated)
	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Dated: July 13, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos. C-2018-3006116 (consolidated)
	:	P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No. C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No. C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No. C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER’S ASSOCIATION, INC.	:	Docket No. C-2018-3003605 (consolidated)
	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

**SUNOCO PIPELINE L.P. MOTION TO COMPEL RESPONSES TO FIRST REQUEST
FOR ADMISSIONS AND INTERROGATORIES TO FLYNN COMPLAINANTS**

Pursuant to Section 5.342(g) of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations, 52 Pa. Code § 5.342(g), Sunoco Pipeline L.P. (“SPLP”) files this Motion To Compel Responses To First Request For Admissions And Interrogatories To Flynn Complainants (“Motion”).¹ In support of this Motion, SPLP respectfully asserts as follows:

INTRODUCTION

1. SPLP is moving to compel verified responses to 10 simple discovery requests² seeking relevant information as to witness bias, credibility, and motivation and compliance with the decorum required in litigating cases before this Commission. The controversy here involves questions calculated to determine if a party or representative of a party has made harassing and/or defamatory statements against SPLP and its counsel that show bias against SPLP or its

¹ SPLP notes that it served similar request on two other parties. One of those parties, pro se litigant Tom Casey, has objected, and the other indicated that he will object but has not yet served objections. SPLP will address these objections with an additional motion or motions.

² The discovery requests are included as **Attachment A**.

representatives of SPLP's positions in this case when that person obtained copies of SPLP's testimony. As discussed below, bias and credibility are always issues that can be probed in Commission proceedings and in legal proceedings generally.

2. SPLP electronically served on counsel and each pro se party its public testimony in this proceeding via Sharefile link that required each user to enter an email address and first and last name. The controversy began when an unidentified person or persons logged in³ with the following information:

- First Name/Last Name "F█k You,"⁴ email address "fred@f█ksunoco.com,"; and
- First Name/Last Name "Mankogold Endangerschildren," email address "kaboom@milewideblastradius.com"

3. SPLP is now seeking to discover who that person was for two troubling reasons: a) because the link was only provided to parties and their representatives either a party or representative signed in under a fake and scandalous name which is contemptuous to the integrity of this legal proceeding and may be sanctionable; or b) a party or its representative provided the link to parties or entities outside of this proceeding and was thus complicit in this behavior by improperly (given the conduct that occurred as a result of their action) forwarding this Sharefile link created for the limited purpose of service upon counsel and pro se parties of testimony set forth in the Procedural Orders in this case. If a party in this proceeding made these

³ Sharefile keeps a log of access to the materials including usernames and email addresses. The relevant portion of the log is included as **Attachment B**. Undersigned counsel Diana Silva and Whitney Snyder are administrators of this folder and certify that the attached is a true and correct copy of the relevant portions of the log, redacted consistent with note 4 *infra*.

⁴ SPLP has redacted the letters "uc" from this profane word given the public nature of this filing and respect for Your Honor and the Commission.

harassing, profane, and/or defamatory statements, that goes directly to that person's bias, credibility, and motivation and that information is relevant. *See Commonwealth v. Nolen*, 634 A.2d 192 (Pa. 1993) (evidence of bias, interest, or corruption is always relevant impeachment evidence). Moreover, if a party engaged in this contemptuous and improper conduct, they face potential consequences in this proceeding further showing this information is relevant. 66 Pa. C.S. § 332(f); 52 Pa. Code §§ 1.26-1.27. As detailed below, neither the constitutional right to free speech nor the Commission's regulation prohibiting unduly burdensome or harassing discovery bar SPLP's discovery requests. SPLP is entitled to discover if a party to or witness in these proceedings made or participated in making these statements and its discovery is narrowly tailored to this point.

4. Upon initial email inquiry into this matter, Complainants' counsel agreed "such communications should not take place" and did not object to the matter being brought to Your Honor's attention.⁵ Now that Complainants have been requested to provide this information subject to penalty for unsworn falsification to authorities,⁶ they object.

