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March 2, 2021

Via Electronic Filing

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

RE: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129;
SUNOCO PIPELINE L.P.’S MOTION FOR PROTECTIVE ORDER

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.’s Motion for Protective Order in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service.

This notice is served electronically pursuant to the COVID-19 Suspension Emergency Order dated March 20, 2020 and ratified March 26, 2020.

If you have any questions, please feel free to contact the undersigned counsel.

Respectfully submitted,

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Whitney E. Snyder
Kevin J. McKeon
Bryce R. Beard

Counsel for Sunoco Pipeline L.P.

BRB/das

Enclosures

cc: Honorable Joel Cheskis (via email jcheskis@pa.gov)
Ashley L. Beach (via email abeach@foxrothschild.com)

**THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.	:		
	:	Docket Nos.	C-2020-3023129
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL CHESKIS:

Sunoco Pipeline L.P. (“Sunoco”) hereby requests that the Honorable Deputy Chief Administrative Law Judge Joel Cheskis (the “ALJ”) enter a Protective Order in these proceedings pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), and in support thereof represents as follows:

I. Background

1. On December 2, 2020, Complainant Glen Riddle Station, L.P. (“Glen Riddle”) filed a Formal Complaint (Docket No. C-2020-3023129) with the Pennsylvania Public Utility Commission (“Commission”).
2. On February 9, 2021, Glen Riddle lodged discovery requests that seek confidential, proprietary, or Highly Confidential CSI information.
3. On February 11, 2021, Glen Riddle filed a petition for interim emergency relief with the Commission which was subsequently withdrawn.
4. On February 15, 2021, Counsel for Sunoco reached out to Counsel for Glen Riddle and proposed the Commission-standard Protective Order and a requested their review and “non-opposition” to best serve the efficiency of the parties, Your Honor, and the Commission. See attachment A.

5. By email dated February 15, 2021, Counsel for Glen Riddle responded, indicating they needed time to review the proposed order and asked whether the protective order would apply to both the Emergency Petition and the underlying complaint to which Counsel for Sunoco confirmed the proposed order's applicability to the entire matter. See attachment A.

6. At the February 26, 2021 Prehearing Conference and in its Motion to Compel filed the same day Glen Riddle has taken the position that Sunoco has waived its opportunity to seek a protective order, apparently relying on 52 Pa. Code § 5.365(c)(4) ("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.")

7. Glen Riddle's position is not supported by law or fact. Counsel for Sunoco proposed a Commission-standard Protective Order that complies with 52 Pa. Code §§ 5.362(a)(7) and 5.365 and requested Glen Riddle's review and "non-opposition" within 6 days of receiving Glen Riddle's discovery requests.

8. On March 1, 2021, Glen Riddle sought significant alterations to the standard protective order which go far beyond the Commission's norms and regulations, and if enacted, would create a significant risk that the parties and SPLP's public utility proprietary, confidential, highly confidential, and Confidential Security Information would not be protected in this proceeding. By way of example, Glen Riddle's proposed alterations flip the Commission's rules regarding how the parties designate or label information as Confidential and Highly Confidential information and the challenge process therein. 52 Pa. Code § 5.365(c)(5) provides that:

(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.

This principle is embodied in the Commission standard order attached to this Motion. In contrast, Glen Riddle’s proposed alterations would flip that standard, requiring a party to affirmatively “demonstrate that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process.” See attachment B, page 6. In other words, Glen Riddle seeks to have the party affirmatively demonstrate that protections are needed for each piece of confidential information in this expedited proceeding, rather than the parties undertaking in good-faith labeling of confidential and highly confidential information and the opposing party challenge such designation should the need arise for that information to be used in the public record for this matter.¹

9. As described more fully below, the proposed Protective Order aligns with years of previously implemented protective orders before the Commission in complaint and rate proceedings, designating confidential and highly confidential information.² In some cases, the proposed order is less restrictive than what ALJs have entered, including the protective order in prior complaint proceedings involving SPLP due to the limited subject matter and expedited nature of this proceeding. Given the relatively shortened procedural schedule in this proceeding, it is in the best interests of the parties to expeditiously resolve procedural matters such as this protective

¹ SPLP notes that the evidence, testimony, and transcripts will likely be segregated into a public and a confidential record, as is done in matters before the Commission and thus Glen Riddle’s need for a reversed standard is unnecessary. That items used in written testimony or introduced at hearing may or may not be subject to confidentiality does not hinder the parties’ access to them or their preparation of their case – rather it means that Your Honor will need a public and a confidential record in this proceeding.

