**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn : C-2018-3006116

Rosemary Fuller :

Michael Walsh : P-2018-3006117

Nancy Harkins :

Gerald McMullen :

Caroline Hughes and :

Melissa Haines :

:

Melissa DiBernardino : C-2018-3005025

:

Rebecca Britton : C-2019-3006898

:

Laura Obenski : C-2019-3006905

:

Andover Homeowners Association : C-2018-3003605

:

v. :

:

:

Sunoco Pipeline, L.P. :

**ORDER GRANTING IN PART AND DENYING IN PART ANDOVER HOMEOWNERS’ ASSOCIATION, INC.’S AMENDED MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND DOCUMENT REQUEST SET 1**

On October 11, 2019, Andover Homeowners’ Association (Andover) filed a Motion to Compel and on October 16, 2019, Andover filed an Amended Motion to Compel. On November 6, 2019, Sunoco Pipeline, L.P. (Sunoco, SPLP, or Respondent) filed an Answer. The Amended Motion to Compel is ripe for a decision.

I am disregarding the procedural defect of Andover’s attempt to file duplicative motions one day late on October 11, 2019, then an amended motion on October 16, 2019, pursuant to 52 Pa. Code §§ 5.342(g) and 5.349(d). On October 21, 2019, I consolidated the Andover Complaint with the Flynn *et al* complaint proceeding at Docket No. C-2018-3006116. Sunoco argues it served objections on September 30, 2019, and pursuant to Section 5.342(g), Andover’s Motion to Compel was due October 10, 2019, yet Andover filed a Motion to Strike and Answer to Sunoco Objections to Interrogatories and a Motion to Quash and Answer to Sunoco Objections to Interrogatories, which I am treating as a Motion to Compel on October 11, 2019. Then, on October 16, 2019, Andover filed an Amended Motion to Compel. Sunoco argues the filings are untimely and should not be considered.

Conversely, Complainant Andover argues the procedural rules allow for liberal discovery of non-privileged matter reasonably designed to address matters reasonably anticipated from the face of the complaint. *George v. Shirra*, 814 A.2d 202, 2014 (Pa. Super. 2002). Andover argues Sunoco’s objections were not signed as required by 52 Pa. Code § 5.342(c)(4) and are invalid and waived. Andover requests consideration of its Amended Motion to Compel filed on October 16, 2019.

The Commission’s regulations grant the presiding officer “all necessary authority to control the receipt of evidence.” 52 Pa.Code § 5.403(a). The Commission’s regulations also allow Presiding Officers the authority to “regulate the course of the proceeding.” 52 Pa.Code § 5.483(a). Liberal construction is allowed to “secure the just, speedy and inexpensive determination of every action or proceeding” and the “presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” 52 Pa.Code § 1.2(a); see also, 52 Pa.Code § 1.2(c) (“presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.”). I will consider the objections of Sunoco and the Amended Motion to Compel of Andover. Sunoco’s substantive rights are not violated if I consider these. As an Amended Motion to Compel was filed, I will only address that Motion.

Standard And Evidence

The Commission’s rules provide that “parties are encouraged to exchange information on an informal basis.” 52 Pa. Code § 5.322. The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

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

52 Pa. Code § 5.321(c). 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).

Andover Complainants’ Set 1, Nos. 1-8, 127-128

Andover Complainants’ Set 1, No. 1 provides:

Identify each person from whom you expect to submit fact or lay written testimony and/or who you expect to call as a fact or lay witness at hearing.

Complainant Set 1 No. 2 states:

For each person identified in response to paragraph 1, state the subject matter on which you expect each person to testify.

Complainant Set 1 No. 3 states:

For each person identified in response to paragraph 1, state the substance of the facts and opinions on which you expect the person to testify and a summary of the grounds for all such testimony.

Complainant Set 1 No. 4 states:

For each person identified in response to paragraph 1, identify:

1. all documents or communications relied upon in preparing the testimony;
2. all persons other than counsel of record, who directly or indirectly participated in the preparation, drafting, review or approval of the testimony;
3. all texts, article, reports, theses, other publications, and any other witness testimony or statement offered by this person in any state or federal judicial or administrative proceeding related to pipelines.

Complainant Set 1 No. 5 states:

Identify each person from whom you expect to submit expert written testimony and/or call as an expert witness at hearing.

Complainant Set 1 No. 6 states:

For each person identified in response to paragraph 5, state the subject matter on which the expert is expected to testify.

Complainant Set 1 No. 7 states:

For each person identified in response to paragraph 5, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Complainant Set 1 No. 8 states:

For each person identified in response to paragraph 5, identify:

a. all documents or communications relied upon in preparing that person's testimony or expert report;

b. all persons other than counsel of record, who directly or indirectly participated in the preparation, drafting, review or approval of the testimony or expert report;

c. all texts, article, reports, theses, other publications, and any other witness testimony or statement offered by that person in any state or federal judicial or administrative proceeding related to pipelines.

