Raiders Law

July 24, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Via electronic filing only

RE: Flynn et.al. v. Sunoco Pipeline L.P, C-2018-3006116 (consolidated)

Dear Secretary Chiavetta,

Please find the attached Answer to Sunoco Pipeline L.P.'s Motion to Compel filed today with the Public Utility Commission's electronic filing system. Thank you.

Sincerely,

/s/

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

MEGHAN FLYNN et al.	:	C-2018-3006116
	:	P-2018-2006117
MELISSA DIBERNARDINO	:	C-2018-3005025
REBECCA BRITTON	:	C-2019-3006898
LAURA OBENSKI	:	C-2019-3006905
ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:	C-2018-3003605
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.	:	

ANSWER TO SUNOCO PIPELINE's MOTION TO COMPEL UNTIMELY DISCOVERY

Pursuant to 52 Pa. Code §§ 5.342, Andover Homeowners' Association, Inc. ("Association") answers Sunoco Pipeline L.P.'s ("Sunoco") Motion to Compel Responses to Sunoco's untimely discovery requests, and avers in support thereof as follows:

1. Denied. Sunoco is attempted to harass the Association and its President long after the President testified in the 2019 lay hearings without bothering to engage in any discovery. Further, Sunoco is selectively harassing select litigants without bothering to conduct any real investigation into the alleged conduct for which it claims that some, but not others, of the parties may or may have not been involved in. Further, Sunoco engages in untimely discovery in a manner which the Association has no means to respond to allegedly simple discovery responses to which Sunoco already has, from a June 23, 2020 email to Robert Fox, Esq., knows the answers to. Bias and credibility may or may not be relevant, but Sunoco already had their chance to make that case when Mr. Friedman testified at the lay hearing. As Her Honor stated in denying the Flynn complaintants further discovery, quoting *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 trial by reasonable diligence, must not be cumulative or merely impeach credibility, and must be such as would likely compel a different result." *Flynn v. Sunoco Pipeline L.P.*, Order of May 28, 2020 at *3 (internal citations omitted). Sunoco cannot argue that it has not had the chance to attempt to smear the Association and its President in the lay hearings. Sunoco cannot now argue that any further attempt to muddy the waters about Mr. Friedman would be anything but cumulative, as it already argues that the Association and its President are "biased" against what Mr. Friedman testified is the operator most likely to suffer a leak event. There is no way that anything Mr. Friedman already acknowledged that he did not do will in any way change the result of this matter as to if Sunoco should be allowed to construct or operate a highly volatile hazardous liquids pipeline in extremely urbanized high consequence areas. Further, the Association would be biased in its utter inability to answer Sunoco's fishing expedition given that lay witnesses may not testify at trial and Mr. Friedman has already testified. Sunoco may not now use the discovery process to try to change reality. Sunoco incorporated the Association's position as Attachment "C", which the Association incorporates by reference as if fully recited herein. Strict proof that Sunoco has any right to any discovery required at trial.

2. Denied, as the Association has no way to deny or admit. Strict proof required at trial.
3. Denied, as the Association has no way to deny or admit. Further, Sunoco admits, though seems to not like, that the Association communicated to Sunoco that the Association nor its members were responsible for this conduct. Under Commission

rules, the Association refers Sunoco to the June 23, 2020 email to Robert Fox. Sunoco is entitled to nothing further. Any further fishing expedition, including the time wasted to respond to this Motion, is unduly burdensome and harasses the Association and its officers while potentially uncovering absolutely no discoverable evidence or any alleged bias that was not already apparent on the record. Further, Sunoco seeks discovery in a position where the Association would be fully unable to answer or further provide color. The Commission should not be burdened by Sunoco's unwillingness to accept the correct answer that the Association already told its lawyers that nobody from the Association was involved in this unfortunate event. Sunoco included the Association's objections in its Motion as Attachment "C", which the Association incorporates by reference into this Answer. Strict proof required at trial.