² See e.g. *EnergyMark LLC et al. v. National Fuel Gas Distribution*, Docket No. C-2020-3019621, Protective Order entered January 20, 2021 (notably parallel to the instant proposed order, but including a heightened category of EXTREMELY SENSITIVE MATERIALS); *PA PUC et al v. Columbia Gas of Pennsylvania*, Docket No. R-2020-3018835, Protective Order entered June 23, 2020; *Flynn et al. v. Sunoco Pipeline L.P.*, Docket No. C-2018-3006116, Protective Order entered June 7, 2019 (notably parallel to the instant proposed order, but including a heightened category of EXTREMELY SENSITIVE MATERIALS); *Interstate Gas Supply et al v. Metropolitan Edison Company et al*, Docket No. C-2019-3013805, Protective Order entered February 28, 2020; *PA PUC et al v. Columbia Gas of Pennsylvania*, Docket No. R-2018-2647577, Protective Order entered May 2, 2018.

order and there is no reason to part from the accepted and proven proposed Protective Order that comports with the Commission's provisions in 52 Pa. Code §§ 5.362(a)(7) and 5.365(a).

10. Sunoco, Glen Riddle, Your Honor and this Commission have a duty to protect proprietary, confidential and notably Public Utility Confidential Security Information from disclosure. See 52 Pa. Code § 5.365; 35 P.S. §§ 2141.1 to 2141.6; 52 Pa. Code §§ 102.1 – 102 and 52 Pa. Code §§ 102.1 – 102.4. This is the purpose of such protective orders. Counsel for Glen Riddles' gamesmanship would ultimately seek to abuse a public utility's proprietary, confidential, or confidential security information, and cannot be allowed. To the extent Sunoco's attempt to amicably address the protective order necessity in this case could be viewed as a technical procedural defect in formally requesting a protective order, Your Honor may and should disregard it pursuant to 52 Pa. Code § 1.2, and grant this motion to adopt a Commission standard Protective Order as described below.

II. Motion for Protective Order

11. Proprietary Information within the definition of 52 Pa. Code § 5.365 may be presented during the course of these proceedings, which justifies the issuance of a Protective Order. For example, parties may present information that is customarily treated as sensitive, proprietary, highly confidential, or confidential security information. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

12. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial

and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information is known by others and used in similar activities; and the worth or value of the information to the party and to the party's competitors. 52 Pa. Code § 5.365(a)(1)-(3).

13. Moreover, the Commission has an affirmative duty to protect from release Confidential Security Information, which is not subject to disclosure to third parties under the provisions and procedures specified in the '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.

14. The attached proposed Protective Order is similar to the Protective Orders entered in many Commission proceedings,³ including what was entered in *State Senator Andrew Dinniman et al v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-30014533 *et al* (Order entered May 8, 2018) and initially entered in *Flynn et al. v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3006116 *et al* (Order entered Nov. 28, 2018) and the protective orders commonly used in Commission proceedings.

15. The attached proposed Protective Order defines two categories of protected information. The first is "CONFIDENTIAL," which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury." The second is "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," which is also defined in Paragraph

³ See f.n. 2.

3 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive nature among the parties; or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials; or Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6)” Moreover, Paragraph 3 of the attached proposed Protective Order also defines “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” as information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4.

16. Paragraph 17 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.”

17. Limitation on the disclosure of information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of these proceedings. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

18. The attached Protective Order sought by Sunoco will protect the proprietary nature of competitively valuable information and Confidential Security Information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

WHEREFORE, for all the reasons set forth above, Sunoco Pipeline L.P. respectfully requests that Your Honor issue the attached Protective Order.