Andover Complainant Set 1 Nos. 127-128 state:

Identify and describe any other areas along ME2 and ME2X that you replaced portions of the pipeline, and the reasons, dates, and locations for such replacement.

Identify and describe all investigations made by you in response to any and all claims regarding falsified inspection reports related to welds along ME2 and/or ME2X.

Sunoco contends these above questions seek information already provided in a prehearing memorandum and are overbroad seeking all documents relating to or referring to all communications the witnesses relied upon for his/her testimony and any document the witness has authored relating to pipelines. Sunoco argues a witness may have reviewed hundreds of thousands of documents over the course of their employment with Sunoco on which their testimony would be based. Sunoco should not be required to produce a list of all documents relied upon prior to the deadline of pre-filed testimony of Sunoco’s experts. The overly broad request should be denied as unduly burdensome and untimely.

Regarding Questions 127-128, SPLP objects to these requests on the grounds they are not reasonably tailored to lead to the discovery of relevant evidence and are unduly burdensome and overbroad. Taken literally these requests could pertain to hundreds of thousands of documents. This request is a fishing expedition and is not reasonably tailored to discover admissible evidence. SPLP further objects to these requests as seeking information beyond what is allowable under the privilege for litigation preparation. The Commission's regulations broadly exempt privileged materials and documents from discovery. 52 Pa. Code §§ 5.321(c) and 5.323(a); *see also* 52 Pa. Code § 5.361(a)(3) (prohibiting discovery which relates to a matter which is privileged).

Conversely, Andover argues that Sunoco failed to aver that it operates the Mariner East system on a dedicated, isolated control system away from other pipelines it operates in Pennsylvania and elsewhere. Its practices in operating pipelines, as applied to Mariner East and other similarly situated pipelines, is wholly relevant to evaluate if Sunoco is operating this pipeline in compliance with applicable law. Sunoco could offer as a defense to a defect in its Mariner East system “we run all of our pipelines this way”, which would, at that point, make the operation of any and all similarly operated pipelines throughout Sunoco’s or Energy Transfer’s system relevant. Andover seeks to discover here if its allegations of inadequate service and operations are isolated to Mariner East or are endemic to additional Sunoco or Mariner East assets.

Disposition

Discovery “may not include the disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.” 52 Pa. Code § 3.323(a). The Pennsylvania Supreme Court has held:

As has been observed, the work product protection supports our judicial system, based on the adversarial process by allowing counsel privacy to develop ideas, test theories, and explore strategies in support of the client’s interest, without fear that the documents in which the ideas, theories and strategies are written will be revealed to the opposing counsel. Allowing counsel to document legal theories without concern of disclosure encourages better representation of clients, which in turn benefits justice.

*Barrick v. Holy Spirit Hosp. of the Sisters of Christian Charity,* 625 Pa. 301, 312-13, 91 A.3d 680, 686 (2014).

Requests for legal theories and conclusions are not allowed. *See, e.g.*, *City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Cmwlth. 1971) ("’Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.’") (quoting *American Car & Foundry Company v. Alexandria Water Company*, 70 A. 867, 869 (Pa. Super. 1908)).

I agree that some of the information sought appears reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories above seek information regarding witnesses Sunoco intends to call, and the information sought such as documents relied upon in the preparation of testimony is relevant. However, I agree with Sunoco that the scopes of Questions 4 and 8 are unduly burdensome and premature as Sunoco’s witnesses’ testimonies have not yet been served. Questions 4 and 8 request information in advance of testimony being filed, which is impermissible as it likely pertains to drafts or work product that is not producible under 52 Pa. Code §§ 5.321(c) and 5.323(a). However, any document authored by the proposed witness could be identified now. The Company may label the response “Confidential,” if appropriate, and if appropriately labeled, it will be kept confidential pursuant to the Amended Protective Order.

Regarding Questions 127-128, the information sought appears to be overly broad and unduly burdensome. The scope of the question shall be tailored as the questions apply to Chester and Delaware Counties. That will lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories above seek information regarding practices in operating pipelines, as applied to Mariner East project within Chester and Delaware Counties is wholly relevant to evaluate if Sunoco is operating this pipeline in compliance with applicable law. The Company may label the response “Confidential,” if appropriate, and if appropriately labeled, it will be kept confidential pursuant to the Amended Protective Order.