ARGUMENT

5. Complainants' objections⁷ misconstrue the law and should be dismissed. Complainants objected to all requests on the grounds that the information sought "relates to matters entirely outside the scope of permissible discovery under the applicable rules of civil procedure and discovery is in every instance constrained by relevancy." Objections at p. 5.

⁵ Objections at p. 3.

⁶ 52 Pa. Code § 1.36 (denials of fact require verification subject to 18 Pa. C.S. § 4904); 52 Pa. Code § 5.342(a)(6) (verification pursuant to § 1.36 required for answers to discovery).

⁷ Complainants objections are included as **Attachment C**.

Complainants further objected to all requests on the basis that the “log-in information was an exercise of free speech.” *Id.* at p. 7.

I. SPLP Set I Seeks Discoverable Information That Is Relevant

6. Contrary to Complainants’ objections, the information is relevant. As the Commission’s regulations outline and as the Commission has repeatedly affirmed, a party seeking to withhold discovery on grounds of relevancy must meet a high burden showing the requested information to be wholly irrelevant to the applicable subject matter. Under the Commission’s regulations, “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.” 52 Pa. Code § 5.321(c). The Commonwealth Court has further reinforced the broad scope of discoverable information, stating that “relevancy should be interpreted broadly and liberally, and any doubts regarding the relevancy of subject matter should be resolved in favor of relevancy.” *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Cmwlth. 2006). As emphasized by the Commonwealth Court, the party contending discovery is not relevant has the burden of proving irrelevancy. *Id.*

7. Discovery intended to obtain evidence which is relevant or reasonably calculated to lead to relevant evidence⁸ has always been permitted. Evidence which can impeach a witness

⁸ 52 Pa. Code Section 5.321(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

is universally permitted as relevant in Pennsylvania jurisprudence, whether in court or administrative proceedings. Thus, SPLP's narrowly tailored discovery requests are reasonably calculated to lead to relevant and admissible evidence. The caselaw could not be clearer. *See Application of Scranton Transportation, LLC, for the Right to Begin to Transp., As A Common Carrier, by Motor Vehicle, Persons in Call or Demand Serv., to &/or from Points Within Lackawanna Cty., Pennsylvania*, No. A-2012-2303837, 2014 WL 2876689, at *6 (Pa. PUC 2014) ("The credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal intent and bias, or lack thereof, are all considered in determining what weight should be given to their testimony.") (quoting *Application of Jet Sedan Services*, Docket No. A-2009-2120781 (Order entered August 18, 2010)) (citing *Danovitz v. Portnoy*, 399 Pa. 599, 161 A.2d 146 (Pa. 1960)); *see also, e.g., Com. v. Ellis*, 700 A.2d 948, 957 (Pa. Super. 1997) (evidence of bias, interest, or corruption is always relevant impeachment evidence).

8. In fact, Your Honor has already admitted into the record similar evidence as to bias, credibility and witness motivation.⁹ At hearing, Your Honor permitted the admission of evidence that a witness is a "vocal critic of the pipeline." N.T. at 230:3-4. Specifically, Your Honor permitted the admission of statements witness and Complainant Mr. Walsh made on Twitter, which criticized SPLP, the Commission, and other state officials. N.T. at 230:3-234:11. Likewise, Your Honor permitted the admission of witness and president of Complainant Andover Homeowner's Association Inc., Eric Friedman's Twitter posts that contain similar criticisms and accusations of misconduct lodged at SPLP, the Commission, and state officials. N.T. 848:18-849:13. As the above examples illustrate, Your Honor has consistently recognized

the information sought will be inadmissible at hearing if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence.*" (emphasis added).

⁹ N.T. 230:3-234:11 and SPLP Cross Exhibit 1 (Walsh tweets); N.T. 848:18-849:13 (Friedman tweets).

that statements posted to the internet by witnesses and parties in this litigation are probative and relevant.

