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October 1, 2019

BY ELECTRONIC FILING

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

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton; Docket No. C-2019-3006898 (consolidated)
Laura Obenski; Docket No. C-2019-3006905 (consolidated)
v.
Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING REBECCA BRITTON'S
MOTION FOR SANCTIONS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Rebecca Britton's Motion for Sanctions in the above-referenced proceedings.

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

Very truly yours,

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

WES/das
Enclosure

cc: Hon. Elizabeth H. Barnes (Electronic ebarnes@pa.gov and first class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos. C-2018-3006116 (consolidated)
	:	P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No. C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No. C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No. C-2019-3006905 (consolidated)
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	
<hr/>		
ANDOVER HOMEOWNERS' ASSOCIATION, INC.	:	
	:	Docket No. C-2018-3003605
v.	:	
	:	
SUNOCO PIPELINE L.P.	:	

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING REBECCA BRITTON'S MOTION
FOR SANCTIONS**

Pursuant to 52 Pa. Code §§ 5.371(b), Sunoco Pipeline L.P. (SPLP) answers¹ *pro se* Complainant Rebecca Britton's Motion for Sanctions (Motion) served September 26, 2019.²

¹ The Motion is presented in numbered paragraphs. Unlike a complaint, SPLP is not required to deny or admit allegations contained in a motion. *Compare* 52 Pa. Code § 5.61(b) (form of answer to complaints) with 52 Pa. Code § 5.61 generally (not mandating form of answer to motions). As such and given that the Motion contains various irrelevant, hyperbolic and otherwise improper statements, SPLP will not respond on a paragraph by paragraph basis.

² Contrary to Ms. Britton's representation in her certificate of service that she served her Motion on September 24, 2019, Ms. Britton served her Motion at 7:36 PM on September 25 via electronic mail. Pursuant to the June 6, 2019 Procedural Order at page 7, in hand service may be perfected via electronic mail if sent prior to 4:30 PM. As Ms. Britton did not serve her Motion prior to 4:30 on September 25, service effectively occurred on September 26.

I. INTRODUCTION

Ms. Britton's attempt to have SPLP sanctioned for alleged violation of the Amended Protective Order must be denied. As demonstrated below, the plain terms of the Amended Protective Order³ do not allow pro se complainants to access the Highly Confidential materials at issue; rather, only attorneys and experts may review them. *Infra* Section II.A. These restrictions are consistent with the Commission's regulations concerning protective orders, which clearly only contemplate access to such highly confidential materials to attorneys of record and outside

³ By its plain and unambiguous terms, Paragraph 7 of the Amended Protective Order only allows access to Highly Confidential Materials to three categories of people (attorneys appearing in this proceeding along with their employees and outside experts (Paragraph 7(i)-(iii)), with a limiting clause in subsection (iv) for certain people that may fall within paragraphs (i)-(iii) but are still not eligible to be a Reviewing Representative because of competitive concerns.

Information deemed as "HIGHLY CONFIDENTIAL PROTECTED MATERIAL", may be provided to a "Reviewing Representative" who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (i) An attorney for a statutory advocate pursuant to 52 Pa. Code §1.8 or a counsel who has entered an appearance in these proceedings for a party;
- (ii) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in these proceedings; or
- (iv) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL, provided that a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL shall not include an officer, director, stockholder, partner, or owner of any competitor of the parties, or of any shipper, customer or consignee of any affiliate of any competitor of the parties, or shipper, customer or consignee, or any employee of any such entity, if the employee's duties involve marketing or pricing responsibilities, or any responsibility for marketing or pricing with respect to the transportation or commodity sales and/or exchanges of refined petroleum products.