Interrogatories Nos. 9-73

9. Identify and describe all actions taken by you or on your behalf to assess the condition, adequacy, efficiency, public safety risk, and reasonableness of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

10. Identify and describe all actions taken by you or on your behalf to assess the integrity of the ME1 pipe, including without limitation, the welds and seams thereon, in and around Delaware and Chester Counties, Pennsylvania.

11. Identify and describe with specificity the materials that ME1, ME2, ME2X and Point Breeze-Montello are made of in and around Delaware and Chester Counties, Pennsylvania.

12. Identify and describe the pipe wall thickness of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

13. Identify and describe the depth of cover over ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

14. Identify and describe all locations in or around Delaware and Chester Counties, Pennsylvania where the depth of cover over ME1 is less than 48 inches.

15 Identify and describe all locations in or around Delaware and Chester Counties, Pennsylvania where the depth of cover over Point Breeze-Montello is less than 48 inches.

16. Identify and describe the distance (or proposed distance) between each of ME1, ME2, ME2X or Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, noting with specificity all locations where the distance between any two of these pipelines is equal to or less than ten (10) feet.

17. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello to any United States or Pennsylvania numbered highways in and around Delaware and Chester Counties, Pennsylvania, specifically where such distance is less than one (1) mile from any pipeline in or anticipated to become in NGL service.

18. Identify and describe all locations where the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello is less than 2,000 feet from private dwellings in and around Delaware and Chester Counties, Pennsylvania.

19. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each school, public or private, located in and around Delaware and Chester Counties, Pennsylvania, where such distance is less than one (1) mile from any pipeline in NGL service or anticipated to be placed into NGL service. Identify the school district in which each public school belongs, and any affiliation of each private school within the one (1) mile radius.

20. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each daycare, hospital, senior living facility, nursing home, or rehabilitative care facility in and around Delaware or Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any Sunoco pipeline in or proposed to be placed in NGL service.

21. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from each mall or shopping center located in and around Delaware and Chester Counties, where such facilities are within one (1) mile of any Sunoco pipeline in or proposed to be placed in NGL service.

22. Identify and describe the distance (or proposed distance) of ME1, ME2, ME2X and Point Breeze-Montello from places of public assembly, including without limitation playgrounds, recreation areas, theaters, public libraries and houses of worship in and around Delaware and Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any subject pipeline of NGL service.

23. Identify and describe the distance (or proposed distance) of ME1, ME2 and ME2X from all public water supply wells and reservoirs in Delaware and Chester Counties, Pennsylvania, where such facilities are within one (1) mile of any subject pipeline in NGL service.

24. Identify and describe the types of welded seams on ME1 (e.g., oxygen-acetylene welding, electric resistance welded seams) in and around Delaware and Chester Counties, Pennsylvania.

25. Identify and describe any and all inspections or testing of the welded seams on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, hydrostatic testing, pig pipeline testing, strain gauges, and radiographic inspections. Please include all testing performed within the last five (5) years from the date of service of this document.

26. Identify and describe the findings of any and all inspections or testing of the welded seams on ME1 and Point Breeze-Montello in and around Delaware or Chester Counties, Pennsylvania in the last five (5) years.

27. Identify and describe the investigations, tests, repairs, replacements and changes made by you or on your behalf related to the flow reversal or product change in ME1 or Point Breeze-Montello.

28. Identify and describe all investigations made by you or on your behalf into the leak detection and monitoring systems related to the flow reversal and product change in ME1 and Point Breeze-Montello.

29. Identify and describe all investigations made by you or on your behalf to determine whether the hazardous liquids proposed or presently being transported in ME1 or Point Breeze-Montello are compatible with the materials of which ME1 and Point Breeze-Montello are made.

30. Identify and describe all in-line inspections of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties in the last five (5) years.

31. Identify all welders who worked on ME1, ME2, ME2X, and the Point Breeze-Montello pipeline in the last five (5) years in and around Delaware and Chester Counties, Pennsylvania.

32. Identify and describe all training and tests administered to welders who worked on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

33. Identify and describe all Operational Qualification certifications required pursuant to 49 CFR part 195 Subpart G held by all welders who worked on ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

34. Identify and describe all work on ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania where any worker required to hold OQ qualifications did not hold such qualifications at the time such worker performed work on any part of ME2 or ME2X.

35. Identify and describe your emergency response plans, practices and procedures in and around Delaware and Chester Counties, Pennsylvania.

36. Identify and describe all relevant portions of your 49 CFR part 195 Manual that address compliance with 49 CFR § 195.440 that have been in effect for any NGL service for the last five (5) years within the United States. Please include all prior versions that have been superseded by newer versions of your 49 CFR part 195 Manual.

37. Identify and describe all changes to any relevant portions of your 49 CFR part 195 Manual that address compliance with 49 CFR § 195.440 that have been in effect for any NGL service within the last five (5) years in effect anywhere within the United States.

