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REPLY TO:
Center City

December 9, 2019

Via Electronic Filing

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.
Docket Nos. C-2018-3006116 and P-2018-3006117
**MOTION TO DISMISS OBJECTIONS AND COMPEL
ANSWERS TO INTERROGATORIES AND DOCUMENT REQUEST**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Complainants' Motion to Dismiss Objections and Compel Answers to Interrogatories and Document Reques in the above-referenced proceeding.

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

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: Judge Barnes (Via email and First Class Mail)
Per Certificate of Service

Meghan Flynn
Rosemary Fuller
Michael Walsh
Nancy Harkins
Gerald McMullen
Caroline Hughes and
Melissa Haines

Sunoco Pipeline, L.P.

P-2018-3006117

Complainants have filed a Motion to Dismiss Objections and Compel Answers to Interrogatories and Document Request in the above-captioned matter, pursuant to regulations of the Pennsylvania Public Utility Commission (“PUC”) at 52 Pa. Code Section 5.342 (g). You are hereby notified pursuant to 5.342 (g)(1) that if you do not file a written response within five (5) days from service of this notice, the PUC may rule on this Motion without further input.

PUC may rule on this Motion without

Attorney for Complainants

**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-2018-30066117
Complainants	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

**COMPLAINANTS' MOTION TO DISMISS
OBJECTIONS AND COMPEL ANSWERS
TO COMPLAINANTS' SECOND
INTERROGATORIES AND DOCUMENT REQUESTS**

Complainants, having received Respondent's objections to interrogatories and a document request, and desiring to oppose same, hereby move to dismiss said objections and compel answers for the reasons set forth below:

Respondent served Complainants with timely objections to Complainants Second Interrogatories and Document Request. The objections were 21 pages long and were quite detailed.

Sunoco's objections consist of lengthy objections to definitions and instructions and specific objections to interrogatories. The objections to definitions and instructions were largely vague and non-specific and mirrored previous such objections that were overruled. Most of the specific interrogatories were followup questions to Complainants' First Interrogatories, with questions suggested by the ALJ's most recent discovery ruling.

For the reasons stated below, Flynn Complainants submit that Sunoco's objections should be dismissed.

I. Objections to Definitions and Instructions

Definitions and Instructions:

Definitions

A. The terms "person" or "persons" shall refer not only to natural persons, but also, without limitation, to firms, partnerships, corporations, associations, unincorporated associations, organizations, businesses, trusts, public entities, parent companies, subsidiaries, divisions, departments or other units thereof, and/or any other type of legal entities.

B. The terms "you" and "your" shall refer both to Sunoco and/or any other person representing or purporting to represent Sunoco in any capacity, including its attorneys.

C. "Identify" is defined as the following:

1) *when used with respect to individuals*, means to state (a) their name; business affiliation and official title and/or position; and (c) their last known residential and business address.

2) *when used with respect to a document*, means to state (a) the type of document (e.g. letter, memorandum, hand-written note, facsimile, e-mail) (b) its date of origin or creation; (c) its author and addressee; (d) its last known custodian or locations; and (e) a brief description of its subject matter and size. In lieu of identifying any document(s), you may attach a copy of it to your answer, indicating the question to which it is responsive. ALL DOCUMENTS SO IDENTIFIED SHALL BE BATES STAMPED OR OTHERWISE STAMPED USING SEQUENTIAL NUMBERING FOR EASE OF REFERENCE.

3) *when used with respect to a company or other business entity*, means to state, (a) the company's legal name, any former names, and the name under which it trades or does business; (b) the address of its principal place of business; and (c) the identity of its chief executive officer

D. The term "communication" shall refer to any exchange or transmission of words or ideas to another person or entity, whether accomplished person-to-person, by telephone, in writing, via electronic mail or through another medium, and shall include, but shall not be limited to, discussions, conversations, negotiations, conferences, meetings, speeches, memoranda, letters, correspondence, notes, and statements or questions.

E. For purposes of these interrogatories, the terms "records" and "documents" are used interchangeably and shall include without limitation (1) books of account, spreadsheets, ledgers, computerized data bases and other records; (2) checkbooks, canceled checks, check stubs and checking account statements; (3) personnel files in which records are segregated for individual employees; (4) all written or printed matter of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made in such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, releases, agendas, opinions, reports, studies, test

results, records of measurements, surveys, maps of any sort, written protocols, summaries, statements, consultations speeches, summaries, pamphlets, books, inter-office and infra-office communications, manuals, notations of any sort of conversation, bulletins, computer print-outs, teletypes, telefax, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments or any of the foregoing; (5) graphic or manual records or representations of any kind, including without limitations, photographs, charts, graphs, microphone, microfilm, videotape, records, motion pictures; and (6) electronic, mechanical or electric records or representations of any kind, including, without limitation, tapes, cassettes, discs and recording.

F. If any information, communication, or document responsive to anyone (or portion thereof) of the following requests is withheld based on any claim of privilege, describe generally the substance or subject matter of the information, communication, or document withheld, state the privilege being relied upon or claimed and the basis therefore, and identify all persons or entities who have had access to such information, communication, or document.

G. The term "including" shall mean including without limitations.

H. The terms "all," "each," and "any" are used in their broadest sense and shall be construed as all and any.

I. The conjunctions "and" and "or" shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of a discovery request all responses that might otherwise be outside its scope.