June 6, 2019 Amended Protective Order at Paragraph 7.

experts. 52 Pa. Code § 5.365(c)-(d). That is a fair and necessary balancing of protecting public safety and the public interest versus a pro se complainant's interest in reviewing information she is not qualified to opine about as a witness. Moreover, the Highly Confidential Materials at issue here also encompass Confidential Security Information. The current and ongoing need to protect such information, particularly given the recent attacks on Saudi oil fields, is indisputable and allowing its release to non-attorneys or outside experts is contrary to the intent of state and federal law protecting such information. *E.g.*, Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6); 49 U.S.C. § 60138 (protecting certain information contained in facility response plans). A GAO report also establishes the serious national security threat faced by pipelines:

According to TSA, pipelines are vulnerable to physical attacks—including the use of firearms or explosives—largely due to their stationary nature, the volatility of transported products, and the dispersed nature of pipeline networks spanning urban and outlying areas. The nature of the transported commodity and the potential effect of an attack on national security, commerce, and public health make some pipelines and their assets more attractive targets for attack. Oil and gas pipelines have been and continue to be targeted by terrorists and other malicious groups globally.

U.S. Gov't Accountability Off., GAO-19-48, Critical Infrastructure Protection Actions Needed to Address Significant Weaknesses in TSA's Pipeline Security Program Management, pgs. 10-11 (Dec. 2018), available at <https://www.gao.gov/assets/700/696123.pdf>.

No relief is available here. The terms of Ms. Britton's motion and request for relief as to the Amended Protective Order are clear – she is erroneously and improperly seeking access to Highly Confidential materials as a sanction for SPLP's alleged violation of the Amended Protective Order. SPLP did not violate the Order so no relief can be granted. Moreover, the Commission and/or Presiding Officer cannot act as an advocate and raise arguments or theories

sua sponte in a Complaint proceeding.⁴ While the Motion is unclear at best and is at odds with the Order of which it complains, Ms. Britton appears to be impermissibly collaterally attacking Your Honor’s ruling and to be asking Your Honor to advocate or create new arguments on her behalf in violation of the recent *Dinniman* determination.

Moreover, Ms. Britton has not shown any prejudice to her case. She did not lodge the discovery requests resulting in the production of information that she seeks and she has not even allege any need for any particular document or set of documents based upon what she may testify to or offer opinions—which she may not as a lay person under clear Pennsylvania law.

Any potential risk of prejudice is hers to bear for her own choice of proceeding *pro se* and has no weight in considering her motion. As the Pennsylvania Supreme Court has held, “[i]t is, we believe, preferable to simply recognize, as the Commonwealth Court has previously done, that ‘any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.’” *Vann v. Com., Unemployment Comp. Bd. of Review*, 508 Pa. 139, 148 (1985)(emphasis added); quoting *Groch v. Unemployment Compensation Board of Review*, 81 Pa.Cmwlth. 26, 30, 472 A.2d 286, 288 (1984)). See also *Dolores Herring v. Metropolitan Edison Company*, No. F-2016-2540875, 2017 WL 3872590, at *3 (Order entered August 31, 2017) (The Commission, citing *Vann* and *Groch*, adopted the ALJ’s initial decision, noting “the Complainant in this case proceeded *pro se* by choice and bore the risk of doing so.”).

Finally, while Ms. Britton’s incorrect and defamatory accusations against SPLP’s counsel in her motion are impertinent, scandalous and irrelevant, counsel addresses them herein to

⁴ See *Sunoco Pipeline L.P. v. Dinniman and Pub. Util. Comm’n*, __ A.3d __, 2019 WL 4248071, Docket No. 1169 C.D. 2018, Slip Op. at 7-8, 10 (Pa. Cmwlth. Sept. 9, 2019) (“The PUC erred in raising the issue of personal standing *sua sponte* and injecting this theory of standing into the case”) (*SPLP v. Dinniman and PUC*).

correct these falsities. In fact, they are so out of line that such specious allegations themselves could support sanctions against Ms. Britton.

SPLP's counsel is under absolutely no duty to assist Ms. Britton, explain the law, or communicate outside required legal pleadings and filings. Ms. Britton makes a series of incorrect statements regarding timing of responses to motions to imply counsel was trying to inappropriately "buy time." Ms. Britton is the one that is incorrect concerning procedural time frames and SPLP's correspondence. While Ms. Britton is not a lawyer, that does not mean she can make false allegations concerning orders issued in this proceeding which are clearly understandable to any lay person, and then use her misrepresentations to defame SPLP's lawyers.