38. Identify and describe how you intend to coordinate with fire, police, the Pennsylvania Emergency Management Agency, PHMSA, and other federal and state agencies in responding to a release (with or without ignition) of highly volatile liquids from ME1, ME2, ME2X or Point Breeze-Montello within and around Delaware and Chester Counties, Pennsylvania.

39. Identify and describe all geophysical studies conducted by you or on your behalf (including without limitation electrical resistivity, gravity, microgravity surveys, multi-channel analysis of surface waves and other seismic methods) at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation the dates, locations and methods for all such studies.

40. Identify and describe all geotechnical studies conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations and methods for all such studies.

41. Identify and describe all geological bores undertaken by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies concerning ME1, ME2, ME2X or Point Breeze-Montello.

42. Identify and describe the results all geophysical studies, geotechnical studies and geologic bores conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

43. Identify and describe all hydrological studies conducted by you or on your behalf at and around ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, including without limitation, the dates, locations, and methods for all such studies.

44. Identify and describe the results of all hydrological studies conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

45. Identify and describe any and all karst geology identification, testing and sampling conducted by you or on your behalf in Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

46. Identify and describe the results of all karst geology identification, testing, and sampling conducted by you or on your behalf in and around West Whiteland Township, including without limitation, the dates, locations, and methods for all such studies.

47. Identify and describe any and all metamorphic or igneous geology identification, testing and sampling conducted by you or on your behalf in Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

48. Identify and describe the results of all igneous or metamorphic geology identification, testing, and sampling conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania, including without limitation, the dates, locations, and methods for all such studies.

49. Identify and describe all precautions taken by you concerning karst, igneous or metamorphic rock encountered or anticipated to be encountered during ME2 and ME2X construction in Delaware and Chester Counties, Pennsylvania during all phases of design, engineering, construction or permitting.

50. Identify and describe all groundwater in the right-of-way for the Mariner East Project in Delaware and Chester Counties, including but not limited to flow and infiltration paths and patterns, the water table, the aquifer system(s), and soil and/or geologic characteristics.

51. Identify and describe each and every fracture trace analysis conducted in or around Delaware and Chester Counties, Pennsylvania.

52. Identify and describe each and every instance where you or someone on your behalf identified an anomaly, or "soft zone" from geophysical, geotechnical testing, or geologic borings in Delaware or Chester Counties, Pennsylvania.

53. Identify and describe all collocated utilities in the existing Mariner East project right-of-way in Delaware and Chester Counties, Pennsylvania.

54. Identify and describe all areas in which you do not propose to collocate ME2 and ME2X with the existing right-of-way for ME1 in Delaware and Chester Counties, Pennsylvania.

55. What are the Maximum Allowable Operating Pressures (“MAOP”) for ME1, ME2, ME2X and Point Breeze-Montello? Please identify any changes in MAOP for any segment of each line in the last five (5) years, and the reason for such a change in MAOP.

56. Identify and describe your public awareness program for ME1, ME2, ME2X and Point Breeze-Montello.

57. Identify and describe any differences in your NGL public awareness programs across the United States where any aspects of your public awareness program in place for ME1, ME2, ME2X and Point Breeze-Montello differs from other locations where you offer NGL transportation services in the United States.

58. Identify and describe all portions of your 49 CFR part 195 Manual that document your public awareness program.

59. Identify and describe all actions taken by you to warn and protect the public from danger associated with ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

60. Identify and describe all actions taken by you to reduce the hazards to employees, customers, residents and other persons related to ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

61. Identify and describe how you would contact residents within one (1) mile of ME1, ME2, ME2X and/or Point Breeze-Montello of an ongoing release of NGLs. Specifically, describe how such contact would not create a spark or other energy release that could ignite a vapor cloud.

62. Identify and describe the buoyancy properties of each material potentially transported in ME1, ME2, ME2X and/or Point Breeze-Montello in a boiling liquid to vapor cloud transition likely to occur in Delaware or Chester Counties.

63. Identify and describe the differences in public awareness and emergency response plans required to react to a release of ethane, propane, butane, gasoline, diesel fuel and other liquid products potentially transported by you in Pennsylvania.

64. Identify and describe each risk assessment performed by you in the United States and Canada in the last ten (10) years related to NGLs.

65. Identify and describe any modifications to any emergency response or public awareness programs based on the buoyancy of any material transported by you via pipeline.

66. Describe and identify how a first responder or the public would know what product(s) are being transported during a release from any NGL pipeline or pipeline(s) from each of ME1, ME2, ME2X or Point Breeze-Montello.

