**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn : C-2018-3006116

Rosemary Fuller : P-2018-3006117

Michael Walsh :

Nancy Harkins :

Gerald McMullen :

Caroline Hughes and :

Melissa Haines :

Andover Homeowners Association : C-2018-3003605

Melissa DiBernardino : C-2018-3005025

Rebecca Britton : C-2019-3006898

Laura Obenski : C-2019-3006905

 :

 v. :

 :

 :

Sunoco Pipeline, L.P. :

**ORDER ADMITTING STIPULATION INTO THE RECORD**

On December 30, 2019, Sunoco Pipeline L.P. (“SPLP”) and Complainants Megan Flynn *et al.* at PUC Docket C-2018-3006116 *et al.* (“Complainants”) (collectively “moving parties”) filed a Stipulation of Record to Amended Protective Order and Procedural Schedule for my approval and admission into the record at the above-captioned consolidated proceeding.

The moving parties jointly agree to the below stipulations regarding terms and conditions of Complainants’ access to certain information and procedure for submission of materials to the Commission and the Administrative Law Judge. (“Stipulation”):

1. Solely for purposes of preparing expert testimony in this proceeding, SPLP will allow Complainants’ expert, Dr. Mehrooz Zamanzadeh and the following associates at Matergenics, Anil Kumar, Chikcrim, Edward Larkin, George Bayer and Erik Lahti, (collectively and individually “Reviewers”) during in person review sessions conducted in accordance with the Amended Protective Order in this proceeding, to take notes (“ESM Notes”) of such portions Complainants expert will designate of certain Extremely Sensitive Materials (“ESM”) described in Paragraph 2 of this Stipulation. Except as expressly set forth in this Stipulation, ESM shall continue to be governed by the Amended Protective Order entered in this proceeding.
2. The ESM to which this Stipulation applies are:
	1. Narrative Interrogatory Responses to Flynn Set 1, Nos. 5-7.
	2. Sunoco Logistics Pipeline Integrity Management Plan; SPLP00007094-SPLP00007161
	3. Energy Transfer Pipeline Integrity Management Plan; SPLP00007034-SPLP00007093.
	4. Appendices to Energy Transfer Pipeline Integrity Management Plan; SPLP00031808-SPLP00032109.
	5. 2013 Mariner East Hazard Assessment; SPLP00031198-SPLP00031253.
	6. 2017 ME2 Hazard Assessment; SPLP00031254-SPLP00031319.
	7. 2018 Hazard Assessment of Re-route of ME2 Pipeline; SPLP00031320- SPLP00031354.
	8. 2018 Butane Spill Assessment; SPLP00031355-SPLP00031449.
	9. Sunoco Logistics Risk Model Workbook SPLP00031450-SPLP00031521.

SPLP hereby affirms that the ESM identified above comprises the entirety of ESM materials that it has produced in discovery during this proceeding to date.

1. Complainants Reviewers shall identify by bates range the portions of the ESM in Paragraph 2 that are necessary to presentation of their case, and provide this designation to SPLP 24 hours in advance of any in-person review session pursuant to the terms of the Amended Protective Order or as otherwise agreed by counsel for Complainants and SPLP.
2. At any such session, handwritten notes (“ESM Notes”) on standard letter sized paper may be made by the Reviewers. At the conclusion of any review session, all ESM Notes shall be provided to SPLP’s review proctor. SPLP’s counsel may designate redactions of the ESM Notes as it deems necessary to protect ESM.  Any disputes over the redactions shall immediately be addressed with the Administrative Law Judge via telephone. SPLP shall retain a copy of the ESM Notes. SPLP does not waive its right to a hearing on the confidentiality level of any ESM Notes.
3. ESM Notes are subject to the Amended Protective Order in this proceeding and shall be treated as ESM except that, after the review and copying described above, Reviewers may retain the original and make copies of ESM Notes as described below and only for the limited purpose of preparing expert testimony or exhibits to be submitted in the proceeding. All ESM Notes shall contain the following watermark or footer:

EXTREMELY SENSITIVE MATERIALS, CONFIDENTIAL SECURITY INFORMATION NOT SUBJECT TO DISCLOSURE TO THIRD PARTIES UNDER THE PROVISIONS AND PROCEDURES SPECIFIED IN THE AMENDED PROTECTIVE ORDER AT CONSLOLIDATED PUC DOCKET C-2018-3006116 *ET.AL.,* AND THE PUBLIC UTILITY CONFIDENTIAL SECURITY INFORMATION DISCLOSURE PROTECTION ACT (35 P.S. §§ 2141.1 TO 2141.6) AND THE PUC’S REGULATIONS IMPLEMENTING SUCH ACT AT 52 PA. CODE §§ 102.1 – 102.4.