J. The terms "concerning" and "concerns" shall mean, in whole or in part, referring to, describing, evidencing, constituting, containing, comprising, embodying, connected to, reflecting, analyzing, showing, discussing, identifying, illustrating, stating, regarding, supporting, refuting, rebutting, responding to, commenting on, evaluating, about, in respect of, mentioning, dealing with, or in any way pertaining to, either explicitly or implicitly.

K. Use of the past tense in these interrogatories includes the present tense unless otherwise explicitly stated.

L. Use of the singular form of any word includes the plural and vice versa.

M. The term "statement" includes:

- (1) A written statement, signed or otherwise adopted or approved by the person making it, or
- (2) A stenographic, mechanical, electronic, videographic or other recording, or a transcript thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

N. "BIE Complaint" as used herein refers to the formal complaint filed on behalf of the Public utility Commission ("PUC") Bureau of Investigation and Enforcement as docketed in the PUC at No. C-2018-3006534.

O. "Flynn Complaint" as used herein refers to the Second Amended Formal Complaint filed in the instant proceeding.

P. "Subsidence" as used herein refers to the mainly vertical downward displacement of the Earth's surface which may be caused by geologic or human-induced causes. "Subsidence events" refers to subsidence occurrences in Chester and Delaware Counties that have taken place up until the date of your answers to these interrogatories.

Q. For purposes of these Interrogatories, unless otherwise indicated, the relevant time period for which information is sought is from the date a pipeline became operational until the present.

R. "ME1" and "the 8 inch pipeline" are used synonymously herein below. The description of this pipeline set forth in ¶¶ 13 - 17 of the BIE Complaint is hereby incorporated by reference thereto.

S. "The 12 inch pipeline" refers to the Sunoco pipeline placed into service by Sunoco's predecessors in the 1930's that has now been pieced together with various sections of 20 inch ME2 and 16 inch ME2X pipeline segments to begin additional transport of highly volatile liquids ("HVLs").

T. "Workaround pipeline" as used herein refers to the hybrid HVL pipeline consisting of various sections of 20 inch ME2, 16 inch ME2X and 12 inch pipeline segments.

U. "Beaver County Explosions" refers to the pipeline events described more in detail in ¶¶ 94 - 98 of the Flynn Complaint.

R. "ME1" and "the 8 inch pipeline" are used synonymously herein below. The description of this pipeline set forth in ¶¶ 13 - 17 of the BIE Complaint is hereby incorporated by reference thereto.

S. "The 12 inch pipeline" refers to the Sunoco pipeline placed into service by Sunoco's predecessors in the 1930's that has now been pieced together with various sections of 20 inch ME2 and 16 inch ME2X pipeline segments to begin additional transport of highly volatile liquids ("HVLs").

T. "Workaround pipeline" as used herein refers to the hybrid HVL pipeline consisting of various sections of 20 inch ME2, 16 inch ME2X and 12 inch pipeline segments.

U. "Beaver County Explosions" refers to the pipeline events described more in detail in ¶¶ 94 - 98 of the Flynn Complaint.

V. "Well Contamination Events" refers to incidents in Chester and Delaware Counties in which Sunoco, in drilling for Mariner East pipelines, has drilled into private and public water sources and aquifers, resulting in leakage of drilling fluids and other substances not previously present and having an adverse affect on water quality.

Instructions

1. No interrogatory shall be construed with reference to any other interrogatory for purposes of limitation.
2. If you object to the scope or breadth of any of these discovery requests, you shall, to the extent possible, respond to the request notwithstanding its objection.
3. If any of these discovery requests cannot be answered in full, you shall answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating what information, knowledge or belief you have concerning the unanswered portion.

Sunoco's Objections to Definitions and Instructions:

I. OBJECTIONS TO INTERROGATORY INSTRUCTIONS AND DEFINITIONS

- SPLP objects to the instructions and definitions contained in the Interrogatories to the extent that such instructions and definitions are inconsistent with the Commission's regulations. Lack of specific written objection to any instruction or definition shall not be construed as SPLP's agreement with such instruction or definition.
- SPLP objects to the instruction that answers be served on all parties. To the extent any of SPLP's responses contain confidential, proprietary, highly confidential, or confidential security information, SPLP will only provide such information and materials pursuant to the terms of the Amended Protective Order.

- SPLP objects to the instruction that “Such supplemental Answers may be filed from time to time, but not later than 20 days after such further information is received.” To the extent SPLP is required to supplement answers, it will do so consistent with the Commission’s regulations.
- SPLP objects to the instruction that SPLP’s answers “shall be based upon information known to Respondent or in the possession, custody or control of Respondent, its attorneys or other representatives acting on its behalf whether in preparation for litigation or otherwise.” SPLP objects to the extent that the instruction requires the production of any information subject to any applicable privilege. SPLP further objects to this instruction to the extent it requires the production of information exempt from discovery under 52 Pa. Code § 5.323(a) (litigation preparation materials).
- SPLP objects to the instruction that “[t]he omission of any name, fact, or other item of information from the Answers shall be deemed a representation that such name, fact, or other item was not known to Respondent, its counsel, or other representatives at the time of Service of the Answers.” Flynn Complainants propounded 46 interrogatories with multiple subparts, many of which are objectionable. This is in addition to the original set of 260 interrogatories previously propounded, to which SPLP objected to, and which was the subject of motion practice before Administrative Law Judge (“ALJ”) Elizabeth Barnes. SPLP will produce responses to the Interrogatories and the Requests to which it does not object as consistently with the 20-day answer period as reasonably possible; however, to the extent SPLP does not have such information available within that timeframe, SPLP will provide additional information on a rolling-basis as it becomes available.