9. Complainants' argument that the actions at issue have nothing to do with a (a) their claims or the (b) defenses (presumably speaking to SPLP's defenses) misses on both points. First, the issue is not Complainants' case or arguments but whether it is relevant to SPLP's defense relative to the credibility or bias of opposing witnesses. Second, Complainants have no basis to say what SPLP's defenses are or should be. Indeed, witness bias, motivation, and credibility are relevant to SPLP's defense and in determining the weight of testimony by Complainants and therefore whether allegations in testimony are factually true or should be viewed with skepticism because of the witness's bias or lack of candor. *Commonwealth v. Rouse*, 782 A.2d 1041, 1045 (Pa. Super. 2001) ("Pennsylvania courts have consistently recognized that evidence of bias is relevant to impeach the credibility of a witness."). As Complainants admit, "It goes without saying that a matter is relevant if it makes a fact in dispute more likely or less likely." Objections at p. 6. There are some facts in dispute in this matter, and determination of some of those facts will rely on witness testimony. Witness bias, motivation, and credibility play directly into the weight testimony should be given and thus make a fact alleged by such witness more or less likely to be true. *Supra* Paragraphs 6-7. SPLP is not through this discovery attempting to "tarnish the Safety 7 in the eyes of the ALJ."¹⁰ This matter would not be before Your Honor via this Motion if Complainants had answered the discovery. If one of the Complainants is responsible, they have tarnished their own credibility and that is relevant.

10. Moreover, the information sought is relevant to determine if a party has violated the rules of decorum set forth in the Public Utility Code and Commission regulations.

¹⁰ Objections at p. 7.

Specifically, the Public Utility Code and Commission regulations provide that, after due notice and opportunity for hearing, if the Commission or presiding officer determines actions of a party or counsel in a proceeding are obstructive to the orderly conduct of the proceeding and inimical to the public interest, the Commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel and, with respect to counsel, may bar further participation by him or her in any proceedings before the Commission. 66 Pa.C.S. § 332(f); see 52 Pa. Code §§ 1.26 (pertaining to contemptuous conduct), 1.27 (pertaining to suspension and disbarment of attorneys before the Commission). Where appropriate, the Commission or the presiding officer may dismiss the complaint, application, or petition if the action is that of a complainant, applicant, or petitioner. *See* 66 Pa. C.S. § 331(d); 52 Pa. Code § 5.245(c).

II. The Identity Of The Persons Making Profane And Defamatory Statements Is Not Constitutionally Protected Speech

11. The identity of the persons making profane and defamatory statements is not constitutionally protected speech. “Mankogold Endangerschildren,” “F███k You” and “f███ksunoco.com” is defamatory speech that is not constitutionally protected. *See, e.g., Commonwealth v. Mastrangelo*, 414 A.2d 54, 58 (Pa. 1980). Moreover, free speech does not come without reasonable limitations and consequences. As Complainants acknowledge, the Constitutional protection of speech contains the caveat “being responsible for the abuse of that liberty.” Objections at p. 7 (quoting Pa. Const. Art. 1 § 7); *see Mastrangelo*, 414 A.2d at 58 (“Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.”). Freedom of speech provides no right to intimidate or coerce, and no right to damage or injure another's reputation or business. *Wortex Mills v. Textile Workers Union of Am., C.I.O.*, 85 A.2d 851, 854 (Pa. 1952). As the courts of this Commonwealth have recognized:

There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, **the profane, the libelous**, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.... **Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution**, and its punishment as a criminal act would raise no question under that instrument.

Commonwealth v. Lutes, 973 A.2d 949, 962 (Pa. Super. 2002) (quoting *Commonwealth v. Mastrangelo*, 414 A.2d 54, 58 (Pa. 1980)) (emphasis added) (quotations omitted); see *Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952) (libelous statements are outside the realm of constitutionally protected speech). There is no question that these principles apply here where the statements at issue (1) were not posted to a public forum but rather specifically directed at SPLP and its counsel via a non-public internet link SPLP’s counsel maintains; and (2) do not express any substantive opinion or criticism, but rather are limited to libelous epithets and personal abuse.