Respectfully submitted,

/s/ Thomas J. Sniscak

Thomas J. Sniscak, Esq. (PA ID No. 33891)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Kevin J. McKeon, Esq. (PA ID No. 30428)
Bryce R. Beard, Esq. (PA ID No. 325837)
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Dated: March 2, 2021

Attorneys for Respondent Sunoco Pipeline L.P.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.	:		
	:	Docket Nos.	C-2020-3023129
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by Sunoco Pipeline L.P. on March 2, 2021;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below that have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceedings and all proceedings consolidated therewith.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in these proceedings, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” Such materials will be referred to below as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. This Protective Order applies to the following categories of materials: (a) the parties may designate as “CONFIDENTIAL” those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business

injury; (b) the parties may designate as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials, or Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6). Moreover, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will also be designated as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” Pursuant to the Commission’s rules regarding the handling of Confidential Security Information, no information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will be provided electronically to the Commission, Administrative Law Judge, Secretary’s Bureau, or any other Commission staff, and such information must be filed with the Commission in hard copy only. The parties shall endeavor to limit their designation of information as HIGHLY CONFIDENTIAL PROTECTED MATERIAL.

4. Proprietary Information shall be made available to counsel for a party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in these proceedings. To the extent required for participation in these proceedings, counsel for a party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Information deemed as “CONFIDENTIAL” shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

- (i) An attorney who has entered an appearance in these proceedings for a party;
- (ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph 5(i);
- (iii) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in these proceedings; or
- (iv) Employees or other representatives of a party appearing in these proceedings with significant responsibility for this docket.

6. 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 of an attorney for purposes of this case with an attorney described in Paragraph (i); or
- (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.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL PROTECTED MATERIAL, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular persons or parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person.”

(a) A “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the

parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

8. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" may review and discuss "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person", but may not share with or permit the client or entity to review the "HIGHLY CONFIDENTIAL PROTECTED MATERIAL." Such discussions must be general in nature and not disclose specific "HIGHLY CONFIDENTIAL PROTECTED MATERIAL."

9. Information deemed Proprietary Information shall not be used except as necessary for the conduct of these proceedings, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of these proceedings and who needs to know the information in order to carry out that person's responsibilities in these proceedings.

10. Reviewing Representatives may not use information contained in any Proprietary Information obtained through these proceedings to give any party or any competitor or customer or consignee of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(i) through 5(iv) or 6(i) through 6(iii) above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 6(iv) above with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

11. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure

Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

12. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL PROTECTED MATERIAL." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in these proceedings, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served upon the parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL PROTECTED MATERIAL."

14. The parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the non-producing party shall promptly notify the

producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

15. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Part of any record of these proceedings containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

17. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

18. The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. Within 30 days after a Commission final order is entered in the above-captioned proceedings, or in the event of appeals, within thirty days after appeals are finally decided, the parties, upon request, shall either destroy or return to the parties all copies of all documents and

other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the party shall certify in writing to the other producing party that the Proprietary Information has been destroyed.

Dated: _____

Joel H. Cheskis
Deputy Chief Administrative Law Judge

ATTACHMENT A

From: [Whitney Snyder](#)
To: [Cortes, Samuel W.](#); [Beach, Ashley L.](#)
Cc: [Thomas Sniscak](#); [Chernesky, Jean C.](#); [Kuebler, Tara L.](#)
Subject: RE: Draft Protective Order Glen Riddle v SPLP Pa PUC
Date: Monday, February 15, 2021 11:43:00 AM

Confirmed.

-Whitney

From: Cortes, Samuel W. <SCortes@foxrothschild.com>
Sent: Monday, February 15, 2021 11:42 AM
To: Whitney Snyder <WESnyder@hmslegal.com>; Beach, Ashley L. <abeach@foxrothschild.com>
Cc: Thomas Sniscak <TJSniscak@hmslegal.com>; Chernesky, Jean C. <JChernesky@foxrothschild.com>; Kuebler, Tara L. <TKuebler@foxrothschild.com>
Subject: RE: Draft Protective Order Glen Riddle v SPLP Pa PUC

We will review and get back to you later today or tomorrow at the latest – please confirm that you intend for this to apply to the entire proceeding (not just a hearing on the pending petition). Thank you.