As to Ms. Britton's implication that SPLP's counsel's reluctance to correspond with her outside of legal pleadings or otherwise communicate in such a way that could be misinterpreted, SPLP's actions adhere to the Rules of Professional Conduct. Undersigned counsel represents SPLP, a party adverse to Ms. Britton's interests. SPLP's counsel is under no duty to correspond with Ms. Britton, to provide her with legal advice, or interpretations of legal documents such as the Amended Protective Order. In fact, it could violate counsel's duties to its own client to do so, as well as Rules of Professional Conduct concerning parties unrepresented by counsel with interests adverse to a client. The Rules of Professional Conduct are clear that SPLP's counsel cannot communicate in a way with Ms. Britton that could be misconstrued by her as legal advice:

Rule 4.3. Dealing with Unrepresented Person.

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

(b) During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

Id. Counsel's decision not to informally communicate with Ms. Britton based on her representation that she signed (albeit incorrectly and without qualifying) the Non-Disclosure Agreement was in keeping with these rules. Contrary to Ms. Britton's false, yet verified representation, she did not request access to discovery materials in July – she merely sent around an improperly executed Non-Disclosure Agreement. Motion at ¶ 5 and Attachment. Counsel did not want to imply that it was advising Ms. Britton what to or not to do and did not respond to that email that made no request of SPLP or its counsel. Counsel did timely respond in September when Ms. Britton actually demanded access to Highly Confidential Materials, and did so in a timely manner, particularly given counsel was not required to correspond with Ms. Britton at all.

While recognizing Ms. Britton is a *pro se* party, her misrepresentations and actions concerning this Motion are the sanctionable behavior here, not that of SPLP or its counsel.

II. ARGUMENT

A. The Amended Protective Order Clearly Does Not Allow Access to Highly Confidential Materials to Pro Se Complainants and SPLP Has Not Violated It

The Amended Protective Order clearly does not allow access *pro se* complainants to access Highly Confidential Materials. By its plain and unambiguous terms, Paragraph 7 of the Amended Protective Order only allows access to Highly Confidential Materials to three categories of people (attorneys appearing in this proceeding along with their employees and outside experts (Paragraph 7(i)-(iii)), with a limiting clause in subsection (iv) for certain people

that may fall within paragraphs (i)-(iii) but are still not eligible to be a Reviewing Representative because of competitive concerns.

Information deemed as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”, may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (i) An attorney for a statutory advocate pursuant to 52 Pa. Code §1.8 or a counsel who has entered an appearance in these proceedings for a party;
- (ii) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in these proceedings; or
- (iv) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL, provided that a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL shall not include an officer, director, stockholder, partner, or owner of any competitor of the parties, or of any shipper, customer or consignee of any affiliate of any competitor of the parties, or shipper, customer or consignee, or any employee of any such entity, if the employee’s duties involve marketing or pricing responsibilities, or any responsibility for marketing or pricing with respect to the transportation or commodity sales and/or exchanges of refined petroleum products.

June 6, 2019 Amended Protective Order at Paragraph 7.

The Amended Protective Order is completely consistent with and mimics the Commission’s regulations:

(c) *Restrictions.*

- (1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or

presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including exhibits, writings, direct testimony, cross-examination, argument and responses to discovery will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto must be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information must remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties.* Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert who is a stockholder, partner or owner of a competitor or affiliate is eligible unless the ownership interest

is valued at more than \$10,000 or constitutes a more than 1% interest, or both. Other persons may not have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

52 Pa. Code § 5.365(c)-(d) (emphasis added).

These restrictions exist for a reason – attorneys and outside experts have professional duties and representations to maintain to practice their livelihood. They can be sanctioned in meaningful ways and risk losing the ability to practice if they violate a protective order. Moreover, such people are under a duty to actually understand the terms of a protective order to abide by them. In contrast, Ms. Britton has already demonstrated her inability to understand and ignorance of the terms of the Amended Protective Order and the Commission’s regulations. Her actions demonstrate an inability to understand or abide by its terms. She is not a qualified Reviewing Representative and for good reason. In short, given her lack of comprehension versus the threat to public safety and integrity of infrastructure and other operational information shows the need for her not having access to these documents and information that needs a high level of protection.