4. Denied. Her Honor identified the appropriate law, cited above, to prevent Sunoco from harassing the Association. This is not the first time that Sunoco has harassed the Association, as described Sunoco's Attachment "C". If Sunoco were so protective of its reputation, it would review its own media coverage and its conduct with the public and its land owners. Strict proof required at trial.
5. Denied. The information is utterly irrelevant and will lead to no discoverable evidence about Sunoco's industry-worst operations. Sunoco's only claim to relevance is "bias" which it had every opportunity to bring up at the lay hearings. Her Honor was very generous to Sunoco in allowing Sunoco to raise irrelevant issues concerning the Association's President's federal litigation into unrelated matters. However, as the Association has already provided Sunoco with everything it needs here, no further

discovery is warranted. In no way does Sunoco highlight how this late discovery might change the Commission's ultimate opinion and order. Naked and baseless "bias" accusations that do not address any of the allegations on the record are utterly irrelevant. Therefore, strict proof required at trial.

6. Denied. The caselaw does not cure Sunoco's ignoring that it already has the information it seeks. This filing is nothing more than Sunoco trying to drive up the Association's costs. Strict proof required at trial that the case law does not force a party which already provided the exact information when possible to do so again and again. Sunoco failed to allege any harm to itself or anyone at all, other than maybe someone at Manko Gold getting their feelings hurt because they could not properly manage a login system to restrict access to documents that may already be in the public domain or will be public in due course. The Association is not responsible for Sunoco's inability to pre-register for access to the public version of the docket when Sunoco could simply input the email addresses from the service list and only set up accounts for those addresses. The fact that Sunoco failed to take this simple step shows that Sunoco really is not concerned about this issue at all, but only uses this process to harass some, but not all, of the parties and intervenors it has chosen to impose this process upon. Strict proof required to show that any further discovery would lead to any evidence that Sunoco suffered any harm from any act required at trial.
7. Admitted in part and denied in part. Admitted that Sunoco used the lay hearing process to try to paint the complainants here, unwillingly hosting a highly volatile hazardous liquids pipeline on property in which they hold an equity interest as "biased". The

Association fails to see how additional mud being thrown upon complainants that this operator gives them no comfort in operating such a high stakes pipeline would change any result herein. Strict proof required at trial.

8. Denied. This witness has already testified, and the Commission has had ample opportunity to evaluate the witness. This Motion is nothing than an opportunity to offer nonexistent cumulative evidence to pile on to a weak "bias" argument. As Sunoco already knows that the Association was not involved, Sunoco only wastes Commission time and harasses the Association here. No facts are in dispute. Sunoco falsely tries to allege that there is some dispute here that the Association did not already tell Sunoco that its members did not troll Manko Gold's file distribution system. If Manko Gold was concerned about its system, it would have instituted better procedures to protect itself. For example, it should have, in advance, collected signup information from any potential subscriber rather than circulate links that were not validated with a potential subscriber list. It did not do so, instead subjecting itself to a loose link problem to which it tries to blame some, but not others, of the stakeholders in this process. Had Sunoco filed discovery on every party and intervenor, the Association might believe that Sunoco is actually interested in finding out who trolled its lawyers. But, with this selective enforcement after people it has already harassed, the Association cannot believe that Sunoco really wants to find out who trolled it. Further, Sunoco, by withdrawing request #7, admitted that it has no idea who operates the dynamic Internet Protocol address it alleges accessed its lawyer's system. Sunoco will never learn exactly where that interchange came from with any information available from any party. If Sunoco were

serious about this issue, it would have sought subpoenas from the owner of that Internet Protocol address to see where that address was assigned at the time of the alleged incident. It failed to even consider such a step, and thus has no credibility in this discovery effort. Strict proof required at trial.

9. Denied. The Association already told Sunoco that its Members were not involved. The Association has, time and time again, told Sunoco the correct answer. The only obligation the Association has is to refer Sunoco to where it can find the correct answer, which it has done in this Answer. Nothing more is due. Strict proof required at trial.
10. No answer is due to a legal conclusion.
11. No answer is due to a legal conclusion.
12. No answer is due to a legal conclusion.
13. No answer is due to a legal conclusion.
14. Denied. Sunoco already has the information it seeks. It is due nothing more. Strict proof required at trial.
15. Denied. That information is sufficient and answers Sunoco's questions that the Association was not involved. Nothing more is due. If Sunoco were so concerned about the "evasive responses" or "denials" from "all parties", then Sunoco would have sent this same discovery to every party, intervenor or other interested party. The fact that Sunoco failed to identify every party to which this information may be available is telling that Sunoco is not interested in the real answer. Sunoco further fails to aver that its people did not create this content on its server. For all the Association knows, maybe a Manko Gold employee or a lawyer working for Sunoco may have committed this

conduct. Further, the Association's answer was not "ambiguous". The email stated that the Association, including its members and agents, was not involved. Sunoco is entitled to nothing more. Strict proof required at trial.