Sam

Samuel Cortes

Partner

Fox Rothschild LLP

Eagleview Corporate Center
747 Constitution Drive, Suite 100, PO Box 673
Exton, PA 19341
(610) 458-4966 - direct
(610) 458-7337- fax
SCortes@foxrothschild.com
www.foxrothschild.com

From: Whitney Snyder <WESnyder@hmslegal.com>
Sent: Monday, February 15, 2021 11:34 AM
To: Cortes, Samuel W. <SCortes@foxrothschild.com>; Beach, Ashley L. <abeach@foxrothschild.com>
Cc: Thomas Sniscak <TJSniscak@hmslegal.com>
Subject: [EXT] Draft Protective Order Glen Riddle v SPLP Pa PUC

Sam and Ashley,

Per the prehearing call with ALJ Cheskis, attached for your review is a motion for protective order and proposed protective order for this proceeding similar to the protective orders commonly used in PUC proceedings. We seek your non-opposition to entry of the order.

Best,

Whitney E. Snyder | Partner

Hawke McKeon & Sniscak LLP

100 North 10th Street | Harrisburg, PA 17101

Phone: 717.703.0807 | Fax: 717.236.4841 | Email: wesnyder@hmslegal.com

<http://www.hmslegal.com/> |

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ATTACHMENT B

~~cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.~~

~~5. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information is known by others and used in similar activities; and the worth or value of the information to the party and to the party's competitors. 52 Pa. Code § 5.365(a)(1)-(3).~~

~~6. Moreover, the Commission has an affirmative duty to protect from release Confidential Security Information, which is not subject to disclosure to third parties under the provisions and procedures specified in the '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.~~

~~7. The attached proposed Protective Order is similar to the Protective Order entered in *State Senator Andrew Dinniman et al v. Sunoco Pipeline, L.P.*, Docket Nos. P-2018-30014533 *et al* (Order entered May 8, 2018) and initially entered in *Flynn et al. v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3006116 *et al* (Order entered Nov. 28, 2018) and the protective orders commonly used in Commission proceedings.~~

~~8. The attached proposed Protective Order defines two categories of protected information. The first is "CONFIDENTIAL," which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject~~

~~that party or its clients to risk of competitive disadvantage or other business injury information that would subject the providing party to substantial harm such that it outweighs the public's interest in free and open access to the administrative hearing process." The second is "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," which is also defined in Paragraph 3 of the attached proposed Protective Order as "those materials that are of such a commercially sensitive nature among the parties; or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials; or Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6)" Moreover, Paragraph 3 of the attached proposed Protective Order also defines "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" as information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4.~~

~~9. Paragraph 17 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL PROTECTED MATERIAL."~~

~~10. Limitation on the disclosure of information deemed "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of these proceedings. The proposed Protective Order balances the interests of the parties, the public, and the Commission.~~

~~— The attached Protective Order sought by Sunoco will protect the proprietary nature of competitively valuable information and Confidential Security Information while allowing the~~

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLENN RIDDLE STATION, L.P. :
 :
 v. : Docket Nos. C-2020-3023129
 :
 :
 SUNOCO PIPELINE L.P. :

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by Sunoco Pipeline L.P. on February 16, 2021;

IT IS ORDERED THAT:

~~1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2-3 below that have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceedings and all proceedings consolidated therewith.~~

~~2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in these proceedings, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL PROTECTED MATERIAL." Such materials will be referred to below as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.~~

1. This Protective Order applies to the following categories of materials referred to collectively as the "Proprietary Information":

(a) the parties may designate as "CONFIDENTIAL" those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the

~~public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury~~information/materials for which they can demonstrate that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. For any document so designated, the producing party must create a log describing the applicability of the factors set forth in 52 Pa. Code § 5.365(a). No documents shall be withheld on the basis of being "CONFIDENTIAL" as set forth in this paragraph. †

3. _____(b) the parties may designate as "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" those materials that ~~are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials, or Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6). Moreover, information~~are subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4. ~~will also be designated as "HIGHLY CONFIDENTIAL PROTECTED MATERIAL."~~ Pursuant to the Commission's rules regarding the handling of Confidential Security Information, no information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will be provided electronically to the Commission, Administrative Law Judge, Secretary's Bureau, or any other Commission staff, and such information must be filed with the Commission in hard copy only. The parties shall endeavor to limit their designation of information as HIGHLY CONFIDENTIAL PROTECTED

MATERIAL. No documents shall be withheld based on being “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” as set forth in this paragraph.