67. Identify and describe the differences in how the public should react to a NGL leak based on the composition of the contents of a leaking pipeline, including but not limited to differentiation between ethane response and butane response, liquid and NGL response, and other differentiations that could require the public or first responders to take different action in response to a leak on your pipelines in Delaware and Chester Counties, Pennsylvania.

68. Identify and describe the risks of you, a first responder, the government or the public making telephone calls to residences, travelers, occupants or the general public within one (1) mile of the site of an NGL leak.

69. Identify and describe the risks of you, a first responder, the government or the public operating electrical devices within a vapor cloud to residences, travelers, occupants or the general public within one (1) mile of the site of an NGL leak. Include, but not limit, your response to electric garage door openers, electric security systems, electric fences of any type, transformers, emergency generators, and other electric, electronic or mechanical spark-generating devices likely to be located within one (1) mile of ME1, ME2, ME2X or Point Breeze-Montello.

70. Identify and describe the minimum standards for distance of NGL valve sites from known or suspected sources of ignition, including but not limited to highways, restaurant kitchens, residences, other valve sites, other commercial or industrial operations, or other sources of ignition.

71. Identify and describe anywhere you have installed or proposed to install any NGL valve site within 2,000 feet….

72. Identify and describe how each municipal government within one (1) mile of ME1, ME2, ME2X or Point Breeze-Montello instructs its respective public to respond to any NGL pipeline incident, including, but not limited to contradictory instructions of any nature from instructions offered by You.

73. Describe any and all audits, reviews or evaluations performed by any person, entity or governmental body concerning your compliance with API Recommended Practice RP1162 in the last five years. Describe and identify all results, audit findings and corrective measures taken in response to any such audits.

Disposition

Complainant Andover has averred that it is a nonprofit corporation with an address of 9 Fallbrook Lane, Glen Mills, Thornbury Township, Delaware County. Andover avers it owns “open space” real estate upon which Sunoco operates a section of ME1, including a valve site, approximately one-half mile encroaching on property owned by the Association in its open space of a residential subdivision. It is averred Sunoco also operates a 12 inch workaround pipeline as part of the ME2, between Point Breeze to Montello, immediately adjacent to ME 1. Complainant avers the 12 inch pipeline leaked hazardous liquids at least four separate times in Delaware and Chester Counties since 1987, the most recent in June 2018, into the Darby Creek, Delaware County. Sunoco also proposes to construct a segment of ME2 on Complainant’s property.

Andover requests the Commission restrict or enjoin Mariner East operations unless and until a full and complete risk assessment is undertaken and shows Sunoco is able to operate any or all of the Mariner East system in compliance with Commission requirements to safely provide transportation services including credible notification and evacuation plans. The questions above seek information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories above seek information regarding practices in operating pipelines, as applied to Mariner East and other similarly situated pipelines in Chester and Delaware Counties and in comparison with a general public awareness plan, is wholly relevant to evaluate if Sunoco is operating this pipeline in compliance with applicable law and whether operations should be restricted pending a risk assessment and/or the creation of evacuation plans and public/emergency responder education. The Company may label the responses to Question Nos. 9-73 “Confidential,” if appropriate, and if appropriately labeled, it will be kept confidential pursuant to the Amended Protective Order.

Interrogatories Nos. 74-75

74. Identify and describe any and all remote-activated early warning systems in place to alert nearby public to any NGL leak on any pipeline, terminal, transfer station or other facility you operate in the United States or Canada.

75. Identify and describe and all requests you received to install hydrocarbon detectors and early warning systems along any segment of ME1, ME2, ME2X and/or Point Breeze-Montello in the last five (5) years.

76. Describe and identify why hydrocarbon detection and early warning systems are not installed at each valve site in any Mariner East service.

77. Describe and identify all hydrocarbon detection and early warning systems you install at your facilities handing NGL materials anywhere in your system.

78. Describe and identify the costs to install hydrocarbon detection and warning systems at a valve site.

79. Describe and identify each decision you made in the last five (5) years to install or not install hydrocarbon detection and early warning systems in any NGL service, and why you made the decision to install or not install such systems.

Sunoco contends Nos. 74 -79 are unduly burdensome and are not likely to lead to the production of relevant evidence. Sunoco contends these questions are a “fishing expedition.”

Conversely, Andover claims Sunoco has not averred that it operates the Mariner East system on a dedicated, isolated control system away from other pipelines it operates in Pennsylvania and elsewhere. Its practices in operating pipelines, as applied to Mariner East and other similarly situated pipelines, is wholly relevant to evaluate if Sunoco is operating this pipeline in compliance with applicable law. Sunoco could offer as a defense to a defect in its Mariner East system “we run all of our pipelines this way”, which would, at that point, make the operation of any and all similarly operated pipelines throughout Sunoco’s or Energy Transfer’s system relevant. Andover seeks to discover here if its allegations of inadequate service and operations are isolated to Mariner East or are endemic to additional Sunoco or Mariner East assets.