- SPLP objects to Definition B, which provides that: "The terms 'you' and 'your' shall refer to both Sunoco and/or any other person representing or purporting to represent Sunoco in any capacity, including its attorneys." SPLP objects to Definition B to the extent it seeks the disclosure of an attorney's mental impressions or work product and to the extent it seeks production of information exempt from discovery under 52 Pa. Code § 5.323(a) (litigation preparation materials).
- SPLP objects to Definition E, which states:

For purposes of these interrogatories, the terms "record" and "documents" are used interchangeable and shall include without limitation (1) books of account, spreadsheets, ledgers, computerized data bases and other records; (2) checkbooks, canceled checks, check stubs and checking account statements; (3) personnel files in which records are segregated for individual employees; (4) all written or printed matter of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made in such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, releases, agendas, opinions, reports, studies, test results, record of measurements, surveys, maps of any sort, written protocols, summaries, statements, consultations speeches, summaries, pamphlets, books, inter-office communications, manuals, notations of any sort of conversation, bulletins, computer printouts, teletypes, telefax, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments or any of the foregoing; (5) graphic or manual records or representations of any kind, including without limitations, photographs, charts, graphs, microphone, microfilm, videotape, records, motion pictures; and (6) electronic, mechanical or electric records or representations of any kind, including, without limitation, tapes, cassettes, discs and recording.

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Section 5.323(a) of the Commission's regulations also exempts preliminary or draft versions of testimony and exhibits from discovery, whether or

not the final versions of the testimony or exhibits are offered into evidence. 52 Pa. Code § 5.323(a). In addition, the Commission's regulations prohibit discovery which would cause unreasonable burden to a party. 52 Pa. Code § 5.361(a)(4). Definition E defines "Document" in a manner which is unreasonably burdensome, and seeks information that is privileged, irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence.

Definition E specifically seeks to include all prior drafts of any document, and handwritten notes, notations, records or recordings of any conversation in the definition of "Document." Any prior drafts of a document are irrelevant and immaterial to the issues in this proceeding and are not likely to lead to the discovery of admissible evidence. To the extent that a document is relevant to the issues in this proceeding, the content of that document speaks for itself and does not require inquiry into any prior draft(s). Moreover, such drafts are exempt from discovery under the Commission's regulations. In addition, production of prior drafts, and any handwritten notes, notations, records or recordings of any conversation is unreasonably burdensome. Production of such materials would require an unreasonably extraordinary and burdensome effort by SPLP, and only serve to inefficiently delay this proceeding.

Moreover, Definition E seeks to include materials and documents that were created in preparation of litigation in its definition of Document. To the extent that any document or other material was prepared in anticipation or preparation of litigation, such materials are privileged and exempt from discovery.

Based on the foregoing, SPLP objects to Definition E as unreasonably burdensome, and as seeking information that is privileged, irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence. SPLP reserves the right to further object to any question that similarly seeks discovery of an overly broad classification or category of materials or documents.

- SPLP objects to Definition F, which states:

If any information, communication, or document responsive to anyone (or portion thereof) of the following requests is withheld based on any claim of privilege, describe generally the substance or subject matter of the information, communication, or document withheld, state the privilege being relied upon or claimed and the basis therefore, and identify all persons or entities who have had access to such information, communication, or document.

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). However, the Commission's regulations do not require a party to maintain a privilege log for any material or materials for which privilege is asserted. In addition, the Commission's regulations prohibit discovery which would cause unreasonable burden to a party. 52 Pa. Code § 5.361(a)(4). Complainant Set 2 Definition F seeks to unreasonably burden SPLP efforts to respond to discovery requests, which specifically inquire into matters which are exempt from discovery under the Commission's regulations, by imposing a requirement on SPLP that is not contemplated by the Commission's regulations.

- SPLP objects to Definition P, which states:

"Subsidence" as used herein refers to the mainly vertical downward displacement of the Earth's surface which may be caused by geologic or human-induced causes. "Subsidence events" refers to subsidence occurrences in Chester and Delaware Counties that have taken place up until the date of your answers to these interrogatories."

SPLP objects to Definition P because it is overbroad, requests information that is not relevant, and would place an undue burden on SPLP, and to the extent it seeks information that is outside of SPLP's knowledge, information, and control.

- SPLP objects to Definition Q, which states:

For purposes of these Interrogatories, unless otherwise indicated, the relevant time period for which information is sought is from the date a pipeline became operational until the present.

SPLP objects to Definition Q because it is overbroad, requests information that is not relevant, and would place an undue burden on SPLP. Certain of the pipelines at issue in this litigation have been in operation since the 1930s, thus a request for information from the date a pipeline became operational is a request for over 80 years of information. Such a request goes far afield of the Commission's regulations because it is overbroad, requests information that is not relevant, and would place an undue burden on SPLP. Furthermore, such Definition is contrary to the ALJ Barnes' June 6, 2019 Order² and ruling regarding the time period and scope of the Flynn Complainants' prior interrogatories, which ALJ Barnes limited SPLP's obligation to response regarding interrogatories to a much more narrow window of time. For example, related to upgrades on the Mariner East 1 pipeline, ALJ Barnes limited such information and documents since January 1, 2013; summaries of maintenance and upgrades were limited to the time period since January 1, 2015; leaks and other incidents on the Mariner pipelines were limited to the time period since January 1, 1986; leak detection on Mariner East pipelines were limited to the time period since January 1, 2014; and changes to SPLP's public awareness plan were limited to the time period since January 1, 2014.

