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March 12, 2018

VIA ELECTRONIC FILING

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

Re: West Goshen Township and Concerned Citizens of West Goshen Township v.
Sunoco Pipeline L.P.; Docket No. C-2017-2589346; **PETITION OF SUNOCO
PIPELINE, L.P. FOR CERTIFICATION OF A DISCOVERY RULING FOR
INTERLOCUTORY REVIEW**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission in the above-referenced matter is Sunoco Pipeline L.P.'s Petition for Certification of a Discovery Ruling for Interlocutory Review. Copies of the Petition have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

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

TJS/WES/jld
Enclosure

cc: Honorable Elizabeth H. Barnes (via email and first-class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township,

Complainant,

v.

Sunoco Pipeline, L.P.,

Respondent.

Docket No. C-2017-2589346

**PETITION OF SUNOCO PIPELINE, L.P.
FOR CERTIFICATION
OF A DISCOVERY RULING FOR INTERLOCUTORY REVIEW**

Pursuant to 52 Pa. Code § 5.304, Sunoco Pipeline, L.P. (SPLP) petitions Administrative Law Judge Elizabeth Barnes for certification of the material question addressed in the ALJ's Order Denying Motion to Compel Responses to Sunoco Pipeline, L.P.'s Second Set of Discovery Requests, dated March 8, 2018 (Order). In support thereof, SPLP states as follows:

QUESTION PRESENTED

Whether 52 Pa. Code § 5.324 is a broad limitation of discovery of expert witness testimony, precluding full discovery of expert witness credentials, materials relied upon, prior testimony, publications, and facts known and opinions held.

In the Order, the ALJ ruled that SPLP's interrogatories to West Goshen Township (WGT) pertaining to the identification of all documents the expert relied upon in reaching conclusions in the testimony (including workpapers), all documents considered but not relied upon, identification of individuals that assisted in production of testimony, identification of prior testimony and publications of the witness, production of the materials identified to the extent they are not already in SPLP's possession, and interrogatories regarding facts known and opinions held (SPLP Discovery Questions) exceed the scope of expert discovery set forth in 52 Pa. Code § 5.324. Order at 4.

SPLP respectfully disagrees with the Order and requests that the ALJ certify this issue to the Commission to address important questions of law and policy, prevent substantial prejudice to SPLP, expedite the conduct of this proceeding, and ensure discovery practice before the Commission is not unduly narrowed, which would impinge on the ability of not just SPLP, but also statutory parties such as the Office of Consumer Advocate, Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement who participate in almost every rate, default service provider, and application case, to obtain the information necessary to ensure robust review of the complex and technical issues in Commission complaint proceedings. 52 Pa. Code § 5.324 does not serve to narrow or limit the scope of allowable discovery as to the credentials or conclusions of an expert and interpreting it as a limitation is a radical departure from Commission practice. Instead, expert witnesses are subject to the same scope of discovery applicable to Commission proceedings – “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 . . . documents. . .” *Id.* § 5.321(a). These regulations must be “liberally construed to ensure the just, speedy and inexpensive determination of every action or proceeding.” *Id.* § 1.2(a).

The only applicable limitations to such discovery are set forth by 52 Pa. Code § 5.361(a), which prevents discovery of privileged material, made in bad faith, requires unreasonable investigation or is oppressive. The Order makes no such finding here. Instead, the Order interprets 52 Pa. Code § 5.324 to broadly limit the scope of discovery to prohibit discovery of expert credentials and conclusions, reasoning these issues can be addressed on cross-examination. However, such an interpretation is a radical change from Commission practice and infringes on SPLP's ability to conduct constitutionally guaranteed cross-examination.¹ Moreover, the Commission is not bound by the Pennsylvania Rules of Civil Procedure or interpretations thereof that do not take into account the

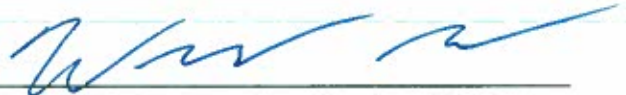
¹ See *Pa PUC v. Breezewood Telephone Co.*, Docket No. R-901666, Slip Op. at 80 (Order entered Feb. 14, 1991) (“Our discovery rules make it clear that the facts and opinions held by an expert are discoverable to the extent that the discovery does not include the disclosure of mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits.”); *Pa PUC v. Pa Gas & Water Co.*, 68 Pa. P.U.C. 191 (Sept. 29, 1988) (“[W]e are constrained to note that the Company is entitled to discovery and cross-examination of *all facts* upon which the expert opinion is based.”)(emphasis added).

Commission's duty to facilitate the public interest, which calls for a thorough and more broad discovery policy. *See, e.g., Pa. P.U.C. v. Harold Williams*, 53 Pa. P.U.C. 552, 554 (Sept. 24, 1979) ("the Commission is not bound by the Rules of Civil Procedure and cases interpreting the Rules[.]").

The Order implicates important questions of policy because it strips away the discovery process critical to Commission proceedings resolving complex and technical issues, where, as here, SPLP's Discovery Questions are standard in Commission practice.² That SPLP is entitled to cross-examine the witness disregards the purpose of Commission discovery rules and hampers SPLP's ability to challenge witness credibility on cross-examination.³ This limitation on expert discovery chills due process rights and the ability to gather expert discovery, resulting in more hearing time for cross-examination. Given the important questions of law and policy the Order implicates, interlocutory review is necessary to prevent a sea change in Commission practice and substantial prejudice to SPLP that cannot be cured during the ordinary course of Commission review.

WHEREFORE, SPLP respectfully requests that this Petition for Certification be granted.

Respectfully submitted,



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DATED: March 12, 2018

Attorneys for Sunoco Pipeline L.P.

² This fact was illustrated by Exhibit C to SPLP's Motion to Compel, which contained a few examples among thousands of discovery requests lodged to experts in various Commission proceedings, including requests made by the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement.

³ For example, disallowing discovery of prior expert testimony and submissions substantially affects SPLP's ability to identify and address inconsistencies in testimony given before the Commission.

CERTIFICATE OF SERVICE

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

This document has been filed electronically on the Commission's electronic filing system.

VIA EMAIL AND FIRST-CLASS MAIL

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