I find the questions 74-79 are likely to lead to the admissibility of relevant evidence and are not unduly burdensome. Andover requests early detection and warning systems in Delaware County and whether or not the Company has similar devices elsewhere is relevant to the feasibility and likely outcome of such a request.

Interrogatories Nos. 80-126, 129-154

80. Describe and identify how your supervisory control and data acquisition (“SCADA”) system did or did not detect each leak of NGLs from any system you own, operate or control in the last five (5) years. Further identify how you learned of each release, failure, leak or other incident where any amount of NGL was released from any facility, pipeline, valve site or other operation in NGL service.

81. Describe and identify the expected size of failure required to where your SCADA system would identify the release.

82. Describe and identify how you would deinventory a pipeline segment in ME1, ME2, ME2X or Point Breeze-Montello in the event of a release or incident on any segment of any Mariner East pipeline in Delaware and Chester Counties, Pennsylvania.

83. Describe and identify the procedures to safely remove product from a pipeline segment in the event of an incident. Describe and identify the amount of product in each impacted pipeline segment in Delaware and Chester Counties, the location(s) where such product would be removed from each segment, the procedure to remove such products, the equipment required to safely remove such product, and the burden on the location hosting such operations.

84. Describe and identify and all environmental permits that are or would be required to remove a pipeline segment full of NGLs, and designate if you hold such permits. If you do not hold such permits, describe how you would obtain authority to deinventory one or more segments of ME1, ME2, ME2X or Point Breeze-Montello.

85. Describe and identify the differences in inventory procedures between liquid product (i.e., gasoline, diesel fuel, jet fuel, kerosene, transmix, etc.) and NGLs (i.e., ethane, propane, butane, Y-grade, etc.).

86. Identify and describe how your public awareness program instructs the public to determine prevailing wind direction during an NGL incident.

87. Identify and describe how your public awareness program guides the public with regard of traveling uphill or downhill in response to an NGL incident.

88. Describe and identify how your public awareness program guides the public in regard to determining when a safe area is reached.

89. Describe and identify the guidance in your public awareness program that pertains to how people who are elderly, very young, or who have physical disabilities that affect their mobility should respond to a leak of NGLs.

90. Identify and describe any requests you have received from any party, entity or governmental entity to provide remote leak detection and public warning concerning the Mariner East project. Identify any changes you made in response to any such request.

91. Identify and describe each NGL leak on any pipeline asset you own, control, manage or operate since January 1, 2010, reported to PHMSA or not, of any amount of any NGL.

92. Identify and describe each liquids leak on any pipeline asset you own, control, manage or operate since January 1, 2010, reported to PHMSA or not, of any amount of any hydrocarbon product or commodity, including but not limited to gasoline, diesel fuel, jet fuel, kerosene, crude oil, condensate, fractionated hydrocarbons or any other commodity not referenced in the above paragraph.

93. Describe the pipe thicknesses, materials of construction of all gaskets and materials used to connect the pipe to ancillary equipment, coatings (field applied or factory applied) used to protect any pipe used in this project, steps required to protect the pipe from damage during storage, construction or field work (including but not limited to light-related degradation due to excessive storage times) and other concerns which you have considered in implementing the Mariner East project.

94. Identify and describe each change to your 49 CFR part 195 Manual you made in response to each such incident listed above.

95. Identify and describe all changes made to your public awareness program to accommodate the flow reversal and product change in ME1 or Point Breeze-Montello.

96. Identify and describe all changes made to your public awareness program to accommodate NGL service, as compared to other hazardous liquids such as gasoline, diesel, jet fuel, kerosene or other liquid hydrocarbon products transported at ambient conditions without pressurization required for liquid transportation.

97. Identify and describe all methods used by you to locate and inform the owners or occupiers of properties with private drinking water wells in and around Delaware or Chester Counties, Pennsylvania that you advised of pipeline construction activities prior to 2018.

98. Identify and describe all owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you informed of pipeline construction activities prior to 2018.

99. Identify and describe all methods used by you to locate and inform the owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you advised of pipeline construction activities in 2018 and thereafter.

100. Identify and describe all owners or occupiers of properties with private drinking water wells in and around Delaware and Chester Counties, Pennsylvania that you informed of pipeline construction activities in 2018 and thereafter.

101. Identify and describe any and all testing of public or private water supplies conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania.

102. Identify and describe all sinkholes and depressions, including their location, observed by you or any agent acting in your behalf while constructing ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

103. Identify and describe all sinkholes and depressions, including their location, caused or contributed by activities conducted by you or on your behalf in and around Delaware and Chester Counties, Pennsylvania.