12. Moreover, there is a level of decorum and professionalism required in proceedings before this Commission and violation of those responsibilities has consequences, even if the speaker had the right to make these statements. See *Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S. 640, 647 (1981) (“the First Amendment does not guarantee [persons] the right to communicate [their] views at all times and places or in any manner that may be desired.”); see also, *Frederick Altland*, No. C-2017-2582828, 2018 WL 6590869, at *6 (Pa. PUC 2018) (“This Commission has recognized that the use of vulgar language to a member of Commission staff, refusal to cooperate with the process and disruptive behavior at a hearing are contemptuous conduct which warrants exclusion from the hearing.”). This is especially true here where the person(s) making the communication had no expectation of anonymity – in order to

access the Sharefile link, individuals were required to input their first and last names and email address. In fact, that the individual did not input accurate identifying information further supports that the information sought is not entitled to protection. *Purcell v. Westinghouse Broad. Co.*, 191 A.2d 662, 670 (Pa. 1963) (“A lie is never privileged. It always has malice coiled up within it. When a man coins and utters a lie, or when he repeats it knowing it to be false, the law implies malice, and he cannot shelter himself behind the doctrine of privileged communications.”). Pennsylvania law and Commission regulation are clear - one cannot direct profanity and/or defamatory speech at a utility and its counsel within the context of an official litigated proceeding, expect to remain anonymous, and not face the consequences of this contemptuous conduct.

III. SPLP’s Requests Are Neither Unduly Burdensome Nor Harassing

13. Complainants’ assertion that these requests constitute an undue burden or harassment¹¹ is without foundation. SPLP asserts it would have taken Complainants less time and burden to answer the discovery than to object and initiate the motion to compel process. SPLP even provided the verifications for each party to sign. Indeed, because Complainants’ counsel claims to have already asked each of the Complainants whether he or she was responsible for the profanity, there is no burden required to respond to the discovery. The only thing required is that Complainants verify their responses. Hauling a utility into litigation before the Commission comes with the duty to answer discovery. Considering this is the first set of discovery requests SPLP has served coupled with the hundreds of discovery requests SPLP has complied with, the 100,000 plus pages of documents SPLP has produced, and SPLP’s participation in Complainants’ deposition of SPLP witness Mr. Gordon, there can be no assertion

¹¹ Objections at p.7. (“Sunoco will have achieved its secondary goal of harassing petitioners and intervenors and making this proceeding more expensive for them to sustain.”).

of undue burden or harassment here. To the extent Complainants are arguing that Mr. Bomstein's email response to Mr. Fox should have resolved the matter, that is wrong and irrelevant. First, SPLP is entitled to verified discovery responses, meaning the parties answering are swearing their responses are true and correct to the best of their knowledge and belief subject to penalty for unsworn falsification to authorities. 52 Pa. Code § 1.36 (denials of fact require verification subject to 18 Pa. C.S. § 4904); 52 Pa. Code § 5.342(a)(6) (verification pursuant to § 1.36 required for answers to discovery). This is especially important here where in unverified emails all parties have at least denied their participation or given an evasive response. Someone who is a party, consultant or representative is not being forthcoming and SPLP is entitled to determine who caused access to the Sharefile. Second, Mr. Fox asked very specific questions in his email (seeking counsel to ask clients or persons they forwarded the documents to whether they are the individual who directed this profanity and scandalous matters and identify that individual to us)¹² and Mr. Bomstein's response was ambiguous: "the last two have just confirmed they did not send the note."¹³ This did not answer Mr. Fox's specific inquiry and the lack of specific response further shows the propriety of this discovery.

¹² Objections at p. 3.

¹³ Objections at p. 4.

CONCLUSION

WHEREFORE, Sunoco Pipeline L.P. respectfully requests that Your Honor reject Complainants' Objections to SPLP's Requests for Admissions and Interrogatories and grant this Motion to Compel.

Respectfully submitted,

/s/ Whitney E. Snyder _____

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Date: July 10, 2020

Attachment A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER’S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**SUNOCO PIPELINE L.P.’s FIRST REQUEST FOR ADMISSIONS
AND INTERROGATORIES TO FLYNN COMPLAINANTS**

Sunoco Pipeline L.P. (“SPLP”) serves the following First Request for Admissions (the “Requests”) and Interrogatories on Complainants Megan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines, and in accordance with 52 Pa. Code. § 5.350 and § 5.341, requests a written response together with the accompanying verifications provided herewith be served within twenty (20) days hereof, as follows. These Requests and Interrogatories are directed to each individual “Flynn et al.” Complainant listed in above, and should be answered by each individual Complainant, with the accompanying verification for each individual Complainant that is provided herewith.