Ms. Britton alleges SPLP violated the Amended Protective Order. But the Amended Protective Order is prohibitive in nature – it determines who may and may not have access to materials. It does not order SPLP to provide information to anyone—particularly to the non-attorney, non-expert Ms. Britton. To the contrary, the Amended Protective Order prohibits Ms. Britton from accessing Highly Confidential Materials because she is not a qualified Reviewing Representative. SPLP has not violated the Amended Protective Order.

Ms. Britton incorrectly takes issue with the definition of attorney or counsel in Paragraph 7(i), apparently alleging that she fits within this category. Motion at ¶¶ 14-15. Interpreting Ms. Britton’s arguments most favorably to her, she demonstrates that she, as a pro se Complainant, is

confused about the Order and the meaning of attorney or counsel. The Commission's regulations and the plain terms attorney and counsel who has entered their appearance are clear – while a “person” may represent themselves, an attorney or counsel is “an attorney at law admitted to practice before the Supreme Court of Pennsylvania.”

§ 1.21. Appearance.

(a) Individuals may represent themselves.

§ 1.22. Appearance by attorney or certified legal intern.

(a) Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

52 Pa. Code §§ 1.21-1.22. To the extent Ms. Britton is implying she is an attorney, she should be admonished that such verified implication toes the line of the unauthorized practice of law.⁵

B. No Relief Can Be Granted

1. Given SPLP has Not Violated any Order, No Relief Can Be Granted as to the Amended Protective Order

The terms of Ms. Britton's motion and request for relief as to the Amended Protective Order are clear – she is solely seeking access to Highly Confidential materials as a sanction for SPLP's alleged violation of the Amended Protective Order. The Commission and/or Presiding Officer cannot act as an advocate and raise arguments or theories *sua sponte* in a Complaint proceeding.⁶ As demonstrated above, SPLP has not violated the Amended Protective Order, but

⁵ See Rule of Professional Conduct 5.5 Unauthorized Practice of Law (prohibiting person not admitted to practice in Pennsylvania from holding out to the public or otherwise representing they are admitted to practice law).

⁶ See *Sunoco Pipeline L.P. v. Dinniman and Pub. Util. Comm'n*, __ A.3d __, 2019 WL 4248071, Docket No. 1169 C.D. 2018, Slip Op. at 7-8, 10 (Pa. Cmwlth. Sept. 9, 2019) (“The PUC erred in raising the issue of personal standing *sua sponte* and injecting this theory of standing into the case”) (*SPLP v. Dinniman and PUC*).

instead followed its plain terms. Since Complainant has failed to show any violation of the Amended Protective Order, no relief can be granted on the basis of her Motion.

2. Other Relief Requested Cannot Be Granted

Ms. Britton also makes two requests for inappropriate relief that cannot be granted even if a violation of the Amended Protective Order were shown. First, Ms. Britton requests counsel's fees on an ongoing basis, essentially seeking to have her opponent hire her a lawyer. Had she engaged a lawyer or simply read SPLP's September 16, 2019 Answer to Flynn Complainants' Motion for Sanctions, she would have discovered that the Commission lacks authority to issue legal fees, and as such that her claim it could is specious. It is well-established the Commission cannot order counsel fees, as a sanction or otherwise.