104. Identify and describe your integrity management program.

105. Identify and describe all relevant portions of your 49 CFR § 195 Manual addressing integrity management anywhere in the United States or elsewhere regarding NGL pipeline transportation.

106. Identify and describe the status of construction of ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

107. Describe the proposed method of installing ME2 and ME2X in and around areas in Delaware and Chester Counties, Pennsylvania where construction has not been completed as of date of service of this document.

108. Identify and describe the status of applications to DEP for permit(s) to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

109. Identify and describe the status of applications to DEP for permit(s) to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

110. Identify and describe the status of required municipal permits to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania.

111. Identify and describe all expired required municipal permits to construct ME2 and ME2X in and around Delaware and Chester Counties, Pennsylvania and any required steps you must take to renew or refile any such permits.

112. Identify and describe the causes of all sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018 related to the construction of ME2 and ME2X.

113. Identify and describe all investigations made by you or on your behalf related to the all sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018.

114. Identify and describe all investigations made by the PUC, PHMSA, DEP or any other government organization related to the sinkholes and depressions that occurred in and around Delaware and Chester Counties, Pennsylvania in 2017 and 2018.

115. Identify and describe the status of all activities undertaken or to be undertaken by you or on your behalf to remediate and/or address sinkholes and depressions in and around Delaware and Chester Counties, Pennsylvania.

116. Identify and describe any and all communications with Amtrak regarding the construction of ME2 and M2X in and around Delaware and Chester Counties, Pennsylvania, including the identification of any sinkholes and depressions in the location.

117. Identify and describe any and all grout plugs used in any drilling in and around Delaware or Chester Counties, Pennsylvania, and the reasons for using such grout plugs.

118. Identify and describe the failure that occurred on the Revolution Pipeline in or around Center Township, Beaver County on or about September 10, 2018.

119. Identify and describe the cause of the failure that occurred on the Revolution Pipeline in or around Center Township, Beaver County on or about September 10, 2018.

120. Identify and describe the failure that occurred on the Point Breeze-Montello Pipeline in Delaware County and/or Philadelphia County on or about June 19, 2018.

121. Identify and describe the cause of the failure that occurred on the Point Breeze-Montello Pipeline in Delaware County and/or Philadelphia County on or about June 19, 2018.

122. Identify and describe the incident in which an Aqua water company contractor struck the ME2 or ME2X in or around Middletown Township, Delaware County on or about May 21, 2018.

123. Fully explain how and why the incident occurred in which an Aqua water company contractor struck ME2 or ME2X in Middletown Township, Delaware County on or about May 21, 2018.

124. Identify and describe your activities, including dates and locations, to remove and replace portions of ME2 and/or ME2X in or around Delaware and Chester Counties, Pennsylvania in 2017 or 2018.

125. Identify and describe all reasons why you removed and replaced portions of ME2 and/or ME2X in or around Delaware or Chester County after January 1, 2017.

126. Identify and describe how you became aware of the need to replace the portions of pipe on ME2 and/or ME2X referenced in the proceeding paragraphs.

129. Identify and describe all investigations made by you in response to any and all claims regarding falsified inspection reports related to welds in other pipelines constructed, owned, operated or otherwise managed by you or covered under any 49 CFR part 195 Manual you use to comply with PHMSA regulations.

130. Identify and describe all Notices of Probable Violation issued to you by PHMSA or the PUC in the last 5 years for any pipeline owned, constructed, operated or otherwise managed by you.

131. Identify and describe all Orders or Consent Orders issued to you by PHMSA or the PUC in the last 5 years.

132. Identify and describe all civil penalty assessments or consent assessments of civil penalties issued to you by PHMSA or the PUC in the last 5 years.

133. Identify and describe all complaints made to you by the public (including but not limited to complaints related to noise, dust, smoke or particulates, water supply, water pressure, flooding, sinkholes or depressions) related to the construction or operation of ME1, ME2, ME2X or Point Breeze-Montello.

134. Identify and describe all requests made by you to the Delaware River Basin Commission to change the method of pipe construction from Horizontal Directional Drilling to some other method of construction.

135. Identify and describe the status of all requests made by you to the Delaware River Basin Commission to change the method of pipeline construction from Horizontal Directional Drilling to some other method of construction.

136. Identify and describe all actions taken by you or on behalf to evaluate the integrity of ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

137. Identify and describe all risks or threats identified by you or on your behalf related to ME1, ME2, ME2X and Point Breeze-Montello in and around Delaware and Chester Counties, Pennsylvania.

138. Identify and describe all remedial, preventative and mitigative measures taken by you or on your behalf to address the risks or threats related to ME1. ME2, ME2X and Point Breeze-Montello.