Requests for Admission

1. Admit that on or after June 15, 2020 you received the ShareFile link via email from SPLP’s counsel that granted access to SPLP’s Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

2. Admit that on or after June 15, 2020, you accessed the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

3. Admit that you used the First Name/Last Name "F█k You" or the email address "fred@f█ksunoco.com" to access the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

4. Admit that you used the First Name/Last Name "Mankogold Endangerschildren" or the email address "kaboom@milewideblastradius.com" to access the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

5. Admit that on or after June 15, 2020, you forwarded the ShareFile link previously received via email from SPLP's counsel that granted access to SPLP's Rebuttal Testimony and Exhibits (public versions), to anyone.

Admitted: _____ **Denied:** _____

6. Admit that your internet service provider is Verizon Fios.

Admitted: _____ **Denied:** _____

7. Admit that your internet protocol ("IP") address 100.19.129.46.

Admitted: _____ **Denied:** _____

Interrogatories

1. If your answer to Request for Admission No. 2 is the affirmative, and you admitted that on or after June 15, 2020, you accessed the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions), list the First Name, Last Name, and email address that you used to access the ShareFile link.

ANSWER:

2. If your answer to Request for Admission No. 5 is in the affirmative, and you admitted that on or after June 15, 2020, you forwarded the ShareFile link previously received via email from SPLP's counsel that granted access to SPLP's Rebuttal Testimony and Exhibits (public versions), identify the person(s) to whom you forwarded the ShareFile link, including his or her First Name, Last Name, and email address.

ANSWER:

3. If your answer to Requests for Admission No. 3 or 4 were in the negative and you denied that you used the First Name/Last Name "F█k You," the email address "fred@f█ksunoco.com," the First Name/Last Name "Mankogold Endangerschildren," or the email address "kaboom@milewideblastradius.com" to access the ShareFile link to view download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions), identify whether you know the person(s) who used those names or email addresses, and if you do, identify that person(s).

ANSWER:

Counsel for Sunoco Pipeline L.P.

/s/ Thomas J. Sniscak

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Whitney E. Snyder, Esq. (PA ID No.
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/s/ Robert D. Fox

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Neil S. Witkes, Esq. (PA ID No. 37653)

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dsilva@mankogold.com

June 29, 2020

VERIFICATION

I, Megan Flynn, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Megan Flynn

VERIFICATION

I, Rosemary Fuller, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Rosemary Fuller

VERIFICATION

I, Michael Walsh, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Michael Walsh

VERIFICATION

I, Nancy Harkins, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Nancy Harkins

VERIFICATION

I, Gerald McMullen, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Gerald McMullen

VERIFICATION

I, Caroline Hughes, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Caroline Hughes

VERIFICATION

I, Melissa Haines, hereby state that the facts above set forth are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: July _____, 2019

Melissa Haines

Attachment B

Date	ItemName	Activity	User	Email	Company	IPAddress	Location	EventID
6/18/20 2:43 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/04. Noll Rebuttal Testimony.pdf	View	Mankogold Endangerschildren	kaboom@milewideblastradius.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/18/20 2:43 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/04. Noll Rebuttal Testimony.pdf	View	Mankogold Endangerschildren	kaboom@milewideblastradius.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:55 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/02. Zurcher Rebuttal Testimony.pdf	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:54 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/05. Public Version - Perez Exhibits/SPLP Exh. No. JP-5, 2019SP	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:52 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/05. Public Version - Perez Exhibits/[Public] SPLP Exh. No. JP-7,	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:52 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/14. Public Version - Field Exhibits/JF-4 ME1 and GRE Inspectio	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:47 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/06. McGinn Rebuttal Testimony.pdf	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a
6/16/20 9:42 PM	/Flynn et al. - SPLP Rebuttal Testimony- Public/14. Field Rebuttal Testimony.pdf	View	f k You	fred@ksunoco.com		100.19.129.46	US, Philadelphia, Pennsylvania	sf65e441c0574477a

