**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 DENYING FLYNN COMPLAINANTS’ MOTION TO RECLASSIFY ANSWERS TO INTERROGATORIES**

On January 28, 2020, Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Flynn Complainants) filed a Motion to Reclassify Answers to Interrogatories. On February 19, 2020, Sunoco Pipeline, L.P. (Sunoco, SPLP, or Respondent) filed an Answer opposing the request. The Motion to Reclassify is ripe for a decision.

Flynn Complainants move to reclassify the written response to Flynn Complainants’ Interrogatory No. 44(l) from “highly confidential security information” to “public” or “non-proprietary.” Interrogatory No. 44(l) asks for a detailed timeline of the entire release of gasoline or petroleum products in the vicinity of the Turnbridge Apartment complex on or about Monday, November 11, 2019, including: 1) the time the release occurred; 2) when Sunoco became aware of it; 3) how Sunoco became aware of it; 4) when Sunoco personnel were dispatched to the scene; 5) when Sunoco personnel arrived at the scene; 6) the time Sunoco first spoke to Delaware County Emergency Services; 7) when first responders first arrived; and 8) when the release was contained. The Motion cited to an entirely redacted response at pages 2-4.

Conversely, SPLP provided a more public response to Interrogatory No. 44(l) in SPLP Attachment A to its Answer. This version only redacts the detailed and specific times of SPLP’s initial awareness of the event, response and arrival to the scene, and emergency responders’ timing of arrival to the scene, as well as the staging area that the emergency responders used. SPLP argues the times and staging area redacted in Attachment A are properly designated as Confidential Security Information (CSI) and Highly Confidential pursuant to the Amended Protective Order.

Disposition

The CSI Act defines confidential security information in relevant part as:

Information contained within a record maintained by an agency in any form, **the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities, *including, but not limited to***, all of the following:

(1) A vulnerability assessment which is submitted to the Environmental Protection Agency or any other Federal, State or local agency.

(2) Portions of emergency response plans that are submitted to the Department of Environmental Protection, the Pennsylvania Public Utility Commission or any other Federal, State or local agency **dealing with response procedures** or plans prepared to prevent or respond to emergency situations, except those portions intended for public disclosure, **the disclosure of which would reveal** vulnerability assessments, **specific tactics, specific emergency procedures or specific security procedures**. Nothing in this term shall be construed to relieve a public utility from its public notification obligations under other applicable Federal and State laws.

(3) A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.

(4) A security plan, security procedure or risk assessment prepared specifically for the purpose of preventing or for protection against sabotage or criminal or terrorist acts.

(5) (i) Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts. (ii) Nothing in this definition shall be construed to prevent the disclosure of monetary amounts.

CSI Act at Section 2 (emphasis added).

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.”).

The Amended Protective Order dated June 6, 2018 in this case provides for a procedure whereby the parties may challenge the confidential or proprietary nature of proprietary information and its admissibility. The party providing the information retains the burden of demonstrating that the designation is appropriate. *Id.* at Ordering Paragraph No. 17.

In part, Flynn Complainants’ Motion is now moot as SPLP has released a large portion of its previously classified Highly Confidential response to the public through its publicly filed Answer. I am persuaded to agree with SPLP that the remaining classified information detailing the specific timing from an actual event (time of awareness of the event through times when SPLP and emergency responders took action and arrived to the scene of the event) and where emergency responders located during the event is information that the CSI Act protects because this information could potentially compromise security against sabotage or criminal or terrorist acts. The nondisclosure of the exact times and staging area is necessary for the protection of the public and public utility facilities. CSI Act at Section 2 (defining CSI).

I am not persuaded to reclassify information SPLP claims to be CSI because the release of pipeline incident response time information and location of emergency responders could provide terrorists with information necessary to interfere with the pipeline operator’s and emergency responders’ actions in response to a pipeline emergency; and/or conduct secondary attacks on or diversions of emergency responders and pipeline operator personnel.

Flynn Complainants have the response they requested and the fact that a portion of it should be treated as Highly Confidential pursuant to the terms of the Amended Procedural Order does not affect Flynn Complainants’ due process rights or ability to prepare their case in this proceeding. I see no need for an *in camera* hearing before deciding this Motion.

THEREFORE,

IT IS ORDERED:

1. That Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines’ Motion to Reclassify Answers to Interrogatories is denied.

Date: February 19, 2020 /s/

Elizabeth Barnes

Administrative Law Judge

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

*(Revised 1/16/20)*

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