- SPLP objects to Definition V, which states:

"Well Contamination Events" refers to incidents in Chester and Delaware Counties in which Sunoco, in drilling for Mariner East pipelines, has drilled into private and public water sources and aquifers, resulting in leaking of drilling fluids and other substances not previously present and having an adverse effect on water quality.

² See Order Granting in Part and Denying in Part Complainants' Motion to Compel Responses to Complainants' Interrogatories and Document Request Set 1, dated June 6, 2019.

SPLP objects to Definition V on the basis that it refers to alleged incidents related to adverse effects on private or public water supplies, which are not irrelevant to any claim or issue in the Flynn Complainant's Second Amended Complaint. In fact, there are no allegations in the Second Amended Complaint that relate to alleged adverse effects on private or public water supplies, and therefore any information sought regarding such alleged incidents are not relevant to this proceeding. SPLP also further objects to Definition V on the basis that it seeks information that is outside the Commission's jurisdiction, and which is rather within the jurisdiction of the Pennsylvania Department of Environmental Protection ("PADEP").

- SPLP objects to Instruction No. 2, which states:

If you object to the scope or breadth of any of these discovery requests, you shall, to the extent possible, respond to the request notwithstanding its objection.

SPLP objects to this request because it is inconsistent with the Commission's regulations which do not require a party to respond to a request to which it has objected. 52 Pa. Code § 5.342(c)(1).

Response to Objections:

Complainants' Instructions and Definitions are not broader than what is required or permitted by either this Commission's regulations or the Pennsylvania Rules of Civil Procedure. Moreover, Sunoco has conspicuously failed to explain how the Instructions or Definitions violate any particular rule.

By way of illustration, Sunoco claims that "Definition E defines 'Document' in a manner which is unreasonably burdensome, and seeks information that is privileged, irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence." (Objections at 5). Definition F, however, only half an inch farther down, excludes privileged documents but asks Sunoco to furnish a privilege log.

As regards relevance, not one word or line in Definition E imposes an obligation to furnish information that is irrelevant or immaterial. Nothing in the definition has a bearing on the question of admissibility either.

The proof of the pudding as regards this set of objections is that Sunoco does not identify even one, single piece of Definition D that is objectionable. Is Respondent claiming that photographs and charts should not be considered discoverable records of documents? How about electronic records?

Respondent's objections to interrogatories are similarly frivolous, and to the extent they warrant any response, are best addressed in the context of the objections to specific interrogatories. Complainants do so below.

II. Objections to Individual Interrogatories

A. Objections to Interrogatories 1 - 7

Interrogatories 1 - 7

Subsidence Events

1. Identify all records in your possession, custody or control that relate in part or in whole to the Subsidence Events as defined above in Definition P.
2. Identify the specific location of each such Subsidence Event listed in response to No. 1 above.
3. Identify when and how Sunoco first learned of each Subsidence Event identified in the answer to No. 1 above.
4. Identify who, if anyone, Sunoco notified about each Subsidence Event identified in the answer to No. 1 above.
5. With respect to your answer to No. 1 above, state when such notice of a Subsidence Event was given.
6. Identify what testing or studies were done to determine the cause(s) of each of the Subsidence Events identified in your answer to No. 1 above.
7. Identify any mitigating action taken in relation to the Subsidence Events identified in your answer to No. 1 above.

Sunoco's Objections

SPLP objects to Interrogatories Nos. 1-7 because they seek information that is overbroad and unduly burdensome. Pursuant to 52 Pa. Code § 5321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.* The requests in Flynn Complainants Set 2, Nos. 1-7, is not reasonably tailored to lead to the discovery of relevant evidence and is unduly burdensome and overbroad because it requests "all records" which is likewise defined overbroadly. It is also unlimited in time frame and inquires into matters that are beyond the issues related to Mariner East 1, Mariner East 2, Mariner East 2X, or the 12-inch pipeline.

As Flynn Complainants are aware, subsidence is a naturally-occurring phenomena that is well-documented as occurring in various locations throughout Chester County. Subsidence events occur in Chester and Delaware Counties, elsewhere in the Commonwealth of Pennsylvania, and beyond, and such events are completely unrelated to the Mariner East pipelines. Furthermore, information regarding subsidence events in Chester and Delaware Counties is available in the public domain or is otherwise equally accessible to the Flynn Complainants. This request for "all records" for an undefined period of time and scope is therefore a fishing expedition that is not reasonably tailored to discover admissible evidence. *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 Co. v. Alexandria Water Co.*, 70 A.867, 869 (Pa. Super. 1908)).

To the extent that Flynn Complainants would agree to a more limited and narrowly-tailored scope of information request – such as a list of the construction locations where subsidence has occurred in Chester and Delaware Counties in proximity to the Mariner East 1, 12-inch pipeline,

Mariner East 2, and Mariner East 2X pipelines during the time period when construction of Mariner East 2 and 2X pipelines was occurring (i.e. February 2017 to the present) – SPLP would be willing to respond to Interrogatories Nos. 1-7 by providing such a list. But, the remainder of Interrogatories Nos. 1-7 as written are overbroad, unduly burdensome and beyond the bounds of discovery established by the Commission's Rules.