Attachment C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NO. C-2018-3006116
CAROLINE HUGHES and	:	
MELISSA HAINES	:	DOCKET NO. P-2018-3006117
Complainants	:	
v.	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

**FLYNN COMPLAINANTS' OBJECTIONS TO
SUNOCO'S FIRST REQUEST FOR ADMISSIONS
AND ANSWERS TO INTERROGATORIES**

I. General Background

This proceeding against Sunoco has challenged the company's ability to build and operate HVL pipelines that have the capability of wreaking havoc and causing the catastrophic loss of life and property throughout Pennsylvania. Sunoco's historic record in operating pipelines is one of the worst in its industry.

Sunoco's callous disregard for the environment and regular flouting of state and federal regulations, as shown by the incidents involving Raystown Lake, the Revolution Pipeline, and the leak in Morgantown, all support Complainants' allegations that the Company is not fit to build or operate the Mariner East pipelines or any other petroleum product pipelines.

The Flynn Complainants' most recent Amended Complaint alleges in great detail how Sunoco is in violation of its obligation to provide a public awareness program compliant with federal regulations. The Amended Complaint alleges that the siting of the Mariner East pipelines is

dangerously close to homes, businesses, and other facilities in high-consequence areas of Chester and Delaware Counties. The Amended Complaint also alleges that the condition of the existing circa 1930s 8-inch and 12-inch pipelines is questionable and must be investigated.

Nothing in the Amended Complaint or the evidentiary hearings or the direct testimony of Complainants' three expert witnesses involves or touches upon the question of whether or not the law firm Manko Gold endangers children.

II. Sunoco's Inappropriate Discovery Requests

On June 19, 2020, attorney Robert Fox sent an email to counsel and parties in this proceeding that contained the following text:

I wanted to bring to your attention a disturbing and inappropriate communication we received. As you know we distributed to all parties Sunoco's rebuttal testimony and exhibits. To ensure that people received and were able to access the documents, we checked the login information. One person logged in with a username and a fake email address both of which contained profanity directed at us and Sunoco. We assume that this was not done by counsel in the case or any of the pro se litigants, but rather someone this was forwarded to. We request that you immediately ask your clients or persons you forwarded the documents to whether they are the individual who directed this profanity and identify that individual to us. We intend to inform Judge Barnes of this incident.

Within *fifteen minutes* Flynn Counsel Michael Bomstein responded as follows:

My clients and I share your concern that such communications should not take place. I am not sure, however, that much can be done about it. Also, are you going to be asking Judge Barnes to do something? I don't know what she can do either but I have no objection to your reporting the incident to her.

Similar responses were subsequently sent to Mr. Fox, assuring him neither counsel nor clients had sent him such a communication. Fox then replied to Bomstein as follows:

Thank you. We are adversaries in this case but you always act with decorum and civility and I hope I do as well. There is no place for this. Let's figure out who it is and we will see what should or can be done about it.

The matter escalated, however, when attorney Fox expressly requested attorney Bomstein to speak with each of the Safety 7 clients and obtain an assurance from each that he or she was not involved. While Bomstein initially did not agree, he did so in the end, sending an email on June 22nd to Mr. Fox stating, “The last two have just confirmed they did not send the note.”

Flynn counsel believes that Mr. Fox received similar assurances from all attorneys and *pro se* parties in this matter. Notwithstanding said assurances, Mr. Fox is determined not to let the matter rest.

On June 29th, Diana Silva, an attorney in Mr. Fox’s law firm, served upon Flynn counsel a request for admissions together with interrogatories. A copy is attached hereto as Exhibit “A.” Because the discovery requested focused solely on the letter to Manko Gold, Bomstein promptly sent Ms. Silva the following email note:

These discovery requests are not even remotely relevant to the issue before Judge Barnes. On behalf of the Flynn Complainants, I've gone as far as I can to assure Rob that my clients had nothing to do with it, but that's that.

Unless you withdraw these requests immediately I intend to object and ask for sanctions. I think it's plain at this stage that your office intends to use this to bias the judge against complainants.