4.2. Proprietary Information ~~Proprietary Information~~ shall be made available to counsel for a party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in these proceedings. To the extent required for participation in these proceedings, counsel for a party may afford access to ~~Proprietary Information~~Proprietary Information subject to the conditions set forth in this Protective Order.

5.3. Information deemed as “CONFIDENTIAL” ~~Proprietary Information~~ shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

- (i) An attorney who has entered an appearance in these proceedings for a party;
- (ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph 5(i);
- (iii) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in these proceedings; or
- (iv) Employees or other representatives of a party appearing in these proceedings ~~with significant responsibility for this docket.~~

~~5. 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 of an attorney for purposes of this case with an attorney described in Paragraph (i); or~~
- ~~(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.~~

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL PROTECTED MATERIAL, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular persons or parties.

~~5. — For purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person."~~

~~—— (a) — A "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.~~

~~—— (b) — If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person,~~

~~said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.~~

~~8. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" may review and discuss "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person", but may not share with or permit the client or entity to review the "HIGHLY CONFIDENTIAL PROTECTED MATERIAL." Such discussions must be general in nature and not disclose specific "HIGHLY CONFIDENTIAL PROTECTED MATERIAL."~~

~~13. Information deemed Proprietary Information ~~Proprietary Information~~ shall not be used except as necessary for the conduct of these proceedings, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of these proceedings and who needs to know the information in order to carry out that person's responsibilities in these proceedings.~~

~~14.9. Reviewing Representatives may not use information contained in any Proprietary Information ~~proprietary Information~~ obtained through these proceedings to give any party or any competitor or customer or consignee of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(i)~~

through 5(iv) or 6(i) through 6(iii) above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 6(iv) above with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

~~15. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.~~

~~(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.~~

17.10. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

~~18.11. The parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.”~~ Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, information that warrants the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” designation, the parties, insofar as reasonably practicable within discovery and other time constraints imposed

in these proceedings, shall designate only the specific data or pages of documents ~~which constitute or contain Proprietary Information~~so affected. Proprietary Information ~~The Proprietary Information~~ shall be served upon the parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.”

~~19.12.~~ The parties will consider and treat the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” ~~Proprietary Information~~ as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found ~~to be non-proprietary~~not to qualify for the designation. In the event that any person or entity seeks to compel the disclosure of ~~Proprietary Information~~Proprietary Information, the non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

~~20.13.~~ Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

~~21.14.~~ Part of any record of these proceedings containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph ~~135~~ above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

~~22.15.~~ The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information ~~and to question or challenge the admissibility of Proprietary Information.~~ If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

~~23.16.~~ The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

~~24.17.~~ Within 30 days after a Commission final order is entered in the above-captioned proceedings, or in the event of appeals, within thirty days after appeals are finally decided, the parties, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the party shall certify in writing to the other producing party that the Proprietary Information has been destroyed.

Dated: _____

Joel H. Cheskis
Deputy Chief Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P. :
 :
 v. : Docket Nos. C-2020-3023129
 :
 :
 SUNOCO PIPELINE L.P. :

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the retaining party). The undersigned has read and understands the Protective Order deals with
the treatment of Proprietary Information, and the undersigned is a (check ONE):

- Reviewing Representative for CONFIDENTIAL information.
- Reviewing Representative for CONFIDENTIAL & HIGHLY CONFIDENTIAL information.

The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

Name

Signature

Address

Employer

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL ONLY

Samuel W. Cortes, Esquire
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
(610) 458-7500
scortes@foxrothschild.com

/s/ Thomas J. Sniscak _____

Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.
Kevin J. McKeon, Esq.
Bryce R. Beard, Esq.

Dated: March 2, 2021