Response to Objections

Nos. 1 -7 concern subsidence events. The interrogatories correspond to Interrogatories Nos. 105 -112 in Flynn's First Interrogatories. Sunoco previously objected to those interrogatories based on overbreadth, relevance and undue burden.

Judge Barnes in her June 6, 2019 discovery order ruled that the interrogatories must be answered within ten days but limited the answers to events in Chester and Delaware Counties. (Order at 28). Almost three months later, Respondent had not answered the interrogatories and Complainants filed their Motion for Sanctions. In response to that, Sunoco contended that there were no sinkholes, only "subsidence" events, despite the fact that I&E uses the term "sinkholes."

The ALJ clearly ruled in her sanctions order of October 21, 2019 that Flynn Complainants could re-ask the question but refer instead to subsidence events. Complainants did that and now Sunoco objects, once again, that the interrogatories are overbroad and burdensome.

Judge Barnes has ruled already. If the two previous discovery orders are to mean anything, Sunoco should be required to serve full and complete answers to these interrogatories. Moreover, during the first two days of lay testimony, Flynn Complainants gave evidence both as to sinkholes and water contamination and Judge Barnes permitted it.

Sunoco's offer to provide a list of events does not even begin to answer these relevant interrogatories.

B. Objections to Nos. 14 and 15

Complainants agree that Interrogatories 14 and 15 should not have been included and need not be answered.

C. Objections to Nos. 16 and 17

Nos. 16 and 17

Pipeline Siting

16. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the siting of The Mariner East 2 and 2X pipelines in Chester and Delaware counties.

17. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the transportation of HVLs via the 8-inch Mariner East 1 pipeline through Chester and Delaware Counties.

Objections

C. OBJECTION TO FLYNN COMPLAINANTS SET 2, NOS. 16 and 17

Flynn Complainants Set 2, Nos. 16 and 17 state:

16. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the siting of the Mariner East 2 and 2X pipelines in Chester and Delaware counties.
17. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the transportation of HVLs via the 8-inch Mariner East 1 pipeline through Chester and Delaware Counties.

SPLP objects to Flynn Complainants Set 2, Interrogatories Nos. 16 and 17 on the basis that they seek the same information as was previously requested in the Flynn Complainants'.

Interrogatories Set 1, Nos. 165-166, which are as follows:

165. Identify all records reflecting planning for the location of the ME pipelines in Chester and Delaware Counties
166. Identify all records reflecting planning for transportation of HVLs through Chester and Delaware Counties

SPLP objected to the Flynn Complainants' Interrogatories Set 1, Nos. 165-166 on the basis that they were overbroad and unduly burdensome, and those objections were subject to a Motion to Compel before ALJ Barnes. ALJ Barnes sustained SPLP's objections that the requests were overbroad and unduly burdensome, and ruled in the June 6, 2019 Order that SPLP "produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties." See June 6, 2019 Order at 34 and Ordering Paragraphs 18-19. In accordance with the directive of the June 6, 2019 Order, SPLP responded by producing documents Bates Nos. SPLP00005786-5891 and SPLP00006922-7000, which comprised of transcripts of previous testimony before the Commission that included detailed explanations of the planning process for the Mariner East pipelines. The Flynn Complainants took issue with SPLP's response and production of the documents and filed a Motion for Sanctions. On October 21, 2019, ALJ Barnes ruled upon that Motion for Sanctions by Order³ that recognized SPLP had produced documents responsive to the interrogatories and ordering SPLP to ensure that the electronic link to the Share File for the document production remained accessible. SPLP complied and has ensured the link for electronic access of the documents, remains live and active – in fact it always was active as demonstrate by the Flynn Complainants' counsel and others continually accessing the Share File for the past several months. Flynn Complaints Interrogatories Set 2, Nos. 16 and 17 are therefore improper, duplicative, and unduly burdensome, as they seek information and documents that SPLP has already objected to, been ruled upon by ALJ Barnes, and to which SPLP has already responded to and produced responsive documents.

Responses to Objections

These interrogatories correspond to Nos. 165 and 166 in the First Interrogatories. In the Order of June 6, 2019, Judge Barnes directed Sunoco to produce a “detailed explanation of the Mariner East Project planning process from inception...” (Order at 34).

When Sunoco failed to provide an explanation, Flynn Complainants moved for sanctions. The ALJ agreed in her sanctions order of October 21st that the identification of certain materials complied with her order for a “detailed explanation.”

The judge, however, went on to note that “Complainants request documents at an administrative or executive level....Flynn Complainants are free to serve further interrogatories on this issue.” (Order at 4). Interrogatories 16 and 17 of the Second Interrogatories explicitly sought information and documents created at the administrative and executive levels.

Sunoco now claims these requests are overly broad, burdensome and duplicative. Complainants disagree.

Flynn Complainants are looking for documents that reflect planning at the highest levels of the company for siting of the Mariner East pipelines and HVL operations in Chester and Delaware Counties only. The Second Amended Complaint alleges that the siting is improper. The scope of the request is limited to two counties. The time frame probably goes back less than a dozen years. These requests are not overbroad or burdensome.