Upon receipt of this note that suggested the purpose of Manko Gold’s discovery was to influence the judge, Mr. Fox responded as follows:

As your email identifies, these discovery requests go directly to bias, credibility and motivation. Bias, credibility and motivation, especially of the parties, are always relevant. Therefore we will not withdraw the discovery requests.

I should also note that I am not questioning the representations you made to me. Rather, all parties have denied making these statements, yet someone obviously did, twice. If your clients did not do this they should have no difficulty attesting to that under oath.

(Emphasis added).

Of course, Mr. Fox's efforts to influence the ALJ are not remotely related to the bias, credibility or motivation of parties or witnesses in this proceeding. Fox's lack of objectivity was pointed out to him in the final email sent to him by Bomstein:

You write, "As your email identifies, these discovery requests go directly to bias, credibility and motivation."

That's not what the email says. Unfortunately, your personal stake in this little controversy has affected your judgment.

We will proceed accordingly.

As of the date of the instant filing, attorney Fox still has not furnished counsel with a copy of the log-in record that is the subject of this controversy.

III. Specific Objections

A. Requests for Admissions

Pursuant to 52 Pa. Code § 5.350, Complainants object to Sunoco's seven requests as follows:

1. Admit that on or after June 15, 2020 you received the ShareFile link via Email from SPLP's counsel that granted access to SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

Objection. This request seeks information that is non-discoverable because the request relates to matters entirely outside the scope of permissible discovery under the applicable rules of civil procedure and discovery is in every instance constrained by relevancy.

52 Pa. Code § 5.321(c) provides in pertinent part that "[s]ubject 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..." (Emphasis supplied). Thus, under § 5.321(c), the party seeking discovery must limit its inquiry to claims or defenses of the parties in the proceeding.

It goes without saying that a matter is relevant if it makes a fact in dispute more likely or less likely. It also is perfectly obvious that there are no claims or defenses in this proceeding that will be made more likely or less likely by the response to this request for admission.

Whether or not the Flynn complainants received the Manko Gold ShareFile link for Sunoco's rebuttal testimony and exhibit does not make it more or less likely that the company complied with its obligation to create a legally compliant public awareness plan. The receipt of the ShareFile link has nothing to do with Sunoco's construction and operation of the Mariner East pipelines obscenely close to homes, businesses and senior facilities in high consequence areas. The receipt of the ShareFile link does not make it more likely or less likely that persons next to a ruptured HVL pipeline are going to die and that Sunoco was fully aware of this fact but concealed it from the public.

It should also be clear that Sunoco would not be excused from compliance with the discovery rules if it were to argue that this particular request is merely "foundational." The area of inquiry relates to irrelevant matters; "foundational" questions such as this have only one purpose: to obtain information outside the proper scope of discovery.

As alleged by Sunoco's very experienced attorneys, the documents stored in Manko Gold's ShareFile systems are public. Flynn complainants are aware of no reason that this particular ShareFile link could not have been shared with persons who have no involvement whatsoever in the present case.

There are many persons across the Commonwealth who have followed this case closely and any one of them could be angry with Sunoco or its attorneys. It should be noted that the exercise of free speech is still protected in Pennsylvania. Pa. Const. Art. 1 § 7 provides *inter alia* that “[t]he free communication of thoughts and opinions is one of the invaluable rights of man, and **every citizen may freely speak, write and print on any subject**, being responsible for the abuse of that liberty.” (Emphasis added).

The content of the log-in record Mr. Fox accessed still has not been shared with counsel or the unrepresented parties. Notwithstanding his over-reaction to seeing the words he allegedly saw, Mr. Fox is a reputable member of the bar and Flynn complainants accept the possibility that the words would have offended others as well.

Nonetheless, the log-in information was an exercise of free speech. Sunoco’s counsel is now seeking to put a *pro se* intervenor and counsel for several parties to work responding to frivolous discovery requests meant to ferret out the identity of the person who wrote it. If it should turn out to be one of the parties in the case or someone associated with the broad-based opposition to the Mariner East project, Sunoco clearly hopes the result will be to tarnish the Safety 7 in the eyes of the ALJ and sway the outcome of the case, even if only by a small amount. Even if not, Sunoco will have achieved its secondary goal of harassing petitioners and intervenors and making this proceeding more expensive for them to sustain.