It is well established in the courts of this Commonwealth that legal fees are not generally recoverable except where permitted by statute or other recognized exception to this general rule. *Corace v. Balint*, 418 Pa. 262, 271 (1965); *Becker v. Borough of Schuylkill Haven*, 200 Pa. Super. 305, 312 (1963); 11 Pa. Law Encyclopedia Damages § 33 (1970). Nothing in the Commission's statutes, regulations or orders gives the Commission the power to grant attorney fees in the factual setting of the present Complaint. See *Capitol Bus Company v. Leonard M. Smith*, Docket No. 20830 (Final Order entered September 23, 1975) 1975 Pa. PUC LEXIS 24; 49 Pa. PUC 428; see also *Pa. Pub. Util. Comm'n v. Duquesne Light Company*, 61 Pa. PUC 495 (1986); *Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corporation*, 63 Pa. PUC. 68, 71 (1987) (The Commission does not have jurisdiction to award attorney fees and costs); *Edward Dugas v. PECO Energy Company*, Docket No. Z-01417035, 2004 Pa. PUC LEXIS 50 (June 10, 2004) (The Commission was not empowered to award damages, attorney fees or costs); *James H. Joseph v. Bell Telephone Company of Pennsylvania*, Docket No. C-00924568, 1993 Pa. PUC LEXIS 55 (The Commission is without authority to award attorney fees).

Armstrong Telecommunications, Inc. v. Verizon Pennsylvania Inc., Initial Decision, Docket Nos. C-2010-2216311 *et al*, 2018 WL 5082013, at *16 (Oct. 4, 2018) (ALJ Buckley).

Second, Ms. Britton requests that the Flynn Complainants' September 9, 2019 Motion for Sanctions be granted. If Ms. Britton wanted to be heard on the Flynn Motion, she needed to follow the rules like everyone else and file a timely answer within five days of service of that Motion (September 16, 2019). She did not. Instead she threw in a request for relief in her own Motion with absolutely no support for such relief or showing of how she has any interest in being heard in that matter. This is not allowable relief in these circumstances and must be denied. To the extent Your Honor considers this requested relief, SPLP hereby incorporates in full as if set forth herein its September 16, 2019 Answer to Complainants' Motion for Sanctions.

3. Ms. Britton Has Not Shown Any Prejudice to Her Case

Ms. Britton baselessly alleges that her inability to access to Highly Confidential Materials is somehow prejudicial, harmful or "biased." Ms. Britton has not and cannot show that her inability to access such materials prejudices her case. First, Ms. Britton did not lodge the discovery requests at issue. She has shown absolutely no need for any particular document or set of documents or explained how lack of access thereto is somehow prejudicial to her. Moreover, if Ms. Britton retains an attorney or an outside expert, so long as they are a qualified reviewing representative that person could obtain access to such materials and assist her with her case. Not doing so is Ms. Britton's own choice and she bares the risk of that choice. As the Pennsylvania Supreme Court has held, "[i]t is, we believe, preferable to simply recognize, as the Commonwealth Court has previously done, that 'any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.'" *Vann v. Com., Unemployment Comp. Bd. of Review*, 508 Pa. 139, 148 (1985)(emphasis added); quoting *Groch v. Unemployment Compensation Board of Review*, 81 Pa.Cmwlth. 26, 30, 472 A.2d 286, 288 (1984)). See also *Dolores Herring v.*

Metropolitan Edison Company, No. F-2016-2540875, 2017 WL 3872590, at *3 (Order entered August 31, 2017) (The Commission, citing *Vann* and *Groch*, adopted the ALJ's initial decision, noting "the Complainant in this case proceeded *pro se* by choice and bore the risk of doing so.").

C. SPLP's Counsel Has and Is Acting In Good Faith and Consistent with Duties of Professional Conduct

Ms. Britton falsely makes inflammatory allegations that SPLP's counsel has behaved with "ill intent," "unscrupulously," or otherwise demonstrated behavior that "is unbecoming of an 'attorney.'" *See, e.g.*, Motion at ¶¶ 7, 9, 16. To the contrary, SPLP's counsel has acted in good faith and in accordance with Rules of Professional Conduct. If anything should be sanctioned, it should be only Ms. Britton's false claims.

First, contrary to Ms. Britton's incorrect allegations based on what appears to be willful ignorance of both procedural rules and Your Honor's orders, SPLP was not trying to "buy" time to respond to Ms. Britton's improper email to Your Honor seeking relief. Motion at ¶¶ 7-8. In its September 19, 2019 email, SPLP wanted to clarify that if the relief Ms. Britton requested in her email would be considered, then her email was an improperly filed motion and that SPLP would be provided with its right to respond to a motion within 20 days. 52 Pa. Code § 5.61(a)(1).