The information sought is not by any means duplicative. None of this information has been found in more than 32,000 pages of papers supplied to date. Indeed, it would appear that Sunoco has taken great pains to remove any such materials from document production in order to prevent Complainants from obtaining it.

Flynn Complainants believe they are entitled to all such requested documents.

D. Objections to No. 20

No. 20

20. Identify all leak, puncture and rupture incidents for the 8-inch and 12-inch Mariner lines that were related to corrosion.

Sunoco's Objections

SPLP objects to Flynn Complaints Interrogatories Set 2, No. 20 on the basis that it seeks the same information as was previously requested in the Flynn Complainants' Set 1, Interrogatories Nos. 113-115, which are as follows:

- 113. Identify all leaks, punctures and ruptures that have occurred.
- 114. Identify all leaks, punctures and ruptures that have occurred on the 12 inch line.
- 115. Identify all leaks, punctures and ruptures that have occurred on the workaround pipeline.

SPLP objected to the Flynn Complainants' Interrogatories Set 1, Nos. 113-115 on the basis that they were overbroad and unduly burdensome, and those objections were subject to a Motion to Compel before ALJ Barnes. ALJ Barnes sustained SPLP's objections that the requests were overbroad and unduly burdensome, agreed with SPLP's offer to compromise by producing PHMSA incident reports dating back to 1986, and ruled in the June 6, 2019 Order that SPLP answer the interrogatories as modified by providing such reports from January 1, 1986 forward. *See* June 6, 2019 Order at 30 and Ordering Paragraph 13. Pursuant to the June 6, 2019 Order, SPLP produced responsive documents that consisted of available PHMSA incident reports for the

Mariner East 1 and 12-inch pipelines, Bates Nos. SPLP00005715-5785, and which identify the apparent cause of the reported incident, which include whether the apparent cause was corrosion. See e.g., SPLP00005715-5720 (including Section H-Apparent Cause, and subset H1-Corrosion, sub-subsets external corrosion or internal corrosion). Flynn Complaints Interrogatories Set 2, No. 20 is therefore improper, duplicative, and unduly burdensome, as it seeks information and documents that SPLP has already responded to and produced.

Response to Objection

Complainants previously asked for documents reflecting leaks on the 8-inch and 12-inch pipelines. The ALJ directed that documents dating back to 1986 be produced.

In the Second Interrogatories Flynn Complainants seek the identification and production of a much smaller subset: leaks, puncture and rupture incidents related to corrosion. This information should be quickly accessible to Sunoco and if it is not – if Sunoco does not have accurate and accessible records relating to the causes of previous leaks—that is additional reason for concern.

E. Objections to No. 22

No. 22

22. Identify all procedures, inspections, data collection processes and reports that are specified in Sunoco's integrity management manual.

Sunoco's Objections

SPLP objects to Flynn Complaints Interrogatories Set 2, No. 22 on the basis that it seeks the same information as was previously requested in the Flynn Complainants' Set 1, Interrogatories Nos. 11-12, 163-164, which are as follows:

11. You state that your pipeline integrity management program ("PIMP") "continues to function in compliance with the law." Identify each statute and regulation of which you are aware that sets out PIMP requirements.
12. With reference to your answer to No. 11 above, explain how you are in compliance with each such statute and regulation.
163. What is your understanding of the term "pipeline integrity management program" ("PIMP") in relation to pipelines?
164. Identify all documents in which your PIMP is found.

SPLP objected to the Flynn Complainants' Interrogatories Set 1, Nos. 11-12 and 163-164 on the basis that they were overbroad and unduly burdensome, and those objections were subject to a Motion to Compel before ALJ Barnes. ALJ Barnes sustained SPLP's objections that the requests were overbroad and unduly burdensome and ruled in the June 6, 2019 Order that SPLP produce its integrity management plans. *See* June 6, 2019 Order at 11 and 32, and Ordering Paragraphs 9 and 16. Pursuant to the June 6, 2019 Order, SPLP produced its Integrity Management Plan, Bates Nos. SPLP00007034-7161, which was designated as "Extremely Sensitive Materials" in accordance with the terms of the Amended Protective Order. Counsel for Flynn Complainants and their designated expert witness have already accessed and reviewed the Integrity Management Plan which contains the information sought in this Interrogatory. Flynn Complaints Interrogatories Set 2, No. 22 is therefore improper, duplicative, and unduly burdensome, as it seeks information and documents that SPLP has already responded to and produced.

Response to Objections

This objection is another example of Sunoco suggesting apples and oranges are the same; they are not. The identification of procedures and reports specified in Sunoco's integrity management manual is not the same as identifying laws and regulations; it is not the same as explaining the term "pipeline integrity management program;" and it is not the same as simply identifying documents in which the program is to be found.

No. 22 has not previously been asked. The judge has not ruled on it. To suggest otherwise is misleading (at best).

Sunoco has produced only a portion of its integrity management plan, and that was produced in an "eyes-only" review on August 9, 2019. Complainants' expert, Dr. Zee, and attorney Richard Raiders (formerly a pipeline engineer), have noted the absence of probably hundreds of pages of material from that document production.

The missing pages are not only relevant but they are important for Dr. Zee's team to complete their work. Hence, Interrogatory No. 22 seeks that information.