Sunoco’s inquiry has no place in this proceeding. For all of the above reasons, complainants’ objections should be sustained.

2. Admit that on or after June 15, 2020, you accessed the ShareFile link to view, download, or otherwise access SPLP’s Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

Objection: Complainants' Objection to RFA No. 1 above is hereby incorporated by reference thereto.

3. Admit that you used the First Name/Last Name "Fred [REDACTED] You" or the email address "[fred@\[REDACTED\]ksunoco.com](mailto:fred@[REDACTED]ksunoco.com)" to access the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

Objection: Complainants' Objection to RFA No. 1 above is hereby incorporated by reference thereto.

4. Admit that you used the First Name/Last Name "Mankogold Endangerschildren" or the email address "kaboom@milewideblastradius.com" to access the ShareFile link to view, download, or otherwise access SPLP's Rebuttal Testimony and Exhibits (public versions).

Admitted: _____ **Denied:** _____

Objection: Complainants' Objection to RFA No. 1 above is hereby incorporated by reference thereto.

5. Admit that on or after June 15, 2020, you forwarded the ShareFile link previously received via email from SPLP's counsel that granted access to SPLP's Rebuttal Testimony and Exhibits (public versions), to anyone.

Admitted: _____ **Denied:** _____

Objection: Complainants' objection to RFA No. 1 above is hereby incorporated by reference thereto.

6. Admit that your internet service provider is Verizon Fios.

Admitted: _____ **Denied:** _____

Objection: Complainants' Objection to RFA No. 1 above is hereby incorporated by reference thereto.

7. Admit that your internet protocol (“IP”) address is 100.19.129.46.

Admitted: _____ **Denied:** _____

Objection: Complainants’ Objection to RFA No. 1 above is hereby incorporated by reference thereto.

B. Answers to Interrogatories

1. If your answer to Request for Admission No. 2 is the affirmative, and you admitted that on or after June 15, 2020, you accessed the ShareFile link to view, download, or otherwise access SPLP’s Rebuttal Testimony and Exhibits (public versions), list the First Name, Last Name, and email address that you used to access the ShareFile link.

Answer: Complainants did not answer RFA No. 2 in the affirmative.

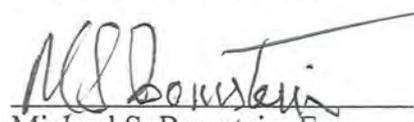
2. If your answer to Request for Admission No. 5 is in the affirmative, and you admitted that on or after June 15, 2020, you forwarded the ShareFile link previously received via email from SPLP’s counsel that granted access to SPLP’s Rebuttal Testimony and Exhibits (public versions), identify the person(s) to whom you forwarded the ShareFile link, including his or her First Name, Last Name, and email address.

Answer: Complainants did not answer RFA No.5 in the affirmative.

3. If your answer to Requests for Admission No. 3 or 4 were in the negative and you denied that you used the First Name/Last Name “F█k You,” the email address “fred@f█ksunoco.com,” the First Name/Last Name “Mankogold Endangerschildren,” or the email address “kaboom@milewideblastradius.com” to access the ShareFile link to view download, or otherwise access SPLP’s Rebuttal Testimony and Exhibits (public versions), identify whether you know the person(s) who used those names or email addresses, and if you do, identify that person(s).

Answer: Complainants did not answer RFA No.3 or RFA 4 in the negative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MS Bomstein", written over a horizontal line.

Michael S. Bomstein, Esq.

Pinnola & Bomstein

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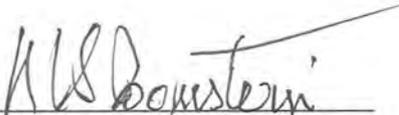
Tel.: (215) 592-8383

Dated: July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below as per the requirements of § 1.54 (relating to service by a party). The document also has been filed electronically on the Commission's electronic filing system.

See attached service list.



Michael S. Bomstein, Esq.

Dated: July 2, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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/s/ Whitney E. Snyder
Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire

Dated: July 10, 2020