1. Reviewers shall not share or otherwise disclose ESM Notes with or to anyone other than Reviewers and SPLP’s counsel or proctor representatives.
2. All ESM Notes in Reviewers’ possession shall be stored securely as follows:
3. Only original handwritten paper notes and copies thereof shall be stored by Reviewers in a safe or other secure locked location to which only Reviewers have access.
4. Reviewers shall not electronically reproduce (other than for copying as described above), mail or otherwise electronically transmit ESM Notes.
5. All ESM Notes shall be destroyed in accordance with Paragraph 19 of the Amended Protective Order.
6. If Complainants want to include any ESM in Paragraph 2 as an exhibit to testimony, Complainants counsel will inform SPLP’s counsel of each document to be included. SPLP will include the designated ESM as part of its exhibits when it submits its testimony.
7. Complainants shall, on the dates that their Direct and Rebuttal testimony are due, serve only SPLP’s counsel with their testimony and exhibits via a secure link that SPLP’s counsel will provide. Complainants’ shall, in their testimony, indicate any portions of the testimony that are Confidential, Highly Confidential or ESM by highlighting such portion of their testimony in yellow. SPLP shall have four days[[1]](#footnote-1) to review confidentiality designations and modify such designations as necessary as well as add appropriate markings on the documents pursuant to the Amended Protective Order. Within four days of receipt of the testimony, SPLP shall:
	1. provide a redacted, public version of the testimony to Complainants’ counsel for electronic service on the parties to this proceeding as well as any public exhibits;
	2. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any versions of testimony or exhibits containing Confidential or Highly Confidential Materials;
	3. serve the Administrative Law Judge with any testimony or exhibits containing or discussing Highly Confidential, Confidential, or ESM; and
	4. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any testimony or exhibits containing or discussing ESM.
8. At hearing, SPLP shall be responsible for copying, transporting, and providing paper copies of Complainants’ testimony and exhibits that are Confidential, Highly Confidential or ESM for use at hearing, including copies for the court reporter, Administrative Law Judge, and copies for use by counsel and witnesses at the hearing. Complainants’ counsel shall be responsible for providing copies at hearing of all public versions of their testimony and exhibits. All copies of Confidential, Highly Confidential and ESM used at hearing and not in the possession of the ALJ or court reporter shall be returned to SPLP at the conclusion of each hearing day.
9. SPLP shall complete post-hearing filing of Complainants’ testimony and exhibits that are Confidential, Highly Confidential, or ESM pursuant to 52 Pa. Code § 5.412a(d).
10. Complainants and SPLP will use best efforts to limit inclusion of ESM in testimony, exhibits, briefs, exceptions, and reply exceptions and to limit on the record discussion of ESM.
11. Access to testimony, exhibits, transcripts, briefs, exceptions and reply exceptions containing Confidential, Highly Confidential, or ESM shall be in accordance with the Amended Protective Order.
12. Complainants’ shall, in their Main and Reply Briefs, indicate any portions of the brief that are Confidential, Highly Confidential or ESM by highlighting such portion of their brief in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, on the date their Main Brief and Reply Brief is due, serve only SPLP’s counsel with briefs for SPLP’s counsel to review confidentiality designations and modify such designations as necessary. SPLP’s counsel shall, within two days[[2]](#footnote-2) of receipt of Complainants’ briefs:
	1. provide a redacted, public version of the brief to Complainants’ counsel for electronic service on the parties to this proceeding as well as any public exhibits;
	2. serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order and the Administrative Law Judge any briefs containing Confidential or Highly Confidential Materials;
	3. serve the Administrative Law Judge with any briefs containing or discussing Highly Confidential, Confidential, or ESM; and
	4. Retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any briefs containing or discussing ESM.
13. Access to versions of the Administrative Law Judge’s decision in this matter containing Confidential, Highly Confidential, or ESM shall be pursuant to the Amended Protective Order.
14. Once the Administrative Law Judge issues a decision in this matter and if the decision contains ESM or Highly Confidential Materials, SPLP and Complainants shall jointly request the Commission to:
	1. extend Complainants’ exceptions and reply exceptions periods from 20 days to 60 days for exceptions and 10 days to 30 days for reply exceptions;
	2. extend for all other parties the exceptions and reply exceptions periods from 20 days to 55 days for exceptions and 10 days to 25 days for reply exceptions;[[3]](#footnote-3)
	3. allow Complainants and SPLP to utilize the following procedures for filing and service of Complainants’ exceptions and/or reply exceptions:
		1. Complainants’ shall, in their exceptions and reply exceptions, indicate any portions of their exceptions and reply exceptions that are Confidential, Highly Confidential or ESM by highlighting such portion of their exceptions and reply exceptions in yellow. Confidentiality designations shall be made based on the confidentiality designations of testimony and exhibits of record. Complainants shall, five days prior to the respective date their exceptions or reply exceptions are due, serve only SPLP’s counsel with the exceptions and reply exceptions for SPLP’s counsel to review confidentiality designations and modify such designations as necessary.
		2. SPLP’s counsel shall:
			1. one day prior to the date Complainants’ exception or reply exceptions are due, provide a redacted, public version of the brief to Complainants’ counsel for filing and service on the parties to this proceeding as well as any public exhibits;
			2. file with the Secretary and serve counsel that are eligible reviewing representatives pursuant to the Amended Protective Order that have executed an NDA to the Amended Protective Order any exceptions or reply exceptions containing Confidential or Highly Confidential Materials;
			3. serve the Administrative Law Judge with any exceptions or reply exceptions containing or discussing Highly Confidential, Confidential, or ESM; and
			4. file with the Secretary and retain for in person review by eligible reviewing representatives pursuant to the Amended Protective Order any exceptions or reply exceptions containing or discussing ESM.
15. Complainants’ withdraw their Motion to Reclassify with prejudice dated November 8, 2019.