F. Objections to Nos. 23 - 43

Nos. 23 - 43

Well Contamination Events

23. Identify each and every well contamination event of which you are aware in connection with drilling for the Mariner East pipelines. For each such event, furnish the following information: date, location, and a brief description of what happened.

24. For each event identified in your answer to No. 23 above, identify all documents in your possession, custody or control that you furnished to state or federal authorities that describe the event.

25. For each event identified in your answer to No. 23 above, identify all documents (including laboratory reports) in your possession, custody or control that set forth the results of your investigation, or anyone else's investigation, of the event.

26. Identify each and every communication between Sunoco and residential property owners who were affected by well contamination events.
27. Prior to commencement of drilling for the Mariner East lines in Chester and Delaware Counties, was Sunoco aware that there was a risk of negative impacts to private water wells from the drilling activities?
28. Identify all documents in your possession, custody or control reflecting your knowledge that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.
29. Identify all written communications from Sunoco to owners of private water wells in Chester and Delaware Counties in which you notified owners, prior to commencement of drilling, that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.
30. Identify all written communications from Sunoco to owners of private water wells in Chester and Delaware Counties in which you notified owners, prior to execution of easements, that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.
31. Identify all easement agreements with owners of private water wells in Chester and Delaware Counties in which you identified a risk of negative impacts to private water wells from the Mariner East drilling activities.
32. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.0 that "Unanticipated encounters with contaminated soil may also threaten water resources and supplies." Was that statement true at the time?
33. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.0 that "Private and public water supplies may be impacted by hazardous material spills during any of the project activities ..." Was that statement true at the time?
34. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.2.1 that during the course of HDD drilling, pipeline fluid may enter "an existing fracture, fissure, or formation opening in the soil or rock substrate. When this happens... drilling fluid could enter the groundwater table that could be used by private groundwater wells." Was the information in Section 5.2.1 true at the time?
35. Explain why the information set out in Fuller Exhibit 8, noted in Interrogatories 32, 33 and 34 above, was not furnished to private well owners prior to their signing easement agreements.

36. Prior to execution of easement agreements, what information was given by Sunoco to property owners being asked to sign the agreements regarding (a) the characteristics of HVL's and (b) the fact the HVLs would be transported in Mariner East pipelines across their properties?

37. Identify any and all written communications from Sunoco to Rosemary and Gordon Fuller in which Sunoco unconditionally offered the Fullers public water connection at Sunoco's expense.

38. With respect to Fuller Exhibit 6, and admitted into evidence at the hearing on October 24, 2019, Sunoco employee on April 18, 2018 stated in a letter to the Department of Environmental Protection that "the best method to prevent impacts to private water supplies continues to be non-use of private wells within the 450 ft buffer surrounding the HDD profile during HDD activities." Was that statement true at the time?

39. Identify any and all written communications from Sunoco to private well owners in Chester and Delaware Counties advising them not to use private wells within the 450 ft buffer surrounding the HDD profile during HDD activities.

40. Identify all fracture lines known or believed by Sunoco to exist on the properties of private well owners in Chester and Delaware Counties on whose property there have been HDD activities.

41. Do you agree that Fuller Exhibit 7, admitted into evidence at the hearing on October 24, 2019, depicts a fracture trace line passing through the Fullers' property and past their well?

42. Sunoco's Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (February 6, 2018) provides in Section 6.6 in pertinent part that, "If any impact to a private water supply attributable to pipeline construction is identified after post construction sampling, SPLP will restore or replace the impacted water supply to the satisfaction of the private water supply owner. See URL at:

<http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD%20Inadvertent%20Return%20Assessment,%20Preparedness,%20Prevention%20and%20Contingency%20Plan%20-%20revised%202-6-18.pd.pdf>

Sunoco's Pennsylvania Pipeline Project Operations Plan (January, 2018) provides in Section 4.3 in pertinent part that, "If any impact to a private water supply attributable to pipeline construction is identified after post construction sampling, SPLP will restore or replace the impacted water supply to the satisfaction of the private water supply owner." See URL at: http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary_of_Order/Para%209%20-%20Exhibit%20E%20-%20Operations%20Plan.pdf

Identify all written communications and other documents in your possession, custody or control that reflect your efforts to restore or replace Gordon and Rosemary Fuller's water supply to their satisfaction

43. Laboratory analyses of the Fullers' water indicate the existence of a contaminant identified as "undetermined". Identify each such contaminant.

Objections to Interrogatories

SPLP objects to Flynn Complaints Interrogatories Set 2, Nos. 23-43 on the basis that they do not seek information relevant to this proceeding or that could lead to the discovery of relevant and admissible evidence. Under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c), in turn, provides that a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding and reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The requests are also unduly burdensome and overbroad because they request "all records," which interpreted literally could pertain to hundreds of thousands of documents. This request for all records is a fishing expedition and is not reasonably tailored to discover admissible evidence relevant to the Amended Complaint. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Cmwlth. 1971).

Moreover, Flynn Complainants Interrogatories Set 2, Nos. 23-43 seek information regarding alleged contamination to private water wells during the construction of the Mariner East 2 and Mariner East 2X pipelines in general, and Complainant Rosemary Fuller's individual complaints regarding alleged impacts to her private water supply in particular. Alleged impacts to private water wells during the construction of Mariner East 2 and Mariner East 2X are not issues that were raised in the Flynn Complainant's Amended Complaint, nor are they a matter for which Flynn Complainants seek any form of relief through this action. Discovery requests on matters beyond the scope of the issues raised in a complaint before the Commission are irrelevant, improper, and beyond the scope of discovery allowed under the Commission's procedural rules. *See* 52 Pa. Code § 5.321(c) and § 5.361(a). SPLP also further objects to Interrogatories Set 2, Nos.