Ms. Britton similarly is wrong that Your Honor has set forth a 7-day response time for all motions. That ruling expressly only applies to discovery motions (not answers, which are due 3 days from the motion) for motions to compel filed after service of Complainants' Surrebuttal testimony.⁷ While Ms. Britton is not a lawyer, that does not mean she can make false allegations concerning orders issued in this proceeding which are clearly understandable to any lay person,

⁷ June 6, 2019 Procedural Order at Ordering Paragraph 4.

and then use her misrepresentations to defame SPLP's lawyers. Moreover, it was unclear what type of motion Ms. Britton was attempting lodge via her email. SPLP could have no knowledge that Ms. Britton was apparently attempting to move for sanctions via email, which motion has a five-day response time, particularly, as shown above, since such motion is totally meritless.

As to Ms. Britton's implication that SPLP's counsel's reluctance to correspond with her outside of legal pleadings or otherwise communicate in such a way that could be misinterpreted, SPLP's actions adhere to the Rules of Professional Conduct. Undersigned counsel represents SPLP, a party adverse to Ms. Britton's interests. SPLP's counsel is under no duty to correspond with Ms. Britton to provide her with legal advice or interpretations of legal documents such as the Amended Protective Order. In fact, it could violate counsel's duties to its own client to do so, as well as Rules of Professional Conduct concerning parties unrepresented by counsel with interests adverse to a client. The Rules of Professional Conduct are clear that SPLP's counsel cannot communicate in a way with Ms. Britton that could be misconstrued by her as legal advice:

Rule 4.3. Dealing with Unrepresented Person.

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

(b) During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

Id. Counsel's decision not to informally communicate with Ms. Britton based on her representation that she signed the Non-Disclosure Agreement was in keeping with these rules. Contrary to Ms. Britton's false, yet verified representation, she did not request access to

discovery materials in July – she merely sent around an improperly executed Non-Disclosure Agreement. Motion at ¶ 5 and Attachment. Counsel did not want to imply that it was advising Ms. Britton what to or not to do and did not respond to that email that made no request of SPLP or its counsel. Counsel did timely respond in September when Ms. Britton actually demanded access to Highly Confidential Materials, and did so in a timely manner, particularly given counsel was not required to correspond with Ms. Britton at all.

Ms. Britton’s failure to seek relief via proper means at an earlier date likewise cannot be blamed on counsel’s refusal to advise her on legal matters. If Ms. Britton felt she was entitled in July or August to these materials, she should have filed a motion then and SPLP’s counsel was under absolutely no duty to advise her to do so. Again, taking such actions could have violated counsel’s duties under the Rules of Professional Conduct both as to its duties to its client and duties when dealing with unrepresented parties. Ms. Britton is choosing to proceed pro se and bares the risk of doing so.⁸

⁸ As the Pennsylvania Supreme Court has held, “[i]t is, we believe, preferable to simply recognize, as the Commonwealth Court has previously done, that ‘any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.’” *Vann v. Com., Unemployment Comp. Bd. of Review*, 508 Pa. 139, 148 (1985)(emphasis added); quoting *Groch v. Unemployment Compensation Board of Review*, 81 Pa.Cmwlth. 26, 30, 472 A.2d 286, 288 (1984)). See also *Dolores Herring v. Metropolitan Edison Company*, No. F-2016-2540875, 2017 WL 3872590, at *3 (Order entered August 31, 2017) (The Commission, citing *Vann* and *Groch*, adopted the ALJ’s initial decision, noting “the Complainant in this case proceeded *pro se* by choice and bore the risk of doing so.”).

III. CONCLUSION

WHEREFORE, Sunoco Pipeline L.P. respectfully requests Your Honor deny Ms. Britton's Motion for Sanctions.

Respectfully submitted,



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Dated: October 1, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL ONLY

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Dated: October 1, 2019