Disposition

The above Stipulation amends the discovery rules and the procedural schedule pursuant to the Procedural Order and Amended Protective Order issued on June 7, 2019. The Stipulation adds a new procedure allowing for the taking of notes of ESM subject to review and possibly redaction by SPLP’s counsel and “review proctors.” The Stipulation also addresses the treatment of confidential information in general throughout this adversarial proceeding before the Commission.

Notably, in Paragraph No. 4, the Stipulation provides for a procedure for resolving discovery disputes regarding ESM information, whereby unresolved disputes are presented to the presiding officer via a phone conference. If there is no informal resolution, then a hearing may be held.

The Stipulation is a reasonable resolution to Complainants’ Motion to Reclassify filed on November 8, 2019. The agreed upon terms appear to comply with the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1 to 2141.6 and the Commission regulations at 52 Pa. 52 Pa. Code §102.1 *et seq.* (Confidential Security Information). Specifically, Section 102.4(h) provides:

(h) *Discovery requests in adversarial proceedings*. The challenge and request to review procedures described in this chapter do not apply to exchanges of documents among parties in adversarial proceedings pending before the Commission. In adversarial proceedings, a party wishing to limit availability of records containing confidential security information must move for an appropriate protective order before the presiding officer in accordance with accepted rules and procedures for issuing protective orders.

52 Pa. Code § 102.4(h).

I encourage the parties to notify me in advance of the time and date of any in-person review session such that I may make myself available between the hours of 8:00 a.m. and 4:30 p.m. for a phone conference in the event there is an impasse regarding the redaction of ESM notes at the conclusion of the session. I also encourage the parties to use a good faith effort to resolve any disputes regarding the redaction of any notes taken by Complainants’ expert witnesses regarding ESM. If a hearing is ultimately requested prior to the resolution of a discovery dispute involving the appropriate confidentiality level of any ESM notes, a hearing may be scheduled and held.

**ORDER**

 THEREFORE,

 IT IS ORDERED:

1. That the Stipulation of Record to Amended Protective Order and Procedural Schedule filed on December 30, 2019 is approved and admitted into the record at Docket No. C-2018-3006116 *et al.*
2. That the discovery rules and procedural schedule pursuant to the Procedural Order and Amended Protective Order issued on June 7, 2019 are amended in accordance with the approved Stipulation of Record to Amended Protective Order and Procedural Schedule.
3. That in all other respects, the Procedural Order and Amended Protective Order remain in full force and effect.
4. Complainants’ Motion to Reclassify Putative Confidential Documents filed on November 8, 2019, is deemed withdrawn.

Date: January 2, 2020 /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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1. Provision to other parties in the proceeding of Complainants’ testimony four days after the deadline is only potentially prejudicial to one party – Range Resources. The testimony schedule in this proceeding only allows for Respondent (SPLP) and intervenors aligned with Respondent to file responsive testimony to Complainants’ testimony. June 6, 2019 Procedural Order at Ordering Paragraph 2. Range Resources is the only intervenor aligned with SPLP, and thus the only other party that may file responsive testimony to Complainants’ testimony. Counsel for SPLP is authorized to represent that Range Resources does not oppose this provision. Since no other party may file responsive testimony to Complainants’ testimony, a delay of four days in receiving Complainants’ testimony is not prejudicial. [↑](#footnote-ref-1)
2. SPLP believes provision to other parties in the proceeding of Complainants’ main brief two days after the deadline is only potentially prejudicial to one party – Range Resources. Range Resources is the only party aligned with SPLP, and thus the only party other than SPLP that should be replying to Complainant’s main brief. Responsive briefs are not allowed to reply briefs, so Counsel for SPLP is authorized to represent that Range Resources does not oppose this provision. Since no other party should need to file a reply brief addressing Complainants’ main brief, a delay of two days in receiving Complainants’ main brief is not prejudicial. [↑](#footnote-ref-2)
3. These time extensions combined with the review provisions in subsection c result in the following procedure: All parties must have their exceptions done within the shorter time period, but there are five additional days built into the schedule for the filing of Complainants’ exceptions and reply exceptions so that SPLP has time to review these documents for confidentiality status prior to their filing. [↑](#footnote-ref-3)