23-43 because they seek information outside of the Commission's jurisdiction and that is irrelevant to this proceeding. Issues related to alleged impacts to private water wells fall squarely within the jurisdiction of PADEP, SPLP's permits for the Mariner East 2 and Mariner East 2X construction have detailed and robust requirements and special conditions regarding private and public water supplies, and PADEP has been actively monitoring and enforcing SPLP's permit conditions and requirements related to water supply issues. Lastly, any alleged issues with Complainant Rosemary Fuller's individual complaints are a matter to be addressed by PADEP or pertain to a private party legal claim, either of which is beyond the scope of the Commission's jurisdiction.

Responses to Objections

These interrogatories relate to Sunoco's practice of contaminating the wells of the residents of Chester and Delaware Counties. The suggestion by Sunoco that this could require production of "hundreds of thousands of documents" (Objections at 17) is especially troublesome; if true, there is a lot more than meets the eye in what Sunoco has been doing to people's drinking water supplies.

The ALJ properly accepted testimony during the lay hearings on well contamination; it goes to issues of Sunoco's recklessness as a public utility. Flynn Complainants are presently in the process of developing expert testimony on hydrological issues.

There is nothing unusual in pleading practice for the court to allow pleadings to conform to the evidence. An important legal lynchpin of Complainants' case is 66 Pa.C.S. Section 1501, which requires Sunoco to run its pipelines in a safe, adequate and reasonable manner. Flynn Complainants have already given evidence that Sunoco is nothing, if not reckless. Information relative to Respondent's contamination of wells in Chester and Delaware Counties is relevant to claims under Section 1501. The objection that this issue is beyond the scope of the complaint, therefore, should not be sustained.

G. Objection to No. 44

No. 44

Additional Interrogatories

44. With respect to the event(s) involving the release of gasoline or other petroleum product(s) in the vicinity of the Tunbridge Apartment complex on or about Monday, November 11, 2019,

(a) Identify each and every product and the quantity of each such product that was released;

(b) Explain in detail the methods by which you determined the quantities of product that were released;

(c) Explain the cause(s) of the release(s);

(d) State how long the release(s) continued before it or they were stopped;

(e) Identify the area in which an odor was noticeable;

(f) Explain in detail the efforts you or your agents made to inform government officials of the existence of the leak(s), including without limitation officials from Delaware County Emergency Services, the Pennsylvania Public Utility Commission, the Pennsylvania Department of Environmental Protection, Middletown Township, Pennsylvania Fish & Boat Commission, and the U.S. Coast Guard;

(g) Explain in detail the efforts you or your agents made to inform the public contemporaneously what steps if any the public should take by way of precautions; and

(h) Explain in detail the efforts you or your agents made after the event was over to inform the public via written notice or public media as to what had occurred and what concerns the public should have under the circumstances.

(i) Identify all persons, including emergency responders, who experienced any health effects in connection with the release(s) and its or their sequelae;

(j) For each person identified in response to (h) above, explain how that person came to experience health effects.

(k) For each person identified in response to (h) above, set forth the extent of that person's health effects and the treatment that person received.

(l) Set forth a detailed timeline of the entire release event, for each event, including but not limited to time the release commenced, when Sunoco became aware of it, how Sunoco became aware of it, when Sunoco personnel were dispatched to the scene, when Sunoco personnel arrived at the scene, the time when Sunoco first spoke with Delaware County Emergency Services, when Delaware County first responders first arrived, when the release was contained.

that Sunoco is reckless in all kinds of pipeline related emergencies.

Interrogatory No. 44 seeks information on a recent incident at the Tunbridge Apartments in Middletown, Delaware County, when gasoline leaked and the public as well as emergency responders were not timely notified. The interrogatory seeks information on the protocol that was followed or not followed in connection with that event.

III. Objections to Individual Document Requests

Document Requests

You are directed to produce the following documents:

1. All documents identified in your answers to Complainants' Second Interrogatories Addressed to Sunoco Pipeline, L.P.
2. All documents known or believed by you to contain information related in whole or in part to your answers to Complainants' Second Interrogatories Addressed to Sunoco Pipeline, L.P.
3. All documents you have relied upon in whole or in part in furnishing answers to Complainants' Second Interrogatories Addressed to Sunoco Pipeline, L.P.

Flynn Complainants hereby incorporate by reference their responses to Sunoco's second interrogatories and hereby request that the objections to the corresponding document requests be overruled.

Respectfully submitted,

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Attorney for Complainants

Dated: December 9, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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	:	

**CERTIFICATE OF SERVICE OF
COMPLAINANTS' SECOND INTERROGATORIES
ADDRESSED TO SUNOCO PIPELINE L.P.**

I hereby certify that I have this day served a true copy of Flynn Complainants' Motion to Dismiss and Compel Answers to Interrogatories and Document Request upon the persons listed below as per the requirements of § 1.54 (relating to service by a party). The Interrogatories have not been filed electronically on the Commission's electronic filing system.

See attached service list.


Michael S. Bomstein, Esq.

Dated: December 9, 2019

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