16. Denied. Sunoco has a well-documented history of harassing the Association, which it continues to do so here. It is not "senseless", as the Commonwealth Court has, in the past, sanctioned Sunoco for this exact conduct. See, Attachment "C" of Sunoco's Motion. If Sunoco is concerned about who forwarded the link, it needs to seek discovery from every party. It has not. Therefore, selective allegations merit a harassment claim. Strict proof required at trial.

17. Denied. Sunoco cannot claim that it or its actors, agents or attorneys did not place this content on Manko Gold's server. We may never know, given that Sunoco has not narrowed down where this IP address was active at the date and time of the alleged conduct. Sunoco must do its own homework first before selective enforcement. Given that Verizon dynamically assigns IP addresses, and that Mr. Casey identified at least four (4) distinct locations from where this IP address may have been assigned, Sunoco must provide much more information before anyone can possibly answer any questions about that IP address. See, Exhibit to Sunoco's Motion to Compel from Thomas Casey. There is no actual way to answer a yes or no question when the answer may change every single time any number of devices may attach to the internet from anywhere within someone's network. Further, Sunoco claims that Verizon was the provider. Sunoco has not identified if that provider was a landline, wireless, or fiber optic connection that may have somehow connected to a FIOS connection with or without

the user's knowledge. Without that information, no party can possibly answer this poorly written request because nobody knows what IP address a tablet, phone, laptop or any other equipment may use from one minute to the next. The average person does not have the time, resources or funds to back trace a connection to which it has no access. Sunoco, through Manko Gold, has the only access to this connection, and must be the party responsible to identify where that connection was active at the time of the alleged conduct. Without that information, the Association is wholly unable to answer any questions about this alleged event. Strict proof of where this IP address was active at the time of the alleged event required at trial.

18. Denied. The Association rested in October 2019. The Association has no means to respond to anything that were to come out of this discovery request. Sunoco insisted in Her Honor ordering that lay witnesses complete their time at trial after the lay hearings. Now Sunoco wants to start over discovery against lay witnesses while offering no opportunity for any lay witness to respond. This is simply Sunoco trying to bias the proceedings in its favor. If the Commission wants any lay witness to respond to this harassment, then the Association requests that each harassed party, intervenor or agent or member of such person or entity be given ample time at the time of hearing to respond to Sunoco's harassment. Otherwise, the Commission prejudices these witnesses. Further, the Association seeks leave to propound discovery upon Sunoco, Manko Gold, every lawyer or support staff involved in this matter, and any other person who may have accessed or sabotaged Manko Gold's inadequately designed data distribution system. This discovery could show that Sunoco, or someone acting on

Sunoco's behalf, may have caused the alleged incident. Please note that nowhere does Sunoco admit or deny that it or an actor on its behalf did not self-sabotage on this system for its own purposes. Strict proof required at hearing.

19. Denied. This request is well outside any direct or rebuttal case. There is a procedural prohibition on pursuing harassment and cumulative discovery, as outlined above. Sunoco violates those prohibitions here, offering to collect evidence that in no way would become relevant evidence of anything concerning pipeline operations. Strict proof that this harassment would lead to any relevant evidence about Sunoco's pipeline operations required at trial.
20. Admitted. Further admitted that, because Sunoco withdraws this request, that it undoes the justification for the entire discovery request. Sunoco here admits that it has no idea how the internet works and cannot justify harassing select parties.

WHEREFORE, Andover Homeowner's Association, Inc. requests that the Public Utility Commission deny Sunoco's request to compel this selective discovery request. In the alternate, the Association would then request that, if Sunoco is permitted to pursue this frivolous action, that the Association be granted leave to propound discovery upon Sunoco, its aligned parties, the attorneys for each defendant and defendant aligned party, and anyone involved in the Manko Gold data system, to determine if Sunoco is actually responsible for this alleged conduct.

Respectfully submitted,

/s/

Date: July 24, 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 shown in the attached service list, in accordance with the requirements of Rule 1.54 regarding to service by a party.

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