139. Identify and describe all actions taken by your or on behalf to advise the public of the risks or threats associated with ME1, ME2, ME2X and Point Breeze-Montello.

140. Identify and describe all information provided to the public by you or on your behalf on how to respond in the event of a release or other emergency associated with ME1, ME2, ME2X or Point Breeze-Montello.

141. Identify and describe any proposed or anticipated changes to information provided by your or on our behalf on how to respond in the event of a release or other emergency associated with ME1. ME2, ME2X or Point Breeze-Montello.

142. Identify and describe all communications between you and each school district operating within Delaware or Chester Counties, Pennsylvania.

143. Identify and describe all communications related to the Aqua public water source in or around Drill 381, including but not limited to, the establishment of the monitoring well in that location.

144. Identify and describe any and all efforts made by you to avoid areas containing private dwellings, commercial or industrial buildings, critical infrastructure, such as highways, rail lines and airports, and places of public assembly.

and describe all investigations of alternative routes for the construction of ME2 and ME2X.

146. Identify and describe any and all PUC tariffs related to ME1, ME2, ME2X or Point Breeze-Montello.

147. Identify and describe all products approved for conveyance through ME1, ME2, ME2X and Point Breeze-Montello.

148. Identify and describe all products conveyed through ME1, ME2, ME2X and Point Breeze-Montello since 2014.

149. Identify and describe all products approved for intrastate conveyance through ME1, ME2, ME2X and Point Breeze-Montello.

150. Identify and describe all products conveyed intrastate through ME1, ME2, ME2X and Point Breeze-Montello since 2014.

151. Identify and describe all differences in your answers to any questions asked above concerning the Mariner West or Mariner South pipelines, including any segments of such pipelines in the Dominion of Canada.

152. Identify and describe the differences in your answers to any questions asked above concerning other NGL services offered by you or any affiliate, subsidiary or parent of you in the United States.

153. Identify each person involved or having knowledge of the information requested in each of the preceding interrogatories.

154. Identify and describe all persons other than your counsel of record, who directly participated in the preparation of the answers to these interrogatories.

SPLP objects to Nos. 151 - 154 as inconsistent with the Commission’s discovery regulations. To the extent SPLP is compelled to provide a written interrogatory response, it will identify who has provided such response consistent with the Commission’s regulations. Moreover, SPLP objects to this request as unduly burdensome and requiring an unreasonable investigation given the breadth of information sought and thus the corresponding persons that may have knowledge of such information.

I agree with Sunoco that it should not be compelled to answer Questions Nos. 151-154 as they are unduly burdensome. However, the other questions may lead to admissible evidence and are not unduly burdensome. If the Revolution pipeline in Beaver County does not belong to Sunoco Pipeline, L.P. then it may respond as such; however, if it is a pipeline over which Sunoco has control, then the company should be compelled to answer Question Nos. 118-119. For all of these above reasons, the Amended Motion to Compel shall be granted in part and denied in part.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Andover Homeowners’ Association’s Amended Motion to Compel filed on October 16, 2019 is granted in part and denied in part.
2. That the objections of Sunoco Pipeline, L.P. to interrogatories Set 1, Nos. 1, 2, 3, 5, 6, 7 are overruled. Sunoco Pipeline, L.P. is compelled to respond to Nos. 1, 2, 3, 5, 6 and 7 within thirty (30) days of the date of issuance of this Order.
3. That Sunoco Pipeline, L.P.’s objections to Set 1, Nos. 4 and 8 are sustained pursuant to 52 Pa. Code §§ 5.321(c) and 5.323(a).
4. That Sunoco Pipeline, L.P.’s objections to Nos. 127-128 are sustained in part. Sunoco Pipeline, L.P. is compelled to respond to Nos. 127-128 as they pertain to actions taken in Chester and Delaware Counties only within thirty (30) days of the date of issuance of this Order.
5. That Sunoco Pipeline, L.P.’s objections to Nos. 9-73 are overruled. Sunoco Pipeline, L.P. is compelled to answer Nos. 9-73 within thirty (30) days of the date of issuance of this Order.
6. That Sunoco Pipeline, L.P.’s objections to Nos. 151-154 are sustained.
7. That Sunoco Pipeline, L.P.’s objections to Nos. 74-126 and 129-150 are overruled.
8. That Sunoco Pipeline, L.P. is directed to respond to Nos. 74-126 and 129-150 within thirty (30) days of the date of issuance of this Order.
9. That to the extent Sunoco Pipeline L.P.’s objections to interrogatories have been overruled and the question involved and identification of document as if it were a request for production of document, Sunoco Pipeline LP is required to also furnish true copies of the requested referenced documents to Complainants.

Date: November 26, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

**C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP**

*(Revised 10/21/19)*

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