**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**

**Granting** **Sunoco Pipeline, L.P.’s Motion for Enforcement of Omnibus Order and Denying Sunoco Pipeline, L.P.’s Motions to Compel Responses to First Admissions and Interrogatories**

Sunoco Pipeline, L.P.’s Motion for Enforcement of Omnibus Order

On July 1, 2020, Sunoco Pipeline, L.P. (SPLP) filed a Motion for Enforcement of Omnibus Order requesting enforcement of the February 11, 2020 Order Granting Sunoco Pipeline L.P.’s Omnibus Motion (Omnibus Order). Specifically, SPLP requests a ruling that it need not respond to an informal e-mailed letter requesting various forms of relief sent by counsel for Andover Homeowners Association Inc. (Andover) to the presiding officer on June 30, 2020. No response to this Motion for Enforcement of Omnibus Order was filed.

Disposition

I agree with SPLP that the Commission’s regulations specify procedures to obtain various types of relief including what type of relief may be available and how and when it can be obtained. Andover must follow these procedures, which do not include informal emailed correspondence, essentially requesting sanctions and attorney’s fees. Accordingly, SPLP’s Motion will be granted. SPLP is under no duty to respond to the June 30, 2020 email.

Sunoco Pipeline, L.P.’s Motions to Compel Responses to First Request for Admissions and Interrogatories

On July 10, 2020, SPLP filed a Motion to Compel the Flynn Complainants to Respond to First Request for Admissions and Interrogatories. On July 20, 2020, SPLP filed a very similar Motion to Compel Andover to Respond to First Request for Admissions and Interrogatories. Also on July 20, 2020 SPLP filed a similar Motion to Compel Thomas Casey to Respond to First Request for Admissions and Interrogatories. On July 13, 2020, the Flynn Complainants filed a response. On July 27, 2020, Andover and Mr. Casey respectively filed Answers. These Motions To Compel are ripe for a decision.

The Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.321 permit a broad scope of discovery:

(c) Scope. Subject to this subchapter, **a party may obtain discovery regarding any mater, 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 is reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). (Emphasis added).

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).

The requests for admission and interrogatories still in dispute in each of the Motions to Compel consist of the following.

**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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**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).

Sunoco Pipeline, L.P.’s Position

SPLP claims it is seeking relevant information as to witness bias, credibility, and motivation and compliance with the decorum required in litigating cases before this Commission. SPLP argues responses and admissions will show who has made harassing and/or defamatory statements against SPLP and its counsel that show bias against SPLP or its representatives of SPLP’s positions in this case when that person obtained copies of SPLP’s testimony. Bias and credibility are issues that can be probed in Commission proceedings and in legal proceedings generally. SPLP withdraws admission number 7 (pertaining to internet protocol address). SPLP claims discovery is not yet closed in this proceeding. Regardless of whether the individuals served with the interrogatories/admissions have already testified, an admission can still be admitted into the record in this proceeding. Thus, the requests for admissions/interrogatories are timely.

Flynn Complainants’ Position

The Flynn Complainants contend that SPLP unfairly targets them for admissions when the documents stored in a Share file were on a public domain. As such, unknown individuals not parties to the case could have accessed the files. Flynn Complainants contend that the questions/admissions seek to show the Flynn Complainants are not credible and are biased towards SPLP. However, not only are these questions/admissions beyond the scope of the proceeding, all of the Complainants have already testified and have been cross examined by SPLP. They will not take the witness stand again and will have no opportunity to refute any allegation of bias regarding the credibility of their prior testimony. No misconduct occurred during the October hearings and it is inappropriate to be alleging a misconduct occurring outside the hearing room now. Flynn Complainants contend that informally no one admitted to the complained of conduct.

Andover Homeowners’ Association’s Position

Andover responded to the Motion to Compel formally on July 27, 2020. Andover claims discovery is closed, that its lay witness (Eric Friedman) has already testified, and that the questions are too vague to answer regarding question 7 (identification of an internet protocol address) or are designed to harass its members and raise the cost of their litigation with irrelevant admissions and interrogatories. Andover represents that none of its members were involved in the conduct complained of. Andover questions whether an individual tied to Sunoco submitted the fake email address and name in order to cast a negative light upon Complainants. Andover claims this is a fishing expedition and therefore, its objections should be sustained and SPLP’s Motion should be denied.

Intervenor Tom Casey’s Position

Mr. Casey avers that he had not yet accessed any of the shared files and denies that the questions/admissions are relevant to the proceedings. Mr. Casey argues SPLP is unfairly targeting him as he is a pro se intervenor in this matter and has made some public statements in social media. Mr. Casey views the Motion to Compel as harassing and intended to intimidate a pro se litigant.

Disposition

I agree with SPLP that the deadline for discovery is not yet closed in this proceeding. If there were a deadline issued through a procedural order, then that would be the case. However, as is common in many Commission proceedings, unless a deadline for discovery is directed by the presiding officer, discovery requests may be made until the hearing.

I also agree that credibility and bias may be an issue in a proceeding. However, these specific questions/admissions relating to whether an individual complainant or witnesses/members of a homeowners’ association complainant or someone they knew entered a profanity into the name box and an insulting email address into another field are irrelevant to the claims of the Complainants and Respondent’s defense in the instant case.

These questions/admissions go beyond the scope of the issues before the Commission and are not reasonably calculated to lead to admissible evidence as is required by Section 5.321(c). See also 66 Pa. C.S. § 333(b). Such questions are beyond the scope of permissible discovery. Fishing expeditions are prohibited. See e.g. Land v. State Farm Mutual Ins. Co., 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991). Andover has already presented its only witness, and Andover represents that neither President Eric Friedman nor any of Andover’s members were involved in the conduct in question. Mr. Casey avers that he has not accessed the shared files. The Flynn Complainants have informally denied any such conduct. SPLP admittedly does not know who wrote these words, which it alleges constitute defamation and harassment. The Commission is not a trial court designed to evaluate such claims. The questions/admissions have no relevance to a claim or defense in the instant matter, and they are not reasonably calculated to lead to admissible evidence.

Finally, I recognize that this has been a tenuous circumstance for the parties and request that the parties redouble their efforts to work in a collegial fashion for the remainder of this proceeding. Professional courtesy is a form of mutual respect among lawyers in the same line of work. Civility is formal politeness and courtesy in behavior or speech. Professional courtesy and civility are to be shown at all times during the course of this proceeding by the parties and their counsel toward each other.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s Motion for Enforcement of Omnibus Order is granted.
2. That Sunoco Pipeline, L.P. need not respond to the June 30, 2020 email correspondence from Andover Homeowners’ Association.
3. That Sunoco Pipeline, L.P.’s Motion to Compel Andover’s Responses to First Admissions and Interrogatories is denied.
4. That the objections of Andover Homeowners’ Association to Sunoco Pipeline, L.P.’s First Admissions and Interrogatories are sustained.
5. That Sunoco Pipeline, L.P.’s Motion to Compel Tom Casey’s Responses to First Admissions and Interrogatories is denied.
6. That the objections of Intervenor Tom Casey to Sunoco Pipeline, L.P.’s First Admissions and Interrogatories are sustained.
7. That Sunoco Pipeline, L.P.’s Motion to Compel Flynn Complainants’ Responses to First Admissions and Interrogatories is denied.
8. That the objections of Flynn Complainants to Sunoco Pipeline, L.P.’s First Admissions and Interrogatories are sustained.

Date: August 17, 2020 \_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elizabeth H. 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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